

Case No. 85850

In the Supreme Court of Nevada

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

Appellant,

vs.

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

Respondents.

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Elizabeth A. Brown
Clerk of Supreme Court

APPEAL

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

APPELLANT'S APPENDIX

VOLUME 5

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129	Case Appeal Statement	08/12/20	11	2685–2688
134	Case Appeal Statement	02/23/21	11	2711–2716
163	Case Appeal Statement	06/14/22	17	4196–4201
95	Claim of Exemption from Execution – A Cab Series, LLC, Administration Company	10/04/18	8	1993–1998
94	Claim of Exemption from Execution – A Cab Series, LLC, CCards Company	10/04/18	8	1987–1992
97	Claim of Exemption from Execution – A Cab Series, LLC, Employee Leasing Company Two	10/04/18	9	2005–2010
93	Claim of Exemption from Execution – A Cab Series, LLC, Maintenance Company	10/04/18	8	1981–1986
98	Claim of Exemption from Execution – A Cab Series, LLC, Medallion Company	10/04/18	9	2011–2016
96	Claim of Exemption from Execution – A Cab Series, LLC, Taxi Leasing Company	10/04/18	8 9	1999–2000 2001–2004
79	Clerk’s Certificate Judgment	05/07/18	6	1381–1386
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5	Defendant A Cab, LLC’s Answer to Complaint	04/22/13	1	48–52
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17	Defendant A Cab, LLC's Answer to Second Amended Complaint	09/14/15	1	163–169
18	Defendant Creighton J. Nady's Answer to Second Amended Complaint	10/06/15	1	170–176
89	Defendant's Ex-Parte Motion to Quash Writ of Execution and, in the Alternative, Motion for Partial Stay of Execution on Order Shortening	09/21/18	7 8	1745–1750 1751–1769
120	Defendant's Second Amended Case Appeal Statement	03/06/19	11	2554–2558
114	Defendants' Amended Case Appeal Statement	01/15/19	11	2514–2518
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135	Defendants' Motion for Costs	01/13/22	11 12	2717–2750 2751–2810
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140	Defendants' Motion for Declaratory Order	02/11/22	12 13	2854–3000 3001–3064
148	Defendants' Motion to Stay on Order Shortening Time	02/28/22	14 15	3385–3500 3501–3512
182	Defendants' Omnibus Brief Pursuant to Court Order	09/30/22	20 21	4990–5000 5001–5199
139	Defendants' Supplement to Response and Opposition to Plaintiffs' Rogue Supplement	02/10/22	12	2851–2853
146	Errata to Plaintiffs' Motion for Entry of Modified Award of Pre-Judgment Attorney's Fees as Provided for by Remittitur	02/23/22	14	3333–3336
183	Exhibits 6-14 to Defendants' Omnibus Brief Pursuant to Court Order	09/30/22	21 22	5200–5250 5251–5300

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CERTIFICATE OF SERVICE

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

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1 paragraph 3, he specifically states what he looked at, which were the two Excel files
2 that I was referring Your Honor to.

3 MS. RODRIGUEZ: Well, we got -- we got a number of erratas after that.

4 THE COURT: Wait. Don't interrupt. Let's not get that far.

5 MS. RODRIGUEZ: Well, Your Honor, he's interrupted me so many times.
6 I've had to sit down three different times because every time Your Honor asked me
7 to argue, he starts back up again on his argument. And, you know, it's like -- do you
8 not see that, Your Honor?

9 THE COURT: Well, I'll try to watch more carefully to see that doesn't happen.
10 That's not my intention.

11 MS. RODRIGUEZ: Okay. May I reply to something that he answered to you
12 earlier, too?

13 THE COURT: Well, let me --

14 MS. RODRIGUEZ: Because you asked specifically about --

15 THE COURT: Okay, but he was finally getting down to answering one of my
16 questions. What is in the spreadsheet? How do I determine what the information
17 was that was given from the defendants to the plaintiffs?

18 MR. GREENBERG: Well, Your Honor, you don't have a visual representation
19 in the papers of the spreadsheet.

20 THE COURT: Okay.

21 MR. GREENBERG: But Mr. Bass in his declaration, starting at paragraph 3,
22 actually explains what is in the Excel file. He explains it contains 10 columns that
23 identify the following pieces of information on each line. And he explains what each
24 one is and what he was advised there was. For example, Column C is a number

1 which is a payroll check number. Column D is date, the payroll check transaction
2 date. And he also goes on to explain how he has reproduced this information in
3 the 600-page summary that Your Honor is reviewing. I mean, this is a complete
4 A, B, C, D, E --

5 THE COURT: Where it says at the bottom of page 2, "Those Excel files
6 contain 10 columns that identify on each line of those Excel files the following pieces
7 of information. Column C, which is titled Num, N-u-m, I am advised that this is the
8 payroll check number or a payroll transaction number if no physical check was
9 issued."

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

11 THE COURT: All right. So he's got something that's got a -- he calls it
12 Column C. I don't know, maybe it isn't. Maybe we have to actually look at a printout
13 of just a couple of pages.

14 MR. GREENBERG: Your Honor, if Your Honor would like, we can have an
15 evidentiary hearing. I'll bring Mr. Bass down here. You can have him go on the
16 record and corroborate the summary that was performed, if you feel that's
17 necessary for admissibility purposes. That's what we would do at trial if someone
18 was, you know, introducing a summary of voluminous records. I don't believe that's
19 appropriate, Your Honor, because all of this information was given to defendants.
20 When they say they don't know where it came from, that's not true.

21 THE COURT: All right.

22 MR. GREENBERG: They haven't contested a single issue.

23 THE COURT: That's getting away from where I'm trying to focus in.

24 MR. GREENBERG: Yes, Your Honor.

1 THE COURT: I want to see a printout of what was given. Not the entire
2 thing, a sample printout, a couple of pages of -- when you print out their documents,
3 what do you get? Do you get a Column C which says Num and do you get a
4 Column D which is titled Date? And from there maybe we can look and see whether
5 there is an issue of material fact.

6 Now, while you're doing that, I want Ms. Rodriguez to finish the
7 thought that she had.

8 MS. RODRIGUEZ: Well, the only thing I would go back to, Your Honor,
9 because I think there's nothing else to be said on that. I think that's a good proposal
10 from the Court to look at the raw data versus what Mr. Bass has compiled. And still,
11 we'll need a ruling one way or another as to what is considered expert opinion
12 versus what is not, because I think it's important in terms of failure to comply --

13 THE COURT: Right.

14 MS. RODRIGUEZ: -- with the rules as to expert designation. So again, I'll
15 be moving to strike once we get a ruling one way or another on that.

16 But what I was commenting upon was Mr. Greenberg's indication
17 about Michael Sergeant. The only thing he's attached about Michael Sergeant goes
18 through July of 2014. So again, I would reiterate that he doesn't even have authority
19 to ask for partial summary judgment past that deadline, which is July of 2014.

20 THE COURT: That's if I agree with you that any class representative must
21 have worked for the entire period.

22 MS. RODRIGUEZ: Right. And I cited to the Walmart v. Dukes in my papers
23 that show -- that give authority for that argument --

24 THE COURT: Okay.

1 MS. RODRIGUEZ: -- that they don't have the authority.

2 THE COURT: All right. That's an issue we'll have to revisit before we can
3 resolve this. For right now what I would like to get is a printout of just a couple of
4 pages so that I can see these columns and what they're supposed to represent,
5 or at least what Mr. Bass took them to represent, presumably based upon what
6 he was informed of. So, how long will it take you to get me a printout?

7 MR. GREENBERG: I can show you on the computer screen I believe right
8 here, Your Honor, at least a portion of the original Excel files that Mr. Bass --

9 THE COURT: Here's what I'm thinking. Rather than that --

10 MR. GREENBERG: Yeah, this is one of the ones he references in his
11 declaration. It's loading up on my screen right now.

12 THE COURT: Hold on one second. Are you able to email that to us right
13 now?

14 MR. GREENBERG: It is 14 megabytes. I don't know if it would in fact.
15 Would you -- if Your Honor would like to examine, I do have it on my screen right
16 now. You can actually see --

17 THE COURT: No. More than that, I want something printed out that can be
18 part of the record.

19 MR. GREENBERG: Oh, yes. Actually it is on here already.

20 THE COURT: All right.

21 MR. GREENBERG: Your Honor, I do have it available.

22 (The Court confers with the clerk)

23 THE COURT: Here's what I'm thinking. I'm thinking of getting you to send us
24 that and we'll print out a couple of pages if need be.

1 MR. GREENBERG: I can give it to you right now, Your Honor.

2 THE COURT: All right. Good. Then I need to have that and sit down with
3 you all and look at that, and what he says he used as a basis for it so that I can, for
4 one thing, determine whether or not it constitutes undisputed fact presented by the
5 defendant of the type and quality that would be necessary to be the basis for any
6 kind of partial summary. Basically that's it. And plus the explanation here of what
7 is given so I can determine whether this is a simple calculation that doesn't need an
8 expert or whether it does require an expert. And if it does require an expert, what's
9 the implication of that in terms of granting a partial summary judgment motion.

10 MR. GREENBERG: That's fine, Your Honor. It sounds like Your Honor has
11 other pressing matters that you need to attend to --

12 THE COURT: I do, indeed.

13 MR. GREENBERG: -- so we will be reconvening.

14 THE COURT: Reconvening Thursday afternoon at 1:30.

15 MR. GREENBERG: Okay.

16 THE COURT: Is that a problem?

17 MR. GREENBERG: I did have a deposition scheduled for that day, but I think
18 we can manage that. I want to accommodate the Court.

19 THE COURT: All right. Next Thursday afternoon at 1:30. Now, is there
20 anything else that we need to get prepared for that in order to resolve this issue
21 once and for all?

22 MR. GREENBERG: I don't believe Your Honor --

23 THE COURT: And then that's not even true. It's only -- it's only as a pretrial
24 partial summary judgment.

1 MR. GREENBERG: Your Honor, there are other issues in this case that do,
2 I think, require your attention, but I don't think it would be prudent necessarily for
3 us to take up your time with them now. In respect to this particular motion, you've
4 made a particular request that we --

5 THE COURT: Uh-huh.

6 MR. GREENBERG: -- that you -- that we make something available for the
7 Court, that you examine it.

8 THE COURT: When you say there are other matters, do you mean that are
9 comprised by this motion?

10 MR. GREENBERG: No. Only in a peripheral sense that they're connected
11 to the case, Your Honor --

12 THE COURT: Okay.

13 MR. GREENBERG: -- not that they bear on the disposition of this motion.

14 THE COURT: All right. Well, then we'll take those up next Thursday then.

15 MS. RODRIGUEZ: I just want to double check with my office if I have --

16 THE COURT: Yeah. Yeah.

17 MS. RODRIGUEZ: Thank you.

18 THE COURT: Yeah, do.

19 MS. RODRIGUEZ: Thank you, Your Honor. I'm sorry. I just wanted to
20 double check.

21 THE COURT: Yeah.

22 MS. RODRIGUEZ: I am free that afternoon.

23 THE COURT: You're free. Okay. All right, let's do that. And I assume you
24 have whatever it is that he has, but why don't we -- what do you have there, a USB --

1 MR. GREENBERG: I have the two Exel files.

2 THE COURT: -- thumb drive? But is it on --

3 MR. GREENBERG: Yes. I copied one of them on here very easily to give
4 to your staff.

5 THE COURT: That's a thumb drive?

6 MR. GREENBERG: Yes, it is. I'd like to maintain the thumb drive, but the
7 file -- I can instruct your staff to copy it off of this onto your system.

8 THE COURT: Can we just take that and make a copy?

9 (The Court confers with the clerk)

10 MR. GREENBERG: I can deliver a thumb drive or a CD tomorrow to chambers.

11 THE COURT: All right.

12 MR. GREENBERG: Would that be best?

13 MS. RODRIGUEZ: No.

14 THE COURT: All right. All right, let's do that. That will be easier.

15 MR. GREENBERG: Okay, I will do that.

16 MS. RODRIGUEZ: I don't know what we're delivering.

17 THE COURT: One to us and one to the defense.

18 MR. GREENBERG: Certainly, Your Honor.

19 THE COURT: And does the defense have any other, I don't know, some --
20 any physical item or piece of evidence further that you want to submit to the Court?
21 You can see where I'm going with this. Do I have a basis upon which to find that it
22 is uncontested that for certain hours certain employees were not paid the minimum
23 wage act, either under the \$7.25 or the \$8.25? The \$8.25 is a more complicated
24 issue, but.

1 MS. RODRIGUEZ: I would probably look at what he's going to provide to the
2 Court and then I would envision pulling out a few samples to show where the data
3 is incorrect in Mr. Bass' compilation.

4 THE COURT: Okay. The only things I expect to --

5 MS. RODRIGUEZ: I'm not going to do 14,000 of them, I don't think, but I
6 would pull out a couple to show the Court why the data is not reliable.

7 THE COURT: If the data came from the defendant --

8 MS. RODRIGUEZ: Well, I can --

9 THE COURT: But you would say for another purpose?

10 MS. RODRIGUEZ: Pardon me?

11 THE COURT: You would say it's data collected for another purpose, not for
12 this?

13 MS. RODRIGUEZ: Correct. Oh, yes, absolutely.

14 THE COURT: Hold on.

15 (The Court confers with the clerk)

16 THE COURT: All right. Do this, will you? Not only give -- would you give us
17 not only a CD, but go ahead and print out just a sample couple of pages.

18 MR. GREENBERG: I will submit no more than 20 pages as a sample, okay?
19 Because it would be thousands of pages if it was printed in full, Your Honor.

20 THE COURT: Okay. A couple becomes 20.

21 MR. GREENBERG: But I want to make sure you get a full sort of visual
22 representation, as best as I can do.

23 THE COURT: That's how Xerox got rich.

24 All right. Anything else now before we meet next Thursday?

1 MR. GREENBERG: I think Your Honor has made clear how you want to
2 proceed. I don't think it's prudent for me to take issue with that.

3 THE COURT: Now, here's the other thing you do need to be prepared on.
4 If it turns out that my conclusion is that you can't -- I can't -- well, that what you have
5 produced in these 600 pages requires the testimony of Mr. Bass as an expert, then
6 the question becomes does that mean we need to wait and have the defense
7 designate an expert and, I don't know, have conflicting expert reports just on this
8 calculation? I mean, at some point it just becomes too -- it becomes bogged down
9 to the point that the likelihood is I will deny the motion and say that I can't get there
10 based on the evidentiary state, or I may decide that there is an evidentiary state.
11 I'm just saying.

12 MR. GREENBERG: Well, Your Honor, I'm still waiting to understand what
13 is possibly in dispute here --

14 THE COURT: Okay.

15 MR. GREENBERG: -- as I've explained to the Court repeatedly.

16 THE COURT: All right. Let's just take it -- we'll take it piece by piece then.
17 We'll wait until Thursday and see whether there is -- whether this can be
18 characterized as being a simple calculation.

19 MR. GREENBERG: Your Honor, if it conceivably would be helpful or within
20 the Court's possible -- possible view that the Court would welcome actually hearing
21 from Mr. Bass, I will have him here next week. If the Court clearly does not want
22 to do that, I'm not going to do that.

23 THE COURT: Well, I'm not telling you I clearly don't want to do it. I don't
24 know whether --

1 MR. GREENBERG: Okay. I understand, Your Honor.

2 THE COURT: You know, I've tried to say where I think that there -- some of
3 the issues that I would need to be able to resolve in order to make the determination
4 that would have to be determined for a motion for summary judgment.

5 MR. GREENBERG: Yes, Your Honor. And it's not for me to tell the Court
6 how to do its business. You decide that, Your Honor. I want to comply with what
7 the Court's directing us. We're here to assist the Court in its process.

8 THE COURT: Okay. We'll see you Thursday at 1:30.

9 MR. GREENBERG: Thank you, Your Honor.

10 MS. RODRIGUEZ: Thank you.

11 MR. GREENBERG: Your Honor, you did make a ruling on one of the
12 motions, so I will work on getting an order drafted --

13 THE COURT: Yes. Thank you.

14 MR. GREENBERG: -- and to Ms. Rodriguez on that decision.

15 THE COURT: Did I only rule on one out of all those?

16 MR. GREENBERG: Yes, Your Honor, regarding the statute of limitations
17 issue, the toll. The notice issue. Yes, Your Honor.

18 THE COURT: Yeah. One and the countermotion.

19 MR. GREENBERG: The countermotion. Yes. Thank you.

20 THE COURT: Well, then, hold on. Before you leave, what about the
21 defendants' motion for leave to amend the answer and assert a third party
22 complaint?

23 THE CLERK: Chambers calendar.

24 MR. GREENBERG: We did -- you had reserved decision on that, Your Honor.

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THE COURT: Okay. All right. Yeah, yeah, yeah.

MR. GREENBERG: We did discuss that a fair amount, I believe.

THE COURT: Okay. All right, we got them covered. Thank you.

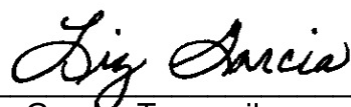
MR. GREENBERG: Thank you, Your Honor.

MS. RODRIGUEZ: Thank you.

(PROCEEDINGS CONCLUDED AT 12:59 P.M.)

* * * * *

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

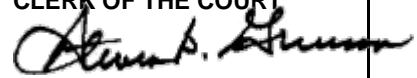


Liz Garcia, Transcriber
LGM Transcription Service

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1 **TRAN**

2
3 **EIGHTH JUDICIAL DISTRICT COURT**
4 **CIVIL/CRIMINAL DIVISION**
5 **CLARK COUNTY, NEVADA**

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

11
12 BEFORE THE HONORABLE KENNETH CORY, DISTRICT COURT JUDGE
13 THURSDAY, MAY 25, 2017

14 ***TRANSCRIPT RE:***
15 **PLAINTIFF'S RE-NOTICE OF MOTION FOR PARTIAL**
16 **SUMMARY JUDGMENT**

17 **APPEARANCES:**

18 For the Plaintiffs: LEON GREENBERG, ESQ.
19 DANA SNIEGOCKI, ESQ.

20 For the Defendants: ESTHER C. RODRIGUEZ, ESQ.
21 MICHAEL K. WALL, ESQ.

22 **ALSO PRESENT:** CREIGHTON J. NADY

23
24 **RECORDED BY:** Lisa Lizotte, Court Recorder

001012

001012

1 LAS VEGAS, NEVADA, THURSDAY, MAY 25, 2017, 1:37 P.M.

2 * * * * *

3 THE CLERK: Michael Murray versus A Cab Taxi Service. Case Number
4 A669926.

5 MS. RODRIGUEZ: Good afternoon, Your Honor. Esther Rodriguez and
6 Michael Wall for the defendants, and Creighton J. Nady is present.

7 THE COURT: Good morning -- good afternoon; wherever we are.

8 MR. GREENBERG: Good afternoon, Your Honor. Leon Greenberg with
9 Dana Sniegocki for plaintiffs.

10 THE COURT: Good afternoon.

11 MS. SNIEGOCKI: Good afternoon.

12 THE COURT: We have pretty well visited this issue. Let's see, we've had
13 a motion for partial summary judgment with two errata, the opposition, the plaintiff's
14 reply to the opposition and then I believe there was a supplemental to plaintiff's reply.
15 We had the oral argument and then we had, at the Court's suggestion or at least
16 allowance or whatever, we had an additional briefing consisting of a letter from
17 Mr. Greenberg with attachments and the supplement to the defendants' opposition.

18 So we've given this issue a lot. Is there anything to be added or is
19 there anything, any argument that needs to be made that hasn't been thus far
20 addressed?

21 MR. GREENBERG: Well, Your Honor, I would address perhaps some other
22 issues that in my mind may well be collateral, but it sort of depends upon the Court's
23 thought process or what the Court agrees is important. So I don't want to start going
24 off into other subject matter that we haven't discussed because Your Honor really

1 sort of hasn't developed your thoughts --

2 THE COURT: Well, give me a notion --

3 MR. GREENBERG: -- communicated to us that much as yet, Your Honor.

4 THE COURT: Give me a notion of what you're thinking of.

5 MR. GREENBERG: Well, Your Honor, I haven't directly addressed to the
6 Court the fact that there's really a question of just estoppel here. And the reason
7 why I say estoppel and I haven't addressed it is because the defendants were under
8 an obligation to keep hourly records. That's statutory under Nevada law. They were
9 also subject to a consent judgment from the Department of Labor to keep accurate
10 records of their employees and pay them accurately in compliance with the federal
11 minimum wage. And by the way, Your Honor, their payroll records for this period
12 do show compliance with the federal minimum wage. There is no violation under
13 federal law for the period we are discussing, 2013 to 2015. The violation that arises
14 under Nevada law is because of the tip credit issue and because of the dollar an
15 hour issue involving the health insurance availability.

16 So for them to come to the Court and now say that their records are
17 not accurate, you know, is in violation of the consent judgment that they agreed to.
18 It's in violation of their duty under the statute to keep the records. Now, you know,
19 I mention this as an estoppel issue, but, Your Honor, I didn't really get into this
20 previously and I don't know that it's germane here because we already have their
21 admissions testimonially, which I've brought to the Court's attention, at their
22 deposition that the records are in fact fully accurate that we have used. So there
23 shouldn't be any dispute as to the accuracy of the records. It's not really even a
24 question of estoppel, Your Honor.

1 THE COURT: Okay.

2 MR. GREENBERG: That is all that came to my mind additionally that we
3 did not discuss previously, Your Honor.

4 THE COURT: All right. Ms. Rodriguez, anything additional --

5 MS. RODRIGUEZ: Actually, yes.

6 THE COURT: -- you think needs to be --

7 MS. RODRIGUEZ: Thank you, Your Honor, because that is actually one
8 of the items that I did want to address that I didn't necessarily highlight in my
9 supplement to the Court. And I think it's ironic that Mr. Greenberg is arguing about
10 the estoppel and the accuracy of the records because throughout this litigation and
11 even in the complaint, and I brought a copy of the complaint because his arguments
12 completely contradict what he's arguing in the complaint or what he's asking for in
13 the complaint.

14 Specifically I'm referring -- it starts at the bottom of page 5 of the
15 second amended and supplemental complaint that was filed on August 19, 2015
16 and it goes through page 6 and 7. But basically the complaint alleges this 2009
17 Department of Labor investigation that Mr. Greenberg just referenced that following
18 that time the complaint states that rather than follow the advisement of the U.S.
19 Department of Labor, defendants intentionally acted to not institute any system that
20 would keep an express, confirmed and accurate records of the hours worked by
21 such taxi driver employees. And then there's a very long paragraph in explanation
22 as to why they are alleging that the records are not accurate, that they're inaccurate.
23 But now in summary judgment they are arguing -- they are relying on those exact
24 records that they previously argued and alleged were inaccurate.

1 So I think there's a big problem there. Either they need to dismiss
2 parts of their complaint where they're alleging that the records are inaccurate and
3 that A Cab fails to keep any accurate records, or they go to their current argument,
4 which is, okay, they are accurate records and based on those records we're asking
5 for summary judgment. So that was the one point that I wanted to bring to the
6 Court's attention.

7 The second item, briefly, is just that in preparing again for this hearing
8 I'm still trying to get my head around what numbers they are asking for, because
9 when I looked at the original motion that was asking for the time period of January
10 1st of 2013 through May of 2016, the motion asked for \$174,445, based on the
11 \$7.25 an hour. The supporting documentation to that motion shows a completely
12 different figure. These are the figures from Mr. Bass that are \$174,593. It's off.
13 And then the reply that is allegedly just asking for a figure through the end of 2015
14 has a third figure that is \$174,423. So just working with the \$7.25, not even getting
15 into the \$8.25 issue, by their own pleadings and their supporting documentation they
16 have a number of different calculations that have come from Mr. Bass' methodology.

17 And what Mr. Greenberg just said, that they are strictly going off of
18 the tip credit issue, if A Cab were to present to the Court, which I didn't know that
19 that was going to be a basis of his argument this afternoon, but A Cab did look at
20 their tip credit for the same time period and it's a fourth figure altogether. So if he's
21 saying now that Mr. Bass' calculations are actually just tips that were improperly
22 used in the payment for drivers, then A Cab's calculations, just looking at -- they
23 can run a report on tips that were included during that time period, and that's yet
24 another figure.

1 So I think just because there are so many different calculations that
2 plaintiffs themselves have presented, I think it's improper for the Court at this point
3 to grant summary judgment on that particular issue. And those are basically --

4 THE COURT: You didn't say proper, you said improper?

5 MS. RODRIGUEZ: I'm sorry?

6 THE COURT: You didn't say it's proper to grant summary judgment?

7 MS. RODRIGUEZ: No, it's improper.

8 THE COURT: Improper. Okay, I just wanted to make sure that I was hearing
9 you right.

10 MS. RODRIGUEZ: No, I'm not arguing for summary judgment on this.

11 THE COURT: Yeah. Okay.

12 MS. RODRIGUEZ: That would be the other court, the other department.

13 THE COURT: All right.

14 MS. RODRIGUEZ: No.

15 THE COURT: All right.

16 MS. RODRIGUEZ: That's the gist of it, Your Honor.

17 THE COURT: Okay. Well, my conclusion is -- doesn't really address either
18 point which has just been raised. My conclusion rests upon the notion that when
19 we last met it appeared that plaintiff at least was convinced that they would not need
20 the services of an expert in order to present these figures and calculations in such
21 a fashion that the Court could grant partial summary judgment. My conclusion after
22 reading everything that I have is that I cannot grant the motion for partial summary
23 judgment. Partly I believe that it is because either I'm just a little slow, and I don't
24 claim to have been a arithmetic or a financial whiz, but I could not simply understand

1 from the presentation made by the plaintiff in this last letter from Mr. Greenberg
2 and the attachments, I could not arrive at a simple calculation and it appeared to
3 me that it would require the services of an expert in order to help the Court or the
4 trier of fact. The Court to determine whether there was no issue or the trier of fact
5 if there is an issue to determine what the correct calculation would be under any of
6 the scenarios that are put forward by the plaintiff.

7 This case has had a somewhat unusual history, including everything,
8 including being assigned out to a different department and then brought back.
9 It is my conclusion that given the present state of discovery and of the time for
10 designation of experts and their reports on both sides having seemingly passed,
11 although there was a reservation of an expert, it's my conclusion that we have
12 time before a February trial date to yet hear from experts. And on my own motion,
13 *sua sponte*, it appears to me that what would be the best way to try and get to a
14 resolution in this case that is based upon the merits would be to reopen discovery
15 for the purposes solely of having both sides have an opportunity to designate
16 experts and file a report. And if a rebuttal expert is deemed necessary, to do so.

17 I have some dates worked out which I have written down. I'll ask you
18 to take those down and then I'd like to hear from you if anybody feels that these are
19 unworkable. And then I'll probably go ahead and do what I was going to do anyway
20 because I think they are workable, but I'll be glad to hear from you on the subject.
21 Today is May 25th. I would be reopening discovery strictly for experts and expect
22 that by June 30th all initial expert designations and reports would be made. By
23 July 31st, all rebuttal expert designations and reports would be made. Discovery
24 would then close September 29th, which would set us up in time for dispositive

1 motions to be filed by October 30th.

2 Anybody have any response to that?

3 MR. GREENBERG: Yes, Your Honor. I understand from what you're saying
4 that you're not precluding a grant of summary judgment for what I have requested
5 in the future based on a developed record after expert discovery is concluded.

6 THE COURT: That is my thought. I am not -- I would not deny this motion
7 with prejudice. I think that what we have run into may cast some question and
8 some doubt about the likelihood of a grant of partial summary judgment, given the
9 -- to some extent the difficulty to harnessing these numbers and making sense out
10 of them, but I would not preclude that. I would not preclude the filing or refiling.

11 MR. GREENBERG: Your Honor, I'm just trying to understand the position
12 of the Court because the testimonial record we have is that the information in
13 the QuickBooks is the information that was used to produce the payroll and the
14 paychecks that were issued to the class members and produce the paystubs.

15 In the letter I had delivered to you on Monday, the last page of the
16 letter actually has a copy of one -- it's Exhibit B, I believe -- it has one page. It has
17 a copy of the actual paystub issued for a pay period, along with the excerpt from
18 the Excel materials given to us showing all of the matching payroll transactions that
19 appear on that paystub. Defendants have testified under oath that it does match,
20 that anything that is on the paystubs is in the Excel files that were produced.
21 Defendants do not dispute that that particular paystub I presented to the Court does
22 in fact present a minimum wage violation. And as I detailed to the Court, it is in fact
23 included --

24 THE COURT: Am I to gather from this that you're rearguing the motion?

1 MR. GREENBERG: Well, Your Honor, what I'm just trying to understand
2 in terms of the Court's denial of the motion, is the Court denying the motion based
3 upon its concern about the calculations that were performed or its concern about
4 the basis, the underlying basis of what's presented?

5 THE COURT: Then let me -- let me run it by you perhaps with a little more of
6 an answer to that. You have a bunch of numbers. There is some dispute from the
7 defendants about whether you can even use those numbers, but you've mounted
8 evidence that would perhaps seem to indicate that they could not be heard to
9 complain if you're using their own numbers. But then you go to the calculation, and
10 getting from those raw numbers on the report to a final calculation I simply suspect
11 takes more in the form of an evidentiary nature, more of an evidentiary presentation
12 than simply saying, look, you can take these numbers off of this column and do that.
13 Well, why? Why does that work?

14 MR. GREENBERG: Well, and if Your Honor feels that that's -- the process,
15 so to speak, needs to be subject to adversarial scrutiny in terms of taking the
16 information and reaching the conclusions that I've presented to the Court, then
17 yeah, I mean, you have experts. They're deposed. There will be a record. There
18 will be a discussion of that and we can proceed in that fashion.

19 What I find perplexing, Your Honor, is Your Honor is reaching that
20 conclusion, okay, when defendants have provided nothing. They've provided
21 nothing in respect to any actual dispute of any of the calculations that are made,
22 okay. Again, it is their materials, it is their information. They've affirmed under oath
23 this is correct information. I have demonstrated to the Court that it does in fact
24 match the payroll that was issued, to the extent that I have the sample to present to

1 the Court. Defendants have not disputed that. They haven't disputed a single line
2 of the arithmetical analysis that was produced.

3 So, Your Honor, they should have a responsibility to come here before
4 the Court and provide something substantive to -- rather than just say, well, we can't
5 trust these calculations.

6 THE COURT: Let me suggest this to you --

7 MR. GREENBERG: Yeah.

8 THE COURT: -- before I even get to whatever their problems are with it.

9 MR. GREENBERG: Okay.

10 THE COURT: There is a burden that you have to show to the Court that this
11 is a simple enough calculation that even I can do it, and I'm afraid I could not quite
12 get there. I need something more that explains to me why you take this and take
13 that and why you do this; the type of thing that I generally get in the form of expert
14 testimony that explains why certain known facts or data may be used or manipulated
15 or however you want to call it to produce a conclusion, be it mathematical or
16 otherwise, which is if not totally unassailable, is at the very least beyond the mark
17 of what a proponent on a motion must show in order to prevail.

18 MR. GREENBERG: I understand, Your Honor. My concern, quite frankly,
19 is down the road we're going to be back here on this on a further motion. And we
20 have a trial scheduled and how the issues in this case may be dealt with either
21 before trial or at trial. And my problem is this, Your Honor. If defendant has
22 admitted how much they have paid a class member in a pay period and they've
23 admitted how many hours that class member worked in the pay period, those are
24 the only facts we need to know to determine whether they've been paid less than

1 \$7.25 or less than \$8.25 an hour. Do you understand that, Your Honor?

2 THE COURT: Yes. If only it were that simple when you're dealing with
3 hundreds of records and calculations. Frankly, I don't think that there's a lot more
4 clarity I can give you as to why I don't feel that I can do this than to say if you were
5 trying to prevail in front of a jury with this I think you'd be hard pressed. In other
6 words, without something more to explain to them what the numbers mean, where
7 you got them, what they mean and how it's calculated out.

8 MR. GREENBERG: Well --

9 THE COURT: And if that doesn't -- if none of that makes any sense to you,
10 then all I can do is say you can attribute it then to perhaps my inability with numbers
11 or with something. But I didn't feel that after reading your explanation that I could
12 simply make that calculation quite as simply as it was expressed to be done and
13 feel that I was being accurate.

14 MR. GREENBERG: Well, Your Honor, the calculation I described has to be
15 -- is at issue for something like 14,000 paychecks. It's not -- but the calculation itself
16 is set by law. I mean, how much was the employee paid and how many hours did
17 he work? Those are the two relevant factors, Your Honor. I don't want to take up
18 Your Honor's time excessively. You've been very patient with us. I'm just trying to
19 understand how we're going to move this case forward and what --

20 THE COURT: Well, it would be nice if you could ask me a few questions
21 and I could tell you, look, this was the only little bit and piece that was missing.
22 You'd know what to plug in next time and away we'd go. I don't think I can do that.
23 I can only tell you that I looked at your explanation and before I even received
24 Ms. Rodriguez' supplement to the opposition I was pretty sure I wasn't going to

1 be able to get from A to B reliably with what I had.

2 MR. GREENBERG: Your Honor, if I have 14,000 individual paystubs that the
3 defendant had verified were in fact copies of the paystubs issued on every paycheck
4 and it showed the hours and the pay and I produced an old-fashioned ledger for
5 each person based on those paystubs showing any amounts that were owed on
6 each pay period, would that be -- if that was done by hand by a group of clerks,
7 would that be more sensible or understandable? You're not sure?

8 THE COURT: How far do you want to go with this?

9 MR. GREENBERG: Your Honor, let me not take up any more of your time.
10 Again, I'm just trying to get guidance from the Court about how we're going to
11 proceed.

12 THE COURT: Well, I've tried --

13 MR. GREENBERG: You're doing your best to give me that guidance and
14 I appreciate it.

15 THE COURT: And I've tried to do my best to explain to you that I can't quite
16 get there. I can't agree that it is that simple of a calculation that it does not appear
17 to need something more in the way of evidence, in the form most likely of an expert
18 explanation for how these things are calculated out.

19 MR. GREENBERG: To do 14,000 calculations, Your Honor, is involved.

20 THE COURT: I'm not suggesting it might take individual explanation of
21 14,000 calculations. I don't know what it would take for you to do it. That's for you
22 to figure out.

23 MR. GREENBERG: Well, that's what I'm trying to do, Your Honor, and it just
24 -- it seems -- I'm confused. I'm just being very straight with Your Honor.

1 THE COURT: Well, you're not alone.

2 MR. GREENBERG: I'm confused because I'm not sure when we go -- when
3 I present a case to the Court on this --

4 THE COURT: Uh-huh.

5 MR. GREENBERG: -- and we have, again, an established amount that was
6 paid to someone, an established amount of hours that they worked, it is just an
7 arithmetic calculation at that point. I mean, 10 divided into 100 is always going to
8 be 10, Your Honor. It's not subject to dispute.

9 THE COURT: What I hear you saying very nicely and kindly now is that
10 unless I'm a dunce there's no way I could not be able to see this calculation and
11 simply do it.

12 MR. GREENBERG: Your Honor --

13 THE COURT: That's what it makes me feel like.

14 MR. GREENBERG: -- the way the information is presented to the Court, the
15 Court may find lacking. I understand that, okay, and I can certainly work to address
16 that. When you speak about you don't -- you're not sure that the calculation to be
17 performed on one particular pay period is so simple --

18 THE COURT: I'm not talking about the simple arithmetic, taking two or three
19 numbers and running those numbers. I'm talking about how you get to that point.

20 MR. GREENBERG: How you get to that result --

21 THE COURT: Yeah.

22 MR. GREENBERG: -- for 14,000 pay periods. Okay.

23 THE COURT: Yeah.

24 MR. GREENBERG: You've clarified it, Your Honor. Thank you. I've taken

1 up enough of your time on this.

2 THE COURT: Good. I'm glad I finally was able to satisfy you.

3 MR. GREENBERG: Thank you.

4 THE COURT: Now, anything else? Ms. Rodriguez, do you wish to make
5 comment on --

6 MS. RODRIGUEZ: Just in answer to the Court's question about the
7 proposed dates. I think those are fair and workable. I don't have any objection to
8 those dates.

9 THE COURT: Okay.

10 MS. RODRIGUEZ: But just for purposes of the record I just do want to put my
11 objection that pursuant to the Discovery Commissioner Report and Recommendation
12 of November 18th, 2016, the expert deadline was January 27th of 2017.

13 THE COURT: Uh-huh.

14 MS. RODRIGUEZ: But I understand the Court's decision in this, so I just --

15 THE COURT: Well, okay. If we were going to go that route, then we could
16 say that by reserving an expert and by putting all of the necessary things that there
17 would at least -- it was necessary for at least a designation, that it might have been
18 a good idea to also counter-designate, even though nobody had a report to give yet.
19 I would not expect a report --

20 MS. RODRIGUEZ: Right.

21 THE COURT: -- from one without getting a report from the other.

22 MS. RODRIGUEZ: Right.

23 THE COURT: I think this is a complicated enough case; that everybody has
24 been doing their best to do the best they can with it. And if we're going to make a

1 record, then here's my record. I know you both to be very fine attorneys, very
2 capable attorneys. I think the level of professionalism has slipped in this case
3 on both sides. I expect both sides to show a higher level of professionalism and
4 courtesy towards each other in the future without accusing each other, either in
5 written pleadings or argument of the motives or a lack of professionalism of each
6 other. If you have a problem with professionalism take it somewhere, but not here.

7 Am I clear?

8 MR. GREENBERG: Yes, Your Honor. I would not have any disagreement
9 with your admonition to us in that respect.

10 THE COURT: Ms. Rodriguez?

11 MS. RODRIGUEZ: I understand that, Your Honor, but just for the Court,
12 because the Court did raise this, or I believe Mr. Greenberg may have raised this
13 in the last hearing that we were here. And on behalf of A Cab I did consult with the
14 State Bar on some of the actions that have occurred in this case.

15 THE COURT: Uh-huh.

16 MS. RODRIGUEZ: And Bar counsel informed me that their hands were tied
17 in proceeding with anything against Mr. Greenberg for like failure to communicate
18 offers of settlement to his client, those kind of things --

19 THE COURT: Okay.

20 MS. RODRIGUEZ: -- because the district court judges undermine -- well,
21 undermine is a strong word. I don't mean to insult the Court by that. But basically
22 Bar counsel said they could only follow the lead of the district court judges --

23 THE COURT: Okay.

24 MS. RODRIGUEZ: -- and they were very frustrated.

1 THE COURT: Okay.

2 MS. RODRIGUEZ: So I understand Your Honor's instruction to take it
3 elsewhere.

4 THE COURT: I'm not talking about trying to sort out what's happened in the
5 past. I'm talking about prospectively. If you all have bones of contention with each
6 other for conduct of counsel in the past there are ways, eventually, to take care of
7 that. But I'm talking about for the rest of this case, I expect what I know you can
8 both give. I've seen you do it.

9 MR. GREENBERG: Your Honor, absolutely. Just to address the question
10 of the schedule you were giving us, Your Honor --

11 THE COURT: Yes.

12 MR. GREENBERG: -- there is discovery outstanding from defendants that's
13 been ordered. There was discussion earlier about some W-4 information to be
14 produced, which is important for an expert report. I am waiting the production of
15 that. I understand you're giving us a deadline to work with here, but obviously
16 there has to be compliance with the prior orders of the Court regarding discovery.

17 THE COURT: Well, then I suggest you seek it.

18 MR. GREENBERG: Okay. If necessary, I will submit a motion on that.
19 Yes, Your Honor.

20 THE COURT: I would suggest to both of you that since we have a fairly tight
21 schedule, that if you aren't getting something you think you're entitled to, you file
22 with the Discovery Commissioner.

23 MR. GREENBERG: Right. The only other item of discovery, just to bring
24 it to the Court's attention, is the deposition of Mr. Nady on the claims against him

1 personally. We had a schedule which would have carried us to the end of April.

2 THE COURT: Uh-huh.

3 MR. GREENBERG: We had a 60-day stay, meaning if that schedule had
4 been carried forward it would have been to the end of June. I've advised defense
5 counsel that we have a motion to bifurcate before Your Honor, which as I
6 understand it Your Honor is not inclined to bifurcate the claim against Mr. Nady,
7 at least not at this point. So I do need to proceed with his deposition on the claims
8 against him individually.

9 THE COURT: I would suggest that you do that.

10 MR. GREENBERG: Well, I just --

11 MS. RODRIGUEZ: I've addressed that with Mr. Greenberg because we
12 have a Discovery Commissioner's order in place. And I sent him correspondence
13 yesterday. I'm not sure if he didn't see that, but she's already ordered an additional
14 only three hours if necessary. So I've asked them what are the areas of testimony
15 they're intending to cover because they've already deposed him for I believe over
16 10 hours on two separate days.

17 THE COURT: Okay.

18 MS. RODRIGUEZ: So I --

19 THE COURT: So it sounds like you may have a discovery dispute to go
20 before our Discovery Commissioner.

21 MR. GREENBERG: Well, Your Honor, I was addressing this because Your
22 Honor was talking about opening the discovery specifically for this issue of expert
23 reports and so forth.

24 THE COURT: Yeah.

1 MR. GREENBERG: The only other item of discovery outstanding that hasn't
2 been --

3 THE COURT: Oh.

4 MR. GREENBERG: -- ordered by the Court is Mr. Nady's deposition.

5 THE COURT: So you're asking whether you're limited to expert things or not.

6 MR. GREENBERG: And counsel is correct, the discovery -- there was an
7 understanding with the Discovery Commissioner. His deposition will be limited to
8 half a day and it is on the claims against him individually. Again, under the stay
9 that schedule for April 27th or 28th actually wasn't served on us until like a week
10 or two ago. I don't know, it got lost sort of in the process between the Discovery
11 Commissioner and Your Honor perhaps. But the point is there was a stay for
12 60 days while we attempted mediation. So assuming that schedule was in place,
13 discovery actually wouldn't be expiring until the end of June.

14 THE COURT: Okay.

15 MR. GREENBERG: I just want confirm-- I don't want an unclear record.
16 I want confirmation --

17 THE COURT: Well, that's fair.

18 MR. GREENBERG: -- that we -- hopefully defendant will go on the record
19 right now and say, yes, we're going to do this deposition. I'm not talking about
20 making any other additional discovery demands or requirements on defendants.
21 This has been sort of in the hopper for awhile, Your Honor. That's all.

22 THE COURT: Well, it would be easy enough to simply say that, yes, the
23 discovery at least until the end of June may involve matters other than these expert
24 designations and reports.

1 MR. GREENBERG: Okay. That's consistent with the schedule that was
2 entered and the --

3 MS. RODRIGUEZ: I'm in agreement with that. I have calculated as well that
4 our discovery closes at the end of June. I don't remember the exact date. I think
5 it's like June 27th or thereabouts for other issues, because I similarly have -- want
6 to take a number of depositions before the close of discovery, unrelated to the
7 experts. But as far as Mr. Nady's deposition, no, I'm not going to go on the record
8 as he's asking, saying that I'm agreeing that he has the right to depose him a third
9 time, because I think he's already asked a number of questions that he's wanting
10 to ask him again. And so this is an issue that's been repeatedly addressed with the
11 Discovery Commissioner, so I can't just give him --

12 THE COURT: Well, in the interest of time then, if you know that there's not
13 going to be agreement, I suggest you file your motion then.

14 MR. GREENBERG: Your Honor, there was a motion for a protective order.
15 It was denied. That was how we came up with this one half day deposition that was
16 instructed by the Discovery Commissioner for Mr. Nady on the claims against him
17 personally. If bifurcation had proceeded I would have deferred that, but it is not
18 proceeding to be bifurcated.

19 THE COURT: This was an order that our Discovery Commissioner put out?

20 MR. GREENBERG: Yes, it was, Your Honor. And, look, Your Honor, to
21 the extent that there was any examination of Mr. Nady on anything that he's been
22 examined on previously, their objections will be preserved. I understand that. There
23 are claims against him individually regarding his management, the alter ego issues
24 with the company and so forth which have not been subject to examination. He's

1 been produced as a 30(b)(6) witness, Your Honor. He has not been deposed
2 in his individual capacity. He elected to come in as a 30(b)(6) witness. He could
3 have --

4 THE COURT: So, what are you -- the purpose of you saying this now is
5 you want me to order it?

6 MR. GREENBERG: I don't -- Your Honor, I hear -- if your position is that we
7 will simply address this by further motion if defendants don't cooperate, then that's
8 fine. I just want to be clear Your Honor is not precluding this today --

9 THE COURT: No.

10 MR. GREENBERG: -- because Your Honor's initial statement about discovery
11 proceeding solely --

12 THE COURT: No. And you're correct. You're correct and I stand corrected.
13 Let us just say, so that we're all on the same page, until the end of June all discovery
14 will be open.

15 MR. GREENBERG: And we have the additional expert discovery that you've
16 outlined to us, Your Honor.

17 THE COURT: Beyond June, unless somebody files a motion and it is
18 warranted, beyond that point then it should be focused on expert discovery.

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

20 THE COURT: Okay.

21 MS. RODRIGUEZ: That's what I understood the Court to say.

22 MR. GREENBERG: I want to thank Your Honor for being patient with me.
23 I don't think I was -- I was a little difficult today and I apologize.

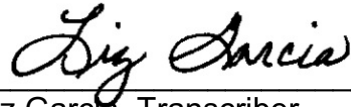
24 THE COURT: Okay. All right, thank you.

1 MS. RODRIGUEZ: So, shall I prepare an order, Your Honor --
2 THE COURT: All right.
3 MS. RODRIGUEZ: -- on the motion for partial summary judgment?
4 THE COURT: That's fine.
5 MS. RODRIGUEZ: Okay.
6 THE COURT: And pass it by counsel
7 MS. RODRIGUEZ: All right. Thank you.
8 THE COURT: Thank you.

9 (PROCEEDINGS CONCLUDED AT 2:11 P.M.)

10 * * * * *

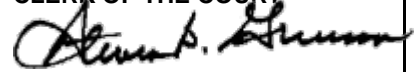
11
12 ATTEST: I do hereby certify that I have truly and correctly transcribed the
13 audio/video proceedings in the above-entitled case to the best of my ability.

14 

15 Liz Garcia, Transcriber
16 LGM Transcription Service
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DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-12-669926-C

Dept.: I

NOTICE OF ENTRY OF
DECISION AND ORDER

PLEASE TAKE NOTICE that the Court entered the attached Decision and
Order on June 7, 2017.

Dated: June 7, 2017

LEON GREENBERG PROFESSIONAL CORP.

/s/ Leon Greenberg

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CERTIFICATE OF SERVICE

The undersigned certifies that on June 7, 2017, she served the within:

Notice of Entry of Decision and Order

by court electronic service to:

TO:

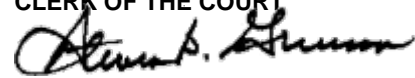
Esther C. Rodriguez, Esq.
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/s/ Sydney Saucier

Sydney Saucier

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-12-669926-C

Dept.: I

DECISION AND ORDER

Defendants filed their Motion for Judgment on the Pleadings Pursuant to NRCP 12(c) With Respect to All Claims for Damages Outside the Two-Year Statute of Limitations on November 17, 2016; Plaintiffs filed their Opposition and Countermotion for a Toll of the Statute of Limitations and for an Evidentiary Hearing on December 8, 2016 with Defendants filing a Reply on December 28, 2016. After due and proper deliberation, review of the arguments set forth in each of the parties' briefs, and considering the oral argument by counsel before the Court on May 18, 2017, the Court hereby finds as follows:

Defendants' motion sought judgment on the pleadings as to all claims of any

1 class members falling outside the two-year statute of limitations which, in this case, is
2 any claim arising prior to October 8, 2010. The relief sought in defendants' motion
3 was based upon the Nevada Supreme Court's Decision in *Perry v. Terrible Herbst,*
4 *Inc.*, 132 Nev. Adv. Op. No. 75 (October 27, 2016), which found that claims for
5 unpaid minimum wages brought pursuant to Article 15, Section 16 of the Nevada
6 Constitution ("The Minimum Wage Amendment" or the "MWA") are subject to a two-
7 year statute of limitations.

8 Plaintiffs countermoved for an equitable toll of the statute of limitations and an
9 evidentiary hearing. Such motion was based upon the language of the MWA which
10 states, *inter alia*, "[a]n employer shall provide written notification of the rate
11 adjustments to each of its employees..." See, Art.15, Sec. 16(A) of the Nevada
12 Constitution. The plaintiffs argued that a literal reading of this language requires the
13 Court to find that the Nevada Constitution imposes on employers a duty to provide a
14 written notice to each of their employees subject to the MWA of the change in the
15 minimum wage rate each time such rate changes. Plaintiffs argued that the posting of
16 a notice in an employee break room or similar common area where employees may
17 frequent does not satisfy the literal obligation imposed upon employers as set forth in
18 the MWA.

19 Defendants contended during oral argument that no written notification of the
20 rate changes in the minimum wage need be "provided" to "each" of defendants'
21 employees individually in the manner that plaintiffs contend. Rather, defendants
22 maintained that in accordance with common business practices respecting other federal
23 and state labor requirements, defendants need only, and did only, post on a wall all
24 such required "written notification" relating to the MWA.

25 The Court finds the posting of such notices by the defendants, which the
26 plaintiffs do not dispute took place, cannot satisfy a strict literal reading of the MWA.
27 Because the Court is charged not with determining how the MWA will affect business
28 and industry practices, but rather must only engage in a plain reading of the

1 constitutional amendment, the Court finds that the meaning ascribed to this provision
2 of the MWA by plaintiffs is the proper interpretation within the confines of this
3 Court's authority. A plain reading of the MWA can only result in an obligation on the
4 employer to "provide" to "each" of its employees "written notification" of the rate
5 adjustments to the minimum wage. The Court reluctantly rules in this fashion because
6 it is the Court's opinion that a more efficient notification process would be the process
7 suggested by the defendants. Nevertheless, the MWA is a constitutional provision and
8 it must be afforded the strictest of construction. Accordingly, the Court believes it
9 does not have the liberty to rule in any other way, and based upon the foregoing, the
10 Court finds that the defendants violated the "written notification" requirement of the
11 MWA.


12 The next question the Court must address is whether such violation is remedied
13 by a toll of the statute of limitations otherwise applicable to claims asserted under the
14 MWA. The court finds it must answer that question in the affirmative. This finding is
15 based upon the broad remedial language of the MWA, specifically that "[a]n employee
16 claiming violation of this section...shall be entitled to all remedies available under the
17 law or in equity appropriate to remedy any violation of this section, including but not
18 limited to back pay, damages, reinstatement or injunctive relief." See, Art.15, Sec.
19 16(B). Accordingly,

20 IT IS HEREBY ORDERED that defendants' Motion for Judgment on the
21 Pleadings in **DENIED in part and GRANTED in part**. It is denied in part as to
22 defendants' request to dismiss the claims of all class members arising prior to October
23 8, 2010. Class members who were employed on July 1st of each of the years in which a
24 rate adjustment of the minimum wage occurred shall be afforded an equitable toll of
25 their claims arising under the MWA from such July 1st forward. Based upon
26 representations of counsel at the hearing, those dates were July 1st of 2007, 2008,
27 2009, 2010, and 2011. Defendants' motion is granted in part with respect to the claims
28 of those class members which arose prior to October 8, 2010 *and* who also were not

1 employed as taxi drivers by defendants on July 1st 2007, 2008, 2009 and/or 2010. The
2 Court's reasoning for ruling in this fashion is that only those class members who were
3 required to be provided with written notification of the rate adjustments occurring on
4 July 1st of each of the foregoing years, but who were not so provided the written
5 notification, are eligible for an equitable toll of the statute of limitations. The list of
6 such class members entitled to such statute of limitations tolling, and the applicable
7 date each such class member's toll commenced, is set forth in Ex. "A" annexed hereto.
8 The MWA claims of all other class members that pre-date October 8, 2010 are
9 dismissed.

10 IT IS FURTHER ORDERED that plaintiffs' Countermotion for a Toll of the
11 Statute of Limitations and for an Evidentiary Hearing is **GRANTED**. An equitable
12 toll will be applied to the claims of class members as described herein in the preceding
13 paragraph and as detailed in Ex. "A."

14 **IT IS SO ORDERED.**

15
16 
17 HONORABLE JUDGE KENNETH CORY
18 DISTRICT COURT, CLARK COUNTY

19
20
21  June 6, 2017
22 DATE

23 Submitted by:

24 LEON GREENBERG PROFESSIONAL CORP.

25 
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28 2965 S. Jones Boulevard - Ste. E-3
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dana@overtimelaw.com
Attorney for Plaintiffs

EXHIBIT "A"

	A	B
1	Class Member, Last Name, First Name, Middle Initial	Statute of Limitations Toll Date
2	Abdulah, Faud Y	7/1/2009
3	Abraha, Tesfalem B	7/1/2009
4	Abuel, Alan B.	7/1/2007
5	Abuhay, Fasil M	7/1/2010
6	Adam, Elhadi K.	7/1/2009
7	Adem, Sued S.	7/1/2008
8	Allen, Otis L.	7/1/2008
9	Alnaif, Abdul S	7/1/2010
10	Alvero, Jose D.	7/1/2008
11	Amato, Richard	7/1/2008
12	Anders, Matthew I.	7/1/2007
13	Andersen, Jason E.	7/1/2008
14	Anderson, Jamie M.	7/1/2007
15	Antoine, Albert J.	7/1/2007
16	Appel, Howard J.	7/1/2008
17	Archuleta, Alex	7/1/2008
18	Artigue, David	7/1/2007
19	Atoigue, Marco F	7/1/2010
20	Auckerman, Katherin	7/1/2007
21	Awalom, Alemayehu	7/1/2008
22	Babinchak, Blaine A	7/1/2007
23	Badillo, Cesar A.	7/1/2007
24	Bafrodu, Solomon T.	7/1/2009
25	Bakhtiari, Marco L.	7/1/2008
26	Barich, Edward C	7/1/2010
27	Barr, Kenneth W.	7/1/2008
28	Batista, Eugenio L.	7/1/2007
29	Bean, Ronald	7/1/2007
30	Bekele, Abraham	7/1/2007
31	Bell, Arthur E.	7/1/2007
32	Bey, Ronald A.	7/1/2008
33	Bialorucki, Richard M	7/1/2008
34	Black, Burton J.	7/1/2008
35	Blumenthal, Alan F.	7/1/2008

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	A	B
36	Bly, Vertito C.	7/1/2008
37	Bolden, Quincy C.	7/1/2009
38	Boling, Freddy D.	7/1/2007
39	Booth, Sean R.	7/1/2007
40	Borja, Virginia	7/1/2007
41	Borowski, Edwin P.	7/1/2008
42	Boyd, Kevin M.	7/1/2007
43	Bozic, Nebojsa	7/1/2010
44	Brauchle, Michael	7/1/2007
45	Breault, Ronald Z.	7/1/2009
46	Brennan, Sheila R.	7/1/2007
47	Briski, Louis	7/1/2010
48	Brown, Maurice	7/1/2008
49	Burgema, Kelemewc	7/1/2009
50	Butler, Bonnie J	7/1/2009
51	Butts, Phillip R.	7/1/2009
52	Cadman, Linda L	7/1/2010
53	Canelstein, Glen	7/1/2008
54	Carracedo, Sonny C	7/1/2007
55	Castillo, Franzes D.	7/1/2007
56	Cater, Leslie D.	7/1/2008
57	Catoera, Nestor F	7/1/2010
58	Cease, Alan L.	7/1/2008
59	Champigny, Paul A.	7/1/2008
60	Chang, Yun-Yu	7/1/2010
61	Chau, Phi V.	7/1/2010
62	Chico, David	7/1/2009
63	Child, Gregg K.	7/1/2009
64	Clift, Daniel C.	7/1/2008
65	Clores, Edgardo F.	7/1/2007
66	Colello, Robert M.	7/1/2007
67	Collier, Samuel J	7/1/2009
68	Collins, Donald V.	7/1/2007
69	Colon, James F.	7/1/2007
70	Connor Jr., Richard	7/1/2008
71	Cook, Eugene	7/1/2010
72	Cook, Robert E.	7/1/2009
73	Costello, Brad	7/1/2007

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	A	B
74	Craddock, Charles F	7/1/2010
75	Crawford, Darryl W	7/1/2010
76	Csorba, Laszlo	7/1/2009
77	Cullison, Christophe	7/1/2007
78	Dagley, Darryl	7/1/2009
79	Daniels, Katherine A	7/1/2010
80	Danielsen, Danny	7/1/2010
81	D'Arcy, Timothy C	7/1/2010
82	Davis, Bradley C	7/1/2008
83	Davis, James E.	7/1/2007
84	Davis, Nancy L.	7/1/2007
85	Degefa, Dejene W	7/1/2010
86	Degracia, Bob	7/1/2010
87	Dein, Fred J.	7/1/2008
88	Diemoz, Ernest D.	7/1/2008
89	Dinok, Ildiko	7/1/2007
90	Dixon, Julius W	7/1/2010
91	Djapa-Ivosevic, Davi	7/1/2007
92	Donahoe, Stephen L	7/1/2008
93	Donleycott, Kevin M	7/1/2007
94	Dontchev, Nedeltch	7/1/2010
95	Dotson, Eugene B	7/1/2010
96	Doughty, Michael W	7/1/2010
97	Downing, Jennifer C	7/1/2008
98	Downs, David A.	7/1/2007
99	Draper, Ivan L.	7/1/2007
100	Dreitzer, Gail M.	7/1/2007
101	Duff, Tommy J.	7/1/2008
102	Durtschi, Jeffrey	7/1/2007
103	Dyson, Edward P.	7/1/2009
104	Eckert, Michael	7/1/2007
105	Edwards, Jeffrey A.	7/1/2007
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107	Elam, Damon L.	7/1/2009
108	Eljawhary, Farid M.	7/1/2009
109	English, David E.	7/1/2008
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111	Farrelly, Bridhid K.	7/1/2007

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112	Feakes, Curtis D.	7/1/2007
113	Fears, Thomas A.	7/1/2007
114	Ferrall, Edwin J	7/1/2009
115	Fesehazion, Teabe	7/1/2010
116	Fitz-Patrick, Michael	7/1/2010
117	Foley, John W.	7/1/2007
118	Fredrickson, Steven	7/1/2009
119	Friedman, Robert I.	7/1/2009
120	Garcia, John E.	7/1/2007
121	Gardea, Alfred E	7/1/2010
122	Gebrayes, Henock L	7/1/2010
123	Gebregiorgis, Tewoc	7/1/2007
124	Gebrehana, Kebera	7/1/2009
125	Gelane, Samuel G	7/1/2009
126	Getnet, Girma M	7/1/2009
127	Giatropoulos, John /	7/1/2008
128	Gleason, John T.	7/1/2009
129	Glogovac, Goran	7/1/2010
130	Gohlke, James	7/1/2007
131	Goldman, Kevin	7/1/2010
132	Gomez-Ramos, Edu	7/1/2008
133	Grafton, Natasha D	7/1/2010
134	Grahl, Steven J.	7/1/2007
135	Gramatikov, Petko I.	7/1/2009
136	Green, Tony D.	7/1/2009
137	Greever, Rickey E.	7/1/2007
138	Gregg, Gary J.	7/1/2007
139	Gross, Daniel I.	7/1/2007
140	Gross, Mark S	7/1/2010
141	Gross, Timothy S.	7/1/2008
142	Gruttadauria, Martin	7/1/2008
143	Guinto, Philip J.	7/1/2007
144	Gutierrez, Jose F.	7/1/2009
145	Gutierrez, Michael D	7/1/2007
146	Habte, Amanuel G.	7/1/2009
147	Haley, Thomas M.	7/1/2007
148	Hanley, David J.	7/1/2007
149	Hansen, Diana L.	7/1/2007

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150	Hansen, Jordan Z	7/1/2010
151	Harms, Michael	7/1/2010
152	Harris, Jason B.	7/1/2008
153	Harris, Jay L.	7/1/2007
154	Hasen, Akmel W	7/1/2010
155	Hay, Mark	7/1/2007
156	Hernandez, Luis F.	7/1/2009
157	Hernandez, Norberto	7/1/2008
158	Hilbert, Edward D.	7/1/2008
159	Hill, Fred G.	7/1/2008
160	Hinks, Dana	7/1/2007
161	Holloway, Maynard I	7/1/2010
162	Hoopes, Bryant L.	7/1/2008
163	Hopkins, Robert L.	7/1/2010
164	Houlihan, Beth	7/1/2007
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166	Howard, Thomas A.	7/1/2007
167	Huffman, Britton L.	7/1/2007
168	Hughes, Jerry	7/1/2007
169	Huntington, Walter C	7/1/2009
170	Hurtado, Hubert B.	7/1/2007
171	Hyman, Irving	7/1/2010
172	Isaac, Edsel E.	7/1/2009
173	Jackson, Michael A.	7/1/2009
174	Jarmosco, John J.	7/1/2008
175	Javelona, Mario F.	7/1/2007
176	Jennings, Stanley	7/1/2007
177	Jimenez, Michael J	7/1/2009
178	Jin, Casey M	7/1/2008
179	Johnson, Brian M	7/1/2010
180	Johnson, Kennard T	7/1/2009
181	Johnson, Robert D.	7/1/2008
182	Johnson, Timothy B.	7/1/2008
183	Jones, Doug	7/1/2007
184	Jones, Glenn O.	7/1/2009
185	Jones, James K.	7/1/2007
186	Joseph, Loradel	7/1/2009
187	Justice, Jason E.	7/1/2007

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	A	B
188	Kang, Chong	7/1/2009
189	Kang, Dae Ik	7/1/2009
190	Keber, Yilma C	7/1/2009
191	Keith, Marcus L.	7/1/2008
192	Kelley, Jared W	7/1/2010
193	Kenary, Brian T.	7/1/2007
194	Kern, Gary F	7/1/2010
195	Koch, Frederick B.	7/1/2009
196	Kolasienski, Aemon	7/1/2009
197	Krouse, Stephen P.	7/1/2007
198	Lantis, Glen	7/1/2010
199	Laspada, Brian M	7/1/2010
200	Lazarov, Vasilije	7/1/2008
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202	Lefevre, Stephen L.	7/1/2009
203	Leonardo, Vito	7/1/2007
204	Link, Peter J.	7/1/2007
205	Little, Daniel J.	7/1/2007
206	Liu, David	7/1/2009
207	Lloyd, Mark W.	7/1/2010
208	Lovett, Patrick S.	7/1/2008
209	Lowe, John W.	7/1/2009
210	Loyd, Gary W.	7/1/2008
211	Lucero, Arturo	7/1/2009
212	Luo, Yue	7/1/2009
213	Magazin, Milorad	7/1/2009
214	Mahmud, Omar	7/1/2008
215	Mahoney, Kevin J.	7/1/2007
216	Mainwaring, David C	7/1/2008
217	Majors, John N.	7/1/2007
218	Mandefro, Nebiyu T	7/1/2009
219	Masetta, Ronald P	7/1/2007
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221	Mastilovic, Branislav	7/1/2009
222	McCarter, Patrick E.	7/1/2007
223	McGarry, James B.	7/1/2008
224	McGowan, Cathy R.	7/1/2007
225	McGregor, Matthew	7/1/2010

	A	B
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227	McNiel, Michael J.	7/1/2007
228	Mears, John	7/1/2007
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230	Mekonen, Solomon	7/1/2010
231	Melesse, Abebe B.	7/1/2008
232	Meloro, Paul M.	7/1/2007
233	Mengesha, Alemaye	7/1/2009
234	Mersal, Beth	7/1/2007
235	Michaels, Terry H	7/1/2010
236	Miller, Darryl S.	7/1/2008
237	Miller, Florence J.	7/1/2007
238	Miller, John A	7/1/2009
239	Miller, Michelle	7/1/2008
240	Milliron, Darrol Q.	7/1/2010
241	Milton, Shawn F	7/1/2009
242	Mitchell, Jimmy	7/1/2008
243	Mitrikov, Ilko I	7/1/2010
244	Moffett, Larry D.	7/1/2007
245	Mogeeth, Ehab K	7/1/2009
246	Mohr, Donald M	7/1/2009
247	Moore, Jerry	7/1/2007
248	Moore, Jimmy R.	7/1/2007
249	Morley, David L	7/1/2010
250	Morris, Robert	7/1/2007
251	Mosley, Rory L.	7/1/2009
252	Muldoon, Thomas N	7/1/2010
253	Mumma, Donald A.	7/1/2010
254	Murray, Melinda M.	7/1/2007
255	Murray, Michael J.	7/1/2007
256	Murray, Michael P	7/1/2007
257	Mutia, Junno D.	7/1/2009
258	Negashe, Legesse M	7/1/2010
259	Negussie, Berhanu	7/1/2009
260	Nichols, Keith	7/1/2010
261	Nick, Harry J.	7/1/2008
262	Nicol, Thaddeus	7/1/2008
263	Niculescu, Adrian	7/1/2009

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	A	B
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265	Novaky, Adam S.	7/1/2007
266	O'Neill, Terry	7/1/2009
267	Oomrow, Laldhar	7/1/2007
268	Orellana, Byron M	7/1/2009
269	Pak, Sam U.	7/1/2007
270	Pannell, Norbert D.	7/1/2008
271	Paranhos, Eurico N.	7/1/2007
272	Patterson, Robert J.	7/1/2007
273	Peer, Yuda	7/1/2008
274	Penera, Eric S	7/1/2010
275	Pepitone, Leonard V	7/1/2007
276	Peterson, Kenneth C	7/1/2008
277	Peterson, Steven A	7/1/2007
278	Pettaway, Marvin G.	7/1/2007
279	Phillips, Gordon R.	7/1/2007
280	Phonesavanh, Paul	7/1/2009
281	Pilkington, Margaret	7/1/2010
282	Pitts, Amir G.	7/1/2007
283	Pletz, David E.	7/1/2009
284	Polk, Craig C.	7/1/2008
285	Portillo-Sanchez, Ca	7/1/2009
286	Poulton, Todd C	7/1/2007
287	Povolotsky, Anatoly	7/1/2009
288	Prather, Robert Z	7/1/2009
289	Presnall, Darryl L.	7/1/2009
290	Price, James L.	7/1/2007
291	Prifti, Ilia K	7/1/2010
292	Purvis, James	7/1/2009
293	Qian, Jie Y	7/1/2009
294	Rabara, Antino A.	7/1/2008
295	Ramos, Lawrence C	7/1/2007
296	Ramsey, Gary K.	7/1/2008
297	Rasheed, Willie A	7/1/2010
298	Rastamo, John	7/1/2007
299	Reevell, Jeffrey L.	7/1/2007
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301	Relopez, Craig M.	7/1/2007

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302	Reno, Michael A	7/1/2010
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304	Rivas, Victor M.	7/1/2009
305	Roberson, Ronnie	7/1/2009
306	Roberts, James	7/1/2007
307	Robinson, William D	7/1/2010
308	Rojas, David	7/1/2007
309	Rosenthal, John S	7/1/2008
310	Ross, Larry W.	7/1/2009
311	Rotich, Emertha	7/1/2010
312	Rubino, Joseph E.	7/1/2008
313	Ruiz, Travis C	7/1/2010
314	Russell, Mark	7/1/2008
315	Sackett, Kathryn V.	7/1/2007
316	Saevitz, Neil R	7/1/2009
317	Salameh, George S.	7/1/2009
318	Saleh, Jemal	7/1/2008
319	Sandoval, Yolanda \	7/1/2007
320	Santos, Billy J.	7/1/2008
321	Schall, Douglas	7/1/2007
322	Schroeder, William L	7/1/2008
323	Schwartz, Steven	7/1/2009
324	Sedgwick, Anthony /	7/1/2010
325	Seller, Paula Y.	7/1/2007
326	Serio, John A	7/1/2009
327	Serrano, Hector N.	7/1/2008
328	Sevillet, Otto E	7/1/2010
329	Shallufa, Azmy	7/1/2008
330	Shank, Lyle W.	7/1/2008
331	Sharp, Omar S.	7/1/2009
332	Shenkov, Svetlozar	7/1/2010
333	Shipers, Shawn M.	7/1/2008
334	Simmons, John D.	7/1/2007
335	Sinatra, Anthony J.	7/1/2009
336	Sinay, Abraham	7/1/2010
337	Smagacz, Stephen \	7/1/2008
338	Smale, Charles J.	7/1/2007
339	Smith, Jerry E.	7/1/2008

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	A	B
340	Smith, Lisa	7/1/2010
341	Smith, Lottie M.	7/1/2008
342	Smith, Toby B.	7/1/2008
343	Soto, Jacob D.	7/1/2007
344	Spangler, Peter A.	7/1/2007
345	Sphouris, Constantir	7/1/2007
346	Spiegel, Louis M.	7/1/2008
347	Spilmon, Mark A.	7/1/2008
348	Springer, Marvin L	7/1/2010
349	Starcher, Richard M	7/1/2010
350	Stevenson, John F.	7/1/2009
351	Tafesh, George J.	7/1/2008
352	Tarragano, Stephen	7/1/2010
353	Taurins, Walter	7/1/2009
354	Tessema, Haile	7/1/2008
355	Thomas, Anthony R.	7/1/2008
356	Tracy, Dennis M.	7/1/2008
357	Travis, Brian T.	7/1/2007
358	Travis, Patricia L.	7/1/2007
359	Tripi, Joseph	7/1/2008
360	Tsegay, Alexander	7/1/2008
361	Tucker, Carl L.	7/1/2008
362	Tucker, Kenlon A.	7/1/2009
363	Urban, David	7/1/2008
364	Van Camp, Carl D.	7/1/2008
365	Vaughan, William N.	7/1/2007
366	Verdine, Craig A.	7/1/2008
367	Viccaro, Nicholas M.	7/1/2008
368	Wallace, James S.	7/1/2008
369	Watkins, Eddie E.	7/1/2007
370	Weaver, Gerie L	7/1/2010
371	Welden, Matthew	7/1/2008
372	Wells, Fredrick H.	7/1/2007
373	Welsh, Sylvia M.	7/1/2008
374	White, Donovan H.	7/1/2008
375	Whitehead, Timothy	7/1/2009
376	Whiteman, Rick L.	7/1/2008
377	Wiggins, Andrew J.	7/1/2007

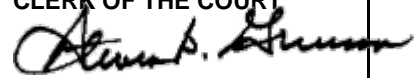
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378	Wilcox, Todd E.	7/1/2007
379	Wilson, Constance L	7/1/2007
380	Wilson, Richard C.	7/1/2008
381	Windsor, Benjamin T	7/1/2008
382	Wollnick, Steven D.	7/1/2009
383	Yabut, Gerry C.	7/1/2008
384	Yabut, Vincent B	7/1/2010
385	Yesayan, Razmik	7/1/2010
386	Zafar, John A	7/1/2009
387	Zanfino, Michael G.	7/1/2008
388	Zangare, Basil A.	7/1/2007
389	Zawoudie, Masfen B	7/1/2007
390	Zelege, Abraham A.	7/1/2009

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TRAN

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

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

BEFORE THE HONORABLE KENNETH CORY, DISTRICT COURT JUDGE
TUESDAY, JUNE 13, 2017

TRANSCRIPT RE:
PLAINTIFF'S MOTION ON ORDER SHORTENING TIME TO EXTEND
DAMAGES CLASS CERTIFICATION AND FOR OTHER RELIEF

APPEARANCES:

For the Plaintiffs:	DANA SNIEGOCKI, ESQ.
For the Defendants:	ESTHER C. RODRIGUEZ, ESQ.
	MICHAEL K. WALL, ESQ.

ALSO PRESENT: CREIGHTON J. NADY

RECORDED BY: Lisa Lizotte, Court Recorder

001051

1 LAS VEGAS, NEVADA, TUESDAY, JUNE 13, 2017, 10:35 A.M.

2 * * * * *

3 THE CLERK: Michael Murray versus A Cab Taxi Service. Case Number
4 A669926.

5 MS. SNIEGOCKI: Good morning. Dana Sniegocki for plaintiffs.

6 THE COURT: Good morning.

7 MS. RODRIGUEZ: Good morning, Your Honor. Esther Rodriguez and
8 Michael Wall for the defendants. And Mr. Nady is here as well. He just stepped out
9 right before you called us.

10 THE COURT: All right. This is on the plaintiff's motion to extend the class
11 certification and other relief. One of the things --

12 MS. RODRIGUEZ: Did Your Honor receive a copy of our opposition?

13 THE COURT: I'm sorry?

14 MS. RODRIGUEZ: I'm sorry. Did you receive a copy of our opposition,
15 Your Honor?

16 THE COURT: Yes, I did.

17 MS. RODRIGUEZ: All right. Thank you.

18 THE COURT: I saw it this morning. Besides the opposition raised by the
19 defense, one of the concerns that the Court has that as of this moment I think may
20 be insurmountable to your motion is that I ran a quick tally on when this -- when the
21 five year rule runs on this case. Depending on whether we included one 60-day
22 period correctly or not, I come out with about July of next year.

23 MS. SNIEGOCKI: 2018. Yeah, I don't disagree with that.

24 THE COURT: Yeah.

1 MS. SNIEGOCKI: I mean, in addition to the --

2 THE COURT: So if I grant your motion it most surely is going to require
3 extending the trial date.

4 MS. SNIEGOCKI: I don't know that I agree with that, Your Honor.

5 THE COURT: Okay.

6 MS. SNIEGOCKI: Granting the motion --

7 THE COURT: Well, part of your burden then is to show me that that's
8 incorrect because I really do not want to extend the trial date.

9 MS. SNIEGOCKI: And I understand that. Granting the motion would extend
10 the class period, the period covered by class certification.

11 THE COURT: Uh-huh.

12 MS. SNIEGOCKI: At this point the plaintiffs -- I'm sorry, the defendants have
13 already provided us with -- you know, as Your Honor is aware, we had extensive
14 argument the last time we were here. It seems like it's a super-complex case,
15 but in reality what we're talking about is how much did these guys get paid, how
16 many hours did they work. And it is sort of simple math, although for, you know,
17 thousands of people it may not be. So that is what we would need from the
18 defendants. The only additional discovery would just be supplementation of what
19 was previously produced.

20 There is deposition testimony from the computer -- third party computer
21 vendor that defendants have used. It is a simple process. This information has
22 already been extracted for people who worked from 2010 all the way through 2015,
23 so a five year time frame. What we're looking at is an additional about 18 months.
24 It would be the exact same process that they used to extract it the first time. They

1 now know how to do it. They've done it. They're, you know, sort of schooled in it
2 at this point and it would really just be a supplementation issue. It would not have
3 to involve any additional major discovery, providing the process that is used and the
4 information that's given to us is the same thing, just for a newer set of people.

5 A lot of those people would be the same plaintiffs that are already
6 included in the case, people who have been working there since 2014 that continue
7 to work there until now, 2017, so it's just give us the rest of the records for this guy.
8 It would be sort of identical to if our lead plaintiff were a current employee, Mr.
9 Murray or Mr. Reno, if they were still working there. I mean, they would be entitled
10 to file this class action lawsuit as a current employee. Defendant would be required
11 to continue to supplement the records as they earned wages and as they worked
12 hours. So it's the same thing, it's just for a group of people, and previously in this
13 case we've established that extracting it for one person or extracting it for 500
14 people involves no more work on the part of the defendant.

15 So it's not really an issue that's going to require us to move this trial
16 out, you know, months and months later. It just isn't -- that isn't something that's
17 going to affect how the case is going to proceed.

18 THE COURT: Okay. Let's see what the defendant says.

19 MS. RODRIGUEZ: Well, Your Honor, from the beginning of the filing of this
20 lawsuit we've been before this Court as well as more so in front of the Discovery
21 Commissioner with Mr. Greenberg and Ms. Sniegocki arguing about how simple
22 this is for the defendant to pull all this different information, but obviously it isn't
23 because it's taken several years to compile everything that they want, which is not
24 a simple process and it's not as simple as supplementing because we've had to

1 pull trip sheets. Now most recently it's taken over a week of probably about five
2 people doing nothing but pulling W-4s. We'd have to pull all the payroll. And it isn't
3 a matter of just, oh here, let's just run the payroll and give it to them. Mr. Nady and
4 A Cab had to pay a third party vendor, Mr. Jim Morgan, to actually create programs
5 and run programs to pull all the Cab Manager data.

6 And my problem with this is that, I mean, the history of this case is that
7 it is far from simple and not complex, as she's representing. And here we are with
8 close of discovery I think within two weeks. It closes the last week of June. And
9 now they're saying they want an additional 18 months of information, which is a
10 huge endeavor. And you can tell in this motion already they're already asking for
11 another 30-day extension to the deadline that the Court just set I think last week or
12 within the last 10 days. They already want another 30 days for expert disclosures.

13 But, you know, from our perspective, from the defendants' perspective
14 we have depositions set within these last two weeks. We have our own set of
15 following up with discovery, remaining discovery issues with the plaintiffs. And
16 basically I think what they're arguing is that we need to stop and drop everything that
17 we need to do from our end, pull all this 18 months of information, give it to them as
18 soon as possible, I'm sure, so that they can get everything they need for their expert
19 to do what they need to do in the next 30 days. And so I can foresee we can't do
20 that. I mean, there's no way to just stop everything. It's not fair to the defendant
21 because they've come up with this last minute request that I have to drop what
22 I need to do to make sure 18 months of information is provided to them, because
23 if I can't do it then of course they're going to come back again and ask for further
24 discovery extension, further extension on the experts, and this is a further delay.

1 And the only basis that they've argued in their motion to extend this
2 is under the threat that, well, if you don't do this then we're just going to have to
3 file another lawsuit for drivers past December of 2015. And so, you know, that's
4 not a basis for the Court to extend past December of 2015 because there in fact
5 is another lawsuit. That's the lawsuit that's over in Judge Delaney's courtroom.
6 They do have a representative plaintiff from 2015 and they are -- the Bourassa Law
7 Group has indicated in their pleadings that they are representing the drivers past
8 December of 2015 through the present.

9 So, you know, my primary argument in my opposition was the fact
10 that we're really going to cut -- you know, I probably didn't take it all the way through.
11 I was arguing that we're looking at extending discovery, we're looking at extending
12 expert discovery and expert deadlines. But I think the Court has kind of taken it the
13 third step, which I didn't see it all the way through, but yeah, then we're going to be
14 running up against the five year rule as well because we are waiting until the last
15 minute to do all of this. So we argue strenuously against. The case is about to wrap
16 up for discovery. We can do what we need to do for dispositive motions and move
17 forward with the trial that the Court has set in February.

18 THE COURT: Would it be fair to ask the plaintiffs if this is such a simple
19 thing to do why it is coming at the last minute?

20 MS. SNIEGOCKI: Well, it hasn't actually come at the last minute.

21 THE COURT: Okay.

22 MS. SNIEGOCKI: We made this request to the Court in October of 2016,
23 which is only really 10 months post the cutoff date of the class certification period.
24 The class certification stops at December 31st, 2015. So the period of time that --

1 THE COURT: This very motion was filed --

2 MS. SNIEGOCKI: That is correct. It is Exhibit A -- B. I'm sorry. Exhibit B
3 to plaintiff's motion. It was filed on October 14th, 2016. The relief was -- it was sort
4 of a multiple request for relief, but it included a request to extend the class period.

5 MS. RODRIGUEZ: That was a motion to enjoin, Your Honor. That was the
6 motion to enjoin the Bourassa Law Group.

7 MS. SNIEGOCKI: Your Honor, if I can continue speaking.

8 THE COURT: Yes.

9 MS. SNIEGOCKI: As I explained, it sought an injunction. It also sought to
10 extend the class period.

11 THE COURT: Okay.

12 MS. SNIEGOCKI: If you look at page 7 of Exhibit B, that's where it begins.
13 I'm so sorry, right here. I'm sorry, it's page 8. It's subsection 2B of the motion,
14 I believe.

15 THE COURT: Okay. (Reading) Should amend certification to include all
16 claims for, blah, blah, blah, blah, blah.

17 MS. SNIEGOCKI: Arising after December 31st, 2015. The relief that's
18 requested in the current motion was sought in October. It was set on a hearing
19 calendar for November. It was subsequently moved to January. I think the
20 Court recalls we were here and we were notified of a change of department.
21 The department was changed. We got back into this department. Eventually the
22 injunction portion of the motion was heard and Your Honor said I'm going to defer
23 any other requests for leave for another time.

24 THE COURT: Yeah.

1 MS. SNIEGOCKI: We did bring this up at our most previous hearing. I think
2 it was in May, May something.

3 THE COURT: Uh-huh.

4 MS. SNIEGOCKI: And Your Honor instructed us to file a new motion, so
5 that's what we did.

6 THE COURT: Well --

7 MS. SNIEGOCKI: This is not -- and there's just one other point that I'd like
8 to make about it being last minute.

9 THE COURT: Yeah. Go ahead.

10 MS. SNIEGOCKI: The defendants are also under an order by the Discovery
11 Commissioner in terms of the W-4 production that defense counsel was just
12 mentioning. That has been coming daily. Every other day we get supplements of
13 it. And they are under order to get that information collected for the extended class
14 period that we're seeking now through the present. The Discovery Commissioner
15 said gather it, get it together, hang on to it pending ruling by Your Honor as to
16 whether this is going to be extended. If it is, produce it. If it's not, don't produce it.
17 So there is no burden on them in terms of the W-4 production because they are
18 supposed to be collecting it through the present day per the order of the Discovery
19 Commissioner. One other thing I'd like to --

20 THE COURT: That --

21 MS. SNIEGOCKI: I'm sorry, if I may?

22 THE COURT: No, go ahead.

23 MS. SNIEGOCKI: She had mentioned that there is this other case before
24 Judge Delaney where they do have an adequate representative in the case.

1 Ms. Rodriguez argues that because none of our plaintiffs worked in the period of
2 January 1st, 2016 through the present, they cannot represent it. In that other case,
3 the Dubric matter, Ms. Dubric did not work post December 2015, either, so she
4 would be an inadequate representative under their own reasoning.

5 I mean, basically if we look at the logic of the defendant, the only way
6 that you can have a class action in terms of an employment matter is to either have
7 a current employee file the lawsuit and maintain his employment throughout, which
8 my firm represents some employees in these matters exclusively and 98 percent
9 of our clients are former employees so it's an anomaly when you have a current
10 employee, or you have subsequent employees as they get fired or as they quit
11 come into an attorney's office and file a case and that's the only way that you can
12 continue through the present. It just doesn't make any sense. That's not what the
13 class action is designed for. There are not supposed to be multiple cases. It's just
14 supposed to be one case that resolves the issues for the entirety of the class period,
15 as long as it's manageable by the Court. And there is no indication that this is not
16 manageable.

17 THE COURT: Well, then let me tell you one of the things that's kind of
18 kicking around in the back of my mind.

19 MS. SNIEGOCKI: Sure.

20 THE COURT: As you are aware, this Court took the extraordinary measure
21 at your invitation to enjoin any resolution of tangent matters that might include these
22 same individuals, the same members of the class, and it did so after taking a look
23 at some of the more often than not federal litigation that has to do with federal class
24 action lawsuits being settled out from under them through class action suits thrown

1 up in state court. But the principle is still the same. We need to have a class action
2 to cover these employees and we need to be able to tell the other cases that this
3 was here first, this is fully incorporated; it encompasses these class members. And
4 it really is unfair and against the jurisprudence of not only the federal courts but this
5 Nevada court to allow the case to be settled out from under them.

6 And we do that in a case that is now entering its fifth year. In other
7 words, we're coming up against the five year rule, as I said. And now at this point
8 we're going to say, oh, but let's change the rules around, let's change the playing
9 field, let's change who's a plaintiff in this. And while it may be simple to say that,
10 look, we just need this same information for this additional group, and if this were in
11 other circumstances the Court would be amenable to that, but where we are getting
12 this far along in the case and I'm staring at a trial date in February that I do not want
13 to change and I typically tell parties that want to continue a trial and it's in that fifth
14 year or the last year before the five year rule runs, I tell them no.

15 And I'm having a hard time seeing why almost in light of the
16 extraordinary measures this Court has taken to protect this class from having their
17 case settled out from under them to protect them, I'm having a hard time seeing why
18 I should therefore open up the class to yet another definition and other issues -- you
19 know, the possibility of other issues like discovery, like expert witnesses having to
20 suddenly change their reports and testimony. I mean, in other cases even requiring
21 an expert witness to do a supplement based on newly discovered information, that
22 happens all the time. In federal court sometimes they have the depositions of those
23 experts being taken during the trial. We don't do that here and I'm glad we don't.
24 I'm not suggesting it. But in a case like this, a class action where we're trying to

1 have one plaintiff of presumably known definition pass through and not take their
2 case out from under them, I don't see that it makes a lot of sense jurisprudentially
3 to then allow at this late hour to allow the definition to change.

4 Now, the question in my mind is because I was thinking that this had
5 just been asked for now and I see you're showing me that it was part of what was
6 asked for last year, I don't know when the hearing was when I said I'm going to
7 leave this part of the motion for a later time. I don't know when it was. I suppose
8 you could say, well, nothing prevented the plaintiffs from turning around and re-filing
9 that motion, but that wouldn't have made a lot of sense in the context of what was
10 happening in the case. But all I can tell you is I just don't -- it just bothers me to
11 think that we're going to, after the extraordinary efforts we've gone to to make sure
12 that this class gets to run their case unmolested through to a trial within the five year
13 rule to now change that class at this hour.

14 What do you say to that?

15 MS. SNIEGOCKI: Well, the only thing that I can say -- I suppose I can say
16 a couple of things. Again, I mean, I tried to stress, Your Honor, that I don't believe
17 this is going to cause us any issues with the five year rule. It really is --

18 THE COURT: Well, let me alleviate your concern. I don't entirely buy into
19 Ms. Rodriguez' argument that it's going to be the end of the world and they can't
20 possibly get it done in time.

21 MS. SNIEGOCKI: It is not.

22 THE COURT: But it is -- it does take a lot of work to put these things through.

23 So, okay, I interrupted you. Go ahead.

24 MS. SNIEGOCKI: Well, what I was going to say is we do have testimony.

1 We have 30(b)(6) testimony or we have testimony from Jim Morgan, who she
2 mentioned, Ms. Rodriguez mentioned. He explained the simplistic nature of getting
3 this stuff. He didn't have to write a program. She represented that a program was
4 written. There was no program written. It's a query. How do we get the information
5 that appears in this column, in this row extracted? Jim Morgan's testimony, which
6 is in the record that Your Honor can review or we can provide a supplement to give
7 you the deposition testimony explains that this was not overly burdensome. In fact,
8 this was the basis for the sanctions that were issued against the defendant for
9 forcing that kind of deposition to go forward without even inquiring with Mr. Morgan.
10 It is a simple process.

11 THE COURT: And these are the things that were argued before the Discovery
12 Commissioner?

13 MS. SNIEGOCKI: That is correct.

14 THE COURT: At the conclusion of which --

15 MS. SNIEGOCKI: And the Discovery Commissioner --

16 THE COURT: -- she said we're going to wait and see what the district court
17 does?

18 THE COURT: Well, that was on a separate issue. That was on the
19 production of the W-4s. She instructed them to collect it for the entire time period
20 up through the present day, hang on to the stuff post December 31st, 2015.
21 Whatever Your Honor rules, they would either give us the additional stuff or they
22 don't have to produce it. So it sort of hinged on this. That was for the W-4
23 production. But in terms of the payroll and hours worked information, it is not an
24 overly burdensome activity. They argued that it was initially. It was determined by

1 the deposition testimony of Jim Morgan and by the Discovery Commissioner, who
2 in the transcript at the hearing said this is simple, he says it's simple. It isn't as hard
3 as you're making it out to be. Produce it. And they have. They know how to do it.
4 It's now jut a matter of instead of producing it for a three and a half year period that
5 they had to do, produce it for an additional 18 months. It's that simple. It is that
6 simple. It isn't overly complicated. It isn't something that's going to require us to
7 extend discovery another six months. It just does not.

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

9 MS. RODRIGUEZ: Well, you know, I'm having difficulty responding to that,
10 Your Honor, because that is a very skewed representation of what has transpired in
11 front of the Discovery Commissioner and no one has ever concluded it was simple.
12 Mr. Morgan never said it's simple in his deposition. And the Discovery Commissioner
13 never said it's simple.

14 Mr. Nady had to pay thousands and thousands and thousands of
15 dollars. I'm hesitant to give you the exact figure because I don't recall it off the top
16 of my head, but it was substantial to pay Mr. Morgan to write this -- what I called
17 a program, what she's calling a query. It's the same thing. It had to be invented.
18 He didn't have to write -- he didn't have to invent a new program like QuickBooks
19 or something like that. I'm not trying to represent that to the Court. But pulling what
20 Mr. Greenberg's law firm has requested was not in an existing form. It had to be
21 created. It had to be -- there had to -- Mr. Morgan had to figure out how to pull the
22 data that the wanted.

23 THE COURT: Uh-huh.

24 MS. RODRIGUEZ: Similarly, we went through the same thing in trying to

1 figure out how to pull the QuickBooks, how to pull the trip sheets, how to pull a
2 number of things. So I think Your Honor understands the lay of the land in terms of
3 it not being as simple as Ms. Sniegocki wants to represent. Your Honor indicated
4 that I'm indicating, well, it's the end of the world, so probably it falls somewhere
5 between the two of what both of us are representing here.

6 THE COURT: Uh-huh.

7 MS. RODRIGUEZ: But it is very, very labor intensive.

8 THE COURT: And I assume all of this has been argued to the Discovery
9 Commissioner.

10 MS. RODRIGUEZ: Oh, absolutely. Repeatedly. And that's why I'm saying
11 how can we possibly come into the court and say, oh, well just pull us another 18
12 months of data because the Discovery Commissioner, who I'm sure you communicate
13 with quite often, will indicate that these parties have been in front of her repeatedly
14 because this is a very difficult task. Mr. Greenberg has had to pay for some of it,
15 but the defendant had to bear the cost of the majority of it. And so to reopen it now
16 for a new time period does create -- just open up a whole can of worms.

17 But one thing I do want to respond in terms of their representation
18 because I may have misheard Ms. Sniegocki when she represented the first time
19 to the Court that it was -- the first request was sometime in 2015. And I heard her
20 the second time saying that it was in October of 2016 that they first asked for this.

21 THE COURT: That's when I took it.

22 MS. RODRIGUEZ: But Exhibit B, and I put this in my opposition, they weren't
23 really asking for it until after they learned that Bourassa was in front of Judge Delaney
24 saying we represent these members. Mr. Greenberg clearly does not because his

1 class order stops in December of 2015. So it was at that point that Mr. Greenberg
2 filed a motion to enjoin. That's what this motion is.

3 THE COURT: Uh-huh.

4 MS. RODRIGUEZ: And there's one paragraph in there that says, well, since
5 they're arguing we don't represent them, by the way Court, will you go ahead and
6 extend our time period to make sure that we now represent them. So that wasn't
7 a motion to extend the class period, it was a motion to enjoin Mr. Bourassa from
8 moving forward with the class certification and the resolution on behalf of these
9 drivers that was already reached, resolved through the mandatory settlement
10 conference. Then Greenberg steps up and says, oh, no, by the way, we want to
11 represent them, too. He waited until that time to ask for it. Again, Your Honor has
12 a copy of it in front of you. It's one paragraph that says, by the way, we want to
13 represent everybody through the present.

14 THE COURT: Okay.

15 MS. SNIEGOCKI: The relief is requested in the motion filed in October of
16 2016.

17 THE COURT: It is.

18 MS. SNIEGOCKI: This is not a last minute request. Additionally, the plaintiff
19 and the defendants in the Bourassa case -- I'm sorry, the Dubric case, didn't actually
20 move for class certification until January. Our motion was filed in October, three
21 months prior. That is the first thing. This was relief that they were on notice about.
22 This isn't something that is brand new that we're rushing through at the end of the
23 discovery period. It isn't that. It is not that. Again, I heard from defendants that
24 it may have been hard to produce the discovery information I was previously

1 discussing prior to producing it. They now know how to do it. There is no indication
2 here that says it's still hard for them to do that. I haven't heard any representation
3 from defense counsel.

4 It might be labor intensive, but the alternative to that, which we posed
5 to the Discovery Commissioner a year or more ago, was they can produce their
6 records in their entirety. The database. The Cab Manager's database in its
7 entirety; QuickBooks database. It would be our job, our burden to sift through the
8 information. It could be done under, you know, a protective order. We're not going
9 to be giving out their trade secrets. The Court can guard it that way. It's very simple
10 to take an external hard drive and copy the entirety of their Cab Manager system
11 which shows the hours worked and copy their entire QuickBooks system which
12 shows the wages paid. That would take probably minutes to do. So that's the
13 alternative if this is so burdensome. But I don't hear that this is burdensome, I just
14 hear that they didn't know how to do it the first time around and now they do. I just
15 don't see where the burdensome argument comes in.

16 And I would be happy to supplement to sort of refresh Your Honor's
17 recollection just as to the testimony of both Mr. Morgan and what the Discovery
18 Commissioner said, who specifically sanctioned the defendant for the
19 misrepresentation of how hard this was going to be and how impossible it was going
20 to be and for forcing us to have to take this -- what she deemed an unnecessary
21 deposition.

22 THE COURT: Uh-huh. Okay, here's what I'm going to do. It's never easy
23 with this case. The Discovery Commissioner has opted to wait and see what this
24 Court would do, but this Court, in order to rule on this motion, I think in light of the

1 considerations that I've raised here and brought to the fore, I need to know what the
2 Discovery Commissioner's recommendation would be. More specifically, whether
3 or not it would include and necessitate moving the trial date. So I am going to defer
4 ruling on this. I'm going to send it back to the Discovery Commissioner and ask her
5 to enter her recommendation as to -- on the discovery motions that are pending.

6 MS. SNIEGOCKI: Well, there are no discovery motions pending. It was --
7 the discovery motion was resolved in terms of the W-4 production, which is a
8 separate component. That's to determine --

9 THE COURT: Well, then maybe I misunderstood. I thought you both were
10 saying that you had been arguing these things about this discovery in front of the
11 Discovery Commissioner --

12 MS. RODRIGUEZ: We have, Your Honor, for several --

13 THE COURT: -- and that she was waiting --

14 MS. SNIEGOCKI: Yeah, and they've been ruled in our favor.

15 MS. RODRIGUEZ: No.

16 MS. SNIEGOCKI: They've been compelled --

17 MS. RODRIGUEZ: No.

18 MS. SNIEGOCKI: They've been compelled to provide the payroll information,
19 the hours worked records and the W-4 information.

20 MS. RODRIGUEZ: But what she's arguing now --

21 THE COURT: All right.

22 MS. RODRIGUEZ: -- to the Court, Your Honor, is what we have been arguing.
23 I heard very clearly in there that, oh, if it's so burdensome just give us everything,
24 give us the whole database. That's what we've been arguing about.

1 THE COURT: Give you the whole hard drive.

2 MS. RODRIGUEZ: Right. Right.

3 MS. SNIEGOCKI: It's an alternative. It's not necessarily what we want,
4 but it is --

5 MS. RODRIGUEZ: And the Discovery Commissioner already --

6 THE COURT: Let me put it this way in order to end the conflict, momentarily
7 at least. I need the Discovery Commissioner's input on this, specifically to know
8 whether or not if the Court grants this motion to enlarge the certified class that it's
9 going to necessitate such additional discovery measures as might imperil our trial
10 date of February 15th. Is it the 15th?

11 MS. RODRIGUEZ: I think it's the 5th.

12 THE CLERK: The 18th. No, I'm sorry, February 5th.

13 THE COURT: The 5th. February 5th of next year. And I need to get that,
14 her recommendation on that. And obviously the same rules would apply, whatever
15 her recommendation is, whatever party doesn't like it within five days can lodge an
16 objection. And I need that to come to the Court swiftly, which means you're going
17 to have to get with the Discovery Commissioner.

18 And if I can do it by simply requesting by order of the Discovery
19 Commissioner to enter a recommendation based on her assimilated knowledge
20 of the discovery requirements without further briefing, without further argument of
21 the parties, then that's what I would ask her to do. She knows, because of her
22 familiarity with the discovery aspects of this case, she knows at this moment in
23 time probably better than I do what the chances are that enlarging this class would
24 imperil that trial date, because that I'm not willing to do. Once she has given me

1 her recommendation, then I will rule on this motion. You can count that factored
2 into that ruling will be the matters which I discussed here today.

3 MS. SNIEGOCKI: Okay. Just so that I'm clear, Your Honor is directing us
4 to bring this -- not enlarging the class period issue, but what impact additional
5 discovery would have?

6 THE COURT: I'm going to enter an order requesting the Discovery
7 Commissioner to enter her recommendation to me as to whether or not the additional
8 discovery necessary for you to -- and I will include this motion to her, this motion and
9 opposition -- whether doing so would imperil the trial date. Can you reasonably get
10 it done in that time? Then I will get her recommendation back and I will rule on this
11 motion. If it imperils the trial date, I definitely do not want to do it.

12 Notwithstanding the question of whether it threatens the trial date or
13 not, there's still the -- I don't know what you want to call it -- the jurisprudential desire,
14 let me put it that way, the desire to make sure that in the protection of class actions
15 in their process through the courts that there is -- that they may expect from the
16 Court protection from other class actions which would imperil any particular class
17 action. But by the same token, that doesn't mean necessarily that they're able to
18 continue to enlarge their classes.

19 See, I'm looking at this not just from the standpoint of this case. I read
20 with a lot of interest the cases, etcetera, that I put in that supplement to the order
21 that I filed. And I think it's important for a court in looking at a class action, it always
22 means more work, if you will, for both sides. And it is an effective tool if it's used
23 to the extent that it was intended to be used and I don't want to go beyond that.
24 So, that's all I can tell you.

1 MS. SNIEGOCKI: Understood. May I make one point that I overlooked?

2 THE COURT: Sure. Sure.

3 MS. SNIEGOCKI: Just to point out, Your Honor, and it may not matter in
4 terms of the ruling. The case was certified for injunctive relief through the present
5 date. So the way that it would stand now is we have a group of class members
6 through December of 2015, December 31st, 2015, certified for damages under (b)3.
7 And then we have a (b)2 certification through the present. So the class members
8 whose claims for injunctive relief are certified as a class action will be able to
9 proceed in this case. Their damages post December 31st, 2015 will have to be tried
10 separately in another case, whether it be the Dubric matter or another case filed
11 by a different plaintiff. So we have -- the way that the order currently stands is it is
12 certified for injunctive relief through the present, but only -- but there's a cutoff for
13 damages. And that was just for efficiency purposes for how do we get the discovery
14 that we need at this present time, instead of having it continuously supplemented.

15 THE COURT: I thought that was just a question of if there is a need for
16 injunctive relief it should apply to all of the class members.

17 MS. SNIEGOCKI: Correct. There was -- that is correct. There was no actual
18 injunctive --

19 THE COURT: But that in terms of the damages for a class that the damages
20 would be limited to this certain definition and that was the way it was certified.

21 MS. RODRIGUEZ: Right. That's my understanding of it as well, Your Honor.
22 And I do have a motion, as I've indicated to the Court, I have a motion coming
23 on the proprietary of even the class as it stands because they don't have a class
24 representative past 2011 and 2012. So, you know, I just want to give the Court the

1 heads up that I will be -- that's one of the dispositive motions that I plan to bring
2 within the next, what, 45 days.

3 THE COURT: So what I'm hearing you saying is we're going to have to jigger
4 with the class anyway.

5 MS. RODRIGUEZ: Well, it should be --

6 THE COURT: Might as well let the plaintiff --

7 MS. RODRIGUEZ: -- like I said, i think it's important to note, Your Honor,
8 you know, there never was any interest in moving to extend it or enlarge it. It's still
9 my position that they've waited until the very last minute to do this --

10 THE COURT: I understand. I understand.

11 MS. RODRIGUEZ: -- because they're only doing it because someone else
12 has already -- is already representing those members. And what we're looking to
13 do in that other matter, as Your Honor knows, that matter is up on appeal before the
14 supreme court, but one of the arguments there is that there are completely different
15 members as to who are before this Court versus who are before Judge Delaney's
16 court.

17 THE COURT: Okay. All right, anything else?

18 MS. SNIEGOCKI: I mean, if I can just respond to what was said here.

19 THE COURT: Yep. It's your motion, you get the last word.

20 MS. SNIEGOCKI: Apparently Mr. Nady doesn't want me to. But we do have
21 a representative post 2012, so if the argument is going to be made in some future
22 motion that we don't, it would be disingenuous. We have Michael Sergeant. He's
23 a certified class representative. He worked there through June of 2014. So to
24 stand here --

1 THE COURT: Rather than argue today a motion that the Court doesn't
2 have before it --

3 MS. SNIEGOCKI: No, I understand, but it was just a point that was
4 represented today.

5 THE COURT: I know. I know.

6 MS. SNIEGOCKI: We have a plaintiff who worked through 2014.

7 THE COURT: My comment is directed at both of you.

8 MS. SNIEGOCKI: Understood.

9 THE COURT: Rather than argue a matter that's not before the Court, let's
10 wait until the motion is filed. So I will be entering that order immediately and I
11 assume the Discovery Commissioner will notify you if she feels that she needs
12 anything additional before giving me her recommendation.

13 MS. SNIEGOCKI: Thank you. I appreciate it.

14 THE COURT: All right.

15 MS. RODRIGUEZ: Thank you, Your Honor.

16 THE COURT: Thank you.

17 (PROCEEDINGS CONCLUDED AT 11:14 A.M.)

18 * * * * *

19

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

22

23

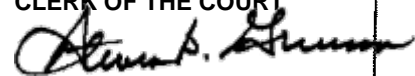
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Liz Garcia, Transcriber
LGM Transcription Service

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

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

12 Plaintiffs,

13 vs.

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

16 Defendants.

Case No.: A-12-669926-C

Dept.: I

STIPULATION AND ORDER

17
18 The parties, by and through their counsel of record, hereby stipulate and agree to
19 modify the schedule for the furnishing of Expert designations and reports as specified
20 below. The reason for such modification is the unanticipated illness and family
21 emergency of plaintiffs' expert, Dr. Terrence M. Clauretie, as detailed in his annexed
22 declaration, Exhibit "A." It is hereby stipulated and agreed to modify the Court's prior
23 schedule for the Expert designations and discovery as follows:

- 24
25 (a) Initial Expert Designations were due on or before June 30, 2017;
26 they will now be due on or before July 24, 2017;
27
28

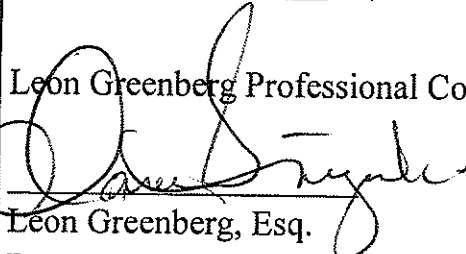
- 1 (b) Rebuttal Expert Designations were due on or before July 31, 2017,
2 they will now be due on or before August 31, 2017;
- 3 (c) Expert depositions were to be completed on or before September
4 29, 2017; they will now be completed on or before October 23,
5 2017;
- 6 (d) Dispositive motions were due on or before October 30, 2017, they
7 will now be due on or before November 27, 2017.
8
9

10 This stipulation is submitted in good faith and as a result of the circumstances
11 documented in Exhibit "A.". Thus, this request is not made for the purpose of delay.
12

13 Submitted this 5th day of July, 2017.

14 Leon Greenberg Professional Corp.

Rodriguez Law Offices

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Nevada Bar No. 6473

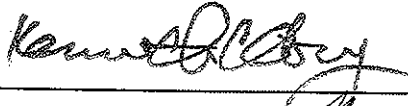
1061 Park Run Drive - Suite 150

Las Vegas, Nevada, 89145

Tel (702) 320-8400

Attorney for the Defendants

23 IT IS SO ORDERED:

24 
25
26 HONORABLE JUDGE KENNETH CORY
27 DISTRICT COURT, CLARK COUNTY
28


DATE

CERTIFICATE OF SERVICE

The undersigned certifies that on July 11, 2017, she served the within:

Stipulation and Order

by court electronic service to:

TO:

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

/s/ Sydney Saucier

Sydney Saucier

001075

001075

EXHIBIT "A"

1 LEON GREENBERG, ESQ.
 Nevada Bar No. 8094
 2 DANA SNIEGOCKI, ESQ.
 Nevada Bar No. 11715
 Leon Greenberg Professional Corporation
 4 2965 S. Jones Boulevard, Suite E-3
 Las Vegas, Nevada 89146
 5 (702) 383-6085
 6 (702) 385-1827 (fax)
leongreenberg@overtimelaw.com
 7 dana@overtimelaw.com
 Attorneys for Plaintiffs

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

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

14 Plaintiffs,

15 vs.

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

18 Defendants.

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

**DECLARATION OF
 TERRENCE M. CLAURETIE**

19 I, Terrence M. Clauretie, hereby affirm under penalty of perjury, that:

- 20
- 21 1. I have a Ph.D. in economics and received my C.P.A. in 1979 (now retired).
- 22 2. Presently, I am an Emeritus Professor of Economics at the University of Nevada, Las
- 23 Vegas.
- 24 3. I have been retained to work in an expert capacity in the above referenced matter and
- 25 have been asked to provide an expert report on damages allegedly owed to the class members in this
- 26 case which work by me includes confirming and verifying calculations done by a third party data
- 27 analyst, Charles Bass (hereinafter "Bass").
- 28

4. On June 15, 2017, I received a disk containing thousands of documents including

1 spreadsheets created by Bass and source documents used to compile said data.

2 5. I have spent significant time working on this matter including reviewing materials and
3 conversing with Bass.

4 6. To verify calculations already completed, I must go through the calculations and
5 compare them to source documents; a process that is very time consuming.

6 7. When I received the foregoing materials on June 15, 2017 I understood my report was
7 to be provided on June 30, 2017 and I anticipated being able to provide it by that date. I am not able to
8 complete my analysis and issue a report by June 30, 2017 for the following reasons:
9

10 a. My spouse has a serious health condition and I have been attending medical
11 treatment with her; and

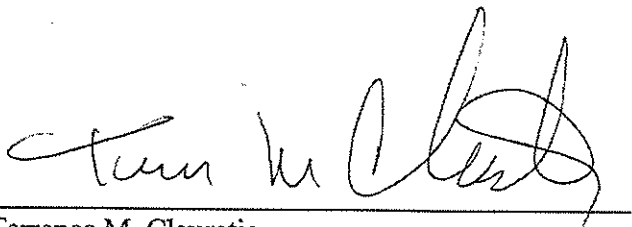
12 b. I personally have been ill.

13 8. I can complete a report with the information provided to me by July 24, 2017, and
14 possibly prior to that date.

15 I have read the foregoing and affirm under penalty of perjury that the same is hereby true and
16 correct.

17 Dated this 30 day of June, 2017.

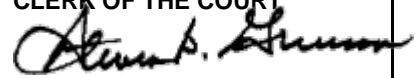
18
19
20
21
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23
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25
26
27
28



Terrence M. Clauretie

59

59



NEOJ
Esther C. Rodriguez, Esq.
Nevada Bar No. 6473
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mwall@hutchlegal.com
Attorneys for Defendants

DISTRICT COURT
CLARK COUNTY, NEVADA

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

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

Plaintiffs,

vs.

A CAB TAXI SERVICE LLC and A CAB, LLC,

Defendants.

NOTICE OF ENTRY OF ORDER DENYING PLAINTIFFS'

MOTION FOR PARTIAL SUMMARY JUDGMENT

PLEASE TAKE NOTICE that an Order Denying Plaintiffs' Motion for Partial Summary

...

...

...

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...

Judgment was entered by the Court on July 14, 2017. A copy is attached hereto.

DATED this 17th day of July, 2017.

RODRIGUEZ LAW OFFICES, P. C.

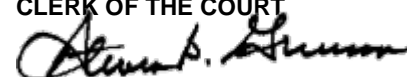
/s/ Esther C. Rodriguez, Esq.
 Esther C. Rodriguez, Esq.
 Nevada State Bar No. 006473
 10161 Park Run Drive, Suite 150
 Las Vegas, Nevada 89145
Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on this 17th day of July, 2017, I electronically filed the foregoing with the Eighth Judicial District Court Clerk of Court using the E-file and Serve System which will send a notice of electronic service to the following:

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

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



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mwall@hutchlegal.com
Attorneys for Defendants

DISTRICT COURT

CLARK COUNTY, NEVADA

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

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

Plaintiffs,

vs.

A CAB TAXI SERVICE LLC and A CAB, LLC,

Defendants.

ORDER DENYING PLAINTIFFS'

MOTION FOR PARTIAL SUMMARY JUDGMENT

Plaintiffs' Motion for Partial Summary Judgment came on for hearing before this Court on May 18, 2017, at 10:15 a.m., and for follow-up argument following additional briefing on May 25, 2017, at 1:00 p.m. Plaintiffs were represented at both hearings by their attorneys, Leon Greenberg and Dana Sniegocki of Leon Greenberg Professional Corporation. Defendants were represented at both hearings by their attorneys, Esther C. Rodriguez of Rodriguez Law Offices, P.C., and Michael K. Wall of Hutchison & Steffen, LLC.

Murray, et al. v. A Cab, LLC; Case A-12-669926-C

Having considered the pleadings and motion papers on file herein, and the arguments of counsel at the hearings, the Court denies plaintiffs' motion for partial summary judgment for the following reasons:

1. Plaintiffs motion seeks partial summary judgment regarding the amount of some of the damages that plaintiffs claim defendants have admitted is due to them based on the Minimum Wage Act ("MWA") for past, unpaid minimum wages for the time period January 1, 2013, through December 31, 2015. Plaintiffs' argument is based on records obtained from defendants during discovery, and the deposition testimony of defendant Creighton J. Nady. Plaintiffs' witness, Charles Bass, has analyzed these numbers, and has provided what plaintiffs characterize as a summary that satisfies NRS 52.275. Defendants dispute that Bass' declaration qualifies as a summary under the statute. Plaintiffs have neither disclosed Mr. Bass as an expert witness nor provided a report from him.

2. Plaintiffs claim that no expert witness is necessary to grant their motion for partial summary judgment because the records review and calculations of Mr. Bass are simple arithmetic, and his conclusion are just a compilation of the data available from the records and a "summary" contemplated by NRS 52.275. Defendants counter that expert testimony is required to determine the amount of damages, that no amount of damages has been conceded, that plaintiffs have presented numerous and conflicting damages figures based on Mr. Bass' "arithmetic," that Mr. Bass' methodologies are flawed and his calculations are incorrect, and that the amount of damages is a factual issue that cannot be resolved on summary judgment based on the records now before this Court.

3. At the first hearing, the Court concluded that Mr. Bass had not been disclosed as an expert witness, and that it was not clear to the Court whether Mr. Bass' conclusions were expert in nature, or merely mathematical calculations, as argued by plaintiffs. The Court requested and received supplemental briefing and materials related to this issue.

Murray, et al. v. A Cab, LLC; Case A-12-669926-C

4. Having reviewed the materials presented, including the sample figures provided by plaintiffs' counsel allegedly showing how the damages could be calculated as a matter of mathematics, the Court concludes that it cannot grant the motion for partial summary judgment. The Court notes that from the presentation made by plaintiffs in the last letter from plaintiffs' counsel and the attachments, the Court could not arrive at a simple calculation and could not understand how Mr. Bass' damages numbers were accomplished. It appeared to the Court that it would require the services of an expert to help the Court or the trier of fact to understand the calculations.

5. The Court concludes that there are genuine issues of fact remaining for trial to a trier of fact, among other things, to determine what the correct calculation would be under any of the scenarios that have been put forward by the plaintiffs. Specifically, plaintiffs have presented numbers in their claimed "summary" of defendants' records which plaintiffs claim can be arrived at by simple mathematics. There is dispute from defendants about whether plaintiffs can even use those numbers and arrive at correct calculations, but plaintiffs have argued that defendants should not be heard to complain if plaintiffs use defendants' numbers from their own documents. But even were the Court to accept that argument, when the Court goes to the calculation, the Court cannot get from the raw numbers provided by Mr. Bass and by counsel to a final calculation.

6. The Court concludes that getting to a final calculation takes more in the form of an evidentiary nature, more of an evidentiary presentation than simply taking numbers off of this column and that column and performing simple arithmetic.

7. At the hearing, the Court noted that the time for designation of experts and their reports on both sides had passed, but that there was time to reopen expert discovery and to still maintain the presently scheduled February trial date. Therefore, on the Court's own motion, the Court reopened discovery for the purposes solely of having both sides have an opportunity to designate experts and file reports, and to designate rebuttal experts if deemed necessary.

THEREFORE, plaintiffs' motion for partial summary judgment is denied without prejudice. Expert discovery is reopened as indicated above, and the following deadlines are established:

Murray, et al. v. A Cab, LLC; Case A-12-669926-C

- (a) Initial Expert Designations are due on or before June 30, 2017.
- (b) Rebuttal Expert Designations are due on or before July 31, 2017.
- (c) Discovery will close on September 29, 2017.
- (d) Dispositive Motions are due on or before October 30, 2017.

All other trial deadlines remain as previously set.


IT IS SO ORDERED.

DATED this 30 day of June, 2017.


DISTRICT COURT JUDGE

Submitted by:

RODRIGUEZ LAW OFFICES, P. C.

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

Approved as to form and content:

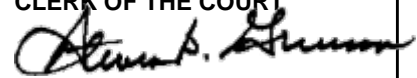
LEON GREENBERG PROFESSIONAL CORPORATION

declined
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DANA SNIEGOCKI, ESQ.
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Attorneys for Plaintiffs

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ORDR
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Attorneys for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-12-669926-C

Dept.: I

ORDER

Defendants filed their Motion for Leave to Amend Answer to Assert a Third Party Complaint on January 27, 2017. Plaintiffs filed their Response in Opposition on February 13, 2017. After due and proper deliberation, review of the arguments set forth in each of the parties' briefs, and considering the oral argument by counsel before the Court on May 18, 2017, the Court hereby finds:

If the Court were to grant defendants' motion at this stage in the proceedings, it would require the Court to sever determination of that cause of action from the Complaint in this case. Accordingly,

IT IS HEREBY ORDERED that Defendants' Motion for Leave to Amend Answer to

1 Assert a Third Party Complaint is **DENIED WITHOUT PREJUDICE.**

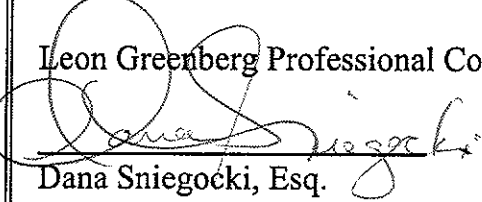
2 **IT IS SO ORDERED.**

3
4  
5 HONORABLE JUDGE KENNETH CORY
6 DISTRICT COURT, CLARK COUNTY

7 July 13, 2017
8 DATE


9 Submitted by:

10 Leon Greenberg Professional Corp.

11 
12 Dana Sniegocki, Esq.
13 Nevada Bar No. 11715
14 2965 S. Jones Boulevard - Ste. E-3
15 Las Vegas, NV 89146
16 Tel (702) 383-6085
17 dana@overtimelaw.com
18 Attorney for Plaintiffs

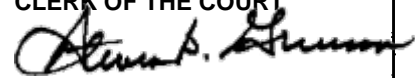
9 Approved as to form and content:

10 Rodriguez Law Offices, P.C.

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12 Esther C. Rodriguez, Esq.
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15 Las Vegas, NV 89145
16 Tel (702) 320-8400
17 info@rodriguezlaw.com
18 Attorney for Defendants

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dana@overtimelaw.com
Attorneys for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-12-669926-C

Dept.: I

ORDER

Plaintiffs' Filed their Motion to Bifurcate Issue of Liability of Defendant Creighton J. Nady from the Liability of Corporate Defendants on January 12, 2017. Defendants filed their Response in Opposition on January 30, 2017. Plaintiffs filed their Reply in Support of their Motion on May 11, 2017. After due and proper deliberation, review of the arguments set forth in each of the parties' briefs, and considering the oral argument by counsel before the Court on May 18, 2017, the Court hereby finds:

The plaintiffs' motion sought to bifurcate from this case for trial the issue of the individual defendant, Creighton J. Nady's, liability to the plaintiffs from issues of the liability of the corporate defendants. The Court agrees with plaintiffs' position that defendant Nady, if

liable at all to the plaintiffs, is only liable to the extent that there is *also* a liability finding against A Cab. Defendant Nady's liability is entirely derivative of a finding of liability against A Cab. Furthermore, if A Cab satisfies that liability in full, there will be no need for any liability finding to be made against Defendant Nady.

In addition, to the extent there is any liability finding against defendant A-Cab that it does not satisfy, Defendant Nady may be able to raise a defense that his personal liability must be limited to the extent of his profit from A Cab's activities.

In light of the foregoing, and in the interests of judicial economy, the Court finds that the best course is to bifurcate all issues concerning the liability of Defendant Nady, and his defenses to any such liability, for separate disposition after the liability of A Cab is finally adjudicated. Accordingly,

IT IS HEREBY ORDERED that Plaintiffs' Motion to Bifurcate Issue of Liability of Defendant Creighton J. Nady from Liability of Corporate Defendants is **GRANTED**.

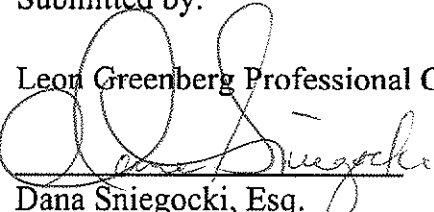
IT IS SO ORDERED.


HONORABLE JUDGE KENNETH CORY
DISTRICT COURT, CLARK COUNTY

July 13, 2017
DATE


Submitted by:

Leon Greenberg Professional Corp.


Dana Sniegocki, Esq.
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Attorney for Plaintiffs

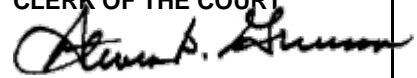
Approved as to form and content:

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Attorney for Defendants

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Attorneys for Defendants

DISTRICT COURT
CLARK COUNTY, NEVADA

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

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

Plaintiffs,

vs.

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

Defendants.

NOTICE OF ENTRY OF ORDER DENYING PLAINTIFFS'

COUNTER-MOTION FOR SANCTIONS AND

ATTORNEYS' FEES AND ORDER DENYING

PLAINTIFFS' ANTI-SLAPP MOTION

PLEASE TAKE NOTICE that an Order Denying Plaintiffs' Counter-Motion for Sanctions
and Attorney's Fees and Order Denying Plaintiffs' Anti-SLAPP Motion was entered by the Court

...

...

on July 31, 2017. A copy of the Order is attached hereto.

DATED this 31st day of July, 2017.

RODRIGUEZ LAW OFFICES, P. C.

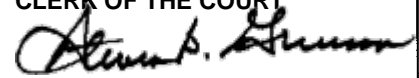
/s/ Esther C. Rodriguez, Esq.
 Esther C. Rodriguez, Esq.
 Nevada State Bar No. 006473
 10161 Park Run Drive, Suite 150
 Las Vegas, Nevada 89145
Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on this 31st day of July, 2017, I electronically filed the foregoing with the Eighth Judicial District Court Clerk of Court using the E-file and Serve System which will send a notice of electronic service to the following:

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

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



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Attorneys for Defendants

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

A CAB TAXI SERVICE LLC and A CAB, LLC,

Defendants.

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

001091

ORDER DENYING PLAINTIFFS' COUNTER-MOTION FOR SANCTIONS

AND ATTORNEYS' FEES AND

ORDER DENYING PLAINTIFFS' ANTI-SLAPP MOTION

Plaintiffs' Counter-Motion for Sanctions and Attorneys' Fees was included in Plaintiffs' Opposition to Defendants' Motion for Leave to Amend Answer to Assert a Third-Party Claim. Included in Plaintiffs' Counter-Motion for Sanctions and Attorneys' Fees was a Motion for additional sanctions in the amount of \$10,000 pursuant to Nevada's Anti-SLAPP protections in NRS 41.660 and NRS 41.670. Plaintiffs' Counter-Motion and Anti-SLAPP motion came on for hearing before this Court on May 18, 2017. Plaintiffs were represented at the hearing by their

Murray v. A Cab, LLC, et al; District Court Case A-12-669926-C

attorneys, Leon Greenberg and Dana Sniegocki of Leon Greenberg Professional Corporation. Defendants were represented at the hearing by their attorneys, Esther C. Rodriguez of Rodriguez Law Offices, P.C., and Michael K. Wall of Hutchison & Steffen, LLC.

The Court having, read all the pleadings and papers on file herein, hearing the arguments of the parties, and good cause appearing,

IT IS HEREBY ORDERED that Plaintiffs' Counter-Motion for Sanctions and Attorneys' Fees **IS DENIED WITHOUT PREJUDICE.**

IT IS HEREBY ORDERED that Plaintiffs' Anti-SLAPP Motion **IS DENIED WITHOUT PREJUDICE.**

DATED this 27th day of July, 2017.


DISTRICT COURT JUDGE

Submitted by:


RODRIGUEZ LAW OFFICES, P. C.

By: 

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

Approved as to form and content:

LEON GREENBERG PROFESSIONAL CORPORATION


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Attorneys for Plaintiffs

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Alvin B. Linn

001093

1 Las Vegas, Nevada - Tuesday, August 8, 2017, 10:07 a.m.

2 * * * * *

3 DISCOVERY COMMISSIONER: Murray.

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

5 DISCOVERY COMMISSIONER: Good morning. Nice to see you all back.

6 MR. GREENBERG: We're here, Your Honor.

7 MS. RODRIGUEZ: Good morning, Your Honor. Esther Rodriguez, for the
8 Defendants.

9 DISCOVERY COMMISSIONER: So the Court, I guess, directed you towards me to
10 be able to develop a new discovery plan, if necessary. I know the current trial date is 2/5 of
11 '18, and there were some concerns on whether or not that would be sufficient time.

12 I cannot recall -- and I apologize to you. I looked through the case. What is
13 the situation with the five-year rule?

14 MR. GREENBERG: Your Honor, the five-year rule would expire in this case
15 approximately in July of next year as best as I can recall. I know there was another say four
16 to six months past the February trial date that Judge Cory set, and that's because there were
17 some extended stays in this case, but Judge Cory, of course being diligent, didn't want to,
18 you know, put this just sixty days just prior to the five-year, you know, end time, so to speak,
19 so he set it in February.

20 DISCOVERY COMMISSIONER: Did he express a willingness to continue the trial
21 date?

22 MR. GREENBERG: You know, Your Honor, I apologize, and I am somewhat at a
23 loss for how Judge Cory has directed the handling of this. This is a very specific issue,
24 which I think Your Honor understands. Are we going to have this class extended for these
25 claims?

1 DISCOVERY COMMISSIONER: Right. Is it class certification?

2 MR. GREENBERG: Right. We have the claims through December 15th -- excuse
3 me -- December 31st, 2015. All discovery has been done. An expert report has been
4 provided. We're in the expert discovery stage exclusively at this point in respect to this case.

5 So if we were going to have the class extended at this point another 18 months
6 or 20 months through, you know, July of 2017, it would be a question of producing the
7 relevant data, a supplemental expert report, a notice to those newly joined Plaintiffs, which is
8 not that many. It's presumably less than a hundred people. They would have to be given say
9 a sixty-day period to exclude, which was what was done previously.

10 [Mr. Wall enters the courtroom at this time]

11 If that was to be granted, and notice was to go out in September, their
12 exclusion rights would lapse in November; that's about three months prior to trial. I think
13 that's appropriate. If I can get this data produced in August -- still today is only August 8th --
14 it's not terribly difficult to produce -- any supplemental report relating to these additional
15 claims could be done, you know, within thirty days thereafter. We have, as I said, an expert
16 report that's been done, a model's been created.

17 So from my perspective it's quite manageable, Your Honor, and Judge Cory
18 referred this for your input, and that was Judge Cory's decision. Again, I can't read into his
19 mind in terms of his reasoning, Your Honor.

20 DISCOVERY COMMISSIONER: Mr. Wall, welcome.

21 MR. WALL: Thank you, Your Honor. I'm sorry I'm late.

22 DISCOVERY COMMISSIONER: So I'm a little bit unclear as to what I need to be
23 doing today. Is it to address the discovery? When does your discovery currently close?

24 MS. RODRIGUEZ: Your Honor, can I --

25 MR. GREENBERG: Yes.

1 MS. RODRIGUEZ: -- respond to some --

2 DISCOVERY COMMISSIONER: Yes.

3 MS. RODRIGUEZ: -- of the comments here?

4 Our discovery was closed already at the end of June.

5 DISCOVERY COMMISSIONER: Okay.

6 MS. RODRIGUEZ: And, as you are well aware, this has been a number -- we've had
7 a number of discovery disputes, and basically my impression from Judge Cory was that he
8 was not inclined to move the trial date too much further out because he is worried about this
9 five-year rule issue, and nobody has actually come to a determination as to when that exactly
10 runs. We are in disagreement about when that runs, and which stays and I --

11 DISCOVERY COMMISSIONER: When you do you believe it runs?

12 MS. RODRIGUEZ: I don't really know, Your Honor. I have to go through the many
13 stays and figure out which ones we agreed to toll and which ones we didn't. But our position
14 has always been that it runs this October when he filed. So that is an issue that's just
15 recently come up.

16 But, as Mr. Greenberg said, discovery is closed. They've done an initial
17 report. We're within about a couple of weeks of doing our rebuttal report, and the only thing
18 that Judge Cory extended was time to do the expert discovery, and so -- and now Mr.
19 Greenberg has indicated right now, oh, this is relatively easy to extend this --

20 DISCOVERY COMMISSIONER: But I thought you told me discovery closed in
21 June.

22 MS. RODRIGUEZ: It did.

23 DISCOVERY COMMISSIONER: So it's not closed because the Judge extended the
24 discovery deadlines for the expert --

25 MS. RODRIGUEZ: Only the experts. He did a --

1 DISCOVERY COMMISSIONER: Okay. So --

2 MS. RODRIGUEZ: -- modification.

3 DISCOVERY COMMISSIONER: -- when did he extend that deadline to?

4 MS. RODRIGUEZ: It's -- that's -- let's see. Our rebuttal's due August 30th, and I
5 believe it's like September 30th that we can just depose the experts. That's all he's allowed
6 us to do.

7 MR. GREENBERG: I believe that is correct, Your Honor.

8 DISCOVERY COMMISSIONER: Okay. Did he set a cutoff deadline for the class
9 certification?

10 MS. RODRIGUEZ: Well, the class certification currently is December 31, 2015, and
11 that's all -- we argued about that particular motion. It was Mr. Greenberg's motion to extend
12 that through June of 2016 -- or 20- --

13 DISCOVERY COMMISSIONER: I thought he said June of 2017.

14 MS. RODRIGUEZ: Sorry, 2017, right, and that is the portion that Judge Cory has
15 referred down here to you to see that should he extend it or should he not; is that going to
16 affect the trial date because, from our perspective, we have to reopen discovery for that
17 additional year-and-a-half and go through everything that we've gone through in terms of
18 productions of QuickBooks, and trip sheets, and CAB Manager, and everything else that was
19 only done through December of 2015. So, obviously, we're opposed to reopening at this
20 stage and starting over.

21 DISCOVERY COMMISSIONER: So does the class continue to exist, I mean from
22 month-to-month, day-to-day?

23 MS. RODRIGUEZ: No, no. We are --

24 DISCOVERY COMMISSIONER: What about the current people then that would
25 technically maybe fall within the class but aren't currently part of it?

1 MS. RODRIGUEZ: There's two --

2 DISCOVERY COMMISSIONER: Do we get options to them? Do --

3 MS. RODRIGUEZ: Yes.

4 DISCOVERY COMMISSIONER: -- they get to join in later?

5 MS. RODRIGUEZ: There's two answers to that.

6 DISCOVERY COMMISSIONER: Okay.

7 MS. RODRIGUEZ: One is that there is another lawsuit running concurrently before
8 Judge Delaney and which has sought certification through -- that's where I was getting the
9 2016 -- through September of 2016. And it was only after we reached a resolution in that
10 case that Mr. Greenberg has now filed his motion to extend his time past December of 2015.

11 DISCOVERY COMMISSIONER: Mr. Greenberg, are you all in the other case as
12 well?

13 MR. GREENBERG: Your Honor, the other case is inactive because the settlement
14 that was proposed was enjoined, and they have made no effort to certify the later class. In
15 theory, they could continue to prosecute that case just for the 2016 and 2017 claims which
16 are outside the scope of this class certification. They have made no attempt to do so, Your
17 Honor. They wanted to certify that solely for settlement purposes to overlap with the 2010
18 forward period of this case. Judge Cory enjoined that settlement, but he certainly didn't
19 enjoin the Plaintiffs in that case from pursuing a --

20 DISCOVERY COMMISSIONER: Are you --

21 MR. GREENBERG: -- separate certification.

22 DISCOVERY COMMISSIONER: -- in that case or not?

23 MR. GREENBERG: I am not in that case.

24 DISCOVERY COMMISSIONER: Okay.

25 MR. GREENBERG: I have no involvement in that case, and I asked Judge Cory to

1 enjoin the settlement because it conflicted with this class certification, Your Honor.

2 DISCOVERY COMMISSIONER: Okay.

3 MR. GREENBERG: So --

4 MS. RODRIGUEZ: But I had point --

5 MR. GREENBERG: -- the only --

6 MS. RODRIGUEZ: -- number two, Your Honor, before I was --

7 DISCOVERY COMMISSIONER: Well --

8 MS. RODRIGUEZ: -- interrupted. I just want to --

9 DISCOVERY COMMISSIONER: -- I'm trying --

10 MS. RODRIGUEZ: -- respond.

11 DISCOVERY COMMISSIONER: -- to follow the logic here, so just bear with me. It
12 feels like Monday morning.

13 So Judge Delaney has that other lawsuit, but the settlement is enjoined?

14 MR. GREENBERG: The Defendant has --

15 DISCOVERY COMMISSIONER: Did Judge Delaney enjoin it, or --

16 MR. GREENBERG: The --

17 DISCOVERY COMMISSIONER: -- or did Judge Cory?

18 MR. GREENBERG: Your Honor --

19 MR. WALL: Judge Cory enjoined it, Your Honor, and I have petitioned the Nevada
20 Supreme Court for a writ --

21 DISCOVERY COMMISSIONER: Okay.

22 MR. WALL: -- regarding that matter.

23 DISCOVERY COMMISSIONER: Okay.

24 MR. GREENBERG: Your Honor, there isn't -- the only application pending to certify
25 the claims after January 1st, 2016, is in this case. In the Dubrik [phonetic] case before Judge

1 Delaney, Plaintiffs have made no effort to certify that class. They --

2 DISCOVERY COMMISSIONER: I'm not going to deal with that case --

3 MR. GREENBERG: I understand, Your Honor.

4 DISCOVERY COMMISSIONER: -- anymore right now. Let me let Ms. Rodriguez
5 finish her --

6 MS. RODRIGUEZ: Just the other option that Mr. Greenberg himself had proposed to
7 Judge Cory in his motion was that if Judge Cory did not extend the damages past December
8 2015, they were threatening a second lawsuit to pick up the current members past December
9 2015.

10 DISCOVERY COMMISSIONER: And that would make sense to me actually.

11 MR. GREENBERG: Your Honor, there would be potential additional litigation.
12 Whether that would be encompassed within the Dubrik case, which, as I said, is essentially
13 an active or a completely new case being filed, would have to be seen. I don't think that's
14 efficient or makes sense, but that's within the discretion of the Court to determine that.

15 DISCOVERY COMMISSIONER: Well, here's the problem. We have a really old
16 case that we're looking at, and your clients from the earlier time frames I'm sure are desiring
17 resolution.

18 We have new potential claimants, and it may just be more efficient in the long
19 run to bring a separate action for those claimants, and, frankly, a lot of the work, the
20 legwork, has been done in this case, so I don't want to hear the same arguments that I've
21 already resolved in the new case, and it could be once the new case is brought, then, you
22 know, that would make more sense.

23 I'm afraid to do too much in this case because I think it does need to be tried
24 February 5th of 2018, unless there can be some agreement reached on the five-year rule, and I
25 would want a written stipulation to do that. I don't think it's necessary -- I'm not sure we're

1 at a point where it's necessary to consider including the 2016 and 2017 claimants in this
2 case. I think there are other avenues to do that. I just don't want to see this case delayed any
3 further, and since I know how difficult the discovery has been in the case, I'm really hesitant.

4 If I had a very limited time frame that I could say let's reopen this for -- if we
5 were talking a month or two months, I might be willing to do that, but that's not what we're
6 talking about. We're talking about two years of claimants from 2016 -- of January 2016
7 through the present time, and we're --and I hate to break the news to you -- into August, so, I
8 mean, we just -- but I don't want you to think that I'm saying those people don't have the
9 right to have their claims heard and adjudicated. I think they absolutely do. The question is
10 what forum --

11 MR. GREENBERG: Yes, Your Honor.

12 DISCOVERY COMMISSIONER: -- should that be.

13 MR. GREENBERG: I would pose a question or a thought to Your Honor about this,
14 and I understand it's a difficult decision to make, and I don't question your reasoning. But
15 what I want to point out is something that I don't think has been discussed or the Court
16 necessarily has considered. Some of these claimants are completely new because they were
17 only hired in 2016 or later.

18 DISCOVERY COMMISSIONER: No. I understand that.

19 MR. GREENBERG: Some of --

20 DISCOVERY COMMISSIONER: That was my thought.

21 MR. GREENBERG: Right, but some of the claimants are actually the continuing
22 claimants. They're already part of this class, but the problem is that, even though they've
23 been given notice and have been joined in this case, their claims will only be adjudicated
24 through the end of 2015.

25 So I would submit --

1 DISCOVERY COMMISSIONER: Yeah, that --

2 MR. GREENBERG: -- to Your Honor --

3 DISCOVERY COMMISSIONER: -- doesn't make sense to me.

4 MR. GREENBERG: Well, that's what I'm saying. I don't think it makes sense
5 either, Your Honor, so an extension of the class period could be simply for the existing class
6 members, but not for any new people who only were hired in 2016 and only have claims for
7 the last 18 months.

8 DISCOVERY COMMISSIONER: Okay. Defense counsel, you're looking at me
9 funny, but think about it. We can't have these people litigating their claims, the same claims,
10 in two separate forums. I think all of their damages need to be considered in one forum or
11 one case, which is this one.

12 So then the question becomes what is the cutoff time? Now, I'm assuming -- I
13 know that's not always a good thing to do, but I am thinking, hopefully, that some changes
14 were made to policies and procedures. So maybe we really aren't looking at up to and
15 including the present time. Maybe we're looking through 2016 for limited individuals where
16 we can just supplement the documents that already exist since the trial date's not till
17 February.

18 I'm not moving the trial date. So what I'm thinking about is do we have a list
19 of those individuals that are still employed that are part of this class certification?

20 MR. GREENBERG: Those individuals would be known to the Defendants 'cause
21 they're still in the payroll records. I mean, everybody who was employed through the end --

22 DISCOVERY COMMISSIONER: How can we not know this? How can we not
23 know who is part of the class at this point?

24 MR. GREENBERG: We --

25 MS. RODRIGUEZ: We have a list through December 2015, but --

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

2 MS. RODRIGUEZ: -- no, we don't have anything further on -- because a lot of these
3 people --

4 DISCOVERY COMMISSIONER: But do we know --

5 MS. RODRIGUEZ: -- leave and come back and --

6 DISCOVERY COMMISSIONER: Yeah, but do we know who's currently employed
7 with you?

8 MS. RODRIGUEZ: Oh, certainly, yeah.

9 DISCOVERY COMMISSIONER: Okay.

10 MS. RODRIGUEZ: But --

11 DISCOVERY COMMISSIONER: Can we track their employment history? Because
12 if they left for a year, and then they just recently came back, I mean, I would almost think it
13 would have to be employees that have been continuously employed with the Defendant, not
14 left and come back.

15 MS. RODRIGUEZ: And there's -- that's -- the second scenario is more likely
16 because that's the nature of the cab business. They leave, they work a couple -- they work a
17 month, they leave, they come back, they work another month, and --

18 DISCOVERY COMMISSIONER: So think -- let's just step back from the litigation
19 for a moment and just put our Civil Procedure hats back on from law school. Do we really
20 want these Plaintiffs who are part of this class who may have wage loss into the future, aren't
21 you going to want -- you may prevail, okay? I'm not saying that. But if you don't prevail,
22 don't you want to deal with that risk right now and not worry about it in the future? Don't
23 you want to have all of the Plaintiffs' potential claims litigated in this case, the ones that
24 exist?

25 I think the new claimants or new potential class members I'm not dealing with.

1 They'll -- Plaintiffs' counsel, you'll just have to decide how to handle that.

2 MR. GREENBERG: Yes, Your Honor.

3 DISCOVERY COMMISSIONER: But the ones -- the class members that are
4 currently existing, don't we want to deal with all of their claims, recognizing that there might
5 have to be a natural cutoff point --

6 MS. RODRIGUEZ: The --

7 DISCOVERY COMMISSIONER: -- and maybe we're rapidly approaching that
8 cutoff point?

9 But I would think at least for 2016, if some of the employees have been
10 continuously employed with the Defendant, those wages and information should be
11 disclosed, and I don't think I have to move any deadlines to make that happen. The very
12 worst that happens is that maybe there's a supplement to an expert report 30 days prior to
13 trial.

14 But in terms of the actual numbers themselves, I mean, think about the fairness
15 of it. Don't we just want to litigate and make sure we've resolved all of the class members'
16 claims that currently exist or that exist for this lawsuit in this lawsuit?

17 MS. RODRIGUEZ: The only problem, Your Honor -- and I'm sorry, Mr. Wall. But
18 I'm just thinking of all of the discovery issues in this and that we already have set numbers
19 now from his expert, and to get to those numbers has been quite an ordeal because for each
20 of those we have to pull --

21 DISCOVERY COMMISSIONER: So what if we just reach an agreement that if the
22 Plaintiffs prevail on the case for the numbers that they have, they will be able to seek
23 recovery up to and including the present time after the lawsuit?

24 MR. GREENBERG: I would be open to a bifurcation order, Your Honor, where this
25 would be addressed postjudgment such --

1 DISCOVERY COMMISSIONER: Right.

2 MR. GREENBERG: I think that makes a lot of sense, but I don't know that that can
3 be -- well, Your Honor --

4 DISCOVERY COMMISSIONER: I think I need to talk to the Judge.

5 MR. GREENBERG: Yeah. The District Judge would have to either order that or we
6 have to have some consent --

7 DISCOVERY COMMISSIONER: Because to me --

8 MR. GREENBERG: -- by the parties.

9 DISCOVERY COMMISSIONER: -- that makes the most -- I mean, these --

10 MS. RODRIGUEZ: For the current class members.

11 DISCOVERY COMMISSIONER: Right, for current class members only that if the
12 Plaintiffs prevail, then they will receive the compensation for this time frame, but they will
13 have the opportunity -- you'll either bifurcate it, or have a separate hearing later, or however
14 the Judge I guess deems most appropriate -- that they will be allowed to collect their
15 damages from the end of 2015 to the present time.

16 MR. GREENBERG: I think that makes a lot of sense, Your Honor.

17 DISCOVERY COMMISSIONER: That's the only thing I can think of right now
18 because I don't want to prohibit those individuals from being made whole, if that's the case.
19 Now, the Defendants may prevail, and then it's a nonissue. But, you know, I think we have
20 to give the current class members the opportunity to be made whole. I think that's fair. But
21 how we do it to preserve the trial date and not put you all through anymore discovery at the
22 present time would be to do something after judgment and ensure that they would be treated
23 fairly at that time, meaning that they would be able to collect all their wages.

24 MR. GREENBERG: In a sense what Your Honor is proposing is a supplemental
25 class certification and a simultaneous bifurcation.

1 DISCOVERY COMMISSIONER: Okay. That sounds good. I don't know if I
2 like thinking that.

3 MR. GREENBERG: Well --

4 DISCOVERY COMMISSIONER: But if that's what I'm proposing, then that's what
5 I'm proposing.

6 MR. GREENBERG: Well, procedurally, essentially what we're saying is that the
7 claims past --

8 DISCOVERY COMMISSIONER: Right.

9 MR. GREENBERG: -- the end of 2015 are going to be certified for these class
10 members, but we are bifurcating and putting off their disposition until postjudgment.

11 DISCOVERY COMMISSIONER: To postjudgment, and that way if the Defendants
12 prevail, they won't have to worry about conducting any further discovery. If they don't
13 prevail, then maybe you can reach some sort of settlement postjudgment to deal with these
14 additional claimants.

15 MS. RODRIGUEZ: The only thing I would ask, Your Honor, if you're going to
16 further discuss this with the Judge, is this concurrent matter with Judge Delaney because it is
17 up on the Supreme Court, and I don't want to see Mr. Greenberg --

18 DISCOVERY COMMISSIONER: I'm going to let the Supreme Court deal with that
19 issue.

20 MS. RODRIGUEZ: Well, I just don't want this argument to preclude now us moving
21 forward, 'cause it's not inactive. It is an active case, and they are seeking certification
22 through --

23 DISCOVERY COMMISSIONER: Are the same class members part of that case that
24 are a part of this case?

25 MS. RODRIGUEZ: Mr. Bourassa, Mark Bourassa, represents those folks, and he has

1 indicated he's got his own class people that are more current than Mr. Greenberg's.

2 DISCOVERY COMMISSIONER: Okay.

3 MS. RODRIGUEZ: So, yes, they are drivers.

4 DISCOVERY COMMISSIONER: But you really didn't answer my question. Are
5 they part of the same -- are they the same names in --

6 MS. RODRIGUEZ: Yeah, I would assume so.

7 DISCOVERY COMMISSIONER: Mr. -- well, let's not assume.

8 MS. RODRIGUEZ: Because -- well, he's never disclosed his names. Mr. Bourassa
9 has disclosed a limited --

10 DISCOVERY COMMISSIONER: How can you not disclose your names? You've
11 got class certification.

12 MR. GREENBERG: Your Honor, the names of my clients are known to Defendants.
13 They're the people they advised me worked up till the end of --

14 DISCOVERY COMMISSIONER: Would you all --

15 MR. GREENBERG: -- 2015.

16 DISCOVERY COMMISSIONER: -- please get a name -- a list of the class members
17 in this case?

18 MR. GREENBERG: We -- yes, we do have that. That was provided by the
19 Defendants, Your Honor --

20 DISCOVERY COMMISSIONER: All right.

21 MR. GREENBERG: -- pursuant to the Court's order.

22 DISCOVERY COMMISSIONER: So maybe we could --

23 MS. RODRIGUEZ: Well --

24 DISCOVERY COMMISSIONER: -- carve out another exception postjudgment that
25 it would not deal with the people who have a remedy in other --

1 MS. RODRIGUEZ: Perfect.

2 DISCOVERY COMMISSIONER: -- in other cases.

3 MS. RODRIGUEZ: Perfect.

4 MR. GREENBERG: If someone elects to bring a suit independently, as did Ms.
5 Dubrik, then they're not a member of this class. The time for people in this class to exclude
6 themselves has expired, Your Honor.

7 DISCOVERY COMMISSIONER: Maybe you need to call Mr. Bourassa and have a
8 phone conversation with him.

9 MR. GREENBERG: Yes, Your Honor, but, again, no application has been made to
10 certify the 2016 and 2017 new claimants in his case, and we're not talking about bringing
11 them into this case, Your Honor.

12 DISCOVERY COMMISSIONER: No.

13 MR. GREENBERG: We're only talking about the existing class members.

14 DISCOVERY COMMISSIONER: I know. I just want to make sure the existing
15 class members in this case, should a judgment be rendered in their favor, have the
16 opportunity to collect their full wages up to, and including, the present time if they've been
17 employed during the proper time frames.

18 MS. RODRIGUEZ: I understand that, Your Honor.

19 DISCOVERY COMMISSIONER: Okay. So that's what -- unless we can have two --
20 you know, the exception being unless they are pursuing their claims in another case, in
21 which case you would not have to address them in this case.

22 But if they're not part of another case, then they should be made whole in this
23 case postjudgment.

24 MR. GREENBERG: Yes, Your Honor.

25 DISCOVERY COMMISSIONER: Is that fair?

1 MS. RODRIGUEZ: Yes.

2 DISCOVERY COMMISSIONER: All right. So, Ms. Rodriguez, why don't you draft
3 my Report and Recommendation from today's hearing.

4 MS. RODRIGUEZ: I will, Your Honor.

5 DISCOVERY COMMISSIONER: And make those recommendations of bifurcation
6 and --

7 MR. GREENBERG: Supplemental certification.

8 DISCOVERY COMMISSIONER: -- supplemental certification for the time frames at
9 issue, with --

10 MR. GREENBERG: For the -- yes.

11 DISCOVERY COMMISSIONER: -- exception of those individuals who are
12 participating in another case and may seek their remedy there --

13 MS. RODRIGUEZ: Correct.

14 DISCOVERY COMMISSIONER: -- for years 2016 and 2017.

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

16 DISCOVERY COMMISSIONER: All right?

17 MR. GREENBERG: That makes sense to me.

18 DISCOVERY COMMISSIONER: All right. I will talk to the Judge and let him
19 know what I did, but I don't want to bring you all back here. I want you to have time to get
20 what you need done in this case and get ready for trial.

21 MR. GREENBERG: Yes, Your Honor.

22 DISCOVERY COMMISSIONER: So that'll be my recommendation, so I'm not
23 moving the trial date. No further discovery in this case currently as it stands, except for what
24 we discussed postjudgment. And then I'll handle the discovery at that time.

25 MS. RODRIGUEZ: Okay.

1 MR. GREENBERG: I want to thank Your Honor. I think you can up with a very
2 sensible approach and solution to our problem here.

3 DISCOVERY COMMISSIONER: Well, good luck.

4 MR. GREENBERG: One that I didn't consider actually before I came in here today,
5 Your Honor.

6 MS. RODRIGUEZ: Thank you.

7 MR. GREENBERG: Thank you.

8 MR. WALL: Thank you, Your Honor.

9 [Proceeding concluded at 10:28 a.m.]

10 * * *

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

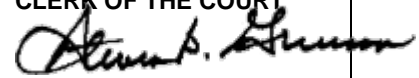
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1 **RTRAN**

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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.**

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) **CASE NO. A-12-669926-C**
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14
15 **BEFORE THE HONORABLE BONNIE A. BULLA, DISCOVERY COMMISSIONER**
16 **WEDNESDAY, OCTOBER 4, 2017**

17 **RECORDER'S TRANSCRIPT OF PROCEEDINGS**
18 **DISCOVERY CONFERENCE - REFERRED BY JUDGE**

19
20 **APPEARANCES:**

21 **For the Plaintiffs:**

DANA SNIEGOCKI, ESQ.

22
23 **For the Defendants:**

ESTHER C. RODRIGUEZ, ESQ.
MICHAEL K. WALL, ESQ.

24
25 **RECORDED BY: FRANCESCA HAAK, COURT RECORDER**

1 Las Vegas, Nevada - Wednesday, October 4, 2017, 9:42 a.m.

2 * * * * *

3 DISCOVERY COMMISSIONER: Murray.

4 MS. RODRIGUEZ: Good morning, Your Honor. Esther Rodriguez and Michael
5 Wall, for the Defendants.

6 DISCOVERY COMMISSIONER: Good morning.

7 MS. SNIEGOCKI: Good morning, Your Honor. Dana Sniegocki, for Plaintiffs.

8 DISCOVERY COMMISSIONER: Good morning. So the Judge referred the motion
9 for sanctions to me on the discovery issue. I went back. I looked at the Report and
10 Recommendations. I read through the minutes. I tried to figure out why this is still a
11 problem, and I'm not sure I really can articulate it better than, you know, the discussions that
12 you all have had.

13 But really my only question at this point -- has documentation been produced
14 that will specifically confirm the total hours worked per pay period per class member, that's
15 it, that's the issue, yay or nay?

16 MS. SNIEGOCKI: No.

17 MS. RODRIGUEZ: Yes, Your Honor, it has.

18 DISCOVERY COMMISSIONER: Okay. See --

19 MS. RODRIGUEZ: I have the specific dates.

20 DISCOVERY COMMISSIONER: -- this is the problem, and this is why the Judge
21 sent you all back to me, and, frankly, we are not doing this dance again. We have had this
22 party now for a year, and I'm sick and tired of it. Either the documents exist, and they need
23 to be produced, or they don't, and that needs to be confirmed, which is what I had asked
24 everyone to do in my Report and Recommendations that I signed off on February 15th of
25 2017.

1 So then I suppose my next question would be can the amounts be calculated
2 based on the records that have been produced, i.e. the trip sheets and payroll records?

3 MS. SNIEGOCKI: That would -- I mean, the technical answer to that would be yes.
4 It would be an impossible task to perform, but yes.

5 DISCOVERY COMMISSIONER: So how are you going to prove your damages at
6 trial?

7 MS. SNIEGOCKI: Well --

8 DISCOVERY COMMISSIONER: What are you --

9 MS. SNIEGOCKI: -- that's the issue --

10 DISCOVERY COMMISSIONER: -- going to do?

11 MS. SNIEGOCKI: -- Your Honor. The --

12 DISCOVERY COMMISSIONER: Well, this case is almost -- has the five-year rule
13 running.

14 MS. SNIEGOCKI: That's correct.

15 DISCOVERY COMMISSIONER: So we've known about this issue since at least
16 January of last year -- or this year I mean, maybe even before that. So, you know, the fact
17 that it is -- I just don't understand why we're here right now on this issue.

18 MS. SNIEGOCKI: Well, the reason that we're here, if I may, Your Honor, is we
19 have established through 30(b) (6) testimony from the Defendant's owner that the records,
20 subject to Your Honor's prior Report and Recommendation, they exist, were kept, were able
21 to be produced; that's the what the testimony says.

22 We also have sworn testimony from two nonparty witnesses saying the exact
23 same thing. We brought that to Your Honor's attention, and then you issued the Report and
24 Recommendation, the Judge signed it. The Report and Recommendation says either give
25 them the stuff, which they now disclaim and they say it doesn't exist, despite testimony that

1 it does, or confirm that you don't have it, or confirm that you already gave it.

2 The specific materials that we're talking about is computerized records that
3 total up hours worked per pay period, meaning calculations are already done per pay period
4 showing how much every single driver has worked. That information has never been
5 produced, which is the alternative one that they needed to do, or, two, confirm we don't have
6 it or we've already produced it. They -- Defendants take the position we've already
7 produced it, here's what we've produced -- trip sheets. As explained in the motion, trip
8 sheets contain two time intervals, a start time and an end time, that's it. It would be up to us,
9 the Plaintiffs' counsel, and whoever else we can get to do this for hundreds of thousands of
10 pages, to figure out the time that's been expended between time A and time B.

11 DISCOVERY COMMISSIONER: So there's a statute --

12 MS. SNIEGOCKI: That's the impossible task.

13 DISCOVERY COMMISSIONER: -- that requires this information to be kept?

14 MS. SNIEGOCKI: That is correct, and that's what we're trying to establish here, is
15 that there is this violation of a statute.

16 The question that Your Honor asked us is how are we going to prove damages.
17 We are -- I mean, the relief sought in the motion is we can at least get a Jury Instruction that
18 says, since they didn't keep the records that the statute requires them to do, since they
19 haven't produced them, despite having the order to do so compelling them to do so, there can
20 be, you know, a Jury Instruction that the Jury can find adversely against them that all hours
21 worked for every driver based on testimony at trial is twelve hours, the maximum that any
22 driver could work during any period. That's the relief that we're looking for here, I mean, in
23 addition to the other sanctions that are being requested for violating the order. That's it.

24 I mean, that's how we would -- the damages would be proven based upon Jury
25 believing estimates given by drivers during their testimony.

1 DISCOVERY COMMISSIONER: Twelve hours a pay period is what --

2 MS. SNIEGOCKI: Twelve hours per shift. We know how many days they would
3 have worked in a pay period.

4 DISCOVERY COMMISSIONER: How many days would that have been?

5 MS. SNIEGOCKI: Well, it just depends on the driver and what the records would
6 show. But that would be -- because we don't have the hours, the statute requires that the
7 Defendants keep a record of all hours worked in every pay period for every employee. They
8 don't have that record.

9 What they have is information from which you can calculate that. That's not
10 what the statute says, and that should not be our burden, to do their homework.

11 DISCOVERY COMMISSIONER: Thank you.

12 MS. SNIEGOCKI: You're welcome.

13 DISCOVERY COMMISSIONER: Ms. Rodriguez.

14 MS. RODRIGUEZ: Thank you, Your Honor. I similarly have looked at this DCR&R
15 to make sure that we're in compliance and specifically, as Your Honor noted on page 4 of
16 the DCR&R, the primary point that we're talking about was Your Honor's order that says if
17 Defendants insist they have already produced the total hours worked per pay period, amounts
18 for the time period prior to January 1, 2013, Defendants must confirm it has been provided
19 and confirmed, the format in which it has been produced.

20 I did confirm that verbally and in writing to Ms. Sniegocki. I can confirm that
21 to Your Honor that the trip sheets that we were previously here arguing about and that Mr.
22 Greenberg insisted, in the format in which he wanted on an external hard drive, was
23 produced to the Plaintiffs on February 8th, 2017. Similarly, we were back before Your
24 Honor as well on the payroll records with Mr. Greenberg insisting that they be produced in
25 Excel spreadsheets for that same time period; those were produced to the Plaintiff over a

1 year ago on June 13th, 2016.

2 So, in accordance with the DCR&R, we did confirm that -- which is what Your
3 Honor asked me to do, go back and confirm -- it has been produced. I gave her the dates. I
4 said if you think you are missing something, please let me know. It has been produced, and
5 it can -- and I confirmed the format in which it was produced, and based on that, yes, in
6 answer to Your Honor's questions, the total hours worked pay period can be calculated. Our
7 expert has done it. Their expert has done it.

8 We just got an expert report over the weekend where their expert has
9 calculated 9.1 hours as the average per shift. So for them now to come in and ask for a Jury
10 Instruction or an adverse finding for 12 hours is not even supported by someone who has
11 actually looked at the trip sheets, like our expert, which came up with a similar number --
12 9.1.

13 DISCOVERY COMMISSIONER: Okay. So --

14 MS. SNIEGOCKI: Our expert has not calculated hours based upon hundreds of
15 thousands of trip sheets for the time period of --

16 DISCOVERY COMMISSIONER: So how did he --

17 MS. SNIEGOCKI: -- 2007.

18 DISCOVERY COMMISSIONER: -- come up with the 9.1 --

19 MS. SNIEGOCKI: I don't --

20 DISCOVERY COMMISSIONER: -- hours?

21 MS. SNIEGOCKI: -- know that that's even the case. To be honest with you, Your
22 Honor --

23 DISCOVERY COMMISSIONER: Can I see your experts' --

24 MS. RODRIGUEZ: I brought it, Your Honor.

25 DISCOVERY COMMISSIONER: -- affidavits?

1 MS. RODRIGUEZ: And I would like to add that if Your Honor will look at the
2 declaration that the expert attached -- if you'll just give me a minute, I brought copies, I
3 believe, for -- it's the Plaintiffs' tenth supplement. The expert supplied a declaration saying
4 that he is basing it on the information provided from the Defendants.

5 DISCOVERY COMMISSIONER: Ms. Rodriguez, do you have your expert's
6 affidavit as well?

7 MS. RODRIGUEZ: I do.

8 DISCOVERY COMMISSIONER: I mean, Plaintiffs' counsel, you know what you
9 produced in terms of your expert, right?

10 MS. SNIEGOCKI: I'm familiar with it. I have not been working directly, me,
11 myself. My cocounsel has been dealing directly with --

12 DISCOVERY COMMISSIONER: Okay.

13 MS. SNIEGOCKI: -- the expert portion, so I truly cannot speak to everything that
14 we've produced in terms of the expert report.

15 [Ms. Rodriguez handing to Ms. Sniegocki and the Marshal]

16 MS. RODRIGUEZ: Your Honor, what I've just handed your marshal is the
17 Plaintiffs' tenth supplemental disclosure that we received over the weekend, which is labeled
18 a supplemental expert witness report, and I printed out the first page. It's a very large
19 attachment, several hundred pages, but the first page that is attached as a -- on a legal size
20 paper indicates the time period, the 2007-2010, that we're talking about and the number that
21 the expert arrived at was 9.21 hours per shift, and --

22 DISCOVERY COMMISSIONER: Okay. But I was talking about in my Report and
23 Recommendations was 2010 through 2013.

24 MS. RODRIGUEZ: Right.

25 DISCOVERY COMMISSIONER: So where are we there?

1 MS. RODRIGUEZ: All of that information has been provided to the Plaintiff, and I
2 think both Mr. Bass and Dr. Clauretje both addressed that time period already. This was just
3 a supplemental, going back even further, Your Honor.

4 And Your Honor asked me for my expert's report; I have that as well where he
5 came up with a 9.5 figure for the hours. Let me just find that, Your Honor.

6 MS. SNIEGOCKI: Your Honor, this expert report is based upon assumptions. If the
7 Jury were to assume that every driver for this time period worked this, there's still a
8 minimum wage deficiency. That's what we're talking about here.

9 This is not a calculation performed by our expert of actual hours worked by our
10 clients. That's not what this is. This is just for show at a worst case scenario, even if we
11 assume drivers are working well below their twelve-hour shifts, there's still a deficiency
12 here.

13 DISCOVERY COMMISSIONER: What's the magic number that they have to work
14 to be able to get healthcare?

15 MS. SNIEGOCKI: There is no magic number that they need to be able to work.

16 DISCOVERY COMMISSIONER: So there's no magic number per employee per
17 shift that they have to work in order to qualify for the healthcare.

18 MS. SNIEGOCKI: Not as far as I know --

19 DISCOVERY COMMISSIONER: So why is --

20 MS. SNIEGOCKI: -- in this specific case.

21 DISCOVERY COMMISSIONER: -- this important?

22 MS. SNIEGOCKI: We have to know how many hours every driver worked in a shift
23 so that when we look at the commissions that they earned for that shift, we can divide the
24 number of hours into that number and figure out what their hourly wage was and whether or
25 not it's -- meets the minimum wage standard.

1 DISCOVERY COMMISSIONER: You would have to know more than that too.
2 You'd have to know whether they had --

3 MS. SNIEGOCKI: We'd have to know what --

4 DISCOVERY COMMISSIONER: We've been down --

5 MS. SNIEGOCKI: -- tier --

6 DISCOVERY COMMISSIONER: -- this road.

7 MS. SNIEGOCKI: -- they fit into, right.

8 DISCOVERY COMMISSIONER: Right.

9 MS. SNIEGOCKI: And that's what our expert report -- that they've come up with a
10 model that they built has alternatives in it. If this guy is entitled to the higher tier, here's
11 what he's owed, under an assumption of 9.21 an hour or -- I don't know, whatever -- 10
12 hours per shift, or whatever it is. There's various assumptions. There's a lot of alternatives
13 built into the model, but you can manipulate the model based upon if the guy is a top tier
14 minimum wage driver or whether he's the lower tier minimum wage driver, the eight-
15 twenty-five or the seven-twenty-five. But that is why it's imperative to know how many
16 hours these guys are working.

17 I mean, it would be our position that it should be on a per shift basis, but even
18 per pay period would necessarily be required because that's at least what the law requires
19 them to keep, total hours worked per pay period. And for the time period prior to January 1st
20 of 2013 the Defendants did not give us that information. What they gave us was things that
21 we could take and do the math ourselves for hundreds of thousands of pages, and that is not
22 what the order specified.

23 At best, the Defendants need to confirm that those records were not kept and
24 they weren't given. That's the alternative to -- in Your Honor's Report and
25 Recommendation. That, I believe, would be enough to make the record that the Jury should

1 be instructed to find that hours worked are the most adverse to Defendants.

2 DISCOVERY COMMISSIONER: Ms. Rodriguez.

3 MS. RODRIGUEZ: Well, Your Honor, I think what I'm hearing is kind of the same
4 thing we've been experiencing over the last couple of years, is that it sounds like what
5 Plaintiff is wanting is for Defendant to go through each trip sheet and do the calculations for
6 them. I think what Your Honor asked me to do was confirm that everything that is in A
7 Cab's possession has been turned over, and it has; I did confirm that.

8 This new statute that was raised in the reply for the very first time and that
9 they're relying upon, the NRS 608.115 about recordkeeping, that has never been plead; it has
10 never been raised; it is a completely different issue. The records that --

11 DISCOVERY COMMISSIONER: Was it -- is it retroactive, the statute?

12 MS. RODRIGUEZ: Two years.

13 MS. SNIEGOCKI: 608.115?

14 DISCOVERY COMMISSIONER: Yes.

15 MS. SNIEGOCKI: I don't know that it has. There's a requirement that records be
16 kept under the law for a period of two years. It's not a cause of action. I mean, we can't file
17 it as a cause of action, but it is certainly --

18 DISCOVERY COMMISSIONER: They might not have had to comply with that
19 provision of the law though for the time frame that you are requesting.

20 MS. SNIEGOCKI: Every employer must comply with the provision of that in this
21 state.

22 DISCOVERY COMMISSIONER: I understand that --

23 MS. SNIEGOCKI: Right.

24 DISCOVERY COMMISSIONER: -- but then you said it's a new statute --

25 MS. SNIEGOCKI: No. She said it.

1 DISCOVERY COMMISSIONER: -- and I asked if it was retroactive. Are you not
2 listening to what I'm asking?

3 MS. SNIEGOCKI: No, it's not a new statute, Your Honor.

4 MS. RODRIGUEZ: It's not a --

5 DISCOVERY COMMISSIONER: Okay.

6 MS. RODRIGUEZ: -- new statute. I'm sorry. If -- it is a newly --

7 DISCOVERY COMMISSIONER: All right. I'm taking it --

8 MS. RODRIGUEZ: -- raised --

9 DISCOVERY COMMISSIONER: -- under advisement. I'll issue a decision. I will
10 look through everything.

11 Is there anything else you would like me to look at?

12 MS. SNIEGOCKI: Just what's in the briefs, Your Honor.

13 DISCOVERY COMMISSIONER: Okay.

14 MS. RODRIGUEZ: I don't have anything further, Your Honor.

15 DISCOVERY COMMISSIONER: All right. Thank you.

16 MS. RODRIGUEZ: Thank you.

17 DISCOVERY COMMISSIONER: I will take a look at everything.

18 Thank you, Ms. Rodriguez, for providing me with the additional information
19 today.

20 And I will just set this for a status check for my own benefit.

21 MS. RODRIGUEZ: Your Honor, I'm sorry. I didn't address -- what was handed to
22 you was our expert report that you asked for, and the page that is flagged shows that he
23 pulled the trip sheets, did a calculation, and came up with the 9.5 hour is what's flagged there
24 for you, Your Honor.

25 DISCOVERY COMMISSIONER: Okay. And, Plaintiffs' counsel, I do have your

1 supplement. Do you have another expert report you'd like me to look at?

2 MS. SNIEGOCKI: Yeah. I can certainly provide you with all the expert reports that
3 have been disclosed.

4 DISCOVERY COMMISSIONER: Why don't we do that.

5 MS. SNIEGOCKI: Absolutely.

6 DISCOVERY COMMISSIONER: Make sure that you CC defense counsel so it's not
7 ex parte.

8 MS. SNIEGOCKI: Sure.

9 DISCOVERY COMMISSIONER: Make sure you do a cover letter saying: Per your
10 request from today's hearing, I'm providing you with the following expert reports. Identify
11 them, CC defense counsel. I'll take a look at everything, and I'll probably issue a minute
12 order and have someone prepare the Report and Recommendations from that minute order.

13 Just so this doesn't fall through the cracks though, I'm going to set it for a
14 status check hearing in case I need additional time. I'll just put it on calendar thirty days out,
15 or approximately thirty days out.

16 THE CLERK: November 8th at 9.

17 DISCOVERY COMMISSIONER: I'll likely take that hearing off.

18 MS. SNIEGOCKI: Okay.

19 DISCOVERY COMMISSIONER: But I just need to set it so I make sure it doesn't
20 fall through the cracks.

21 MS. SNIEGOCKI: Thank you.

22 DISCOVERY COMMISSIONER: Okay?

23 MS. RODRIGUEZ: Thank you, Your Honor.

24 DISCOVERY COMMISSIONER: Thank you. And, Plaintiffs' counsel, try to get me
25 the other information as soon as possible.

1 MS. SNIEGOCKI: I can get it to you this afternoon probably.

2 DISCOVERY COMMISSIONER: Perfect. Thank you.

3 [Proceeding concluded at 9:58 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.

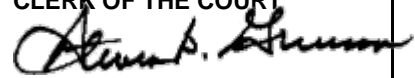
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DISTRICT COURT

CLARK COUNTY, NEVADA

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

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

Plaintiffs,

vs.

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

Defendants.

**NOTICE OF ENTRY OF
DISCOVERY COMMISSIONER'S
REPORT & RECOMMENDATIONS**

PLEASE TAKE NOTICE that the Discovery Commissioner's Report & Recommendations
was entered by the Court on October 24, 2017. A copy is attached hereto.

DATED this 24th day of October, 2017.

RODRIGUEZ LAW OFFICES, P. C.

/s/ Esther C. Rodriguez, Esq.
Esther C. Rodriguez, Esq.
Nevada State Bar No. 006473
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
Attorneys for Defendants

CERTIFICATE OF SERVICE

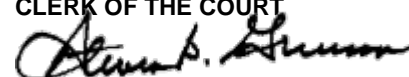
I HEREBY CERTIFY on this 24th day of October, 2017, I electronically *filed* the foregoing with the Eighth Judicial District Court Clerk of Court using the E-file and Serve System which will send a notice of electronic service to the following:

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Las Vegas, Nevada 89146
Counsel for Plaintiffs

Christian Gabroy, Esq.
Gabroy Law Offices
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Henderson, Nevada 89012
Counsel for Plaintiffs pending Appointment

/s/ Susan Dillow

An Employee of Rodriguez Law Offices, P.C.



DCRR
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DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

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

DISCOVERY COMMISSIONER'S REPORT AND RECOMMENDATIONS

Hearing Date: 08/08/17
Hearing Time: 10:00 a.m.

Attorney for Plaintiffs: Leon Greenberg, Esq.
Leon Greenberg Professional Corporation.

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

Michael K. Wall, Esq.
Hutchinson & Steffen, LLC

I.

FINDINGS

1. This matter came before the Discovery Commissioner as a conference regarding the trial judge's referral for a recommendation on the effect of the remedy sought in *Plaintiffs' Motion on Order Shortening time to Extend Damages Class Certification and for Other Relief* on the current trial date of this matter, and to discuss discovery deadline dates and trial. District Court Judge Kenneth Cory referred the matter to the Discovery Commissioner to determine if granting Plaintiffs' motion would affect the February 5, 2018 trial date of this matter.

2. The Discovery Commissioner discussed Plaintiffs' request to extend the class certification to include claims from January 1, 2016 through July of 2017 for damages. The class currently runs through December 31, 2015.

and the extension of the discovery deadlines in order to do so.

3. The Discovery Commissioner discussed the running of the five year rule in this matter. The parties are not in agreement as to when the five years run, as Plaintiffs' Complaint was filed October 8, 2012, but several stays have been implemented throughout the litigation. The trial is currently set for February 5, 2018.

4. The Discovery Commissioner discussed the effect of reopening discovery to accommodate Plaintiffs' request to extend the class certification through July of 2017. The parties represented to the Discovery Commissioner that all discovery has been completed in this matter, with the exception of expert discovery deadlines which were extended by Judge Cory. The Discovery Commissioner indicated that she was not inclined to delay the case any further by reopening discovery for an additional 18 to 19 month time frame, due to the age of this matter, the running of the five-year rule, and how difficult the discovery has been in the case.

5. The Discovery Commissioner discussed protecting the rights of the current class members to receive the compensation they are entitled to, if any; while preserving the current trial date and not putting the parties through any more discovery that could be done after judgment, if necessary.

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II.

RECOMMENDATIONS

IT IS HEREBY RECOMMENDED that pertaining to the District Court's referral of *Plaintiffs' Motion on Order Shortening time to Extend Damages Class Certification and for Other Relief*, which seeks to extend class certification though July 2017, to the Discovery Commissioner for recommendation, the Discovery Commissioner does not recommend reopening discovery for the additional period sought nor extending the class certification, which would delay the current trial date of February 5, 2018 in this matter.

IT IS HEREBY RECOMMENDED if Plaintiffs prevail at trial, the current class members will have the opportunity, either through bifurcation, a separate hearing, or however the District Judge deems most appropriate, to collect their ^{additional} damages, ^{Subsequent to December 31, 2015, in} if any, from the end of 2015 to the present time. This excludes any individuals who are participating in another case and may seek their remedy there. New Claimants or new potential class members are specifically excluded from this recommendation. *These individuals will be pursuing their claims in a separate lawsuit.*

IT IS HEREBY RECOMMENDED that the trial date of February 5, 2018 remain.

IT IS HEREBY RECOMMENDED that there be no further discovery in this case as it currently stands, except for the expert discovery extended by the District Court Judge, and any post-judgment discovery if Plaintiffs prevail at trial as to the current class members.

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The mechanics of the bifurcation and determination of damages after December 31, 2015, will be deferred to the District Court Judge.

Case Name: Murray v. A Cab, LLC, et al.
Case No.: A-12-669926-C

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 this 20 day of September, 2017.




DISCOVERY COMMISSIONER

Submitted by:

RODRIGUEZ LAW OFFICES, P.C.

Approved as to form and content:

LEON GREENBERG PROFESSIONAL CORPORATION


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Case Name: Murray v. A Cab, LLC, et al.
Case No.: A-12-669926-C

NOTICE

Pursuant to NRCP 16.1(d)(2), you are hereby notified you have five (5) days from the date you receive this document within which to file written objections.

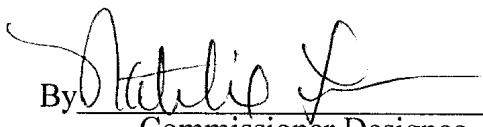
The Commissioner's Report is deemed received three (3) days after mailing to a party or his attorney, or three (3) days after the clerk of court deposits a copy of the Report in a folder of a party's lawyer in the Clerk's office. E.D.C.R. 2.34(f).

A copy of the foregoing Discovery Commissioner's Report was:

_____ Mailed to Plaintiff/Defendant at the following
address on the ____ day of _____, 2017:

_____ Placed in the folder of counsel in the Clerk's
office on the ____ day of _____, 2017:

✓ _____ Electronically served counsel on September 20 2017,
Pursuant to N.E.F.C.R. Rule 9.

By 
Commissioner Designee

Case Name: Murray v. A Cab, LLC, et al.
Case No.: A-12-669926-C

ORDER

The Court, having reviewed the above report and recommendations prepared by the
Discovery Commissioner and,

 The parties having waived the right to object thereto,

 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
attached hereto.

 IT IS HEREBY ORDERED that a hearing on the Discovery Commissioner's Report
and Recommendations is set for _____, 2017, at ____:____ a.m.

Dated this 13 day of Oct, 2017.

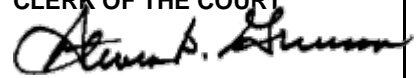


DISTRICT COURT JUDGE

Kr

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1 **NOEO**
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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.

Case No.: A-12-669926-C

Dept.: I

NOTICE OF ENTRY OF ORDER

16
17 PLEASE TAKE NOTICE that the Court entered the attached Order on July 17,
18 2017.

19 Dated: December 12, 2017

20 LEON GREENBERG PROFESSIONAL CORP.

21 /s/ Leon Greenberg

22
23 Leon Greenberg, Esq.
24 Nevada Bar No. 8094
25 2965 S. Jones Boulevard - Ste. E-3
26 Las Vegas, NV 89146
27 Tel (702) 383-6085
28 Attorney for the Plaintiffs

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NOTICE OF ENTRY OF ORDER

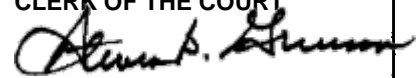
by court electronic service to:

TO:

/s/ Sydney Saucier

 Sydney Saucier

001133



ORDR
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DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-12-669926-C

Dept.: I

ORDER

Plaintiffs' Filed their Motion to Bifurcate Issue of Liability of Defendant Creighton J. Nady from the Liability of Corporate Defendants on January 12, 2017. Defendants filed their Response in Opposition on January 30, 2017. Plaintiffs filed their Reply in Support of their Motion on May 11, 2017. After due and proper deliberation, review of the arguments set forth in each of the parties' briefs, and considering the oral argument by counsel before the Court on May 18, 2017, the Court hereby finds:

The plaintiffs' motion sought to bifurcate from this case for trial the issue of the individual defendant, Creighton J. Nady's, liability to the plaintiffs from issues of the liability of the corporate defendants. The Court agrees with plaintiffs' position that defendant Nady, if

liable at all to the plaintiffs, is only liable to the extent that there is *also* a liability finding against A Cab. Defendant Nady's liability is entirely derivative of a finding of liability against A Cab. Furthermore, if A Cab satisfies that liability in full, there will be no need for any liability finding to be made against Defendant Nady.

In addition, to the extent there is any liability finding against defendant A-Cab that it does not satisfy, Defendant Nady may be able to raise a defense that his personal liability must be limited to the extent of his profit from A Cab's activities.

In light of the foregoing, and in the interests of judicial economy, the Court finds that the best course is to bifurcate all issues concerning the liability of Defendant Nady, and his defenses to any such liability, for separate disposition after the liability of A Cab is finally adjudicated. Accordingly,

IT IS HEREBY ORDERED that Plaintiffs' Motion to Bifurcate Issue of Liability of Defendant Creighton J. Nady from Liability of Corporate Defendants is **GRANTED**.

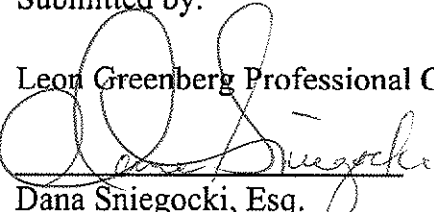
IT IS SO ORDERED.


HONORABLE JUDGE KENNETH CORY
DISTRICT COURT, CLARK COUNTY

July 13, 2017
DATE


Submitted by:

Leon Greenberg Professional Corp.


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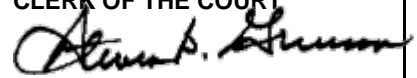
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7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

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.

Case No.: A-12-669926-C

Dept.: I

NOTICE OF ENTRY OF ORDER

16
17 PLEASE TAKE NOTICE that the Court entered the attached Order on July 17,
18 2017.

19 Dated: December 12, 2017

20 LEON GREENBERG PROFESSIONAL CORP.

21 /s/ Leon Greenberg

22
23 Leon Greenberg, Esq.
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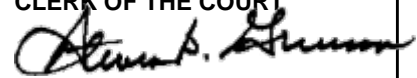
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ORDR

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-12-669926-C

Dept.: I

ORDER

Defendants filed their Motion for Leave to Amend Answer to Assert a Third Party Complaint on January 27, 2017. Plaintiffs filed their Response in Opposition on February 13, 2017. After due and proper deliberation, review of the arguments set forth in each of the parties' briefs, and considering the oral argument by counsel before the Court on May 18, 2017, the Court hereby finds:

If the Court were to grant defendants' motion at this stage in the proceedings, it would require the Court to sever determination of that cause of action from the Complaint in this case. Accordingly,

IT IS HEREBY ORDERED that Defendants' Motion for Leave to Amend Answer to

1 Assert a Third Party Complaint is **DENIED WITHOUT PREJUDICE.**

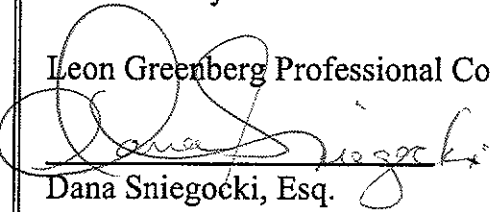
2 **IT IS SO ORDERED.**

3
4  
5 HONORABLE JUDGE KENNETH CORY
6 DISTRICT COURT, CLARK COUNTY

7 July 13, 2017
8 DATE

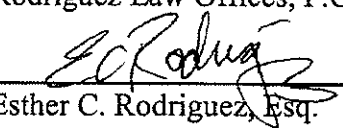
9 Submitted by:

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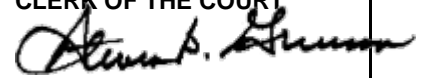
Approved as to form and content:

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TRAN

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

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

BEFORE THE HONORABLE KENNETH CORY, DISTRICT COURT JUDGE
THURSDAY, DECEMBER 14, 2017

TRANSCRIPT RE:
PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT AND MOTION
TO PLACE EVIDENTIARY BURDEN ON DEFENDANTS TO ESTABLISH
LOWER TIER MINIMUM WAGE AND DECLARE NAC 608.102(2)(b) INVALID

APPEARANCES:

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

ALSO PRESENT: CREIGHTON J. NADY

RECORDED BY: Patricia Slattery, Court Recorder

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1 LAS VEGAS, NEVADA, THURSDAY, DECEMBER 14, 2017, 9:12 A.M.

2 * * * * *

3 THE CLERK: Michael Murray versus A Cab Taxi Service. Case Number
4 A669926.

5 THE COURT: Good morning.

6 MS. RODRIGUEZ: Good morning, Your Honor.

7 THE COURT: Do you want to enter your appearances?

8 MS. RODRIGUEZ: Esther Rodriguez for the defendants, present with
9 Creighton J. Nady, owner of A Cab.

10 THE COURT: Good morning.

11 MR. GREENBERG: Leon Greenberg for plaintiff, Your Honor.

12 THE COURT: Good morning.

13 We have the three motions to deal with here. I think what would be
14 helpful to me, while there is some inter-operability of these motions, it would make
15 the most sense to me if we argue them separately. So I would propose to give each
16 side ten minutes -- ten minutes to argue, ten minutes opposition and five minutes
17 for reply to each of the three motions. How does that strike you?

18 MR. GREENBERG: That's fine, Your Honor. I am a little confused when
19 you mention three motions. What are those identified as, Your Honor?

20 THE COURT: Well, three issues.

21 MR. GREENBERG: Three issues. Okay.

22 MS. RODRIGUEZ: I'm the same way.

23 MR. GREENBERG: Well, it's true, I did present a motion to the Court
24 addressing different issues. That is true, Your Honor.

1 THE COURT: Yeah. Yeah. The motion for partial summary judgment,
2 then the motion to shift the evidentiary burden and then the motion to declare
3 NAC 608.102(2)(b) invalid.

4 MR. GREENBERG: Yes, Your Honor. And if that's how the Court would
5 like to proceed, that's fine. I think, you know, ten minutes --

6 THE COURT: It's not mandatory to take the ten minutes.

7 MR. GREENBERG: I understand, Your Honor.

8 THE COURT: What I don't want to happen is for us to get carried away
9 in any way that we don't wind up getting done in the allotted time here.

10 MR. GREENBERG: I understand, Your Honor. And I would just ask the
11 Court, first of all, do you prefer to have these issues addressed in any particular
12 order? We have three issues to address.

13 THE COURT: I would think just the way they were presented in your motion.

14 MR. GREENBERG: Yes, Your Honor.

15 THE COURT: However, if you have a preference --

16 MR. GREENBERG: No, Your Honor.

17 THE COURT: -- I don't think it matters.

18 MR. GREENBERG: I would address the request for partial summary
19 judgment first, Your Honor.

20 THE COURT: Okay.

21 MR. GREENBERG: And in respect to that motion -- that issue and the other
22 issues, I really view my presence here as of course to assist the Court as its servant.
23 And I really tried very hard and I apologize for the length, to some extent, of the
24 submission.

1 THE COURT: Uh-huh.

2 MR. GREENBERG: It is longer than I would desire and it takes a long time
3 probably to read through it and understand it, Your Honor. But I'd really like to focus
4 on answering the Court's questions if it has any questions. I don't really want to just
5 recite everything that's in the submission.

6 THE COURT: Uh-huh.

7 MR. GREENBERG: I can summarize it a little bit. But I would like to begin
8 by asking the Court if there's any particular questions that come to the Court's mind
9 that I could assist with.

10 THE COURT: Yeah. No, there is not; not that sticks out. But I think if you
11 at least summarize your motion there may -- we may come up with some question.

12 MR. GREENBERG: Okay. Well, Your Honor, in respect to the partial
13 summary judgment -- and this goes to the nature of a claim for minimum wages.
14 When we're looking at a claim for minimum wages, we're looking at three factual
15 issues. Everything else flows as a matter of law from the determination of what
16 those three factual issues are. And what I mean as a matter of law, I mean as a
17 matter of legally imposed arithmetical calculations, which is we need to know how
18 much was the employee paid during the relevant pay period, a week, two weeks,
19 how many hours did he work during that pay period for that compensation and what
20 was the minimum wage rate that was applied. Those are the three facts we need
21 to know. Once we know those facts it's a matter of law whether the individual was
22 paid enough to meet the minimum wage requirement or he wasn't paid enough to
23 meet the minimum wage requirement. So it's really a very straightforward sort of
24 limited universe of facts we're looking at here.

1 And as I tried to emphasize to the Court in the submissions, there is
2 no dispute by plaintiffs in respect to what they were paid. We are a hundred percent
3 relying on the defendants' payroll records. The defendants kept these QuickBook
4 records which indicated the nature of what they paid the individuals. In their
5 submissions to the Court they have not disputed that those records contain the
6 correct amounts that the plaintiffs were paid. It's not a question of the plaintiffs
7 saying we never got this money or the defendants saying, well, no, we actually
8 paid these people more than what's in the records, so that issue is not disputed
9 factually between the parties.

10 So the remaining issue, if we set aside the tier issue, there is this
11 7.25, 8.25 tier issue, if we set that issue aside initially at least and we just look at the
12 lower tier, which of course must apply, the only remaining issue in dispute is how
13 many hours these individuals worked in exchange for the wages that they received,
14 which the parties agree are in the QuickBooks records.

15 Now, the partial summary judgment motion is limited to this very set
16 three year period where the defendants have gone on the record through their
17 deposition testimony, which they have not disputed in their submissions to the
18 Court -- not that they could at this point, Your Honor -- that those payroll records,
19 those QuickBook records contain an accurate statement of the hours each of these
20 individuals worked in exchange for the wages they received in each of those pay
21 periods. That is this minimum wage adjustment QTY number that is indicated in
22 each pay period in the QuickBooks records.

23 So, in connection with the motion, Your Honor, we have 14,200 pay
24 periods that we have assembled the information from the QuickBooks records the

1 total wages paid each pay period. We've taken the hours that those same records
2 indicate the individual worked in that pay period and we've divided the hours into the
3 wages. If that equals at least 7.25 an hour for that pay period, the individual is owed
4 nothing. If it is less than 7.25 an hour, we've calculated the deficiency for the pay
5 period. This has been done for 14,200 pay periods using a spreadsheet. That is
6 the 2013-2015 payroll analysis file, which I did provide a copy to Your Honor and
7 perhaps Your Honor has tried to examine that yourself.

8 So there is no factual dispute here, Your Honor, because, again, we
9 have amounts paid that everybody agrees were paid. We have hours worked that
10 defendants insist are correct that were in those QuickBooks records. And we have
11 an arithmetical computation which is the one that has to be performed as a matter
12 of law. So the only potential issue the defendants could raise, since they're not
13 disputing the accuracy of their own records, the other possible issue they could raise
14 is that there is some flaw in the computational process that I have presented to the
15 Court in that spreadsheet. They do not in fact point to any flaw in their opposition.
16 They make various assertions that, well, we think that plaintiffs' counsel may have
17 manipulated these numbers. They seem to make a representation that somehow
18 they have an expert who is going to dispute the accuracy of the calculations.

19 And then they -- unfortunately, they vary off into a bunch of other
20 issues which could be germane to this litigation but have nothing to do with the
21 partial summary judgment motion because we have other time periods, we have
22 other data that the parties dispute, such as what they call dispatch records, which
23 are these cab manager records. It's sort of an in and out system. And we have this
24 question of, well, can we assume that there was a certain amount of time everybody

1 worked each pay period, which you have a motion for bifurcation. And I'm not going
2 to address that because the Court isn't asking to address it, but we're asking the
3 Court to consider that as a trial issue. But that has nothing to do with this motion,
4 Your Honor. This motion is strictly based upon the defendants' records, which they
5 have affirmed and sworn are in fact correct. And if they can't point to some error
6 in the calculation process here that we've presented to the Court -- and they've had
7 the opportunity to do it. Their expert, in fact, confirms -- he says the math is good.
8 He vouched for Dr. Clauretie's review of the spreadsheet. I mean, this is discussed
9 in the reply, Your Honor, which hopefully Your Honor has had an opportunity to
10 review.

11 What I want to point out, and this was not emphasized in the briefings,
12 Your Honor, but I think it would be helpful for the Court to understand, this was just
13 discussed at footnote 1 on page 9, which is that -- of the reply, Your Honor -- which
14 is that when you look at the actual example I gave Your Honor of the paystub, to
15 illustrate in sort of a non-paper, real world type of analysis if we went through this
16 step by step without relying on a formula calculation, the amount that is owed for
17 that pay period is in fact identical to the tip supplemental amount, okay, because
18 what was going on here, when we look at the 7.25 an hour deficiency, defendants
19 were creating records, a payroll system that demonstrated compliance with the
20 federal minimum wage standard because under the federal minimum wage
21 standard they can take those tips, they can apply them to their 7.25 an hour liability.

22 THE COURT: Uh-huh.

23 MR. GREENBERG: As Your Honor probably recalls, there was separate
24 litigation involving the United States Department of Labor. There was a consent

1 order entered in this case. And so the defendants adopted, quite sensibly,
2 procedures to comply with what the U.S. Department of Labor was asking of
3 them. The problem for defendants is that those procedures didn't comply with
4 Nevada law because Nevada law doesn't allow a tip credit.

5 So when we talk about this deficiency, it really results from this issue
6 when we talk at the 7.25 an hour rate. When we talk about the 8.25 an hour rate,
7 they were never looking to comply with the 8.25 an hour rate, so that involves
8 different issues. I did not put in the record here, I certainly could provide it to Your
9 Honor if Your Honor wanted it in a supplement, but there was deposition testimony
10 about this issue by Mr. Nady --

11 THE COURT: Uh-huh.

12 MR. GREENBERG: -- and he conceded that, yes, that was what was going
13 on, that they were taking the tips and applying them to the minimum wage and using
14 that to create their compliance that they were using, which is reflected in these
15 payroll records from 2013 through 2015. Now, that problem disappears after June
16 of 2014 because we have the decision from the Nevada Supreme Court and the
17 defendants at that point, even though Your Honor had ruled 15 months earlier on
18 the issue, defendants at that point elected to no longer give themselves the tip credit
19 and fully complied with the 7.25 an hour standard under State law.

20 I haven't gone quite ten minutes, Your Honor, but I don't really want
21 to take up your time unnecessarily. I think Your Honor understands the issues.

22 THE COURT: Uh-huh. Okay.

23 MR. GREENBERG: And if there's something further that would be helpful
24 for me to explain or emphasize to the Court --

1 THE COURT: Not at this point. Not at this point.

2 MR. GREENBERG: Thank you, Your Honor.

3 THE COURT: All right. Ms. Rodriguez.

4 MS. RODRIGUEZ: Good morning, Your Honor. Thank you.

5 THE COURT: Good morning.

6 MS. RODRIGUEZ: As I indicated in the briefs our primary opposition to this,
7 and I mentioned this when I asked for a continuance of this particular hearing to
8 hear -- for the Court to hear it after the motions in limine were heard, is that the
9 entirety of Mr. Greenberg's motion is based on unreliable and inadmissible
10 evidence. And the Court the last time we were here indicated that that was one
11 of the first things that you wanted to address was whether a summary judgment
12 had to be based on admissible evidence. And so I did do some further research
13 on that and I would point the Court to Rule 56(e), which specifically addresses that
14 the evidence must be admissible. It says: "Supporting and opposing affidavits shall
15 be made on personal knowledge, shall set forth such facts as would be admissible
16 in evidence and shall show affirmatively that the affiant is competent to testify to
17 the matters stated therein."

18 I did some further research on this to find a couple of cases that
19 are right on point, and I have copies for the Court, that says -- that stand for the
20 proposition that evidence introduced in support of a motion for summary judgment
21 must be admissible evidence. And that's the Collins v. Union Federal Savings &
22 Loan Association case, 99 Nev. 284, a 1983 case.

23 THE COURT: Well, if you've got new cases that I haven't considered before,
24 then I need -- I would have to have something, you know, with a written -- with the

1 citation written out so that we can look at it.

2 MS. RODRIGUEZ: I have copies of it for Your Honor. I just want to put
3 them on the record. And the Henry Products, Inc. v. Tarmu case. I have copies
4 for the Court, as well as for Mr. Greenberg. But that was one of the questions that
5 Your Honor asked just a couple weeks ago when we were here when I asked for
6 the continuance due to being out of the country and Mr. Wall's absence as well.
7 So I did go back to verify the Court's question and the case law is clear that the
8 evidence has to be admissible. And our opposition is that --

9 THE COURT: Where is the plaintiffs' motion deficient in that?

10 MS. RODRIGUEZ: Well, the first part that -- asking for the motion for partial
11 summary judgment on the 176,000 range --

12 THE COURT: Uh-huh.

13 MS. RODRIGUEZ: -- what he is depending upon is the same motion that
14 was brought, I believe in May, and at that time Your Honor said, well, you need
15 expert witnesses to support this type of claim. And so now he's basically brought
16 the same motion again with the experts rubber-stamping his prior numbers. And
17 I will be filing motions in limine --

18 THE COURT: If they agree, what's wrong with that?

19 MS. RODRIGUEZ: I'm sorry?

20 THE COURT: If the experts agree, if that is their opinion --

21 MS. RODRIGUEZ: Well, several things.

22 THE COURT: -- what's wrong with that?

23 MS. RODRIGUEZ: One, one of the experts says he's not rendering opinions,
24 it's not his opinion, it's what Mr. Greenberg instructed him to do. That's Charles

1 Bass. The second expert comes in, Terrence Clauretie, and says, well, I've looked
2 at the math that Mr. Bass did and it looks right to me. So these are not expert
3 opinions. These are not experts that will qualify under the Hallmark v. Eldridge
4 case. And as I mentioned, Your Honor, I think it's going to be very clear that these
5 experts are not appropriate. They don't qualify under the case law or under the
6 rules and they should be stricken. So, first of all, the Court needs to consider
7 whether these expert reports and these expert opinions are even going to come in
8 in the first place --

9 THE COURT: Uh-huh.

10 MS. RODRIGUEZ: -- because if they're not admissible, then there is
11 absolutely nothing to support Mr. Greenberg's motion for partial summary judgment.

12 THE COURT: So that the -- so that then the calculation of damages would
13 be in question --

14 MS. RODRIGUEZ: Absolutely.

15 THE COURT: -- all the way through it?

16 MS. RODRIGUEZ: Absolutely. First of all, the experts indicated that they
17 were not calculating actual damages, they were only calculating estimates. And
18 Mr. Greenberg indicated that -- kind of that we were thinking about getting this
19 expert to oppose their expert opinions. We're not thinking about it. There is
20 absolutely an expert report and he's taken the deposition of Mr. Scott Leslie, who
21 is the only CPA in this matter, who did a thorough report. It's about 35 pages long.
22 I brought it with me in case the Court wants it. But Mr. Leslie is going to testify
23 and he has submitted an expert report outlining the problem with the methodology
24 and with the tool that they are relying upon in proposing this number.

1 THE COURT: Did you say he's going to submit an expert report?

2 MS. RODRIGUEZ: No, no, Your Honor.

3 THE COURT: Oh.

4 MS. RODRIGUEZ: We timely submitted it with the Court's deadline.

5 THE COURT: Okay.

6 MS. RODRIGUEZ: No. No.

7 THE COURT: Okay.

8 MS. RODRIGUEZ: And Mr. Greenberg has already taken his deposition.

9 THE COURT: All right.

10 MS. RODRIGUEZ: So, Mr. Leslie went through and said there's a number
11 of problems with this methodology. And he's the only one that actually pulled the
12 paystubs, pulled the trip sheets, pulled examples of what Charles Bass did and
13 said, look, these don't add up, these numbers are wrong.

14 So his motion to the Court --

15 THE COURT: You know that a lot of what the plaintiff says is you're going
16 behind your own QuickBooks, which you've represented are accurate.

17 MS. RODRIGUEZ: Well, that's incorrect --

18 THE COURT: Okay.

19 MS. RODRIGUEZ: -- because what Mr. Greenberg is representing to the
20 Court is that this is actual data from the defendant, and what it actually is is his
21 interpretation of the data. And that's why Mr. Leslie looked at it and said, no, you
22 can't manipulate the data this way, because if you look at the actual trip sheets and
23 you look at the actual paystubs, the numbers don't add up; here's some examples
24 of why they don't add up. And each of these experts as well, Dr. Clauretie and

1 Mr. Bass, indicated --

2 THE COURT: That seems to me to be another way of saying that no
3 fact-finder can rely upon the QuickBooks.

4 MS. RODRIGUEZ: No.

5 THE COURT: No?

6 MS. RODRIGUEZ: You can rely upon the QuickBooks, but not select
7 portions.

8 THE COURT: Not select portions.

9 MS. RODRIGUEZ: You can't just not even consider breaks, for example.
10 You cannot not consider the time that a driver was a road supervisor being paid
11 \$15 an hour. You can't just ignore drivers that were in fact paid in full minimum
12 wage. With his table --

13 THE COURT: And all of that is reflected within the QuickBooks?

14 MS. RODRIGUEZ: No, Your Honor.

15 THE COURT: It's not?

16 MS. RODRIGUEZ: Parts of it are. But you would have to take that in
17 conjunction with the trip sheets. You would have to --

18 THE COURT: So what I hear you saying is that you really can't calculate
19 what the appropriate payment should have been --

20 MS. RODRIGUEZ: Right.

21 THE COURT: -- by looking at the QuickBooks?

22 MS. RODRIGUEZ: Correct. And this is something that has been represented
23 to the Discovery Commissioner for three years now, that what Mr. Greenberg was
24 attempting to do to try to get -- let me back up and be clear that we were always

1 willing to turn over the records that are kept in the normal business course.

2 THE COURT: Uh-huh.

3 MS. RODRIGUEZ: What Mr. Greenberg has insisted throughout the course
4 of discovery is that there be some type of download into an Excel spreadsheet,
5 and so we did have to hire people to figure out how to do this, to download portions
6 of the data. Then he's taken that data, select portions, ignored other portions, and
7 then come up with this tool from Mr. Bass to now say, well, this automatically will
8 calculate minimum wage. Well, it doesn't. And our expert went through and said
9 this is why it doesn't. And each of his experts, when I deposed them, when I asked
10 them are you calculating actual damages, they said no, this is estimates and this
11 is taking into consideration a lot of assumptions, an assumption that drivers are
12 working certain amounts of shifts, certain amounts of hours, certain breaks. They're
13 taking in a lot of assumptions.

14 And so whether that evidence is even admissible is the first question,
15 but secondly we should have an opportunity if that's the dispute, that they're saying
16 our method is reliable and we're saying no, it's not reliable, that clearly is a question
17 of fact. So that's why I argued that it's not appropriate for summary judgment and
18 the Court at the minimum should entertain the motions in limine concerning the
19 experts so that the Court will have an understanding as to why these expert opinions
20 and their expert reports are not reliable. Those have not been set by the Court.
21 I anticipate they will be set sometime in January because the deadline for filing the
22 motions in limine are December 28th.

23 Let me just check on -- there's a couple of other things I just wanted
24 to mention on the summary judgment. We did argue that the time period that he's

1 asking for as well, the 2013 through the 2015, he does not have a representative
2 plaintiff for that time period. He's only got Michael Sergeant, who worked a two
3 month time period within that, so I think the Court needs to consider that as well.
4 And then --

5 THE COURT: And what should be the effect of that then?

6 MS. RODRIGUEZ: Well, he has to have a representative plaintiff and --

7 THE COURT: So therefore -- therefore what should --

8 MS. RODRIGUEZ: It should -- the motion should be denied on that, Your
9 Honor.

10 THE COURT: On that basis.

11 MS. RODRIGUEZ: His primary plaintiffs, Mr. Murray and Mr. Reno, were
12 gone by 2012; 2011, I believe.

13 THE COURT: Uh-huh.

14 MS. RODRIGUEZ: And here Mr. Greenberg is asking for 2013 through 2015.

15 THE COURT: Okay.

16 MS. RODRIGUEZ: Oh. So, Your Honor, may I submit these to the Court?
17 I do have copies for Mr. Greenberg as well.

18 THE COURT: Yes. Are those the cases?

19 MS. RODRIGUEZ: It's the Collins case --

20 THE COURT: Are those the cases?

21 MS. RODRIGUEZ: Yes, Your Honor.

22 THE COURT: Yes. Yes, we'll take that. And then that concludes your
23 ten minutes.

24 MS. RODRIGUEZ: Thank you, Your Honor.

1 THE COURT: Except I have one further question. When you say -- so it's
2 not that you're saying the QuickBooks are not admissible, you're saying that you
3 have to have more information in order to come up with an accurate calculation?

4 MS. RODRIGUEZ: Absolutely. I'm not -- I hadn't contemplated a motion
5 in limine on the QuickBooks.

6 THE COURT: Yeah. Okay.

7 MS. RODRIGUEZ: No, the QuickBooks in and of itself, I'm not sure Mr.
8 Greenberg has produced the entirety of the QuickBooks in his tool. Again, he's just
9 picked certain portions to use in that, and that's what his experts have conceded to.

10 THE COURT: Okay. All right, back to you, Mr. Greenberg, for five minutes.

11 MR. GREENBERG: Your Honor, what defendants are saying about the
12 need for summary judgment to be based on admissible evidence, I don't dispute
13 that, okay. But the evidence here, again, is defendants' records, okay.

14 THE COURT: Uh-huh.

15 MR. GREENBERG: In my declaration in support in paragraph 2, I identify
16 the precise files that were given to me by defendants. They were given to Mr. Bass
17 to do his technical analysis, which he did. He processed the data into the 2013-
18 2015 --

19 THE COURT: Are you saying that you made a specific request for any data
20 that the defendants relied on to dispute your calculation and they only gave you the
21 QuickBooks? Is that what you're saying?

22 MR. GREENBERG: Your Honor, the QuickBooks records are the records
23 for this time period, 2013-2015. For the purposes of this motion they contain both
24 what the class members were paid --

1 THE COURT: Okay.

2 MR. GREENBERG: -- and how many hours they worked.

3 THE COURT: Okay.

4 MR. GREENBERG: So, defendants produced QuickBooks data for a much
5 longer period, but we're only talking about the 2013 to 2015 period here, okay.

6 THE COURT: Uh-huh.

7 MR. GREENBERG: Those original files were given to me. There were two
8 very large data files given to me. I gave them to Mr. Bass in the same form. This
9 is in the record before the proceedings in paragraph 2 of my declaration. Mr. Bass
10 has a declaration which was previously before the Court. It's incorporated into
11 Dr. Clauretie's report where he acknowledges receiving those two files and explains
12 the process he went through to put that information together.

13 THE COURT: Are you saying that they did not assert that the QuickBooks
14 alone would not be sufficient to do the calculation until some later period?

15 MR. GREENBERG: They are coming in in opposition to this motion in oral
16 argument right now making that assertion to Your Honor, but they provide absolutely
17 nothing to support that assertion. They've had the analysis that was done.

18 THE COURT: Uh-huh.

19 MR. GREENBERG: In their opposition they do not point to an error in a
20 single line. They have the original QuickBooks data. If we assembled that data
21 in some improper, manipulative form which is going to create improper results --
22 let's say we processed the data so that it would show people were paid less in a
23 pay period than what's actually in the QuickBooks records. Well, that would tend
24 to inflate the minimum wages that someone was owed if they were paid less; right?

1 They haven't pointed to any such manipulation or error in the 14,200 payroll periods
2 that have been analyzed in the spreadsheet. They don't point to any error, Your
3 Honor, in anything.

4 Now, in terms of how the experts relied -- they made assumptions.
5 There were two assumptions that the experts made, that Mr. Bass made and
6 that Dr. Clauretie discusses in his report in respect to their processing of the
7 QuickBooks data. They assumed that that intersection of the QTY, minimum wage
8 adjustment number, there's a number that goes in there, is the hours worked. And
9 that is based upon defendants' testimony at their deposition, that that was how they
10 recorded the hours the individual worked for the pay period.

11 THE COURT: Uh-huh.

12 MR. GREENBERG: The other assumption is that they took -- they excluded
13 the tip supplemental amount as tips, so they took that out of the pay period
14 compensation. But Dr. Clauretie, in his report he spent about 20 pages in his report
15 specifically going through every step that was performed by Mr. Bass in taking the
16 raw data that was given to us, the raw QuickBooks data, and placing it into that
17 spreadsheet upon which we base the partial summary judgment calculations, Your
18 Honor. He vets that every single element of that process was performed correctly.
19 The other -- and those are the only --

20 THE COURT: And you're also saying that their opposition does not present
21 any either evidence or I suppose opinion evidence that it's -- that that is not a sound
22 basis to calculate the damages?

23 MR. GREENBERG: Your Honor --

24 THE COURT: Is that what you're saying?

1 MR. GREENBERG: Their expert disputes -- what defendants are saying, and
2 I think Your Honor latched onto this, all their expert is saying that they're pointing to
3 is that we can't rely on anything but the trip sheets, okay. Their expert engaged in
4 a review of a bunch of trip sheets, came up with certain calculations. He says you
5 can't assume a constant 11 hours per shift, that would be improper to calculate
6 damages, so forth and so on. That has nothing to do with this motion. Their expert
7 does not offer any opinion about the 2013 to 2015 --

8 THE COURT: Well, why does that have nothing to do with the motion if it
9 says that -- essentially that he disputes that the opinion evidence based on the
10 QuickBooks from the plaintiffs' side presents the appropriate calculation? Why
11 does that not create an issue of fact?

12 MR. GREENBERG: Because he doesn't dispute the analysis of the payroll
13 records for 2013 to 2015 is arithmetically correct. We have his deposition testimony
14 where he was specifically asked, okay, and this is discussed in the reply, you have
15 the excerpts --

16 THE COURT: Uh-huh.

17 MR. GREENBERG: -- where he was specifically asked whether these
18 calculations were correct. And he states -- this is at page 10 of -- at page 10 and
19 page 11. He says I think the math works. The math foots through.

20 THE COURT: Uh-huh.

21 MR. GREENBERG: He also stated: "Dr. Clauretie's review of the math I think
22 is good." Okay. He was not -- what Mr. Leslie says is that -- he says nothing about
23 the 2013 to 2015 payroll period records. He did a review of the trip sheets.

24 THE COURT: Uh-huh.

1 MR. GREENBERG: He comes up with some different findings based on the
2 trip sheets. But the point, Your Honor, is that the defendants -- and this again is
3 discussed in the reply and this is at page 5 -- the defendants have affirmed under
4 oath at their deposition that for this time period, 2013 to 2015, the QuickBooks hours
5 of work record is more accurate than the trip sheets --

6 THE COURT: Okay.

7 MR. GREENBERG: -- because we added in additional time.

8 THE COURT: Okay.

9 MR. GREENBERG: So for this limited piece of the situation we're looking at,
10 the 2013-2015 period based strictly on the QuickBooks records, the defendants have
11 sworn that the hours in those records are accurate. They've already affirmed that.
12 So the fact that Leslie has gone and looked at trip sheets and has drawn various
13 conclusions about them has nothing to do with this partial summary judgment motion.

14 THE COURT: Okay.

15 MR. GREENBERG: And then when you start talking about other time periods
16 or other assumptions --

17 THE COURT: Because you're asking for partial summary judgment that does
18 not represent the final calculation. Is that right?

19 MR. GREENBERG: Well, that's correct, Your Honor. We're going to have
20 issues to try here. We're going to have issues to try as to the time period before
21 2013. We're going to have an issue to try as to whether those payroll records
22 understated the hours worked for 2013 to 2015.

23 THE COURT: When you say payroll records, are you talking about the
24 QuickBooks?

1 MR. GREENBERG: I'm talking about the QuickBooks. I apologize, Your
2 Honor.

3 THE COURT: All right.

4 MR. GREENBERG: There is an issue as to whether the 2013 to 2015
5 QuickBooks records are in fact accurate from plaintiffs' perspective. Defendants
6 have already gone on the record in saying these are a hundred percent accurate.
7 They show everything everyone was paid. They show everything everyone worked,
8 the hours they worked for this three year period, 2013 through 2015. It is on that
9 basis that the partial summary judgment should be granted, Your Honor. Defendants'
10 expert does not dispute that the way we have reviewed that three year piece of the
11 QuickBooks records and presented it to Your Honor --

12 THE COURT: Uh-huh.

13 MR. GREENBERG: -- is arithmatically correct. He doesn't dispute it.
14 Defendants don't dispute it in their submissions.

15 THE COURT: No. He just -- he says -- he doesn't dispute that part. He
16 disputes, apparently, that you can get an accurate answer by simply relying on the
17 QuickBooks. Is that right? Is that what he does?

18 MR. GREENBERG: Well, he opines that the way to do this is to look at the
19 trip sheets, okay.

20 THE COURT: Yeah.

21 MR. GREENBERG: Although he also opines otherwise in his deposition that
22 that would be completely impractical on a class-wide basis. But that has to do with
23 the bifurcation motion, which is not before Your Honor right now.

24 THE COURT: Yeah.

1 MR. GREENBERG: But he does not dispute that if we accept those payroll
2 records, those QuickBook records for 2013 to 2015 as accurate --

3 THE COURT: Uh-huh.

4 MR. GREENBERG: -- the calculations performed by plaintiffs are correct.
5 He doesn't dispute any of that.

6 THE COURT: Okay.

7 MR. GREENBERG: And defendants can't come in now and say that the
8 hours worked in the QuickBooks records are not accurate, when they've stated
9 under oath they are accurate.

10 THE COURT: And where they stated under oath that they are accurate
11 was at the time they submitted them or in a deposition?

12 MR. GREENBERG: In the deposition at page 5 we have an excerpt from
13 this. This is in the reply, Your Honor.

14 THE COURT: Yeah. Uh-huh.

15 MR. GREENBERG: Mr. Nady is testifying that when the trip sheets came in
16 we did use them to track the time and put it in the payroll system, but we also added
17 additional time because the trip sheets didn't reflect the full time that the drivers
18 were working.

19 THE COURT: Okay.

20 MR. GREENBERG: So they can't come in now and say that the hours that
21 are in the QuickBooks records are not in fact valid for this time period.

22 THE COURT: Okay. Okay.

23 MR. GREENBERG: They've admitted it. And again, Your Honor, to repeat
24 myself, they could have attacked the math for that time period, but they haven't.

1 THE COURT: I've taken this beyond the time frame.

2 MR. GREENBERG: Okay. I apologize, Your Honor. We are --

3 THE COURT: No, that's my fault. I had a burning question.

4 All right. Let's pass to the second motion or second part of the motion.

5 MS. RODRIGUEZ: Your Honor, was it your instruction that I would not have
6 an opportunity to reply to his last -- a couple of his --

7 THE COURT: No. It's always the movant, the opponent, and then the last --

8 MS. RODRIGUEZ: Even if I promise not to be lengthy on the next two parts?

9 THE COURT: No. No, we will never finish if we don't hold to -- and let me
10 say this, too. I think this is an instance where the written work in the motions is quite
11 complete. I mean, you could -- I'm not saying I would suggest it, but you almost
12 could have just submitted this in chambers.

13 MS. RODRIGUEZ: Yeah.

14 MR. GREENBERG: Your Honor, I apologize, there is just one other element
15 on the partial summary judgment motion and this is discussed at page --

16 THE COURT: Well, wait, wait, wait, wait now.

17 MR. GREENBERG: Your Honor, all this has to do with is with their expert
18 report. Their expert --

19 THE COURT: No, no, no. Wait, wait, wait.

20 MR. GREENBERG: Yes.

21 THE COURT: You can point out what it is you want me to look at in your
22 motion --

23 MR. GREENBERG: Yes, Your Honor.

24 THE COURT: -- but let's not have more argument.

1 MR. GREENBERG: No, there's nothing more. I just -- because Your Honor
2 may have taken notes as to the issues to be ruled upon.

3 THE COURT: Yeah.

4 MR. GREENBERG: The only other issue that was not discussed is -- and
5 this is discussed at page 14 of the reply, which is that their expert had found that
6 \$2,700 or \$2,800 in unpaid minimum wages is owed --

7 THE COURT: Okay.

8 MR. GREENBERG: -- to certain individuals.

9 THE COURT: Okay. Understood.

10 MR. GREENBERG: They don't dispute that. I just want the Court to --

11 THE COURT: I was aware of that, yes. Thank you.

12 MR. GREENBERG: Okay. That's all, Your Honor.

13 THE COURT: Yeah.

14 MS. RODRIGUEZ: Your Honor, and I would just like to point to where I would
15 ask the Court to review because Mr. Greenberg made the statement that Mr. Leslie
16 did not address the time period that he's talking about. And I did attach the expert
17 report as Exhibit 5 and he does say he's reviewing 2013 to 2015. And I would just
18 ask the Court to review --

19 THE COURT: Okay.

20 MS. RODRIGUEZ: -- the final conclusions as to why --

21 THE COURT: Okay.

22 MS. RODRIGUEZ: -- the methodology is unreliable.

23 THE COURT: All right, thank you. Now let's move to the next motion.

24 MR. GREENBERG: To move along, Your Honor, yes.

1 THE COURT: Let's move to the next step, the next part of the motion.

2 MR. GREENBERG: Yes. Okay.

3 MS. RODRIGUEZ: Well, Your Honor, I mean, you indicated you were going
4 to give him five minutes. He took over ten and --

5 THE COURT: Well, I dragged it into the ten because I had some questions
6 beyond that. But I don't know that I would say that --

7 MR. GREENBERG: I will be -- I promise I will be briefer at this point, Your
8 Honor.

9 MS. RODRIGUEZ: I understand, Your Honor. But the only item I wanted to
10 mention is that their complaint still remains -- their complaint alleges that A Cab did
11 not keep accurate records. And now he's arguing to the Court that A Cab should
12 rely -- that he should rely on --

13 THE COURT: Is that in your -- is that in your opposition?

14 MS. RODRIGUEZ: Yes, it is. Yes, it is, Your Honor.

15 THE COURT: Then it's covered.

16 MS. RODRIGUEZ: Thank you.

17 THE COURT: All right. The next item on the list.

18 MR. GREENBERG: Your Honor, there's this question of whether the burden
19 of proof should be placed upon the defendants --

20 THE COURT: Yeah.

21 MR. GREENBERG: -- to establish the entitlement to the lower tier minimum
22 wage, Your Honor.

23 THE COURT: Uh-huh.

24 MR. GREENBERG: And I will concede Your Honor doesn't have any sort of

1 absolute, clear guidance on this issue from any other decisions that I'm aware of,
2 okay. I think Your Honor understands the analysis that I am essentially saying
3 the Court should adopt in respect to this is that given the protective nature of the
4 constitutional amendment and the fact that it is really putting forth this standard,
5 which is supposed to be a raised standard above the federal level, that what we
6 really should be assuming is that, yes, the employer has the option to pay this lower
7 rate, but if it's going to pay that lower rate it has to prove its entitlement to that
8 option. It has to prove that it took that extra step to make those health insurance
9 benefits available to the worker.

10 And, you know, I try to analogize the situation to some extent, Your
11 Honor, to the precedents involving the Fair Labor Standards Act and the availability
12 of the tip credit, which is a similar scheme under the federal minimum wage law
13 where an employer has to pay the 7.25, but if they agree to certain compliance
14 regarding employee tips, they promise to let the employees keep the tips, so forth
15 and so on, they can pay less. But the burden is on the employer to establish that
16 they have in fact met those requirements. I would submit that the same issue
17 should rule here, okay.

18 Now, in shifting the burden, Your Honor, I'm not saying defendants
19 should be denied any opportunity to establish that they are in fact only required
20 to pay the 7.25 an hour.

21 THE COURT: Uh-huh.

22 MR. GREENBERG: What I am asking is that judgment be entered at this
23 point based upon an 8.25 an hour rate for everyone in the class, but defendants will
24 have an opportunity to then -- to the extent they wish to, to then come in and say,

1 well, for this individual, this individual, this individual, you know, we have evidence
2 that they in fact, you know, were receiving the insurance or had the --

3 THE COURT: So what kind of a judgment -- what kind of a judgment would
4 you call that when you say you should enter judgment but we all know it's not going
5 to be final, it's just sort of a -- it's a temporary judgment?

6 MR. GREENBERG: Well, I would envision there being two elements to the
7 judgment that would be entered, Your Honor. Clearly at the 7.25 an hour rate that
8 would have to be -- those would have to be final amounts. There's no reason that
9 they wouldn't be. In respect to the 8.25 an hour rate, the defendant would have to
10 deposit that money with the court or perhaps the Court, if it wished, could give the
11 defendant a 60-day period or some limited period in which to deposit the amounts
12 that it is not disputed. I mean, defendants should have the burden of coming in here
13 and showing the Court that, well, these individuals made this amount of money, this
14 is what the insurance cost them, and therefore the insurance was available to them,
15 you know, for these number of months or however long it was, within the confines
16 of the requirement. I would submit that the defendants should have to deposit the
17 entire amount with the court and it would be held simply in trust pending a potential
18 return of some portion of the money to the defendants after they've had an
19 opportunity to engage in this process.

20 I mean, Your Honor, I'm trying to propose a process that would give
21 the defendants an opportunity to do this. Quite honestly, I don't think they really
22 should be entitled to the opportunity. I think it would be perfectly appropriate for the
23 Court to simply say, look, you haven't come in in opposition to this particular motion
24 and provided any evidence that any of these individuals are only entitled to 7.25

1 and judgment should be entered against them for the 8.25 amount on that basis and
2 it should be final for all. I am not -- I'm not stepping away from that position. I think
3 that is actually the most appropriate way to approach it. But I'm trying to give the
4 Court an opportunity to chart a middle course here because I know the defendants
5 are insisting that this would be unfair to them. I think they've had the opportunity
6 to make their case already during the course of these proceedings on that issue,
7 and if it is a burden-shifting requirement, they should have already made their case.
8 They haven't. But nonetheless, the Court could still give them the opportunity to do
9 that in some post-judgment situation that the Court would define.

10 I've given Your Honor a couple suggestions. I'm sure there's other
11 ways it could be set up. In the motion to bifurcate I had mentioned a process
12 whereby the defendants post judgment can come in and actually what would
13 happen is we would have the plaintiffs who claim that they were entitled to the
14 minimum wage because -- the higher minimum wage, Your Honor, because they
15 had dependents. That's a big issue in terms of the tiers because the cost for the
16 dependent coverage exceeds the requirements of the constitutional amendment.
17 So basically if I have a child that I'm -- or a spouse, I'm going to have to get paid
18 8.25 as a minimum at all times because the cost to me for the insurance will exceed
19 the ten percent amount, okay.

20 So we could have the plaintiffs simply present claims and say, well,
21 I was entitled, I had a child, I was married during the period, so I'm entitled to the
22 8.25. If the defendants dispute that, they could go to the public records. I mean,
23 the plaintiffs could say, well, my child was born here in this jurisdiction on this date,
24 I was married in this location at this date. Defendants could then go and verify that

1 from the public records, and if they found out the plaintiffs were lying then the Court
2 would say no, you're not entitled to the 8.25.

3 But the point is the defendants ultimately should bear the burden
4 here. I'm trying to give the Court some ideas or some means to really bend over
5 backwards here to provide an opportunity for the defendants to benefit from this
6 lower minimum tier rate. I don't think it's justified, but these are ways the Court
7 could approach the issue.

8 I've taken -- I told you I'd be briefer here, Your Honor.

9 THE COURT: Okay.

10 MR. GREENBERG: Unless you have more questions or there's something
11 more?

12 THE COURT: I do not.

13 MR. GREENBERG: Thank you.

14 THE COURT: And I am prepared to rule on this motion. I have to decline
15 your invitation to chart new territory. I just don't see where I have the authority or
16 the -- I mean, I just don't see where there's -- I just don't see there's a basis for me
17 to adopt that as a procedure. If that's going to happen, I think it has to come from
18 upstairs. Well, it used to be upstairs, now it's across the street. It's going to have
19 to come from the supreme court because I think I must work within the confines of
20 the authority, present authorities that are proffered to me. So that part of the motion
21 I think must be denied.

22 MS. RODRIGUEZ: Thank you, Judge.

23 THE COURT: The last part.

24 MR. GREENBERG: Yes, Your Honor. I understand and let us move on.

1 The remaining issue, Your Honor, is this question of the regulation, 608.102(2)(b).
2 What the Labor Commissioner has done here is they set up this framework whereby
3 insurance that is not available to the employee because they can't actually benefit
4 from it, it's impossible for them to benefit from it because they're on this waiting
5 period for 60, 90 days, six months, whatever it is, is nonetheless deemed to be
6 available within the confines of the Minimum Wage Act of the Constitution --

7 THE COURT: Uh-huh.

8 MR. GREENBERG: -- and therefore entitling the employer potentially to pay
9 a lower rate based upon that ten percent criteria still has to be met. The problem
10 with this, Your Honor, is that the supreme court, unlike in our prior issue, has spoken
11 pretty clearly on what the standard is here under the Constitution in respect to the
12 insurance issue. It has to be available to the employee. They don't have to enroll
13 in it, but it has to be available. They have to have the option, okay. The impetus
14 to benefit from the insurance or the ability to benefit from the insurance must be
15 within the employee's power. That's the analysis and the standard that they gave
16 us. In essence, obtaining relief rests with the workers. That was the actual
17 language from the MDC decision.

18 Now, in this situation where I'm 30 days, 60 days into my employment,
19 I don't have any power within myself to secure that insurance because I'm on a
20 waiting period for six months, which under the Labor Commissioner's regulation is
21 permissible.

22 THE COURT: Is that -- do we know what the waiting period is in this --

23 MR. GREENBERG: The waiting period in this case has varied from a year
24 to -- I believe currently it's 60 days or slightly longer than 60 days, depending on

1 when the first of the month because of the -- the ACA requirements have changed
2 that in recent years, Your Honor, but historically it was as long as a year. I mean,
3 Your Honor, I can't really explain more about this. I think Your Honor understands
4 the issue.

5 THE COURT: What is the analysis? In other words, are you saying that the
6 regulation passed by or promulgated by the Labor Commissioner is invalid because
7 it's constitutionally infirm because it violates one of the -- you know, due process?
8 We're used to dealing with those kinds of considerations. What's the analytical
9 framework for deciding that this regulation or this part of the code cannot be
10 enforced?

11 MR. GREENBERG: Well, the constitutional language says that the employer
12 must pay -- and this is actually discussed at page 14 of the moving papers. Oh,
13 no, I'm sorry, I apologize, that's not where it's discussed. It's actually at page 12.
14 It says: "Each employer shall pay a wage to each employee of not less than the
15 hourly rate set forth in this section. The rate shall be \$5.15" -- now 7.25 -- "per hour
16 worked if the employer provides health benefits."

17 THE COURT: Uh-huh.

18 MR. GREENBERG: So it's conditional -- "7.25 if the employer provides
19 health benefits as described herein or 8.25 per hour if the employer does not
20 provide such benefits." So provide benefits in the MDC case was ruled to mean
21 not actually enrollment by the employee. We don't have to see that the employee
22 is participating in the insurance, but he has to have the insurance available to them.
23 They have to have the option to participate in the insurance.

24 THE COURT: I understand that part of your argument. Where I'm trying to

1 get to is what -- you're saying that it is therefore -- because the MWA is not in a
2 statute, it's in the Constitution of the State of Nevada --

3 MR. GREENBERG: Yes, Your Honor.

4 THE COURT: -- that therefore a regulation such as the Labor Commissioner
5 promulgated is inconsistent with the Constitution, but does it therefore violate
6 due process? I mean, what is -- what's wrong with it being inconsistent with the
7 Constitution?

8 MR. GREENBERG: Well, the Labor Commissioner can issue any regulation
9 he wants, but does it have the force of law? What I'm saying is here it doesn't
10 because what it is purporting to do is to say an employer during the waiting period
11 when it is not in fact making insurance accessible to the employee for that 60 days,
12 six months, whatever it is, nonetheless can pay the lower minimum wage,
13 nonetheless is deemed to be --

14 THE COURT: I understand that part, but I'm saying, okay, so it's not the
15 same and it seems to be at odds with what's provided in the Constitution. So what?
16 What is the legal argument or analysis or why can't you do that?

17 MR. GREENBERG: Well, because a constitutional command is not within
18 the realm of being modified by the Labor Commissioner. The Labor Commissioner
19 can't step in and say, well, yes, the Constitution says you get to pay a lower
20 minimum wage rate during periods of time you make this insurance available, but
21 we're going to say you can do it even though you're not making it available, it's not
22 accessible for these six months.

23 THE COURT: So therefore the regulation itself is -- violates due process?

24 MR. GREENBERG: Well, you could -- it is due process in terms of it's a

1 substantive protection that Nevada's Constitution extends. It's a substantive due
2 process issue. You could look at it that way. When we talk about due process,
3 Your Honor, we're typically talking about Fourteenth Amendment issues --

4 THE COURT: Uh-huh.

5 MR. GREENBERG: -- so the terminology may be a little bit sort of not typical
6 in terms of this particular issue. We're talking about the State Constitution and this
7 particular constitutional amendment, Your Honor. In the MDC case the supreme
8 court looked at this analogous issue with the Labor Commissioner's regulations.
9 In that case they examined the subsection 3, not subsection 2 of that reg. And
10 subsection 3, what it said was when we're figuring this 10 percent limit for the
11 insurance premium, you can include the employee's tips and then figure 10 percent
12 of wages plus tips because that's gross income to the employee. And the language
13 of the Constitution on that issue says 10 percent of the income received from the
14 employer. And the Nevada Supreme Court in MDC said that regulation is invalid
15 because the tips don't come from the employer. That's not gross income from the
16 employer. The Labor Commissioner was essentially adopting the income standard
17 of the Internal Revenue Service. The Internal Revenue Service of course uses tips
18 as income to an employee. But that's not what the Constitution said. It didn't say
19 10 percent of the employee's income, it said 10 percent of the employee's income
20 from tips. So they invalidated that regulation in the MDC decision and said no,
21 this does not apply.

22 It's the same issue here, Your Honor. Defendants can't seek shelter
23 under this regulation and say for the first three months or six months of the
24 employment when there's this waiting period we can potentially pay these individuals

1 7.25 an hour. They can't do it because the insurance isn't available. It's not
2 available -- it can't be accessed by the employee. Again, in essence obtaining
3 relief rests with the workers. The employee can't obtain that relief, which is actually
4 secure the benefits of the insurance during that three month or six month period, so
5 the regulation cannot control the employer's liability under the Constitution because
6 they're not providing the insurance. If I tell the employee, well, I'm going to give you
7 insurance every year from June through December, okay, then from June through
8 December I give you insurance and potentially I can pay you 7.25. But if every year
9 from January to May I decide, no, there's not going to be any insurance that you can
10 have for those months, then I'm going to have to pay you 8.25. It's the same thing
11 here, Your Honor, because the insurance is not available to the employee during
12 the waiting period.

13 I don't want to belabor the point, Your Honor. If there's something
14 further I can assist with in terms of helping the Court understand the issue?

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

16 MR. GREENBERG: Thank you.

17 THE COURT: Thank you.

18 Ms. Rodriguez, same question to you.

19 MS. RODRIGUEZ: Thank you, Your Honor. Well, just a couple of --

20 THE COURT: What kind of analysis would have to take place in order for
21 the Court to say, well, the regulation doesn't seem to comport with the constitutional
22 provision? What sort of analysis must be applied before the Court could say
23 therefore it is declared to be invalid?

24 MS. RODRIGUEZ: You know, it reminds me of where we started with this

1 case at the very beginning when we were looking at whether the amended minimum
2 wage in the Constitution was in conflict with the minimum wage statutes way back
3 in the beginning of this case and we tried to see, can those two statutes live together
4 or can those two regulations co-exist or do they directly conflict with each other.
5 And I don't think that that was necessarily the argument in Mr. Greenberg's brief,
6 and so I didn't necessarily address it in that manner, either, so I'm just kind of
7 thinking at this point. But in re-reading it, both the constitutional amendment and the
8 statutes, there's nothing in the constitutional amendment that doesn't -- that directly
9 prohibits a waiting period.

10 And in answer to the Court's question, the time period that we're
11 talking about, 2013 to 2015, I'm relatively sure and I tried to confer with Mr. Nady
12 that during that entire time period we're only talking about a 60-day waiting period.
13 So we're not even talking a six month waiting period where the employee is deprived
14 of health insurance, as Mr. Greenberg is painting that picture. And the 60-day
15 waiting period is actually even less than the probationary period for an employee.

16 My problem with a lot of this is why has -- this is an issue that appears
17 to be important and why have the plaintiffs sat on it for five years during this
18 litigation? Because if the Court is now going to rule that the 60-day waiting period
19 is invalidated, then we need to go back and do recalculations from his experts,
20 recalculations from my experts, and we're well past those deadlines. So I would
21 definitely ask the Court to consider that. And it's my understanding --

22 THE COURT: Thank you. That reminds me, I was going to ask the same
23 question to Mr. Greenberg, so we'll revisit that when we come back. What would
24 be the effect of the Court agreeing with him that it's invalid?

1 MS. RODRIGUEZ: Right. And, you know, I think we're well past all those
2 deadlines. It's my understanding that plaintiffs were even reprimanded as of
3 yesterday from Judge Israel in not wanting to reopen discovery because that's
4 what would have to happen in this case if the Court were to then reopen the 60-day
5 waiting period. We'd have to go back, do discovery, give up our February 5th trial
6 date to do a recalculation on these people that have always been offered appropriate
7 health insurance. And one thing I would mention --

8 THE COURT: Well, what if the Court interpreted it -- you know, bought the
9 argument from Mr. Greenberg entirely that under the MWA there can be no waiting
10 period --

11 MS. RODRIGUEZ: Right.

12 THE COURT: -- because of the force of the -- so would there really need
13 to be more discovery or would you just say, well, they're all entitled to the upper
14 amount for that -- I don't know, for the six month period or for 60 days or something?

15 MS. RODRIGUEZ: Well, again what we're doing then, it's a burden shifting.
16 It's shifting the burden back to the defendants, then, to go back and to show that
17 these folks were -- in their waiting period were making more than 8.25 at that point.
18 And the problem all along is that, one, as the Court has noted, there is no authority
19 to shift the burdens to the defendants to prove a negative.

20 THE COURT: Uh-huh.

21 MS. RODRIGUEZ: Two, plaintiffs have never conducted any discovery
22 whatsoever on this issue that they now raise about the waiting periods. So they
23 haven't looked at it, we haven't looked at it. The only time that this came up was
24 when the defendant was requested to produce thousands of W-4 hard copies of

1 each employee's file, which we pulled. It took a couple of weeks with full-time staff
2 to pull those and turned them over to the plaintiffs. When I deposed their experts,
3 their experts said they never even looked at one piece of paper. So in answer to
4 the question from the Court, we don't know what the status is on all these people
5 because no discovery was ever done on that particular issue on their dependents,
6 their spouse and where they were for the first 60 days of their employment.

7 THE COURT: Do we know how the Labor Commissioner hit upon six months
8 as being an allowable gap?

9 MS. RODRIGUEZ: No, I don't know how that was determined, Your Honor.
10 I think that's the -- probably the standard throughout the wage regulations, but I
11 don't know how the Labor Commissioner determined the six month waiting period.

12 THE COURT: We have the adopted regulation of the Labor Commissioner
13 and when you look at what was done it appears that there were -- what did we
14 figure, there were seven people who had input on how long that period should be
15 and they were allowed to give input afterwards. Where did we pick that up at?

16 (Colloquy between the law clerk and the Court)

17 THE COURT: So you had a number of people who came to the hearing,
18 but -- and were allowed to make submission on it, but as far as I can tell, at least,
19 there's no -- we don't know exactly what their input was or how it was utilized by
20 the Labor Commissioner, so we're kind of at a loss to know how you -- you know,
21 why is six months okay but nine months is not or a year is not.

22 MS. RODRIGUEZ: Right. Right, or 60 days.

23 THE COURT: Or 60 days, which would tend to make one think that any
24 variation from the mandate of the Constitution would be illegal, but you'd have to

1 know why it's illegal.

2 MS. RODRIGUEZ: Uh-huh.

3 THE COURT: And so far I don't have that.

4 MS. RODRIGUEZ: And the Constitution doesn't address it one way or
5 another as to whether a waiting period would be legal or illegal or prohibited. It's
6 silent on that issue.

7 THE COURT: That is true. It doesn't contemplate a waiting period. It says
8 it must be available. And it doesn't say it can be available some time in the future,
9 whether that be 60 days or six months. It says it has to be available.

10 MS. RODRIGUEZ: Right.

11 THE COURT: I tend to agree with the argument that there is no provision --
12 there is nothing to illustrate why six months is reasonable and still comports with
13 the supreme court interpretation of what this whole passage means, that it must
14 be available. And if you simply look at, you know, applying -- interpreting the MWA,
15 it seems more clear -- it seems more clear to say, well, it doesn't allow for any
16 waiting period.

17 But I am -- we don't just take off and decide, oh, this is inconsistent so
18 we won't validate it. There must be some constitutional analysis for why a regulation
19 which is arguably inconsistent with the Constitution of the State, why it cannot be
20 applied. And I don't think it's enough to say, at least in the jurisprudence I'm familiar
21 with, I don't think there's enough to say, well, it's inconsistent so it has to go. You
22 have to have some -- you know, and maybe I'm wrong. Maybe our supreme court
23 doesn't require that. But where you say that a law, which is the regulation here,
24 cannot be applied because it's inconsistent with the Constitution, there has to be

1 more. You're talking about what is the power of the Labor Commissioner to take
2 away something which arguably at least the Constitution grants. There has to be
3 a violation of the people's constitutional right. And that always, in my experience,
4 is subject to an analysis by -- with resort to available authorities on how far, for
5 example, a Labor Commissioner might vary a regulation from what appears to be
6 the concept before you have a violation of basic constitutional rights, and so far
7 I don't have that.

8 I guess if you don't have anything more, I'll go back to Mr. --

9 MS. RODRIGUEZ: I just would mention one other point, Your Honor, and
10 perhaps it is in those notes on the Labor Commissioner meetings, but logistically
11 in reality you could not offer health insurance to an employee the day they walk in.
12 You know, the paperwork has to be completed. It has to be submitted to a health
13 insurance company. It has to be approved. And so there's just -- logistically there
14 has to be -- I think that's how A Cab has determined a 60-day waiting period
15 because it takes that long to even get the person onto the books.

16 THE COURT: In that --

17 MS. RODRIGUEZ: And so that may be reflected in the --

18 THE COURT: Oh, it may be reflected in the --

19 MS. RODRIGUEZ: In the Labor Commissioner notes that your law clerk
20 was looking at.

21 THE COURT: I don't see it in there. I don't think we found it.

22 (Speaking to the law clerk) Did you see anything like that in there?

23 MS. RODRIGUEZ: As to how they came up with the six months. It would
24 be a reasonable time period in which to process the employee to make them eligible

1 for health insurance because, I mean, you can't start a job and the first day be under
2 a healthcare policy.

3 THE COURT: I would think that -- well, at any rate it doesn't -- you know,
4 we don't have to belabor this. Anything else?

5 MS. RODRIGUEZ: No. Thank you, Your Honor.

6 THE COURT: Mr. Greenberg, how do I do that? How do I get from point A
7 to point B?

8 MR. GREENBERG: Your Honor --

9 THE COURT: I can't just say, well, this appears to be inconsistent so it's
10 invalid.

11 MR. GREENBERG: Well, Your Honor, the Nevada constitutional amendment
12 does not give the Labor Commissioner any authority to vary its terms. In fact, it
13 doesn't even give the Legislature any authority to vary its terms. So the regulation
14 that's issued by the Labor Commissioner, to the extent that it conflicts with a
15 command of the Constitution must be preempted, Your Honor. To the extent that
16 it is applying a lesser benefit to the employee, it cannot stand. It cannot be used --
17 if the regulation didn't exist, Your Honor, and we just looked at the Constitution's
18 language alone, we wouldn't be arguing about this. The employer would have to
19 meet the standard from day one of employment, okay.

20 THE COURT: Or --

21 MR. GREENBERG: Or?

22 THE COURT: Pay the higher rate.

23 MR. GREENBERG: Right. Well, it would have to meet the standard of
24 paying the higher rate. Exactly. There would be no free ride, so to speak --

1 THE COURT: Uh-huh.

2 MR. GREENBERG: -- once the employee is hired where they don't have
3 to have the insurance available. I mean, if this regulation did not exist under MDC,
4 if the employee did not have the right to enroll on day one, clearly they're going to
5 be entitled to the 8.25 an hour. Nobody would dispute that. Analytically you can't
6 dispute it. The Labor Commissioner comes in, he issues a regulation and says
7 but if it's going to be available six months after the guy starts working, then you can
8 pay the lower rate. So the Labor Commissioner's regulation has the effect here
9 of diluting the force of the constitutional command. The Labor Commissioner has
10 no authority to do that. The Legislature doesn't have any authority to do it. It's true
11 the Constitution --

12 THE COURT: Who says -- who says he doesn't?

13 MR. GREENBERG: You can read the constitutional amendment. It doesn't
14 grant the Legislature authority to enact any legislation --

15 THE COURT: Okay.

16 MR. GREENBERG: -- to vary it. I mean, some constitutional provisions
17 do bestow upon the Legislature the authority to enact implementing legislation
18 or otherwise. This constitutional amendment does not give that power to the
19 Legislature, Your Honor. The fact that the constitutional amendment is silent on
20 this issue of a waiting period, this harkens back to what we were here at the initial
21 stages of this case, the fact that there was a statutory exemption for taxi drivers
22 that pre-existed the constitutional amendment. The constitutional amendment was
23 silent as to whether taxi drivers were exempt. The argument being made by the
24 industry was, well, from the silence we're going to infer that this was not changed,

1 that they are still exempt.

2 And a number of jurists agreed with that. You did not. The supreme
3 court adopted the view you took at that time, which is that silence doesn't mean
4 anything in terms of a constitutional command. If a constitutional command is silent
5 as to an issue, it must be applied with the full force of what it does say. And what
6 the constitutional amendment here does say is that you can pay one rate if you
7 make the insurance available, you pay a second rate if you don't make it available.
8 To make it available, we know from MDC what that means, the employee has to
9 be able to enroll. So if the employee can't enroll and receive the benefit, it's not
10 available. It's that simple, Your Honor.

11 THE COURT: Let's assume I agreed with you. How would you possibly --
12 I mean, how would that simplify your burden? Where would you go with that?
13 Would you not have to have some kind of additional discovery at this point in order
14 to establish --

15 MR. GREENBERG: Absolutely not, Your Honor. We don't need any further
16 discovery on this issue. Absolutely not. Your Honor, the 2013-2015 spreadsheet
17 that Your Honor was provided with already calculates the amounts owed during the
18 waiting periods. Defendants' counsel has made an incorrect representation to the
19 Court, saying no discovery was conducted on this. Relevant discovery on this
20 issue regarding the waiting period was conducted because defendants gave us
21 interrogatory answers as to what the waiting periods were during each time period.
22 They were more recently 60 days; six months, a year going further back. We know
23 exactly what the waiting periods were. Defendants were also directed to provide
24 by the Discovery Commissioner and did provide hire dates for the class members.

1 So we know when the class members started working. We can also ascertain that
2 from the payroll records themselves because we can see when somebody starts
3 working and receiving a paycheck in the payroll records.

4 THE COURT: So where do you go from there in terms of granting relief now?

5 MR. GREENBERG: Your Honor, it's a question of --

6 THE COURT: Or are you really asking the Court to go that far? Are you
7 simply asking the Court to declare the regulation invalid?

8 MR. GREENBERG: Well, Your Honor, if the regulation is not valid for
9 purposes of the partial summary judgment motion, just to explain where we are
10 going, the amount of damages that would be awarded to the class members
11 wouldn't be the \$174,839, it would be \$274,000. It would be another hundred
12 thousand dollars, basically, because employee turnover is fairly high over a three
13 year period at this employer, so you have a lot of people who had this 60 or 90-day
14 period, whatever it was.

15 THE COURT: And how do you get from the one figure to the other?

16 MR. GREENBERG: Because the 8.25 rate applies to that 60 or 90 day, that
17 initial -- that initial waiting period. Do you understand, Your Honor? So individuals
18 who are owed something at 7.25 are going to be owed an extra dollar an hour
19 because the rate is 8.25. Some individuals who are owed nothing at 7.25 will prove
20 to be owed something at the 8.25 an hour rate. That's why when we look at these
21 14,000 or so pay periods over three years and we look at just these waiting period
22 times -- again, that's all we're talking about, the first 60 days, 90 days. Again, this
23 is detailed in Dr. Clauretje's report. It's in the spreadsheet that was produced.
24 We get this increased item of damages, Your Honor.

1 This idea that somehow defendants are surprised by this or that they
2 didn't know about this and that they need to do further discovery, there's no further
3 discovery they need to do as to this issue as to the waiting period. They were
4 aware that we were claiming these damages. This was raised in the January
5 partial summary judgment motion that Your Honor deferred at that time. That's
6 at -- Exhibit G is eighth supplemental disclosures from May of this year. That's in
7 the reply. In our eighth supplemental disclosures we specifically gave Rule 16.1
8 estimates referring to our claim that we were going to be seeking these damages
9 for the waiting periods at this higher 8.25 an hour rate. And we have Dr. Clauretie's
10 report from July where on page 21 he discusses -- that's at Exhibit B of the moving
11 papers, his report, he discusses this claim.

12 So defendants have been aware all along that plaintiffs were making
13 this assertion that this regulation did not give defendants a free ride from exposure
14 to the higher tier during the waiting period. They can't act as if insurance was
15 available when the employee couldn't actually enroll in it and receive benefits during
16 the waiting period. So this is not a surprise issue, Your Honor.

17 I understand Your Honor is trying to be diligent and cautious here,
18 but again, you're dealing with a regulation of an administrative agency which --
19 it's not a statute, it is an administrative regulation. And administrative regulations
20 obviously are only within the scope of the power confined to the administrator. The
21 administrator is given no power whatsoever under the Nevada Constitution, this
22 administrator, to do anything in terms of defining anything in respect to a waiting
23 period, in respect to, you know, what will constitute available health insurance or
24 what won't. The Constitution is completely silent on this issue.

1 So given that framework, Your Honor, to the extent that there is a
2 conflict -- and I don't think there's a dispute here that reading the constitutional
3 language when it talks about make available and we look at MDC in terms of telling
4 us what make available means, there is clearly a conflict between what the Labor
5 Commissioner has interpreted this as by reading into it a waiting period which the
6 Constitution is completely silent on. This is no different than reading into the
7 Constitution an exemption for taxi drivers based upon a prior legislative enactment,
8 which Your Honor quite correctly found was invalid and contrary to the constitutional
9 command. It's the same thing here, Your Honor.

10 Again, I don't want to belabor the point. I know we've taken up a good
11 amount of your time this morning. Your Honor has many other matters to deal with.

12 THE COURT: Yes.

13 MR. GREENBERG: So if there's something more I can assist with, I certainly
14 want to, Your Honor.

15 THE COURT: No. I think that does it. The ruling on this last one I think has
16 to be that it is denied again. And, you know, as I said a few minutes ago, I simply
17 cannot say, look, this seems to be at variance and that's it; therefore the result that
18 you ask for, to me, and maybe I'm just a little slow, I don't know, but I am not aware
19 of analyzing issues of constitutional dimension and simply saying -- boiling it down
20 to one provision is at variance with the other, therefore it must go. It has more to
21 do with whatever the power of the Labor Commissioner is to issue a law which is
22 seeming to be in conflict with the words of the Constitution.

23 So, while I think you're on to something there, I don't -- because,
24 you know, I cannot harmonize the language of the MWA in the Constitution with

1 the waiting period that is -- a six month waiting period provided by the regulation.

2 But I am unable to say that you can prevail with nothing more than that. So the
3 motion must be denied. Perhaps this is something that gets revisited at the close
4 of plaintiffs' case-in-chief, I don't know, but I don't see that I can grant it at this point.

5 I can, however, and I do grant the motion for partial summary judgment,
6 but only to this extent, that it seems to me that the plaintiff has established the
7 liability portion of their claim and that the only remaining issue is the amount of
8 damages. And to that extent I think the plaintiff has prevailed in showing that, that
9 there is no -- there is no reason and no remaining issue of material fact as to the
10 liability portion of the lawsuit. And so partial summary judgment is granted as to that
11 and the remaining issue, that of damages, must await trial.

12 MR. GREENBERG: Your Honor --

13 THE COURT: Yes?

14 MR. GREENBERG: I am confused. If liability has been established, that
15 means that minimum wages are owed and it's been established to be owed for
16 some particular amount.

17 THE COURT: I think that's established. Their own expert says that some
18 are owed.

19 MR. GREENBERG: Well, Your Honor, the request at the 7.25 an hour rate is
20 for the entry of this \$174,000, approximately -- \$174,839 that are owed to specified
21 individuals.

22 THE COURT: It does not -- it doesn't make sense to me to enter a partial
23 summary judgment for a stated dollar amount and then say but that's not really
24 a judgment, that's just a number out there and we're going to either add to it or

1 subtract from it at trial.

2 MR. GREENBERG: Your Honor, there's no basis to subtract to it. There
3 are additional amounts -- that's my problem, Your Honor.

4 THE COURT: Okay.

5 MR. GREENBERG: The defendants have not disputed the number, Your
6 Honor. So that's why --

7 THE COURT: Okay. So then let's go with it that way. If that's an amount
8 out there but it's not really the final amount, you're going to add to it, that does
9 not seem to simply the issues to me at trial to say I therefore award damages in
10 X amount and then but I really don't because that's still subject to additional proof
11 and argument at trial.

12 MR. GREENBERG: These damages -- Your Honor, if liability has been
13 established, as Your Honor is saying, then it's been established for something -- for
14 this amount. I mean, the order could simply state that liability is established for the
15 \$174,839 for the specified three hundred or so persons. This is all detailed in the
16 moving papers. And that issue has been determined judgment to be entered after
17 time of trial. If Your Honor is going to defer entry of the judgment for the requisite
18 amount that you found is liable, you can do that.

19 THE COURT: Well, so if I do that, are you going to say, okay, fine, that's it,
20 we'll go away? No. You want additional damages.

21 MR. GREENBERG: We do want additional damages, but it's a question of
22 what is -- we have to prepare this case for trial, Your Honor, okay.

23 THE COURT: Right.

24 MR. GREENBERG: And we need to know what issues are going to be heard

1 at trial and determined, okay. Now, if this issue that \$174,839 is owed based upon
2 these records, based upon your ruling that we've established liability --

3 THE COURT: Uh-huh.

4 MR. GREENBERG: -- then that's not going to be an issue that we're going
5 to be arguing about at trial, Your Honor, in respect to this amount being owed based
6 upon the QuickBooks records.

7 THE COURT: So this would be a discrete amount from -- separate and
8 discrete from additional damages to be awarded at trial?

9 MR. GREENBERG: Potentially. Maybe none will be proved. But potentially
10 there could be additional damages. If Your Honor wishes --

11 THE COURT: And carry the -- carry the -- a syllogism, but carry the process
12 out, why do we arrive at a hundred and seventy-four?

13 MR. GREENBERG: We arrive at \$174,839 because Your Honor has ruled
14 that we've established liability in connection with our motion. Our motion is based
15 upon the payroll records, the QuickBook records that we've discussed, the hours
16 worked in the records, the wages paid --

17 THE COURT: Uh-huh.

18 MS. RODRIGUEZ: The expert reports.

19 MR. GREENBERG: -- and the amount that is shown to be owed at the 7.25
20 an hour rate is that amount and it's owed to these specifically identified -- 319 class
21 members were owed at least ten dollars, okay.

22 THE COURT: Uh-huh.

23 MR. GREENBERG: So, Your Honor, if Your Honor is not going to enter
24 judgment now for those amounts, but we've established our claim to liability, then

1 those amounts are owed to these individuals and this should not be an issue for
2 trial, Your Honor.

3 THE COURT: And I think I know what you're going to say to that, Ms.
4 Rodriguez, but --

5 MS. RODRIGUEZ: Well, I'm going to say a couple of things. First of all,
6 his motion had nothing to do with liability. His motion was for damages only. My
7 motion for summary judgment, which is scheduled on January 2nd, addresses
8 liability. So I would ask that the Court not preclude my motion for summary
9 judgment from going forward at the beginning of the year, as well as the motions
10 in limine, because he's back to arguing -- he just said out of his mouth that these
11 are based on Dr. Clauretie's, the expert's reports. And I need an opportunity to
12 say why this Court cannot rely upon those expert reports.

13 THE COURT: Why would that dislodge a finding that the plaintiff has at least
14 prevailed to establish that there is liability here?

15 MS. RODRIGUEZ: I don't know -- we didn't even argue liability, Your Honor,
16 so I'm actually quite confused as to why you are ruling in favor of liability because
17 my motion --

18 THE COURT: How would I rule on damages if we haven't established
19 liability?

20 MS. RODRIGUEZ: That's a very good question, Your Honor.

21 THE COURT: I didn't see --

22 MS. RODRIGUEZ: And that's why I brought my motion in January. He
23 skipped right over liability. That was one of my points is that he jumped over liability.
24 He didn't even say which defendant this is targeted to. He just came in and said

1 I want damages.

2 THE COURT: Well, I'll tell you what.

3 MS. RODRIGUEZ: Based on my spreadsheet, I want damages.

4 THE COURT: I'll tell you what. That is going to be the order of the Court.
5 That does not preclude you from making further argument in your motion that's
6 already scheduled, you said?

7 MS. RODRIGUEZ: Yes. I believe it's January 2nd. I know it's in the first
8 weeks of January.

9 THE COURT: But for purposes of this motion, it seems to me that there
10 has not shown to be an issue of material fact as to liability.

11 MR. GREENBERG: Your Honor, it's a little confusing in this situation with
12 a minimum wage claim because liability and damages are the same thing, Your
13 Honor. If the employer does not pay the minimum wage they're liable, and they're
14 liable in the amount they didn't pay. It is the exact same issue. So for Your Honor
15 to say that we've established --

16 THE COURT: And it is that thing right there, in the amount that they didn't
17 pay. So the question is how much did they not pay?

18 MS. RODRIGUEZ: If any.

19 MR. GREENBERG: Well --

20 MS. RODRIGUEZ: That was my argument, Your Honor, that he did not have
21 one client where he showed actual damages. Everything is an estimate.

22 THE COURT: Okay. We're not going to -- we're not going to devolve into
23 interrupting. You have the floor, Mr. Greenberg.

24 MR. GREENBERG: Thank you, Your Honor. What I'm saying is for Your

1 Honor to make a finding that liability has been established consistent with the
2 motion for partial summary judgment, Your Honor is making a finding that plaintiffs
3 have established amounts that are owed. And the amounts that are owed that are
4 the basis for the partial summary judgment motion, setting aside this whole issue
5 of the tier, just looking at the 7.25 tier, again is this \$174,839. That's what the
6 liability is for because that was what was underpaid. You can't -- this is not a case
7 of establishing negligence and then later proving the damages that the plaintiff
8 incurred from the negligence based upon whatever additional evidence may come
9 in. It's the same -- it's the same evidence --

10 THE COURT: So --

11 MR. GREENBERG: -- that bears on both, Your Honor. That is my problem
12 with understanding the Court's order. I don't want to perplex the Court. I'm not
13 trying to be difficult, Your Honor.

14 THE COURT: I understand that.

15 MR. GREENBERG: It's just if there's a liability finding we cannot in this
16 circumstance separate the liability found from the partial summary judgment motion
17 from the damages.

18 THE COURT: What if the Court agreed -- what if the Court agreed with the
19 defense expert that the total is some thirty-four hundred dollars or twenty-seven
20 or whatever that number is?

21 MR. GREENBERG: That amount is based upon -- is based upon his review
22 of trip sheets and judgment presumably should be entered for that amount. That's
23 for a handful of individuals for a hundred or so pay periods. I'm talking about
24 14,000 pay periods based upon the record that's been produced to Your Honor.

1 The defendants, again, have not introduced any competent evidence to dispute
2 the payroll-by-payroll period analysis. I know defendants' counsel was interrupting,
3 saying we haven't established that anybody in fact is owed anything. In the reply,
4 again, Your Honor, I produced the paystubs. I tried to give the Court a walk-
5 through, you know, in writing showing each step of the arithmetic process using the
6 actual documentary record, which then of course is being done for an additional
7 14,000 pay periods in the spreadsheet. I think Your Honor understands this.

8 So, for Your Honor to say that we've submitted sufficient competent
9 evidence here to be granted a finding of liability consistent with the partial summary
10 judgment motion means that the amount that's detailed in the spreadsheet that
11 was given to Your Honor in the ledger, so to speak, the analysis of those 14,200
12 pay periods shows that this \$174,839 is owed to the plaintiffs.

13 THE COURT: No, it means that the defendant has at least put forward
14 enough evidence to prevent the Court from finalizing the number, even that number.
15 The most that the defendant agrees that they would owe is some thirty-four hundred
16 dollars. So beyond that, they have their own methodology for showing damages
17 or countering a showing of damages.

18 MR. GREENBERG: Your Honor, it is your prerogative to make the ruling
19 you're going to make. If that's going to be your ruling, then that's going to be your
20 ruling. If what you're saying is nothing is established by this partial summary
21 judgment motion except the defendants' admission from their expert that they owe
22 this thirty-four hundred dollars or three thousand dollars, then that's your ruling. If
23 you're ruling that I have established some greater measure of liability, then that is
24 your ruling as well, Your Honor. I do take issue and I apologize, Your Honor, but

1 again, the defendants' expert has never opined anything about the payroll records
2 upon which this partial summary judgment motion is based. Counsel -- defendants'
3 counsel asserts that they do and they will. They point to nothing in the expert's
4 report which is before the Court. They cite to no section of it. You have his
5 deposition testimony. There is nothing contested about the analysis of the 14,200
6 payroll periods that Your Honor was given.

7 THE COURT: So you're saying that their expert -- there's no evidence that
8 their expert did agree that there was some relatively minor amount that was due
9 and owing?

10 MR. GREENBERG: The expert conducted an independent review of trip
11 sheets. Based on his independent review of trip sheets he arrives at this conclusion
12 for 120 pay periods that he examined.

13 THE COURT: I'm asking if for purposes of this motion are you saying that
14 there was nothing offered by the defense to the effect that their expert had agreed
15 that some thirty-four hundred dollars was due and owing?

16 MR. GREENBERG: Nothing offered by the defendants to the effect that
17 some thirty-four hundred dollars is due. Their --

18 THE COURT: Is that correct, Ms. Rodriguez?

19 MS. RODRIGUEZ: It doesn't sound right, Your Honor. Mr. Leslie's --

20 THE COURT: Because I thought I saw that in there and I thought that was --

21 MS. RODRIGUEZ: I think I saw it in his reply, too, saying that Mr. Leslie
22 had conceded to thirty-four hundred dollars. But I think that's being taken out of
23 context. Mr. Leslie's report is critical of the methodology, whether it's 2012, 2013,
24 2015. So, I know that Mr. Greenberg is just trying to piecemeal and say, well,

1 Mr. Leslie was only addressing this part, not this other part. His report, which is in
2 our papers, is very clear that he is critical of the entire methodology that was used
3 by Charles Bass and Dr. Claurette.

4 THE COURT: Uh-huh.

5 MS. RODRIGUEZ: So, no, we are disputing --

6 THE COURT: But that he does -- he does agree that there is some amount
7 owed?

8 MS. RODRIGUEZ: I don't -- I don't believe that's contained in his report,
9 Your Honor. And I know that this issue has been raised, again, before Judge Israel.
10 I believe it's up on appeal. Because it sounds like what Your Honor is indicating is
11 a finding -- and I hesitate to use this word, if the Court has a better word for it, it's a
12 finding of strict liability, basically, that if there's any amount owed, anything, a dollar,
13 two dollars, it's going to be a violation of the Nevada amended constitution or the
14 amended constitution -- a violation of the minimum wage. And I think that's what
15 Your Honor is indicating this morning, and now the only thing that will go forward is,
16 well, is it two dollars or is it \$600,000? Am I understanding the Court's direction
17 on this?

18 THE COURT: I don't know about the first part, but it does seem to me that
19 the issue at trial is how much --

20 MS. RODRIGUEZ: Uh-huh.

21 THE COURT: -- is owed; how much in damages.

22 MR. GREENBERG: Your Honor, to directly address Mr. Leslie's report,
23 on page 11 of the moving papers Mr. Leslie reviewed 123 pay periods. He found
24 \$3,847 was owed in unpaid minimum wages, based on his review of those trip

1 sheets. He looked at the hours --

2 THE COURT: Uh-huh.

3 MR. GREENBERG: -- that were shown by those trip sheets and he looked
4 at the amount --

5 THE COURT: Uh-huh.

6 MR. GREENBERG: -- that was paid for those 123 pay periods. This is set
7 forth in Exhibit I, which is his report, the relevant excerpts and his exhibits. So, he
8 identified that this amount is owed.

9 THE COURT: Uh-huh.

10 MR. GREENBERG: So presumably they don't dispute that he identified that
11 these amounts are owed. So presumably summary judgment should be entered
12 for those amounts, Your Honor. If Your Honor disagrees, then that's the scope of
13 Your Honor's ruling. I just want to be clear what's in the record before the Court,
14 Your Honor.

15 THE COURT: It seems to me that -- why would you want the Court to enter
16 that dollar amount if that is a dollar amount that you don't agree with and you want
17 to show more? Why is it not appropriate or what's wrong with the Court simply
18 finding that the showing of there being liability here has been established?

19 MR. GREENBERG: Your Honor, the problem is that -- and this really goes
20 back to the nature of the partial summary judgment motion. Defendants have
21 admitted that the payroll records are accurate. We've shown from examining
22 the 14,000 payroll periods in the payroll records, the QuickBook records, that this
23 \$174,000 is owed. Defendants have not disputed that calculation. They don't
24 dispute the underlying information. I understand we claim more is owed. Your

1 question is why should the Court enter a damages judgment at this point? To
2 answer your question, Your Honor --

3 THE COURT: Uh-huh.

4 MR. GREENBERG: -- these individuals are entitled to this money.
5 Defendants are going to continue to defend this case. They will spend their
6 resources defending this case. They very likely may declare bankruptcy or go
7 out of business or evade a judgment at time of trial. These individuals are clearly
8 owed this money. They've been waiting five years to get paid it. The \$174,839
9 is clearly owed to them. There's no reason to defer entering a judgment in their
10 favor and at least have that judgment entered so the defendants will be due to
11 pay it now.

12 THE COURT: Would they be able -- would they be able to execute on such
13 a judgment?

14 MR. GREENBERG: Why not? If defendants decline to pay it, then they
15 will face the consequences of failing to pay it. If they want to bond it, they can
16 bond it and appeal it. But the point is that amount will at least be secured for these
17 minimum wage workers, Your Honor. We've been litigating this case for years now.

18 THE COURT: It seems to me that that amount is a smattering of the amount
19 that you're contending in this class action lawsuit is due and owing to all the
20 members of the class. It does not make sense to me to enter some amount which
21 I'm not even sure would be enforceable. And if it were, then why -- if it's enforceable,
22 it must be a final judgment.

23 MR. GREENBERG: Your Honor --

24 THE COURT: I don't know.

1 MR. GREENBERG: Your Honor, look, I don't -- I --

2 THE COURT: That's going to be my ruling. That's as good as I can do,
3 folks.

4 MR. GREENBERG: Your Honor, just one or two more questions. I
5 apologize, Your Honor. I want to see an order. If you're going to ask us to --
6 if you're going to ask us to work on an order, I'd like to be sure we understand
7 what the order should provide.

8 There was one other issue that I did not address with you, which is
9 that there's a request made here for an interim award of class counsel fees.

10 THE COURT: Uh-huh.

11 MR. GREENBERG: And to the extent that we are prevailing here on liability
12 or a finding of damages of some sort, Your Honor, there is a basis to award that.
13 I asked the Court to award that. And if Your Honor is simply not going to or you
14 want to address it, I would ask the Court to address it. But we haven't discussed it,
15 so that's why I'm mentioning it to the Court, along with understanding, again, what
16 the order is going to say in respect to a liability finding because I am not completely
17 clear how Your Honor would want that to be put in an order and how that would
18 affect the issues for trial. And in respect to the issues for trial, Your Honor, Your
19 Honor may want to examine the bifurcation motion, which was fully submitted to
20 chambers on the 7th and perhaps consider that in conjunction with the finding you're
21 making today and how this is going to impact the presentation of the issues at trial.

22 (Colloquy between the Court and the law clerk)

23 THE COURT: I will do that much. I will look to see the -- we've been through
24 the bifurcation motion but there's additional work we need to do.

1 MS. RODRIGUEZ: May I ask when the bifurcation is set for -- it's chambers
2 calendar, right?

3 THE COURT: Right.

4 MS. RODRIGUEZ: Is it in January?

5 THE COURT: I think the date has already come and gone, has it not?

6 MR. GREENBERG: It was December 7th, Your Honor.

7 MS. RODRIGUEZ: Oh, okay.

8 THE COURT: December 7th. Pearl Harbor Day. I will take a look at it and
9 see if that alters what I have said to this point.

10 MR. GREENBERG: So, should we simply wait --

11 THE COURT: In other words, I will see whether or not that does anything
12 about -- well, all I can tell you is I will look at it and see whether -- what the Court
13 thinks is the best way to proceed and I'll enter an order accordingly.

14 MS. RODRIGUEZ: And if I recall, Your Honor, that bifurcation was a
15 suggestion that we just plug in a number to his expert's spreadsheet. So, again,
16 I would ask the Court to allow me to argue why those spreadsheets are inadmissible
17 and unreliable.

18 THE COURT: Well, you filed an opposition to the motion, correct?

19 MS. RODRIGUEZ: I did. And I probably indicated that in there --

20 THE COURT: Yeah. So --

21 MS. RODRIGUEZ: -- that the Court should wait to consider that.

22 THE COURT: Whatever is in the motion and opposition will be considered.
23 Okay, that's as far as I'm going to say. Anything I say seems to spawn interminable
24 more arguments from both sides.

1 MR. GREENBERG: I apologize, Your Honor.

2 MS. RODRIGUEZ: I've been quiet. Your Honor asked me not to interrupt.
3 I haven't opened my mouth for the last thirty minutes here.

4 THE COURT: Okay.

5 MR. GREENBERG: Your Honor, so we will wait to hear more from the Court
6 regarding the disposition of the partial summary judgment motion, and either the
7 Court will issue an order or will give us directions as to the form of order --

8 THE COURT: Correct.

9 MR. GREENBERG: -- that should be entered and hopefully address clearly
10 these issues we've been discussing. Thank you, Your Honor.

11 THE COURT: All right.

12 MR. GREENBERG: I apologize for taking so much of your time.

13 MS. RODRIGUEZ: Thank you, Your Honor.

14 THE COURT: Thank you.

15 (PROCEEDINGS CONCLUDED AT 10:48 A.M.)

16 * * * * *

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

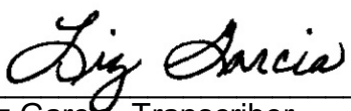
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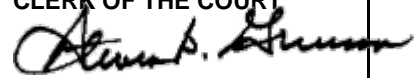
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Liz Garcia, Transcriber
LGM Transcription Service

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1 **TRAN**

2
3 **EIGHTH JUDICIAL DISTRICT COURT**
4 **CIVIL/CRIMINAL DIVISION**
5 **CLARK COUNTY, NEVADA**

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

11
12 BEFORE THE HONORABLE KENNETH CORY, DISTRICT COURT JUDGE
13 TUESDAY, JANUARY 2, 2018

14 ***TRANSCRIPT RE:***
15 **DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

16 **APPEARANCES:**

17 For the Plaintiffs: LEON GREENBERG, ESQ.

18 For the Defendants: ESTHER C. RODRIGUEZ, ESQ.
19 MICHAEL K. WALL, ESQ.

20 **ALSO PRESENT:** CREIGHTON J. NADY

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22
23
24 **RECORDED BY:** Lisa Lizotte, Court Recorder

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1 LAS VEGAS, NEVADA, TUESDAY, JANUARY 2, 2018, 10:20 A.M.

2 * * * * *

3 THE CLERK: Michael Murray versus A Cab Taxi Service. Case Number
4 A669926.

5 THE COURT: We saved the best for last.

6 MS. RODRIGUEZ: Of course. Good morning, Your Honor. Esther
7 Rodriguez and Michael Wall for the defendants, as well as Creighton J. Nady is
8 present.

9 THE COURT: Good morning.

10 MR. GREENBERG: Leon Greenberg for plaintiffs, Your Honor.

11 THE COURT: Good morning. Well, it's your motion, so how do you want
12 to argue it?

13 MS. RODRIGUEZ: Briefly, Your Honor. Would that please the Court?

14 THE COURT: Yes, that would be good.

15 MS. RODRIGUEZ: Okay. Well, Your Honor, I moved for summary judgment
16 on behalf of A Cab on a number of issues -- on behalf of the defendants, I should
17 say. The bottom line is I think we've been here before and there's been admissions
18 and concessions from the plaintiffs and you'll hear further on my motions in limine,
19 which I think are later in the month. But basically their experts, their evidence, their
20 documents, there's been no calculation of actual damages. That's a crucial part
21 of any case, there's liability and damages.

22 So I won't repeat all my arguments on that, but basically we believe
23 that the Court should dismiss the case in its entirety because they have no evidence
24 of actual damages for one individual, much less a class of individuals. But what

1 I primarily want to focus on, if the Court is not inclined to dismiss the matter in
2 its entirety for that, is for the Court to consider a dismissal of the claims against
3 Mr. Nady personally.

4 THE COURT: Uh-huh.

5 MS. RODRIGUEZ: There has been absolutely no evidence to support the
6 plaintiffs' claims of civil conspiracy, aiding and abetting. There's some serious
7 accusations that are in the complaint and which unless the Court dismisses will
8 go before the jury.

9 THE COURT: On that point, would they really be going before this jury?
10 Did we not grant a bifurcation?

11 MS. RODRIGUEZ: We did grant a bifurcation and at that time I tried to point
12 out to the Court as well, because I think Mr. Greenberg's arguments were that any
13 liability towards Mr. Nady would stem from any -- if there was any liability found
14 against A Cab. And the Court agreed and said, okay, we'll try part two, if necessary,
15 against Mr. Nady. But the way that it is currently pled are separate causes of action,
16 those two being the civil conspiracy claim and the unjust enrichment claim. And
17 so this isn't just a claim of alter ego and whether Mr. Nady -- if A Cab's liability is
18 proven, whether there would be any further liability on Mr. Nady. That's not what
19 we're talking about. We're talking about civil conspiracy and elements that have
20 to be proven on that. And I think in the Court's ruling to bifurcate it wasn't a carte
21 blanche or an open invitation to then start all over again and try to prove -- for the
22 plaintiffs to come up with the evidence to prove those particular claims that they
23 have against Mr. Nady.

24 THE COURT: In other words, carte blanche to like reopen discovery --

1 MS. RODRIGUEZ: Correct.

2 THE COURT: -- because, as you say, the discovery so far has been aimed
3 at the liability of the company.

4 MS. RODRIGUEZ: Correct. Correct. And there's been -- they have --
5 he argued in his response that they have conducted discovery on that issue
6 because that's what I argued in my motion, that there was no discovery on this.
7 Mr. Greenberg is arguing, yes, I did do discovery, but he hasn't come up with
8 anything in that discovery for these particular claims. And in his response all
9 he said is there's ample evidence, there's ample evidence of civil conspiracy and
10 of unjust enrichment. But he fails to put anything in his response, as would be
11 required to defeat summary judgment.

12 THE COURT: Uh-huh.

13 MS. RODRIGUEZ: So that's the first point is that I think the Court -- I would
14 request that the Court consider a dismissal of those claims against Mr. Nady
15 because the plaintiff is required to come forward with something to support a civil
16 conspiracy or an unjust enrichment claim. Similarly, my other request to the Court
17 is to consider a dismissal of the punitive damages claim. The same thing on this,
18 we have not seen any evidence, any witnesses to support the level that is required
19 for a punitive damages claim.

20 THE COURT: Uh-huh.

21 MS. RODRIGUEZ: I argued and I produced or cited to the Sprouse case,
22 that this case is not even an appropriate case for punitive damages because this is
23 not a case that sounds in tort. It's a contractual employment wage claim, so punitive
24 damages aren't appropriate in the first place by law. But number two is that there

1 simply is no evidence of punitives to support malice, fraud. The only thing the
2 plaintiffs --

3 THE COURT: Remind me what your response was to his argument that it
4 is not simply a contract case but it involves violation of a constitutional principal
5 and that therefore punitive damages might well be appropriate as to that.

6 MS. RODRIGUEZ: Well, what he did was cite to the actual amendment,
7 the constitutional amendment, which did lay out the remedies for a claimant. And
8 my response was, yes, the remedies are laid out and there is no indication that
9 punitives were meant to be included in that, punitive damages or a new reading
10 to include punitive damages if you're doing a straight reading of the amendment.

11 THE COURT: Okay. So if you were going to avoid your argument by
12 claiming this is a constitutional, you're limited to the damages specified in the
13 Constitution --

14 MS. RODRIGUEZ: Correct. Correct.

15 THE COURT: -- which does not include punitives.

16 MS. RODRIGUEZ: Correct. But I think the most important part, Your Honor,
17 is that the only response that the plaintiffs put forward in their claim for punitive
18 damages is this fraud claim, the accusation or the allegation that A Cab forced its
19 drivers to write in fraudulent break times into the trip sheet. And at the same time
20 they're arguing, well, this is not a fraud claim --

21 THE COURT: Uh-huh.

22 MS. RODRIGUEZ: -- because if they say it is a fraud claim then it's not
23 appropriate by case law, the Johnson v. Travelers case, for class certification.
24 The case law is very clear that fraud claims are not appropriate for class actions.

1 And so plaintiff is saying, well, it's not a fraud claim, but it is a fraud claim if it
2 supports our claim for punitive damages. So they can't have it both ways, and my
3 request to the Court would be that the punitive damages be stricken at this point
4 because there is no evidence for that and by law they cannot proceed with that.

5 The third point I would ask the Court to consider --

6 THE COURT: Punitive damages as to both the corporation and Mr. Nady?

7 MS. RODRIGUEZ: Correct. Yes, all the defendants. And the third item --

8 THE COURT: Well, wait a minute.

9 MS. RODRIGUEZ: Yes.

10 THE COURT: Maybe I'm off there. That cause of action, would it include -- is
11 the cause of action or actions which -- under which -- under Mr. Greenberg's theory
12 might give rise to punitive damages, are any of those even aimed at Mr. Nady?

13 MS. RODRIGUEZ: Well, I'm looking at his complaint.

14 THE COURT: Or is it only limited to one defendant?

15 MS. RODRIGUEZ: His complaint is attached as Exhibit 1 to my motion --

16 THE COURT: Uh-huh.

17 MS. RODRIGUEZ: -- and in his complaint on page 4 when he's talking about
18 punitive damages he is referring to the defendants, plural. And let me get to the
19 actual further pleading on this. The second claim doesn't have anything to do
20 with it. Third is against Mr. Nady and the fourth I believe is also against Mr. Nady.
21 So the first cause of action is where he is alleging the punitive damages and I read
22 it, since he names it throughout the pleading as defendants, plural --

23 THE COURT: Uh-huh.

24 MS. RODRIGUEZ: -- that it is alleged against all three of the defendants.

1 And the three defendants are two corporate ones, A Cab Taxi Service, LLC,
2 A Cab LLC and Creighton J. Nady.

3 THE COURT: And yet he claims that the evidence of this -- actions by Mr.
4 Nady, whether you consider it his personal actions or those of the corporation, to
5 get the drivers to put in phony sheets, that evidence is not pertinent to the case and
6 I assume that means we wouldn't be seeing any such evidence at trial. If the Court
7 does not grant the motion, by virtue of the argument that you've put forward it seems
8 to me that there would be no evidence at trial, at least this first trial, of any of this
9 business of Mr. Nady getting -- or anyone else on his behalf getting the drivers to
10 put in phony sheets, so that's something you're going to need to answer.

11 MS. RODRIGUEZ: Well, and that is the whole basis of the claim. That's why
12 I've always argued that this isn't even a minimum wage claim, that it's a claim for
13 unpaid hours. The way that the complaint currently stands and reads after being
14 amended is the basis of the defendants not meeting the minimum wage because
15 it's undisputed that the defendants always subsidized their drivers' pay to bring
16 them up to minimum wage, but Mr. Greenberg's argument has always been, per
17 the complaint, that A Cab or the defendants forced the drivers to write in fraudulent
18 breaks. So instead of the calculation being 12 hours, it comes down to 9 or 10
19 hours that they're being paid. And my argument has always been, well, that's not
20 a minimum wage, that's your drivers are saying I wasn't paid for three hours that
21 I should have been paid for.

22 THE COURT: Uh-huh.

23 MS. RODRIGUEZ: So I understand the Court's concern, then, in directing
24 that to Mr. Greenberg that he's not going to bring in that evidence, but that is the

1 basis of their claim --

2 THE COURT: Yeah.

3 MS. RODRIGUEZ: -- is the fraudulent breaks.

4 THE COURT: And so your point is that if they don't, they may have no basis
5 to prevail at trial?

6 MS. RODRIGUEZ: Correct. Correct.

7 THE COURT: Okay. Okay.

8 MS. RODRIGUEZ: And just a third item I would bring to the Court's attention
9 is this rather large period of time that they do not have a representative plaintiff.
10 We're talking about three out of -- three years, over three years. Thirty-seven
11 months is the calculation. The main plaintiffs, Mr. Murray and Mr. Reno, stopped
12 working in 2011 and 2012. The last one stopped in September of 2012, and this is
13 a damages claim all the way through the end of 2015.

14 THE COURT: Uh-huh.

15 MS. RODRIGUEZ: So the only one who kind of throws a fly in the ointment
16 there is Mr. Sergeant, who worked a period of two months in-between there in 2014.
17 But other than that, even including the time period that Mr. Sergeant worked, it's still
18 37 months, over three years that they are asking for damages. I don't even know
19 how they can put a plaintiff on the stand to make the claim for damages when they
20 don't have a representative plaintiff. And I've cited the case law that says you do
21 have to have the commonality --

22 THE COURT: Uh-huh.

23 MS. RODRIGUEZ: -- and the plaintiffs have to have an appropriate
24 representative and the representative must come from that class. So I would ask

1 the Court to reconsider the time period that is going to go forward before the Court.
2 I think we need to use the time period in which they do -- they have shown a class
3 representative and that would be through 2012.

4 THE COURT: You obviously don't buy into his federal district court opinion
5 that says essentially that commonality doesn't necessarily require -- what is it called,
6 a mirror image --

7 MS. RODRIGUEZ: Right.

8 THE COURT: -- of time; you know, time as a qualifier. You don't buy that
9 one?

10 MS. RODRIGUEZ: No. I argued against that. I didn't see where he actually
11 cited to anything on that.

12 THE COURT: I thought there was -- didn't you have a federal district court
13 opinion that held that at least?

14 MR. GREENBERG: Yes, Your Honor. I had cited to the Court federal district
15 authority which was most on point. I also am prepared today to advise the Court
16 of Ninth Circuit authority that was relied upon by that district court decision which
17 further develops the issue. It's on page 7 of the opposition, the Sarvas case.

18 THE COURT: The adequacy requirement does not require temporal mirror --
19 yeah, that was it -- between the class representatives. Okay. All right, we'll get to
20 yours in a minute here.

21 MR. GREENBERG: Yes, Your Honor.

22 MS. RODRIGUEZ: I'll submit with that, Your Honor, unless Your Honor has
23 further questions on those issues.

24 THE COURT: What about the decertify class?

1 MS. RODRIGUEZ: Well, that goes hand in hand with my argument that --
2 two of the arguments. If they are making the fraud claim, then it's not appropriate
3 for Rule 23 class certification.

4 THE COURT: Uh-huh.

5 MS. RODRIGUEZ: So the Court can allow the trial to go forward on the
6 individual claims that they do have, but then, you know, our argument has always
7 been that the analysis that is required for these individual claims is very detailed,
8 is very different for each one of these people. Whether we're talking about Mr.
9 Reno or Mr. Murray, you need to get into, well, what were their actual hours, what
10 were their health insurance issues, what's the issue with their break times, because
11 they're all making different claims. And you can't do a broad sweep and just throw
12 it in, especially now at the end of the day with what we're seeing that the plaintiffs'
13 experts don't even have -- they've never looked at trip sheets, they've never looked
14 at the documents. They've just come up with a tool to do an estimate of what they
15 think in theory was an underpayment. But everything is in theory, there's no actual
16 evidence.

17 And so that's why I said this is appropriate for decertification and let's
18 get to the actual heart of the matter. Let's try Mr. Murray's case, let's try Mr. Reno's
19 case, Mr. Sergeant's, and anybody else that Mr. Greenberg represents. But you
20 can't look at it as a class action when there are so many individual factors that need
21 to be considered by the trier of fact to get to actual damages that A Cab would or
22 may be liable for.

23 THE COURT: Okay.

24 MS. RODRIGUEZ: Thank you, Your Honor.

1 THE COURT: All right. Mr. Greenberg, what say you?

2 MR. GREENBERG: Well, is there any particular issue the Court would like
3 me to address first?

4 THE COURT: Well, of the ones that have been argued both in the pleadings
5 and here, I'm -- let me put it this way. There are some that you would need to speak
6 to. One is that no representative plaintiff for the class -- this notion of you don't have
7 to have a temporal mirror. Was it not a federal district court opinion you cited for
8 that?

9 MR. GREENBERG: Yes, it was, Your Honor. And again --

10 THE COURT: Is it Wal-Mart?

11 MR. GREENBERG: Well, no. Wal-Mart --

12 THE COURT: No, that's a supreme court case.

13 MR. GREENBERG: Wal-Mart deals with the (b)(2) class certification issue --

14 THE COURT: Oh.

15 MR. GREENBERG: -- where one is seeking equitable relief. Essentially in
16 Wal-Mart they were trying to shoehorn a nationwide sex discrimination damages
17 claim --

18 THE COURT: Uh-huh.

19 MR. GREENBERG: -- against the company for potentially hundreds of
20 thousands of plaintiffs under a (b)(2) equitable relief under this concept that you
21 could somehow put in this attendant, you know, damages jurisdiction with the
22 equitable jurisdiction.

23 THE COURT: Uh-huh.

24 MR. GREENBERG: The supreme court said no, we're not going to use that

1 standard to certify --

2 THE COURT: Uh-huh.

3 MR. GREENBERG: -- what's really a (b)(3) damages class in that case.

4 A very different set of circumstances and concerns were presented in Wal-Mart
5 than in here where we're dealing with a (b)(3) case for damages, Your Honor.

6 The Sarvas case, which, again, I did cite on page 7 --

7 THE COURT: Uh-huh.

8 MR. GREENBERG: -- is relying on established Ninth Circuit authority and I
9 have the authority here. I looked at this last night. I mean, the Ninth Circuit revisited
10 this issue just last year in the Just Film case. I can give you the cite. And just to
11 quote briefly, it says typicality -- because when we talk about representatives, the
12 idea that the representatives' claim has to have some common nexus, it must be
13 typical of the class, is tied to this question of adequacy of representation. They
14 must be in a position --

15 THE COURT: Uh-huh.

16 MR. GREENBERG: -- to also advocate on behalf of the class effectively.
17 And typicality, and I'm quoting, "focuses on the class representatives' claims but
18 not the specific facts from which the claim arose and insures that the interest of the
19 class representative, quotes, aligns with the interest of the class." They cite earlier
20 Ninth Circuit authority, the Hanon case. "The requirement is permissive, such that
21 representative claims are typical if they are reasonably coextensive with those of
22 absent class members; they need not be substantially identical." Citing Parsons
23 and Hanlon, which are also earlier Ninth Circuit decisions. "Measures of typicality
24 include whether other members have the same or similar injury, whether the action

1 is based on conduct which is not unique to the named plaintiffs, and whether other
2 class members have been injured by the same course of conduct.”

3 THE COURT: Do those -- do any of those Ninth Circuit cases get into this
4 temporal mirror stuff? Or, in other words, do they directly address the question of
5 how much of a claim -- a claim's time period does the representative plaintiff need
6 to be able to cover in terms of having been employed? Any of those address that
7 directly?

8 MR. GREENBERG: I understand your question, Your Honor, and I want to
9 be perfectly honest with the Court, as I always should be.

10 THE COURT: That would be a good idea.

11 MR. GREENBERG: They do not, simply because it's not an issue that's
12 raised or discussed in these decisions because this question of temporal or time
13 frame identity that defendants are raising here --

14 THE COURT: Uh-huh.

15 MR. GREENBERG: -- has no basis in actual facts. If the defendants came
16 before this Court -- let's say, for example, this was a discrimination case that
17 involved a certain hiring application that was used by the employer for a two year
18 period and then was stopped and was not used for another two year period and
19 we were seeking relief for people who were denied jobs based upon use of this
20 discriminatory application process. Then clearly in that situation you have a bright
21 line chronologically in terms of the claim. So, somebody who came in in this later
22 two year period, they wouldn't be in a position to claim that the application process
23 in the earlier two year period was discriminatory because they weren't part of that
24 situation, those set of facts, okay, Your Honor.

1 But we have nothing in this case or this record except defendants'
2 assertions that somehow, well, the policies were different, so forth and so on, during
3 various periods of time. There were different record keeping that was maintained by
4 the employer, this is true. Starting in 2013 we had an asserted payroll record was
5 keeping track of the hours per pay period, which did not exist before 2013 and we
6 had an asserted policy by the defendants starting in 2013 to pay minimum wages.
7 But the plaintiffs still assert that they were not in fact being paid for all of their hours
8 of work under the minimum wage standard, that even in 2013 the records were
9 not accurate. Prior to 2013 there are no records per payroll period, so their
10 compensation every payroll period wasn't sufficient to meet the minimum wage.

11 So, Your Honor, the claims are the same, okay. There is no evidence
12 here that there is any impairment to the typicality or the adequacy of representation
13 requirements of the class action.

14 THE COURT: Uh-huh.

15 MR. GREENBERG: I would also point out that Mr. Sergeant, who they don't
16 mention, was a -- has been appointed by this Court as a class representative. He
17 worked in 2014, so he actually worked during the period of time when this different
18 payroll record-keeping system was in place, Your Honor, that is at issue in this
19 litigation. So even there, not that that should be a legitimate dividing line anyway
20 for the certification question, but we have representatives who were present during
21 both sets of record-keeping policies, Your Honor.

22 I mean, if Your Honor wants me to address this further, I would also
23 point out the East Texas Motor Freight Systems case, which is cited by defendants.
24 This is one of the leading United States Supreme Court cases dealing with this

1 question of adequacy and typicality of class representatives. Just to briefly quote
2 from the decision and the supreme court in upholding the -- in finding that the class
3 certification was granted in error -- the Court of Appeals in that case actually granted
4 the class certification post --

5 THE COURT: Uh-huh.

6 MR. GREENBERG: -- post district court proceedings. The supreme court
7 reversed it and they reversed it because in that case that was a discrimination case
8 where there were claims of discrimination in promotion that were being brought
9 supposedly on behalf of a class of bus drivers. I believe it was transit workers. And
10 the supreme court said that these representatives, Rodriguez, Perez and Herrera
11 were not members of the class of the discriminatees they purported to represent.
12 The district court found that these plaintiffs lacked the qualifications to be hired as
13 line drivers. They simply on the merits could not have qualified for these jobs that
14 they said were being discriminatorily withheld from people of a certain ethnicity. So
15 thus they could not have suffered -- they suffered no injury as a result of the alleged
16 discriminatory practices. So --

17 THE COURT: You're talking about the East Texas Motor Freight case?

18 MR. GREENBERG: Yes, I am. I mean, where you have a situation where a
19 representative has not sustained the injury that is alleged by the class, okay, where
20 clearly on the record this representative has not been injured in the same fashion
21 as the class injury, they can't be a representative. We understand that. That's
22 what the Supreme Court is telling us in this case and in similar cases.

23 It's not the case here. I mean, in the motion for partial summary
24 judgment, Your Honor, which I would just briefly remind we're still waiting for a

1 decision on, Your Honor. Your Honor took that under advisement and with trial
2 approaching it would be helpful for us to hear --

3 THE COURT: You'd like an answer to that?

4 MR. GREENBERG: Well, I don't want to jump to that, Your Honor.

5 THE COURT: Yeah.

6 MR. GREENBERG: We're addressing this.

7 THE COURT: Uh-huh. Yeah.

8 MR. GREENBERG: But in connection with that motion we had documented
9 and it was undisputed that Mr. Sergeant was shown by defendants' own records
10 to be owed certain unpaid minimum wages, from defendants' own records. We
11 have the assertions, and this is discussed at page 6 of the opposition, we have
12 Mr. Murray's declaration that he was working on average 11 hours per shift. If
13 Mr. Murray was working 11 hours per shift, then he's owed over \$2,000 in unpaid
14 minimum wages based upon simple arithmetic in terms of the analysis, the table
15 that was constructed by plaintiff's expert that, you know, we'll have testimony
16 presented at trial of. So assuming the plaintiffs are able to make out their
17 allegations, their allegations are accepted as factually correct, they have the injuries
18 that are alleged to the class. This isn't the East Texas case where the facts were
19 determined to show that the representatives had no injury that was common to the
20 class. So I think I've adequately addressed this question.

21 THE COURT: Yeah.

22 MR. GREENBERG: Unless you have other questions --

23 THE COURT: No.

24 MR. GREENBERG: -- regarding the representative fitness, Your Honor.

1 THE COURT: No. Let's go to the claim that any punitive damages should
2 be dismissed because --

3 MR. GREENBERG: Yes.

4 THE COURT: -- partly because it's not -- it's based on fraud claims which
5 are not amenable to class treatment.

6 MR. GREENBERG: Well, Your Honor, on page 13 and page 14 there's --

7 THE COURT: Of yours?

8 MR. GREENBERG: -- of my opposition there's a discussion as to some
9 of the reasons, and some of this overlaps with the question of Mr. Nady's liability
10 individually --

11 THE COURT: Yeah.

12 MR. GREENBERG: -- as to why punitive -- why there's enough in the record
13 here that a punitive damages finding could be warranted on the evidence that's
14 before the Court, which is that as discussed at page 13 and this Court is aware, in
15 February of 2013 Your Honor made a finding that these class members are subject
16 to the minimum wage provided by Nevada's Constitution.

17 THE COURT: Uh-huh.

18 MR. GREENBERG: Defendants for another 15 months, and Mr. Nady
19 testified about this at his deposition, did not comply with the requirements of Nevada
20 law. Despite being aware of Your Honor's determination that coverage existed,
21 they continued to take a tip credit, which was permissible under the federal law but
22 not under state law, and as a result underpaid the drivers approximately \$170,000
23 during that period of time because they were giving themselves a tip credit and
24 offsetting their minimum wage requirements under their own records with those tips.

1 I mean, that goes back again to the partial summary judgment motion, Your Honor.
2 So that -- I would submit that standing alone is sufficient to open a question of
3 willfulness, intent and so forth that would allow a finding of punitive damages.

4 I mean, we also have -- and again, this is discussed at page 13, we
5 have this history in 2009 of the defendants being told to keep proper records of the
6 hours that people are working. The fact of the matter and the statute requires --
7 608.115 requires the keeping of these hours worked per pay period records. They
8 were not kept by the defendants until 2013. They were advised in 2009 to keep
9 them. They promised the U.S. Department of Labor they would. They did not.
10 The U.S. Department of Labor made a finding in 2013 that the defendants were
11 manipulating the trip sheets and were forcing drivers to put in break time in their trip
12 sheets that were false in an attempt to conceal the hours they were working. Now,
13 I know defendants say this is multiple hearsay. Your Honor, the conclusions of the
14 Department of Labor are not in fact hearsay. I mean, the fact that they were told
15 this by other drivers may be hearsay, but it was a government agency, they reached
16 that conclusion. So --

17 THE COURT: From that I conclude that you would be intending to introduce
18 evidence during this stage of the proceedings, this trial, of those kinds of activities,
19 notwithstanding your argument that it's not really necessary -- that that's not really
20 the gravamen of the case anymore.

21 MR. GREENBERG: Your Honor, it's never been the gravamen of the case.
22 We don't rely on the defendants' records to show the hours that were worked, okay.
23 We agree the compensation records are accurate. The only thing that's agreed
24 upon between the parties here is we know what these people were paid and nobody

1 disputes what they were paid. The question is how many hours did they work for
2 that pay every week, every two week pay period?

3 THE COURT: Uh-huh.

4 MR. GREENBERG: That is the factual issue in dispute between the parties,
5 Your Honor. The accuracy of the trip sheets or the accuracy of the payroll period
6 records they started keeping in 2013 is an issue of fact for trial. The plaintiffs
7 dispute the accuracy of those records, but their claim doesn't arise as a result of
8 those records not being accurate. The plaintiffs are going to have to come in here
9 and they're going to have to present their assertions regarding their hours of work.
10 They are not going to rely upon the defendants' records, at least not solely. They
11 assert that they worked more hours than whatever the defendant has recorded
12 for them.

13 So the fact that they assert the records are inaccurate is not their
14 cause of action. That's just an evidentiary issue. Defendants are free to come in
15 and say, look, these are the records. Here we have this trip sheet from this plaintiff,
16 he filled this out. The jury could agree that it's accurate or it could agree that the
17 plaintiff -- the plaintiff testifies, well, I was forced to write this break time in because
18 they told me I had to do it because they didn't want me to show I was working too
19 many hours because they'd have to pay me more wages. That's just a factual
20 issue.

21 THE COURT: So, failing that, if the defendants don't do that, what you just
22 described, producing trip sheets and making an argument from that, is it true that
23 you would not be bringing in evidence during this phase, this trial phase of the
24 claims that Mr. Nady and/or his agents were importuning them to or forcing them

1 to fill out phony trip sheets? I'm trying to figure out --

2 MR. GREENBERG: I understand Your Honor's question. It's an interesting
3 question, Your Honor, and I want to be very frank, as always, with the Court. In
4 terms of their case-in-chief, if defendants do not intend to rely on the trip sheets,
5 okay, the fact that the trip sheets are inaccurate is not something that the plaintiffs
6 will bring up in their case-in-chief. If the trip sheets were not to be mentioned at all --

7 THE COURT: So it would only be --

8 MR. GREENBERG: -- then the plaintiffs have no reason to question their
9 validity because it's not an issue, it's not a piece of evidence introduced in the case.
10 In respect to --

11 THE COURT: So --

12 MR. GREENBERG: Yes?

13 THE COURT: -- it would only be essentially to impeach any defense witness
14 who attempts to prove the contrary?

15 MR. GREENBERG: That is -- that is correct, Your Honor. It would be an
16 attempt to either show the defendants' reliance on the trip sheets is not correct,
17 and in addition, Your Honor, we have testimony already in the record here that
18 those 2013 to 2015 payroll records which did purport to record the hours worked
19 per pay period, that testimony is that those hours came from the trip sheets. So
20 to the extent that defendants have maintained that those records are accurate,
21 the question of the trip sheets' accuracy then comes in because they've testified
22 that those computerized records were derivative of the trip sheets, Your Honor.

23 So that's the extent to which plaintiffs would be looking towards that
24 issue, okay, but that's not where our cause of action lies. Our cause of action is

1 very simply, look, we worked these number of hours and what you paid us wasn't
2 enough to meet the minimum wage for every pay period every week that we worked
3 these hours. Some weeks they were. I mean, some weeks they were in compliance.
4 There's no question that certain class members got paid minimum wages for some
5 majority. In fact, there are probably some people who are class members in this
6 case under Your Honor's order, which broadly certified the class as to all taxi drivers
7 employed, who probably aren't owed any minimum wages.

8 This is one of the issues I raised in the bifurcation motion which Your
9 Honor recently resolved and in resolving that -- not that I necessarily agree with Your
10 Honor's approach or am completely clear on exactly how Your Honor envisions us
11 moving forward with this case, but one of the things Your Honor did recognize is that
12 the jury is going to have to be free to make an assessment, an inference based upon
13 the evidence here as to the average hours that were worked because we don't have
14 records per pay period. This discussion that defense counsel was engaging in with
15 Your Honor about the need to make these individualized findings as to each single
16 person in terms of how many hours they worked, Your Honor has clearly recognized
17 in that order that that is not an appropriate way for us to proceed because essentially
18 it would absolve an employer in this situation from any sort of reckoning on a class-
19 wide basis --

20 THE COURT: Uh-huh.

21 MR. GREENBERG: -- for a large scale violation of the law by not keeping
22 accurate records. I mean, this was the Mt. Clemens v. Anderson case and so forth,
23 so the law on this is well established. Your Honor has recognized that. So we're
24 going to have to go and have a jury empowered to make a broad finding of some sort

1 based upon the evidence presented about the hours worked. And then based upon
2 that make an attendant finding about what may be owed to the class because, again,
3 we know what they were paid. It's just a question of were they paid enough for the
4 hours that they worked, and if they weren't, how much less, okay. And we have
5 experts who will be prepared to testify as to that, Your Honor. But --

6 THE COURT: Okay. Uh --

7 MR. GREENBERG: Yes, Your Honor, question?

8 THE COURT: Your argument about the punitive damage that you're claiming
9 here, part of it is, at least it's a fairly almost all encompassing argument about the
10 punitive damage claim, but part of it is that this is not a breach of contract case,
11 this is a violation of a constitutional right. Is there anything further that you want to
12 say about that?

13 MR. GREENBERG: I would just respond to something that defendant was
14 saying, that the constitutional amendment's language itself, it doesn't say anything
15 about punitive damages. It authorizes a relief of damages. But -- and this is at
16 page 11 of my opposition and this is the actual language in terms of talking about
17 what can be secured by the employer. The employer, and then quote -- employee,
18 quote, "shall be entitled to all remedies available under the law or in equity
19 appropriate to remedy any violation of this section, including -- including but not
20 limited to back pay damages, reinstatement or injunctive relief."

21 When it says damages, Your Honor, it doesn't say compensatory
22 damages. It doesn't say punitive damages, either, I agree. It just says damages
23 generally. But when you read this broad language, I don't see how you can read
24 into this an interpretation that this precludes punitive damages. So I would submit

1 Your Honor needs to look beyond this language to the broader circumstances of
2 this case, the broader policy implications, which I discuss in my brief, Your Honor,
3 so I don't want to repeat what's in the brief, okay.

4 THE COURT: Okay. What about their argument that the only claims you
5 have against Mr. Nady are -- sound in civil conspiracy, that there's been no discovery
6 conducted of that and that should be dismissed at this point? And with your
7 response to that, please also indicate would you be intending, once this trial phase
8 is over, reopening discovery about Mr. Nady?

9 MR. GREENBERG: Well, Your Honor, Your Honor bifurcated the claims
10 against Mr. Nady simply because if A Cab gets a finding of no liability or if there is
11 a finding of liability against A Cab and A Cab satisfies that liability, there's no claim
12 against Mr. Nady.

13 THE COURT: Okay.

14 MR. GREENBERG: So I would submit that in compliance with that we really
15 shouldn't be spending your effort and time reviewing this issue at this point. In
16 terms of the answer to your question, whether we would pursue additional discovery
17 against Mr. Nady, we are prepared to proceed against Mr. Nady individually after
18 stage one of this case if A Cab doesn't satisfy the judgment. I mean, we're not --
19 we're not necessarily opposed to having further discovery, but we had no request
20 for that. It was not contemplated. Mr. Nady did specifically give a deposition in his
21 individual capacity. He gave that in June of last year, which was actually prior to
22 your order in July which granted the bifurcation, okay.

23 In terms of why Mr. Nady would be in a position to be held personally
24 liable if A Cab doesn't satisfy the judgment or liability here, this is discussed at

1 page 14 of the opposition. The issue is that Mr. Nady is the sole controller of the
2 company. He is the sole beneficiary of the company. He's the sole decision maker.
3 He's not an absentee owner. He profited substantially from the company's business.
4 If the company had paid the minimum wage, if A Cab had paid the minimum wages
5 during this period of time, we're talking hundreds of thousands of dollars, perhaps
6 a million dollars or more, that would have decreased the profits of the business that
7 Mr. Nady personally received by a like amount, okay.

8 This is -- it's not disputed that he received substantial income from the
9 company. We have the financial records. They're, you know, under seal. I have not
10 submitted them in camera. I don't think it's necessary because defendants are not
11 disputing that the business was in fact profitable and Mr. Nady in fact did receive
12 substantial profits from the business. If the business was never profitable, then I
13 don't know that Mr. Nady could necessarily be held liable, you understand, because
14 the nature of the liability, as in the fourth claim for relief, Your Honor, is also really
15 in the nature of unjust enrichment.

16 THE COURT: Uh-huh.

17 MR. GREENBERG: And I would submit, Your Honor, actually that the claim
18 against Mr. Nady, if it was to proceed, would really be a claim in equity, okay, under
19 a theory of unjust enrichment or alter ego --

20 THE COURT: Uh-huh.

21 MR. GREENBERG: -- not a jury type damages claim, Your Honor. And we
22 would stipulate to limit that claim at this point. I mean, I realize this has been a little
23 vague so far in the proceedings, but we would agree that that would be the nature
24 of the claim that would proceed against him at that point if necessary. And again,

1 Mr. Nady does not dispute --

2 THE COURT: So, when you say it would be on the basis of unjust
3 enrichment, is that excluding, then, any claim or evidence of a civil conspiracy?

4 MR. GREENBERG: Well, Your Honor, the civil conspiracy or aiding and
5 abetting claim is made here simply because Nevada law recognizes these concepts.
6 But quite candidly, they're not well defined --

7 THE COURT: Uh-huh.

8 MR. GREENBERG: -- in the jurisprudence by our supreme court. And a
9 question could be argued, well, is this really any different, an aiding and abetting
10 or civil conspiracy claim, in these circumstances is it really any different than an
11 alter ego or an unjust enrichment claim --

12 THE COURT: Uh-huh.

13 MR. GREENBERG: -- because Mr. Nady essentially is using the entity as his
14 agent. You know, it's a conspiracy of himself with his agent. You understand what
15 I'm saying. So, the claim is pleaded, Your Honor, because, again, the law is a bit
16 unclear, but I don't know that there's any real distinction. You understand what
17 I'm saying --

18 THE COURT: Okay. Uh-huh.

19 MR. GREENBERG: -- between the two.

20 THE COURT: Okay. How about decertifying the class?

21 MR. GREENBERG: Well, Your Honor --

22 THE COURT: Because it's essentially a fraud claim, not a -- anything to say
23 more about that?

24 MR. GREENBERG: I really don't know how further to address that than I have,

1 Your Honor, except to say again that defendants are trying to make this claim into
2 something that it isn't. The ultimate question is what hours did these people work?
3 I mean, we know what they were paid. Was it sufficient to meet the minimum wage
4 requirements? The reason that it wasn't sufficient is not germane to the minimum
5 wage amendment. The minimum wage amendment doesn't care if it was a mistake,
6 if there was an intentional record-keeping violation. Whatever the cause is irrelevant.
7 The claim doesn't -- when we talk about fraud, we know -- you know, we study in
8 law school common law, you know, fraud, misrepresentation, reliance, etcetera.
9 There's no -- that doesn't enter into this question of liability here. It's not a question
10 of misrepresentation. It's not a question of reliance. It's not a question of whether
11 they told the truth or didn't tell the truth.

12 THE COURT: Uh-huh.

13 MR. GREENBERG: It's a question of, well, how much did you pay these
14 people and how many hours did they work? And I think Your Honor understands
15 that, so I'm repeating myself. You've been very generous with your time this
16 morning, Your Honor, so I don't want to take up more than necessary, unless
17 there's something else I can assist the Court with.

18 THE COURT: No.

19 MR. GREENBERG: Thank you, Your Honor.

20 THE COURT: Thank you. All right.

21 MS. RODRIGUEZ: Your Honor, I just want to reply to a few of the things
22 that Mr. Greenberg stated. I'll start with the most recent, which has to do with
23 the claims against Mr. Nady. I think I heard an admission -- at one point it was
24 a stipulation as pertains to this conspiracy theory issue. I pointed out to the Court

1 that Mr. Greenberg keeps indicating that the defendants are trying to paint this
2 picture of how -- of what the plaintiffs' case are intending to prove at trial. That's
3 why I attached the complaint that we're using. The wording that I'm moving for
4 summary judgment is right out of their complaint.

5 THE COURT: Uh-huh.

6 MS. RODRIGUEZ: Mr. Greenberg is dancing around the issue saying, well,
7 no, now we're just talking about an unjust enrichment, we're not really talking about
8 these other things. As it is, they still stand. The civil conspiracy -- and I know that
9 he's arguing, well, it's kind of ambiguous, we really don't know what civil conspiracy
10 is. We do know what civil conspiracy is. I briefed it. I laid out the elements on
11 page 10 of what you must show for a civil conspiracy. They must show that each
12 member of the conspiracy acted in concert, came to a mutual understanding,
13 had an unlawful plan. One of them committed an overt act to further it. There
14 are specific elements. And that was why I indicated there's been absolutely no
15 evidence to support this claim. Again, Your Honor, their complaint is attached
16 as my Exhibit No. 1. It's their third claim for relief, which is civil conspiracy, aiding
17 and abetting, concert of action.

18 THE COURT: Do you happen to have a spare copy of that? I don't have --
19 I have your motion but I don't have the --

20 MS. RODRIGUEZ: The exhibits?

21 THE COURT: -- the exhibits with it.

22 MS. RODRIGUEZ: I'm sorry, I don't, Your Honor. The only one I have is
23 attached, but I can pull it out here, you know.

24 THE COURT: Yeah, let's just --

1 MS. RODRIGUEZ: Let me pull it out of my pleading.

2 THE COURT: We might as well take a minute and look at that because
3 my question is going to be, Mr. Greenberg, does that mean that at this point you
4 would agree to dismiss one or more claims? If you're going to proceed on unjust
5 enrichment, what I don't know is if your claims against Mr. Nady are separated
6 that way. Do you have a separate unjust enrichment and a civil conspiracy?

7 MR. GREENBERG: Yes, Your Honor. Unjust enrichment is pleaded as the
8 fourth cause of action here, okay, which I would submit is really synonymous with
9 this concept of the use of the corporate entity as an alter ego --

10 THE COURT: Okay.

11 MR. GREENBERG: -- or as an agent for that purpose, okay. The aiding,
12 abetting, conspiracy claim is in the third cause of action, okay.

13 THE COURT: Okay.

14 MR. GREENBERG: Your Honor, I would -- if Your Honor is of the belief
15 that there cannot be a civil conspiracy or an aiding and abetting claim, given the
16 configuration here of this case, okay, because again, this is not a question of there
17 being two independent-thinking separate defendants.

18 THE COURT: It's not a question of whether I have come to some conclusion
19 that means that I would essentially prohibit you from proceeding on that cause of
20 action anyway. That's not my question. My question is are you ready to the point --
21 as you've already said, you're going to be relying on unjust enrichment. Does that
22 mean we can drop a claim here --

23 MR. GREENBERG: Well --

24 THE COURT: -- and clean up what we're going to trial on?

1 MR. GREENBERG: I would with one caveat, Your Honor, that the third
2 cause of action raises this allegation that the corporation is an alter ego of Mr. Nady.
3 Is that even a separate civil claim, alter ego status? I don't know, Your Honor, okay.
4 I believe it would be tied to this question of unjust enrichment, which is that it all
5 comes back to Mr. Nady personally. It's not a question of him conspiring or aiding
6 and abetting someone else's conduct or conspiring with someone else.

7 THE COURT: Uh-huh.

8 MR. GREENBERG: It's a question of his unjust enrichment and inequitable
9 conduct of his control over the corporate entity. And I would be --

10 THE COURT: Do you have that there?

11 MS. RODRIGUEZ: I do, Your Honor.

12 THE COURT: Can I take a look at it?

13 MR. GREENBERG: I would be willing to limit the claims in that fashion,
14 Your Honor, because ultimately it is a question of his unjust enrichment, in my view,
15 based upon his misuse of the corporate form. And I apologize that the pleading
16 may not be clear on this issue, but I would stipulate to the dismissal of the third
17 cause of action and just proceed on the unjust enrichment on the fourth cause of
18 action with the understanding, the caveat that to the extent that this alter ego status,
19 this lack of independent status of the corporate entity -- if that is a separate legal
20 issue and I'm not sure that it is, Your Honor -- would be encompassed within the
21 fourth claim for unjust enrichment. I don't see that a conspiracy, a civil conspiracy
22 claim in the conventional sense necessarily lies here, and I --

23 THE COURT: Well, what I'm hearing you say is that insofar as the third
24 cause of action alleges a civil conspiracy, that you would be willing to withdraw any

1 such claim. But to the extent that the third cause of action asserts an alter ego
2 claim --

3 MR. GREENBERG: Yes, Your Honor.

4 THE COURT: -- you would keep it in there.

5 MR. GREENBERG: That is correct. I would withdraw any claims in the
6 third cause of action except the alter ego claim --

7 THE COURT: Okay.

8 MR. GREENBERG: -- because I believe that is really the essence of the
9 claim against Mr. Nady is this question of misuse of the corporate form as an agent
10 in what is an equitable sort of remedy of the alter ego status.

11 THE COURT: Well, that at least would sort of clean up what we're headed to
12 trial on, except that we're not really talking about something that would be litigated
13 in this first trial anyway, are we?

14 MR. GREENBERG: That is correct, Your Honor. I don't know that we need
15 to deal with this, but I'm certainly pleased to help the Court by proceeding in that
16 fashion as we've just discussed.

17 THE COURT: Well, I think we need to deal with it -- well, for one thing it
18 causes me to ask the question which of these claims are we going to present to
19 a jury now and which claims are we not going to present to the jury?

20 MR. GREENBERG: It is my position, Your Honor, and consistent with the
21 July order on the bifurcation that the question of Mr. Nady's personal responsibility
22 for anything that the company owes the drivers should not be determined at this
23 stage. I mean, because that's contingent.

24 THE COURT: Okay, but that doesn't really address are we able to excise

1 any of the causes of action themselves from the consideration of the jury in this
2 first phase trial?

3 MR. GREENBERG: I don't think the jury needs to consider whether the
4 corporation was an alter ego of Mr. Nady or whether Mr. Nady was unjustly enriched
5 by the violations that are alleged, assuming the jury finds violations.

6 THE COURT: So the third claim, then, would not be presented to this jury?

7 MR. GREENBERG: That is correct, Your Honor. Neither the third nor the
8 fourth claim. And we would limit --

9 THE COURT: Neither the third or the fourth claims?

10 MR. GREENBERG: Right. And we would limit the third claim simply to be
11 this question of an alter ego status.

12 THE COURT: Okay.

13 MS. RODRIGUEZ: I can appreciate that, Your Honor. And it sounds, again,
14 although it's not confirmed, that the civil conspiracy cause of action is being dropped
15 in its entirety and the only thing that we're possibly --

16 THE COURT: Except for alter ego out of that.

17 MS. RODRIGUEZ: Well, okay, but alter ego is actually part of the fourth one
18 where he's alleging unjust enrichment. And unjust enrichment, I'm still moving for
19 summary judgment on that because of a couple of reasons.

20 THE COURT: Right.

21 MS. RODRIGUEZ: Again, just because we're bifurcating and we're in part
22 two, discovery is closed, we're done. We've had our experts. We've had everything
23 that's going to be produced and there is no evidence to support unjust enrichment
24 alter ego. First of all, unjust enrichment is a quasi-contract. We're talking about

1 contract again, a contract cause of action, which Mr. Greenberg has already just
2 represented to the Court this is not a contract claim when it conveniences him.
3 Now he's going back to a contractual claim alleging unjust enrichment. Part two
4 of that is the only thing I heard from him --

5 THE COURT: Well, let me see if I understand the first part that you said.
6 You're saying that any unjust enrichment claim is actually a contract?

7 MS. RODRIGUEZ: Arises -- correct. Arises from a contractual arrangement,
8 which we've argued --

9 THE COURT: Okay. But you're not saying that an unjust enrichment claim
10 necessarily requires that you first prove a breach of a contract?

11 MS. RODRIGUEZ: No, Your Honor. It is a --

12 (Speaking to Mr. Wall) Do you want to speak to this?

13 MR. WALL: May I, Your Honor, just briefly on that?

14 THE COURT: Yes.

15 MR. WALL: The term unjust enrichment gets bandied about as though if
16 somebody gets unjustly enriched there's a cause of action. There's no such tort
17 cause of action. It's quasi-contract. It exists when there should be a contract --

18 THE COURT: Yeah.

19 MR. WALL: -- that we imply --

20 THE COURT: Okay.

21 MR. WALL: -- and you have to prove a breach of that contract. That's the
22 only recognized claim for unjust enrichment in Nevada.

23 THE COURT: All right. So based on that, we're not looking at saying --
24 we're not limiting -- the fact that the defendant is not alleging an actual breach of

1 the contract, of the written contract or of a contract does not preclude the plaintiff
2 from proceeding on alter ego -- no, I'm sorry, on unjust enrichment. I don't know
3 if I clarified anything with that. Let's go back to --

4 MS. RODRIGUEZ: Okay.

5 THE COURT: Let's go back to that the -- well, to address your argument --

6 MS. RODRIGUEZ: Uh-huh.

7 THE COURT: -- that if -- based on what's just been said that there could be
8 no unjust enrichment claim against Mr. Nady personally --

9 MS. RODRIGUEZ: Right.

10 THE COURT: Okay.

11 MS. RODRIGUEZ: Right. The only argument I heard from plaintiff, again,
12 with no evidence to support it, but his only argument in support of that is that Mr.
13 Nady was an involved owner, the sole decision maker in the company. That is not
14 enough to do what plaintiffs are wanting to do with that, which is basically to pierce
15 the corporate veil. And they are looking beyond satisfaction of a judgment. They're
16 throwing out all kinds of things in their response, saying, oh, the company may not
17 be able to satisfy the judgment, they might declare bankruptcy, we need to have
18 Mr. Nady as a back-up. What they've presented thus far is not sufficient to pierce
19 the corporate veil or to argue this alter ego or this unjust enrichment at this point,
20 and we're at the point where we're within 30 days of trial. Granted that the Court
21 is not going to hear those first set of issues --

22 THE COURT: Correct.

23 MS. RODRIGUEZ: -- but I would expect or envision that when we finish
24 part one we're going to go into part two because the Court did not authorize, again,

1 a whole reopening, now let's start proving these causes of action of alter ego and
2 unjust enrichment.

3 THE COURT: Uh-huh.

4 MS. RODRIGUEZ: So I think at this stage the Court, with the plaintiff failing
5 to come forward with anything to support that, should dismiss Mr. Nady entirely from
6 this action. There is nothing to allow them to pierce the corporate veil or to argue
7 unjust enrichment or alter ego at this stage.

8 THE COURT: I would resist the invitation to dismiss those claims at this
9 point. I would not do so, you know, with prejudice. I think that in order to really rule
10 on that motion it is -- it would be very instructive or useful or helpful to the Court to
11 arrive at the proper decision to have the first phase of the trial done and away and
12 then be able to look and see if with what remains is there a claim that they could
13 go forward on. So I would deny that part without prejudice.

14 Okay, anything more on the rest of the argument?

15 MS. RODRIGUEZ: Yes, Your Honor. On the punitive damages claim the
16 complaint in this matter, as the Court is aware, was filed back in October of 2010,
17 claiming -- making a claim for punitive damages. The only thing I heard from the
18 plaintiffs in support of that claim for punitive damages was their argument that
19 A Cab ignored a Court ruling three years later in 2013 when the issue was on
20 appeal. Mr. Greenberg argued to the Court, saying that in itself should allow
21 punitive damages to go forward. That's not the basis of this complaint and that's
22 a stretch to say because A Cab was waiting on guidance in the Thomas decision
23 from the supreme court for that to support punitive damages, and that's the only
24 thing they've come forward with other than the fraud claims.

1 So I would ask the Court to consider the punitives as a dismissal.
2 There's -- everything that we've shown has been that A Cab -- I think it's undisputed
3 A Cab was making efforts to subsidize the minimum wage. There was no intent
4 to maliciously deprive the drivers. The records that have all been produced show
5 that there is a minimum wage subsidy. There was efforts to do an appropriate
6 calculation, so there's not a malicious intent to defraud the drivers.

7 What I heard Mr. Greenberg say, and this kind of goes into the last
8 point, what he indicated he was going to put on the stand, if I'm understanding him
9 correctly, is the plaintiff saying this is what I got paid, but I wasn't paid for all of my
10 hours. I'm alleging I worked 12 hours and defendants are alleging that I worked
11 less than that. And, yes, we're going to put the trip sheets into evidence to say,
12 well, didn't you basically sign off that you only worked 8 hours and your documented
13 proof shows 8 hours? So the trip sheets are going to come into evidence. That's
14 the plan. But if the Court would read into that, what we just heard from Mr.
15 Greenberg is this is an admission that this is not a minimum wage claim. This is
16 an hours worked claim.

17 And the last point I would point out to the Court is the East Texas
18 case, as well as the Wal-Mart case --

19 THE COURT: Before we move on to that, how does a claim that -- you just
20 called it an hours worked claim, is that what --

21 MS. RODRIGUEZ: Unpaid hours.

22 THE COURT: Unpaid hours. How is that different from a minimum wage
23 claim in the circumstance where their theory is that they don't dispute or contest
24 what the amount was they were paid, they dispute or contest the number of hours

1 worked, which means if they prove the hours worked then you do have unpaid
2 wages, do you not?

3 MS. RODRIGUEZ: I think they're two separate things, Your Honor. A
4 minimum wage claim, as we are seeing with some of the other ones that are on-
5 going in the state and federal courts, are a circumstance where the driver is simply
6 getting paid \$5.00 an hour instead of 7.25 or 8.25 and the employer is deliberately
7 not paying the minimum wage. That's not the case here. All of the records show
8 that A Cab was subsidizing to bring the driver up to 7.25 or 8.25 where appropriate.

9 The plaintiffs' theory in this is that it wasn't enough because there's
10 some fraud in there where whatever A Cab was relying upon to calculate the hours
11 to come up with the subsidy, there was a mistake in the hours somewhere, whether
12 it's the drivers writing in breaks that they didn't take or the company forcing the
13 drivers to write in breaks, telling them you have to write in breaks. Even though you
14 worked 12 hours, you need to say and sign that you only worked 10 hours. So what
15 the drivers are alleging is I worked an additional 2 hours at 7.25 or 8.25 that I'm not
16 being paid for and I want those hours. And they should have gone to the Labor
17 Commissioner.

18 And one other thing that I would mention about that because Mr.
19 Greenberg is saying, well, this is an impossibility, you're putting this burden upon the
20 plaintiffs to, you know, look at the documents and figure out what each driver was
21 owed. Every driver, every one of his clients is entitled to their documents by law.
22 If you want your personnel record, you go to A Cab, you go to any employer and
23 they have to turn over all your payroll records, your personnel file, your trip sheets.
24 A Cab has always made those available and we turned those over immediately

1 pertaining to their representative plaintiffs. We turned them over for everybody,
2 actually. They just didn't look at them. There's over 300,000 of documents
3 available if any one of those individual people wanted to look at what was I actually
4 paid, what do I think I'm owed.

5 And going back to the beginning of this case, Your Honor, when I took
6 the depositions of their plaintiffs, nobody said anything about minimum wage. They
7 were complaining I wasn't paid for a radio call, I was shorted because of my drop
8 shorts. You know, I think I should have made more money at A Cab because I was
9 making more money at Frias. There was a whole variety of samples that Mr. Murray
10 and Mr. Reno were claiming. But nobody ever said anything about minimum wage.
11 And what Mr. Greenberg has just said, it sounds like they're still not even going to
12 say anything about minimum wage. They're going to say, you know, this bad
13 employer forced me to write in breaks that I didn't take. And that's what this case is
14 going to be about. That's what's going to be tried before the jury, is do they believe
15 the driver or do they believe A Cab, that A Cab is forcing them to write in breaks
16 that they didn't take.

17 So, that's my last point is that the Wal-Mart case and the East Texas
18 case that Mr. Greenberg was talking about, I cited to those because they do support
19 that you must have typicality from a class representative because Mr. Greenberg
20 was talking about typicality and why it's important to have a representative from that
21 time period. I'm trying to find, with Your Honor's indulgence to give me -- I've got
22 my papers all in a mess here. But there was one other area I wanted to mention.
23 I think it's page 11 of my motion, I hope.

24 THE COURT: Baldrige? That's on page 11. Deposition of the plaintiff.

1 MS. RODRIGUEZ: Give me one second, Your Honor. There's a couple of
2 cases here that the courts were very clear about --

3 THE COURT: Teflon.

4 MS. RODRIGUEZ: -- that a theory -- a theory of -- such as what Mr.
5 Greenberg is asserting is not enough to support class action when there is
6 individualized analysis that is required. And I think it's become more and more
7 clear that that's what we have here is an individualized analysis of the hours, the
8 shifts, the health insurance, the number of dependents. All of that needs to be
9 taken into consideration when determining whether a claimant has been underpaid
10 at minimum age or not. (I think I was looking at the wrong motion).

11 THE COURT: At the wrong motion, did you say?

12 MS. RODRIGUEZ: Yeah, my wrong motion. Here it is. It's page 11 of my
13 motion, Your Honor.

14 THE COURT: Uh-huh.

15 MS. RODRIGUEZ: "The presence of a common legal theory" --

16 THE COURT: Yeah.

17 MS. RODRIGUEZ: -- does not establish typicality for class certification
18 purposes when proof of a violation requires individualized inquiry." This is that
19 In re Teflon Products liability litigation. And also Your Honor was correct, the
20 Baldrige case. And that's what we have here is individualized inquiry as to each
21 claimant's claim for damages that in reality will have to be analyzed in order to
22 determine what their claim damages, if any, exist.

23 I don't have anything further, Your Honor.

24 THE COURT: Okay, thank you.

1 MS. RODRIGUEZ: Thank you.

2 THE COURT: Some of these are -- it's not so much they're close calls, they
3 just require an analysis of a difficult topic when we apply these causes of action to
4 facts such as this. The best I can do is this. As to the failure to provide -- to prove
5 any liability or damages, I would deny the motion as to that. As to no representative
6 plaintiff, I would deny it as to that. I believe that there is sufficient authority, albeit
7 predominantly federal authority, that would seem to indicate that they don't have
8 to have all the same time period, as long as there is still typicality and commonality.
9 As to the dismissal of punitive damages, I would deny that on the basis that this
10 is a deprivation of a constitutional right claim and that the wording of that provision
11 does not preclude punitive damages.

12 Anyway, so as to the dismissal of claims against Mr. Nady personally,
13 I've already sort of adverted to that. I think it's appropriate to wait and see what
14 happens with this trial before trying to address dismissal of the claims against Mr.
15 Nady personally. Nor would I decertify the class on the basis that it's fraud, and you
16 can't do a class action for a fraud claim because I am satisfied that Mr. Greenberg
17 has demonstrated that the essential evidence at trial is not going to be about fraud
18 but about the claims that their constitutional rights were deprived, that they were not
19 paid the minimum wage when you do the calculation of how much they were paid
20 and how many hours they worked. It's not an easy decision for me, but I think that's
21 the best I can do.

22 Mr. Greenberg, you will prepare the order and pass it by counsel.

23 MR. GREENBERG: I will get to that. I hope if not this week, on Monday,
24 Your Honor --

1 THE COURT: Okay.

2 MR. GREENBERG: -- because we don't have a lot of time. I appreciate that.

3 MS. RODRIGUEZ: Your Honor, do we have a -- I thought we had a
4 stipulation at least on the civil conspiracy issue. Is Your Honor still holding that one
5 in abeyance?

6 THE COURT: Well, yeah, that's a good point. To the extent that the third
7 cause of action alleges anything beyond alter ego, that part of the motion to dismiss
8 against Mr. Nady would be granted. The Court will not dismiss, however, the third
9 claim insofar as it alleges only an alter ego cause of action.

10 MR. GREENBERG: That is fine, Your Honor.

11 THE COURT: Okay.

12 MR. GREENBERG: That's consistent with my representation to the Court.

13 THE COURT: Now, I need -- before you leave, I need to know something.

14 (The Court confers with the clerk)

15 THE COURT: Mr. Greenberg, you indicated that the Court has not ruled on
16 the partial summary judgment motion?

17 MR. GREENBERG: Yes, Your Honor. We had some extensive argument
18 with you about this last month and a conclusion you had from the bench indicated
19 a finding of liability being established, but it wasn't clear what that meant because
20 liability in the context of a partial summary judgment motion meant a finding that
21 those payroll records established a certain number of hours worked and therefore
22 a certain amount of wages owed based on those hours worked. And you needed
23 to consider this further because in essence in a case like this, Your Honor, liability
24 and damages are intertwined. If you haven't paid for the hours, then you're liable

1 and you're also liable --

2 THE COURT: Hold on just one second.

3 MR. GREENBERG: Yes.

4 THE COURT: We're printing it now to see if this -- because I thought I had
5 already tried not to drag this consideration out; try and get it done. My crack staff
6 is producing it for us right now.

7 MR. GREENBERG: Thank you, Your Honor.

8 THE COURT: It's a minute order of December 14th. Are you familiar with
9 that?

10 MR. GREENBERG: I don't know.

11 THE COURT: Let me get you to take a look at it and see if that still leaves
12 open the issue you're talking about or if that represents the ruling on it.

13 Are you familiar with that, December 14th?

14 MS. RODRIGUEZ: I don't think so, Your Honor.

15 THE COURT: Okay. Can you pump out another one? A couple more.

16 THE CLERK: Uh-huh.

17 MR. GREENBERG: This -- yeah. Your Honor, is it possible I could just
18 briefly address this? I have not seen this before, Your Honor.

19 THE COURT: Okay. It does resolve the issue, does it not?

20 MR. GREENBERG: Well, it leaves it where --

21 MS. RODRIGUEZ: Can I have a chance to see it before he addresses it?

22 THE COURT: Yeah.

23 MR. GREENBERG: Your Honor --

24 THE COURT: Hang on one second.

1 MR. GREENBERG: Yes, let me wait.

2 THE COURT: All right. Mr. Goldberg -- sorry -- Mr. Greenberg.

3 MR. GREENBERG: Yes, Your Honor. It's really the last two lines here
4 dealing with -- and this is where we left this when we saw you on December 14th,
5 Your Honor.

6 THE COURT: Uh-huh.

7 MR. GREENBERG: You said you believed that we had established,
8 plaintiffs, that there was no material issue of fact and that liability was established.
9 My question to you at that point, well, was liability for what? And you said you were
10 going to consider this further because as I was explaining to you a few minutes ago,
11 Your Honor, the claim was that approximately 172 or 177 thousand dollars was
12 owed --

13 THE COURT: Uh-huh.

14 MR. GREENBERG: -- at 7.25 an hour, based on defendants' records, which
15 defendants assert are fully accurate records. And we submitted, you know, a pay
16 period by pay period analysis. It ran about 600 pages for something like 12,000
17 pay periods for 500 class members or whatever it was. I actually have a copy of
18 the papers here, Your Honor, and it established that this amount was owed. So if
19 liability is established based upon the records, then the amount is also established,
20 is what I'm trying to communicate to Your Honor. I mean, I don't know what we
21 would be trying as to that issue if we've shown that there's no disputed issue of fact
22 that, well, these are the records for this period. The parties agree this was what
23 these people were paid or there's no material issue that these people were paid
24 this much and there's --

1 THE COURT: You don't want to dress it up with some expert that did the
2 calculations and says that if liability is established this is what the number is?

3 MR. GREENBERG: Well, Your Honor -- Your Honor declined to invalidate
4 the regulation which would have applied an 8.25 an hour rate. You declined to
5 place the burden as to the health insurance on the defendants. That was very clear.
6 We left on the 14th of December knowing that, okay. The issue, though, was that,
7 again, you had found that -- you were saying that we had established that there
8 was liability.

9 THE COURT: Uh-huh.

10 MR. GREENBERG: And there's at least \$174,839 that are owed that is at
11 least \$10 to each of the class members specified in the motion for partial summary
12 judgment. That's at the 7.25 an hour rate. That was what there's no material issue
13 of fact that was established based upon the records, Your Honor. So if we've
14 established the liability based on those records, based upon defendants' admission
15 that those hours of work are accurate and the parties' agreement that the records
16 reflect what people were actually paid and Your Honor's finding that there's no
17 material issue of fact, then we should have a finding. I mean, we had discussed
18 having immediate judgment entered for that amount on December 14th, but if Your
19 Honor would defer entry of judgment, then that's fine, okay. But my question is,
20 is this question resolved?

21 THE COURT: What is the -- I don't know if you called it an admission, but
22 the agreement with the defendants or by the defendants that there is no -- what
23 was that part you said? You don't contest the calculation itself.

24 MR. GREENBERG: The defendants' expert did not contest the calculation

1 at his deposition. They did not in their opposition to the partial summary judgment
2 point to a single payroll period that was analyzed that was in error. They contested
3 the application of the 8.25 an hour rate and Your Honor denied any application of
4 the 8.25 an hour rate in connection with the motion. So the only portion of the
5 motion that we established under Your Honor's finding was the amount owed at
6 7.25. And as I've explained before, Your Honor, this is really owed because they
7 were applying this tip credit for this 15-month period when they shouldn't have been
8 doing it.

9 So I would ask the Court to allow entry of a determination. Again, it
10 doesn't have to -- if Your Honor doesn't wish to enter an immediate judgment, that's
11 Your Honor's discretion. I don't want to argue the merits of that with the Court.
12 You've been very patient with us today. I mean, I think that would be appropriate,
13 but if Your Honor is going to defer entering any judgment until final judgment in the
14 case in its entirety, that's your decision to make, Your Honor. I would just ask the
15 Court to make the finding that the \$175,839 is owed to the identified class members.
16 There are 319 class members. They're owed at least \$10, okay. If they're owed
17 less than \$10 it would be de minimis and we don't need to be bothered with it.
18 I would ask that be incorporated into Your Honor's order because that is what
19 Your Honor found.

20 THE COURT: Uh-huh.

21 MR. GREENBERG: I don't understand how we could have a finding of
22 liability without that attendant finding as to what the liability was for, Your Honor.

23 THE COURT: Well, let me ask Ms. Rodriguez, do you -- is any of your
24 evidence going to contest the calculation itself?

1 MS. RODRIGUEZ: Absolutely, Your Honor. We argued this extensively.
2 We were here a couple hours. I think Your Honor gave us an hour and a half. So
3 I'm not really sure -- one, I'm objecting because this isn't on calendar this morning.
4 Two, he's arguing for reconsideration of what we've already argued, This is the
5 third time that we're here. We have our experts contesting the calculations.

6 THE COURT: Okay. So they contest the actual -- I'm not talking about --

7 MS. RODRIGUEZ: Right.

8 THE COURT: -- liability --

9 MS. RODRIGUEZ: Right.

10 THE COURT: -- but they contest the actual calculation --

11 MS. RODRIGUEZ: Absolutely.

12 THE COURT: -- of the damages?

13 MS. RODRIGUEZ: Absolutely. And I asked --

14 THE COURT: What do they contest? What do they --

15 MS. RODRIGUEZ: They -- my expert is the only one who did testing
16 comparing the calculations, the tool that they produced with actual review of the trip
17 sheets and the paystubs and, you know, looking at the actual data and showed this
18 is where it's wrong, this is where it's wrong. We had Mr. Greenberg come in this
19 morning and say the majority of the drivers are not even owed anything. Now he's
20 saying, well, they're owed at least \$10. So -- and Your Honor considered this the
21 last time and said no, this is what needs to go before the jury; I can't just pick some
22 random number.

23 THE COURT: That's what I had in mind, Mr. Greenberg, that just because
24 the Court says there is liability, you still do have a necessary step to calculate the

1 damages. And if the defendants are going to say you can't -- the calculation is
2 wrong.

3 MR. GREENBERG: Your Honor, they haven't said that. That's the problem
4 is in their opposition in the record in response to the partial summary judgment
5 motion they say their expert says you should look at the trip sheets, okay. We're
6 looking at the payroll records. The partial summary judgment motion is based on
7 the payroll records. Defendants testified at their 30(b)(6) deposition the payroll
8 records for 2013 to 2015 --

9 THE COURT: So, Ms. Rodriguez, are you saying that the impact or import
10 of the testimony you would produce or evidence you would produce is that you have
11 to use the trip sheets in order to arrive at -- in other words, you can't rely --

12 MS. RODRIGUEZ: Right.

13 THE COURT: -- on --

14 MS. RODRIGUEZ: The tool.

15 THE COURT: -- the evidence which was turned over from the defendants
16 to the plaintiffs as a way to calculate the damages?

17 MS. RODRIGUEZ: Well, that's one part of it, Your Honor. One, we are
18 arguing you need to look at the source documents rather than this abstract tool
19 for the appropriate calculation.

20 THE COURT: How can I let you still make that argument if I have essentially
21 said that they are entitled to rely upon the evidence produced by the defendant in
22 the form of -- you're going to have to help me out.

23 MS. RODRIGUEZ: Well --

24 MR. GREENBERG: The QuickBooks records, Your Honor.

1 THE COURT: I'm sorry?

2 MR. GREENBERG: The QuickBooks records.

3 THE COURT: The QuickBooks records.

4 MS. RODRIGUEZ: That was always our argument was that what we were
5 ordered, what A Cab was ordered to produce by the Discovery Commissioner was
6 nothing that was kept in the normal course, and it was pieces of data that Mr.
7 Greenberg specifically wanted. He wanted certain parts of the data and then --

8 THE COURT: Okay. But didn't -- wasn't that argument overruled?

9 MS. RODRIGUEZ: No, Your Honor, it wasn't. Your Honor agreed with it. If
10 you're talking about the Court, or are you talking about the Discovery Commissioner?

11 THE COURT: The Discovery Commissioner.

12 MS. RODRIGUEZ: Yes. She said you have to give him what he wants.
13 You have to go back and you have to produce all this, the different sets, Excel
14 spreadsheets and things like that. We gave that to him. He's used certain portions.
15 By his own expert's admissions they've only used certain portions. They've ignored
16 other portions to come up with their own figures.

17 THE COURT: Certain portions of the QuickBooks?

18 MS. RODRIGUEZ: Yes. So --

19 THE COURT: What have they -- and let's make it to --

20 MS. RODRIGUEZ: Hours. The big question is hours.

21 THE COURT: Okay.

22 MS. RODRIGUEZ: That's where the big dispute is.

23 THE COURT: And they -- what else in the QuickBooks have they ignored?

24 MS. RODRIGUEZ: I can't tell you off the top of my head, Your Honor. Again,

1 I wasn't prepare to re-argue this. I can go back and look at my notes from -- because
2 I know I have a very large stack from the last time we were here.

3 THE COURT: Yeah.

4 MS. RODRIGUEZ: But one thing that I would mention, Your Honor, and I was
5 going to ask the Court when our motions in limine are actually set because I do have
6 motions on these particular issues, on both Dr. Clauretie's opinions and Mr. Bass'
7 opinions as to whether they're even proper for consideration because whether they're
8 proper -- and this is what we argued the last time, whether the Court will deem them
9 admissible or not, admissible evidence. He has to have admissible evidence for you
10 to rule in his favor on summary judgment that he's asking you to jump over and rule
11 again this morning. So, I --

12 THE CLERK: The motions in limine?

13 MS. RODRIGUEZ: Yes, ma'am.

14 THE CLERK: The 23rd.

15 MS. RODRIGUEZ: The 23rd of January. And we have our pretrial and
16 calendar call on the 18th? Because I was going to ask Your Honor what all you
17 expect us to bring at that -- what the expectation is for our calendar call on the 18th.

18 THE COURT: What's our trial date, then?

19 MS. RODRIGUEZ: February 5th.

20 THE COURT: Well, it's certainly not an ideal way, but I don't really want to
21 change the timing of those. If we have -- if you come to calendar call and we set
22 the -- you know, we -- is it a fixed date? Is it a set date?

23 MS. RODRIGUEZ: Yes. February 5th.

24 THE COURT: Okay. So we know that it's going to go forward.

1 MS. RODRIGUEZ: The trial date.

2 THE COURT: Yeah.

3 MR. GREENBERG: For the stack, Your Honor. Yes.

4 THE CLERK: It's just on the stack.

5 THE COURT: All right. So the only thing that's subject to is whatever
6 happens as a result of your motions in limine and what the impact of that is, which
7 will have to be sorted out completely before we start this trial. Nothing in this case
8 seems to go according to the norm.

9 MR. GREENBERG: I understand, Your Honor. If I could --

10 THE COURT: Yeah, go ahead.

11 MR. GREENBERG: Your Honor, in respect to the issue of the calculations
12 that were presented, the \$174,000 or so I was mentioning to Your Honor in the
13 partial summary judgment motion, again, defendants' expert reviewed the data that
14 was compiled --

15 THE COURT: Uh-huh.

16 MR. GREENBERG: -- and summarized from the QuickBooks. His testimony
17 was: "Dr. Claurette's review of the math I think is good." Okay. He examined the
18 spreadsheet, he examined the A Cab all file, the payroll analysis that was done.
19 It's in the record before the Court.

20 THE COURT: I think we're talking about apples and oranges. When I say
21 to Ms. Rodriguez, do you contest the calculation, she goes back to, yes, we think
22 you have to use the trip sheets. But what I really meant by that -- you're talking just
23 calculation of the math and you're saying, look, there's no contrary evidence, and
24 I think as to that you're probably correct.

1 MR. GREENBERG: Well, Your Honor --

2 THE COURT: So what I think is missing in all this is the impact of my ruling
3 because I think that essentially what I'm saying is that the defendant -- I mean, the
4 plaintiff is entitled to rely upon for the calculation of damages the QuickBooks that
5 were produced by the defendant. I understand that the defendant believes that the
6 trip sheets must be consulted, but in this kind of a case I think that it is appropriate
7 where you have a Discovery Commissioner that has ordered you to produce what
8 the records -- you know, a compilation of what the records indicate is the calculation,
9 is the math, is the numbers.

10 MS. RODRIGUEZ: But the only thing in the QuickBooks, Your Honor, is the
11 pay. That's why we come back to when you actually test the source documents,
12 test the trip sheets like our expert did, then you show there was an adequate -- this
13 subsidy was enough to meet the driver -- to meet the driver's pay.

14 THE COURT: But isn't the QuickBooks -- the pay is dependent upon the
15 hours that are also used in the calculation, is it not?

16 MS. RODRIGUEZ: From the trip sheets.

17 MR. GREENBERG: For 2013 through 2015, the QuickBooks records hours
18 worked for each driver for every two week pay period. This is documented in the
19 presentation to the Court. It is in the spreadsheet that was relied upon and it was
20 reviewed by defendants' expert, Your Honor. So the hours for this period are in the
21 QuickBooks records, along with the compensation that was paid every pay period,
22 Your Honor. So the calculation flows as a matter of course, therefore, Your Honor.

23 MS. RODRIGUEZ: And his reference to our expert saying, yes, the math is
24 right, this was after asking the question ten times and it was a very limited admission.

1 He basically asked the expert, well, if you use A and you use B, isn't it true that that
2 will come up with C? And what Mr. Leslie ended up saying was, well, yeah, if you
3 use those factors one plus one is going to equal two. The math was right using the
4 source that Mr. Greenberg was using. But what Mr. Leslie said was, but no, if you
5 actually look at reality rather than theory, the numbers don't add up. The numbers
6 are not right. And I will give you specific examples, which his experts did not.
7 His experts never looked at a source document to come up with their numbers.
8 Everything is a theory. It's an estimate, by their own admissions. Our expert looked
9 at actual documents, did a calculation, came up with different numbers entirely,
10 and Your Honor considered this.

11 THE COURT: Then why weren't those different numbers used for the
12 calculation, for the math calculation that was in the QuickBooks?

13 MS. RODRIGUEZ: The QuickBooks don't -- you have to go to the trip sheets
14 to actually look at the breaks, to actually look at the actual hours, and those
15 documents are there. Those documents --

16 THE COURT: Well, here's what I'm asking you.

17 MS. RODRIGUEZ: They were used for the QuickBooks. They were used
18 for the QuickBooks, Your Honor. I know what you're asking me. I'm trying to
19 answer it --

20 THE COURT: Yeah.

21 MS. RODRIGUEZ: -- because I can see what you're picturing. But that's
22 why I'm saying the QuickBooks are only --

23 THE COURT: I'm picturing that if you produce something that is in response
24 to a discovery request that says --

1 MS. RODRIGUEZ: Uh-huh.

2 THE COURT: -- based on the documents we have here's the calculation
3 of the hours and here's the calculation of the hourly wage.

4 MS. RODRIGUEZ: No. What we gave per order and in compliance with
5 what the Discovery Commissioner ordered, she ordered an external hard drive
6 to contain all of those trip sheets and turn that over to -- we had them all copied,
7 thousands and thousands of PDFs onto an external hard drive, the actual source
8 documents as well as the paystubs, give those to Mr. Greenberg. We gave those
9 to Mr. Greenberg. Then he wanted other things, and actually the timing was the
10 other way around. First he wanted the QuickBooks' pay rather than the paystubs.
11 We gave to him in electronic format. Then we came back and gave him the paper
12 documents.

13 THE COURT: Okay. None of that changes the fact that this was a
14 QuickBooks document analysis --

15 MS. RODRIGUEZ: Uh-huh.

16 THE COURT: -- that came from the defendants to the plaintiffs --

17 MS. RODRIGUEZ: Right.

18 THE COURT: -- that included hours worked and the pay.

19 MR. NADY: No.

20 THE COURT: No?

21 MS. RODRIGUEZ: No. That's what I'm telling you, Your Honor. That does
22 not have --

23 MR. NADY: It says when they came and when they left.

24 THE COURT: Well, Mr. Greenberg, does it include the hours worked or not?