

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 6

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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
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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
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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
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4	Notice of Entry of Decision and Order	02/13/13	1	39–47
56	Notice of Entry of Decision and Order	06/07/17	5	1033–1050
53	Notice of Entry of Discovery Commissioner’s Report & Recommendations	05/18/17	4	872–880
65	Notice of Entry of Discovery Commissioner’s Report & Recommendations	10/24/17	5	1124–1131
36	Notice of Entry of Discovery Commissioner’s Report and Recommendations	07/13/16	3	547–553
6	Notice of Entry of Order	05/06/13	1	53–56
66	Notice of Entry of Order	12/12/17	5	1132–1135
67	Notice of Entry of Order	12/12/17	5	1136–1139
72	Notice of Entry of Order	01/22/18	6	1270–1275
100	Notice of Entry of Order	10/22/18	9	2042–2045
194	Notice of Entry of Order Continuing Decision on Plaintiffs’ Motion for an Award of Attorney’s Fees on Appeal of	11/17/22	22	5383–5386

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CERTIFICATE OF SERVICE

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

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1 MR. GREENBERG: Your Honor, it did, and this was briefed. I can read
2 you Mr. Nady's deposition testimony that was part of -- it was part of the motion
3 for summary judgment. Mr. Nady testified --

4 THE COURT: I assume this whole thing comes out in a spreadsheet.

5 MR. GREENBERG: Well, yes, Your Honor. That was ultimately what was
6 processed and provided because we --

7 THE COURT: And one of the columns is the hours worked?

8 MR. GREENBERG: That is correct, Your Honor. There was a figure that
9 was kept every payroll period that was minimum --

10 THE COURT: And that hours worked column was information supplied by
11 the defendant?

12 MR. GREENBERG: It was supplied by the defendant. And Mr. Nady testified
13 that that information was more accurate than the trip sheets. Quote: "While the trip
14 sheets didn't reflect when they came in and dinked around five or ten minutes or
15 when they came in and dinked around for five minutes."

16 THE COURT: Well --

17 MR. GREENBERG: We put that time -- he was testifying that we put that
18 extra time into those payroll records from 2013 to 2015.

19 THE COURT: What is the effect of that, then?

20 MR. GREENBERG: Well, according to Mr. Nady's testimony --

21 MS. RODRIGUEZ: It's different.

22 THE COURT: Here's what I -- let me finish.

23 MR. GREENBERG: Yes.

24 THE COURT: What is the effect of them giving you a document that purports

1 to be something that includes the hours worked and the pay -- you know, what the
2 resulting pay is?

3 MR. GREENBERG: The effect is they're bound by it because they never
4 disputed that it was accurate, Your Honor. Under oath they asserted that it was
5 accurate.

6 THE COURT: What authority do you rely on to say they're bound by it?
7 In other words, here's what I'm getting at. Is there still room in this trial for them
8 to dispute that, the accuracy?

9 MR. GREENBERG: No, there isn't, Your Honor. They produced a 30(b)(6)
10 witness who was specifically instructed to testify as to the accuracy of these records.
11 He testified that they were accurate. He testified they were more accurate than the
12 trip sheets in terms of what they recorded as to the hours worked. In opposition --

13 THE COURT: Then why would we allow -- why would we allow countervailing
14 testimony? Why would we allow countervailing testimony?

15 MS. RODRIGUEZ: He's taking that completely out of context, Your Honor,
16 and I can pull multiple transcripts before the Discovery Commissioner where we
17 went before the Discovery Commissioner with Mr. Nady even present, indicating
18 the source documents show the hours, show the start times, show what he just
19 mentioned about the drivers showing up ahead of time, they get an extra six
20 minutes, the break times. All of that has to be reviewed right out of the source
21 documents. And we told the Discovery Commissioner this way back when and she
22 still ordered the production over to Mr. Greenberg of the electronic data that does
23 not capture all of that information. And she cautioned him as well to be careful
24 on how he was going to use that because this is where we're at. He's picked and

1 chosen certain parts to advocate that this is the proper number. But that's why
2 we got an expert --

3 THE COURT: You're saying that --

4 MS. RODRIGUEZ: -- to say no, this is not the proper number.

5 THE COURT: You're saying that he has taken the material, and this was in
6 what, on a hard drive? The QuickBooks spreadsheet was what?

7 MS. RODRIGUEZ: Uh, it's been in a number of fashions because it's so big.

8 THE COURT: Okay.

9 MS. RODRIGUEZ: We've had to do like drop files.

10 THE COURT: So he took -- you're saying he took that and although it said --
11 when you gave it to him --

12 MS. RODRIGUEZ: Uh-huh.

13 THE COURT: -- it had certain -- for a given individual a certain number of
14 hours worked.

15 MS. RODRIGUEZ: Uh-huh.

16 THE COURT: That he changed those hours?

17 MS. RODRIGUEZ: Oh, I don't know if he changed those hours, Your Honor,
18 because what his experts, who created the document said, was that they just
19 plugged in hours as instructed by Mr. Greenberg, okay. And that's why I -- and
20 I cited to their deposition. That's why I'm referencing my hearing on the motions
21 in limine because the actual tool itself, the spreadsheet, what they're calling a tool
22 is unreliable. It should never even come into this case, into this trial. And that's
23 what they're relying upon for summary judgment. That's why we hired an expert
24 to show --

1 THE COURT: Who has the legal obligation to keep those records?

2 MR. GREENBERG: The defendant, Your Honor.

3 MS. RODRIGUEZ: The defendant has those records, Your Honor.

4 THE COURT: Well --

5 MS. RODRIGUEZ: And again, I need to come back to this because he made
6 a representation to the Court that the employer was admonished by, you know,
7 federal agencies for not keeping records. That's absolutely not true. We go back
8 to the --

9 THE COURT: Okay. Well, I don't -- right now I don't care about that. That's
10 not the issue.

11 MS. RODRIGUEZ: Okay. Well, it's not true. The records are there.

12 THE COURT: The question in my mind right now is whether or not you
13 would be precluded from bringing at trial evidence to dispute the accuracy of the --

14 MS. RODRIGUEZ: Abso--

15 THE COURT: Just a minute. The accuracy of the hours worked if it is true
16 that that is in a document that you gave to the defense -- I mean, to the plaintiff --

17 MS. RODRIGUEZ: Uh-huh.

18 THE COURT: -- in response to a request for that.

19 MS. RODRIGUEZ: Uh-huh.

20 THE COURT: And if you have testimony from Mr. Nady -- if you do, that --
21 I mean, you know --

22 MS. RODRIGUEZ: Uh-huh.

23 THE COURT: -- this is assuming this -- testimony that that is more accurate
24 than the trip sheets.

1 MS. RODRIGUEZ: Your Honor --

2 THE COURT: If that's the case, then the question in my mind is do you even
3 get to put on countervailing testimony?

4 MS. RODRIGUEZ: Well, Your Honor, from day one I, as their representative,
5 as well as Mr. Nady, have come into this court and come repeatedly before the
6 Discovery Commissioner, repeatedly over and over and over saying the trip sheets
7 are the most reliable document that capture hours. We've never said anything to
8 the contrary. It's Mr. Greenberg who is always wanting to rely on this electronic
9 manipulation, for lack of a better term. The Discovery Commissioner said I don't
10 like you using the word manipulation because I kept telling her that, that he was
11 manipulating numbers to come up with a final number and it wasn't necessarily
12 what was captured in the normal business course.

13 MR. GREENBERG: Your Honor, this was all documented in the record on
14 the partial summary judgment. Your Honor arrived at a finding that there were no
15 material issues in dispute sufficient for plaintiff to establish --

16 THE COURT: Yeah. And the reason -- part of the reason for that is the
17 belief that if this is a document, a product, a piece of evidence produced from
18 the defense to the plaintiff purporting to be the hours worked and the calculation
19 therefrom --

20 MS. RODRIGUEZ: Right.

21 THE COURT: -- then I didn't see how there could be, then, a factual dispute.

22 MR. GREENBERG: There isn't.

23 MS. RODRIGUEZ: Your Honor, and that's what -- you know, Mr. Wall was
24 redirecting -- I guess I'm missing the focus of your question, so let me clarify and

1 maybe he may want to speak to this because I missed the actual question.

2 No, the defendants did not purport that. We were ordered to produce a certain
3 amount of information. And I've said the opposite. We've never said that those
4 are the accurate representation of the pay -- or, excuse me, of the hours.

5 THE COURT: Well, he's claiming that Nady said that in his deposition.

6 MS. RODRIGUEZ: Well, no, Nady didn't say that.

7 MR. GREENBERG: Your Honor --

8 THE COURT: You got that handy?

9 MR. GREENBERG: Yes. Yes, I do, Your Honor.

10 THE COURT: All right, here's what I want.

11 MR. GREENBERG: Yes.

12 THE COURT: I want you to submit to me that deposition. I don't want to
13 go hunt it up.

14 MR. GREENBERG: Of course.

15 THE COURT: The portion where he says that it's more accurate than the
16 trip sheets.

17 MR. GREENBERG: Okay.

18 THE COURT: I want any authorities from either of you about how we're to
19 handle that issue at trial. Is it something where the -- that plaintiff is correct that you
20 can't dispute at trial the mathematical accuracy because you don't have witnesses
21 who will, if your expert says the math is correct and if Mr. Nady says that that's
22 accurate, that that's more accurate than the trip sheets.

23 Secondly, if you have that do you get to present countervailing
24 evidence or is that -- or should the order on this motion be that since you do not

1 have any evidence that the math is wrong, that the motion itself is granted, partial
2 summary judgment for the lesser amount and that issue is removed from trial?
3 That's what I need from both of you, authorities on how we're to handle that at trial.
4 Is that a done deal or can the defendant come in and contest the accuracy of the
5 product that they submitted? I need the Discovery Commissioner's order in order
6 to know whether that order is -- leads to the conclusion that this was accurate or
7 whether it was clouded, as the defendant indicates, that they never agreed that it
8 would be an accurate accounting.

9 MR. GREENBERG: Okay. Your Honor, this was all addressed in the briefs
10 that were submitted. If your law clerk were to review them --

11 THE COURT: All right.

12 MR. GREENBERG: -- I'm sure they could --

13 THE COURT: Okay. If you're content to rest on that, that's fine, we'll do that.
14 I will take a look at it.

15 MS. RODRIGUEZ: I would like to submit, Your Honor, because I would like
16 to pull the Discovery Commissioner's orders and transcripts and our representations
17 repeatedly about this information. I think it's important based on the Court's
18 inclination to not allow the defendant to dispute this because I thought we went
19 through all of this the last time and the Court was persuaded this was an issue for
20 the jury, and so I'm not really sure why we're back to square one.

21 THE COURT: It may be -- it may still be, but it may be that there's a jury
22 instruction that says that this -- the jury may take this as an admission by the
23 defendant, and yet still allow you to put on some evidence as to the calculation,
24 that it's an inaccurate calculation. I have to do something to figure out what do you

1 do with a document that purports to be --

2 MS. RODRIGUEZ: Uh-huh.

3 THE COURT: -- produced by the defense in response to this order and
4 purports to be, if Mr. Greenberg is correct, by Mr. Nady that this is more accurate.

5 MS. RODRIGUEZ: Would Your Honor be inclined to hear this at the same
6 time as our motions in limine issue because they go hand in hand --

7 THE COURT: No.

8 MS. RODRIGUEZ: -- with the problem with his expert's calculations. It's
9 the very same question.

10 THE COURT: No. If you want to get something to me, you need to do it in
11 very short order and I need to get this resolved. We're not getting issues that must
12 be resolved in order for both sides to prepare for trial and the Court to prepare for
13 trial.

14 MS. RODRIGUEZ: But, Your Honor, his whole tool was created by these two
15 experts and there's some major problems with these two experts. And that's what
16 the Court is going to hear on the 23rd, I believe. That's why I'm arguing that they're
17 the same.

18 THE COURT: Well, there's nothing that says that whatever I decide, based
19 on the authorities that you're going to give me and that I already have from Mr.
20 Greenberg, could still be subject to whatever the Court decides on the 23rd if the --
21 No, I take it back. You're right. It would be better to simply resolve it on the 23rd.

22 MR. GREENBERG: We then should be prepared to address it at that time.
23 And I think Your Honor is correct, there are two fundamental issues here. Is the
24 information provided accurate for making a resolution before the Court and are the

1 calculations based on that information in fact undisputed. So -- and I think Your
2 Honor needs to examine those --

3 THE COURT: Well, and I think probably an important issue is whether it was
4 purported to be accurate.

5 MR. GREENBERG: Well, right. Is it in fact something that should bind the
6 parties here --

7 THE COURT: Yeah.

8 MR. GREENBERG: -- and are the calculations made on that information
9 accurate? I think Your Honor understands --

10 THE COURT: Well, either to bind or at least to be admissible with some sort
11 of instruction that indicates that when you have an order out of the Court to do this
12 and you produce that, it's an admission.

13 MR. GREENBERG: Your Honor, the issues you were raising are addressed
14 at pages 3 to 5 and 10 to 11 of the reply on the partial summary judgment --

15 THE COURT: Okay.

16 MR. GREENBERG: -- if that would assist your clerk. Those are the pages
17 where you will find the discussion as to the corroboration of the records' authenticity
18 and the correctness of the calculations that were presented that we were discussing.

19 THE COURT: Okay. I would still like to get anything you're going to submit
20 in short order.

21 MR. GREENBERG: Okay. We will be prepared to address this, you said
22 on the 22nd, is that it?

23 THE COURT: 23rd.

24 MR. GREENBERG: The 23rd. Okay. When would Your Honor like --

1 THE COURT: But I don't -- yeah, I don't want to wait 'til then --

2 MR. GREENBERG: Yes.

3 THE COURT: -- to get the authorities.

4 MR. GREENBERG: When would Your Honor like to have anything submitted
5 in connection with this?

6 THE COURT: I think probably a week should do it.

7 MR. GREENBERG: So that would be by the 20th, we'll say. Okay.

8 THE COURT: No. No, no. A week.

9 MR. GREENBERG: Not by the 20th. I apologize. The 17th.

10 THE COURT: No. A week from now.

11 THE CLERK: One week is the 9th.

12 MR. GREENBERG: A week from now. Oh, okay, I understand. The 9th.
13 That's fine, Your Honor.

14 THE COURT: All right. A week from now any additional authorities you're
15 going to submit.

16 MR. GREENBERG: We will --

17 THE COURT: And I'm not asking for a complete rehash. Based on what I've
18 said, I think you know where I'm going and the question I need to know is for some
19 reason is there not a record -- something in the record to warrant such -- (inaudible).

20 MS. RODRIGUEZ: Uh-huh. I will, Your Honor.

21 MR. GREENBERG: I will have something submitted on the 9th. I will try to
22 keep it brief, Your Honor.

23 THE COURT: All right. Okay.

24 MR. GREENBERG: Thank you, Your Honor.

1 THE COURT: Thank you.

2 MS. RODRIGUEZ: Thank you, Judge.

3 THE COURT: You're going to do the order from today.

4 MR. GREENBERG: I will, Your Honor.

5 THE COURT: Okay.

6 MR. GREENBERG: And I should have it circulated to defense counsel no
7 later than Monday.

8 THE COURT: Very good.

9 MR. GREENBERG: Thank you, Your Honor.

10 MS. RODRIGUEZ: Thank you.

11 THE COURT: Thank you.

12 (PROCEEDINGS CONCLUDED AT 12:04 P.M.)

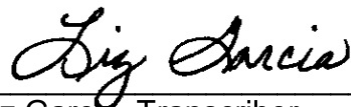
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15 ATTEST: I do hereby certify that I have truly and correctly transcribed the
16 audio/video proceedings in the above-entitled case to the best of my ability.

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Liz Garcia, Transcriber
LGM Transcription Service

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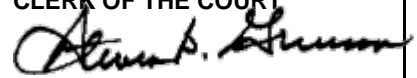
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7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

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.
16

Case No.: A-12-669926-C

Dept.: I

NOTICE OF ENTRY OF ORDER

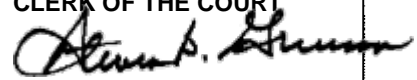
17 PLEASE TAKE NOTICE that the Court entered the attached Order on January
18 4, 2018.

19 Dated: January 4, 2018

20 LEON GREENBERG PROFESSIONAL CORP.

21 /s/ Leon Greenberg

22
23 Leon Greenberg, Esq.
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28 Attorney for the Plaintiffs



ORDER

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Attorney 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 OF APPOINTMENT
OF CO-CLASS COUNSEL
CHRISTIAN GABROY**

Plaintiffs' unopposed motion to appoint Christian Gabroy Co-Class Counsel was heard in Chambers on November 16, 2017. Based upon the Motion, Memorandum of Points and Authorities, declarations of counsel and proposed co-counsel, and the other papers and pleadings in this case, the motion was granted and Christian Gabroy of Gabroy Law Offices is appointed class counsel along with Leon Greenberg and Dana Sniegocki of Leon Greenberg Professional Corporation for the

1 class certified by this court's order of June 7, 2016.

2 IT IS SO ORDERED

3 Dated: Dec 29, 2017


4
5 
6 HONORABLE KENNETH CORY
7 DISTRICT COURT JUDGE
8

8 Submitted by:

9
10 Christian Gabroy (#8805)

11 /s/ Christian Gabroy
12 GABROY LAW OFFICES
13 The District at Green Valley Ranch
14 170 South Green Valley Parkway, Suite 280
15 Henderson, Nevada 89012

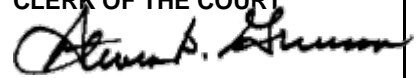
14 Rodriguez Law Offices

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17 Esther C. Rodriguez, Esq.
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22 Attorney for the Defendants

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

9 MICHAEL MURRAY, and MICHAEL
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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
STIPULATION AND ORDER

16
17 PLEASE TAKE NOTICE that the Court entered the attached Order on January
18 16, 2018.

19 Dated: January 16, 2018

20 LEON GREENBERG PROFESSIONAL CORP.

21 /s/ Leon Greenberg

22
23 Leon Greenberg, Esq.
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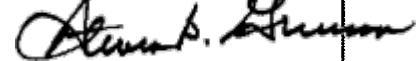
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by court electronic service to:

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Sydney Saucier



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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, A CAB, LLC,
14 and CREIGHTON J. NADY,

15 Defendants.

) Case No.: A-12-669926-C

) Dept.: I

) **STIPULATION AND ORDER**

16
17
18 The parties, by and through their counsel of record, hereby stipulate and agree to
19 extend the date by which they are otherwise required, under EDCR 2.67, to hold their
20 mandatory meeting of counsel. Such meeting is required to be held prior to calendar
21 call and a final pretrial conference. Because the parties still have motions in limine
22 pending before the Court, such motions set to be heard and decided on January 23,
23 2018, the parties are hereby agreeing to hold their EDCR 2.67 meeting of counsel on
24 January 25, 2018 at 10:00 a.m. This meeting will occur after the parties' scheduled
25 calendar call which is set for January 18, 2018.

26 ///

27 ///

1 This stipulation is submitted in good faith and based upon the parties'
 2 reasonable beliefs that the EDCR 2.67 meeting will be more productive after the
 3 parties have received rulings on their various motions in limine. Thus, this request is
 4 not made for the purpose of delay.

5 Submitted this 11th day of January, 2018.
 6

7 Leon Greenberg Professional Corp.
 8

Rodriguez Law Offices, P.C.

9 
 10 Leon Greenberg, Esq.

11 
 12 Esther C. Rodriguez, Esq.

13 Dana Sniegocki, Esq.

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Attorney for the Defendants

18 Attorneys for Plaintiffs

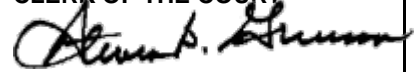
19 IT IS SO ORDERED:

20 
 21 HONORABLE JUDGE KENNETH CORY
 22 DISTRICT COURT, CLARK COUNTY

23 Jan 12, 2018
 24 DATE

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1 **NEO**

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

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19 A CAB TAXI SERVICE LLC, and A
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21 Defendants.

Case No.: A-12-669926-C

Dept.: I

NOTICE OF ENTRY OF ORDER

22 PLEASE TAKE NOTICE that the Court entered the attached Order on January
23 22, 2018.

24 Dated: January 22, 2018

25 LEON GREENBERG PROFESSIONAL CORP.

26 /s/ Leon Greenberg

27 Leon Greenberg, Esq.
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by court electronic service to:

TO:

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Sydney Saucier

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DISTRICT COURT
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MICHAEL MURRAY, and MICHAEL
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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 Summary Judgment on November 27, 2017. Plaintiffs filed their Response in Opposition on December 14, 2017. Defendants filed their Reply in Support of their Motion on December 27, 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 January 2, 2018, the Court hereby finds and orders:

Defendants' Motion for Summary Judgment sought dismissal of this action in its entirety or in the alternative dismissal of the class action claims; dismissal of the claim for punitive damages; dismissal of the claims against defendant Nady; and/or

1 decertification of the class action claims. The Court finds that genuine issues of
2 material fact exist in respect to the claims made against defendant A Cab such that
3 summary judgment cannot be granted. The parties do not dispute that the class
4 members were paid certain amounts of wages by A Cab during each pay period and
5 that those amounts are set forth in the Quickbooks records of A Cab. But the parties
6 dispute the number of hours each class member worked each pay period in exchange
7 for those wages. Whether a class member is owed unpaid minimum wages requires a
8 comparison of the amount of wages paid to the class member with the amount of hours
9 they worked in exchange for those wages. A Cab, in moving for summary judgment,
10 has not demonstrated that the wages it paid to the class members, or the class
11 representatives, each pay period, were of such a substantial amount that no minimum
12 wages are owed if the jury were to accept plaintiffs' assertions regarding their hours of
13 work. For example, the declaration of Michael Murray submitted in opposition to the
14 motion for summary judgment avers he worked on average 11 hours per shift and the
15 calculations presented to the Court that examined his wages paid and shifts worked
16 records show that he would be owed over \$2,000 in unpaid minimum wages at \$7.25
17 an hour if his assertion were true (see page 6 of the plaintiffs' opposition). A Cab has
18 not established that those records or calculations are in error, though it may not agree
19 with Murray's claim in respect to his hours of work. The Court, in its minute order of
20 December 21, 2017, has recognized that such a finding of the hours worked by the
21 class members, as alleged by Murray and based upon an average or estimate, may
22 support a determination by the jury that minimum wages are owed. Accordingly, the
23 branch of defendants' motion seeking summary judgment in favor of defendants and
24 complete dismissal of this action is DENIED;

25 The Court further finds that the claims presented by the plaintiffs are properly
26 adjudicated on a class action basis in the fashion previously determined by this Court
27 in its Order entered on June 7, 2016 and as extended to defendant Nady by its Order
28 entered on November 21, 2016 . It further finds, contrary to the claims made in

1 defendants' motion, that adequate class representatives are prosecuting such claims.
2 Accordingly, the branch of defendants' motion seeking dismissal of the class action
3 claims and/or decertification on the class action is DENIED;

4 The Court further finds that Nevada's Constitution, Article 15, Section 16,
5 permits the imposition of punitive damages for violations of its terms in appropriate
6 cases. The Court further finds that the record presented to it is sufficient to allow the
7 punitive damages issue to be considered at trial against defendant A Cab only.
8 Accordingly, the branch of defendants' motion seeking dismissal of the punitive
9 damages claim is DENIED;

10 The Court further finds that the request for the dismissal of the claims made
11 against defendant Nady will be DENIED WITHOUT PREJUDICE to their renewal
12 upon completion of the trial of this case against defendant A Cab pursuant to the
13 Court's Order entered on July 17, 2017;

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1 IT IS FURTHER ORDERED that, in accordance with the parties' stipulation in
 2 open court, all theories of liability asserted against defendant Nady in plaintiffs' Third
 3 Claim for Relief in their Second Amended and Supplemental Complaint are stricken
 4 except for plaintiffs' alter-ego claim against defendant Nady.

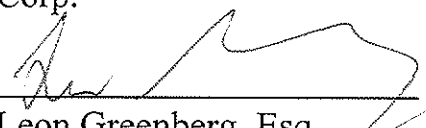
5 **IT IS SO ORDERED.**

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 9 HONORABLE JUDGE KENNETH CORY
 10 DISTRICT COURT, CLARK COUNTY
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14 Jan 14, 2018
 15 DATE


16 Submitted by:

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 18 Corp.

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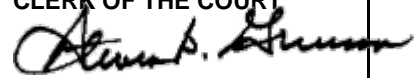
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1 **TRAN**

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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, JANUARY 25, 2018

14 ***TRANSCRIPT RE:***
15 **PLAINTIFFS' OMNIBUS MOTION IN LIMINE 1-25**

16 **DEFENDANTS' MOTION IN LIMINE TO EXCLUDE THE TESTIMONY**
17 **OF PLAINTIFFS' EXPERTS**

18 **APPEARANCES:**

19 For the Plaintiffs: LEON GREENBERG, ESQ.
20 DANA SNIEGOCKI, ESQ.
21 CHRISTIAN GABROY, ESQ.
22 KAINE MESSER, ESQ.

23 For the Defendants: ESTHER C. RODRIGUEZ, ESQ.
24 MICHAEL K. WALL, ESQ.

ALSO PRESENT: CREIGHTON J. NADY

RECORDED BY: Lisa Lizotte, Court Recorder

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1 LAS VEGAS, NEVADA, THURSDAY, JANUARY 25, 2018, 9:17 A.M.

2 * * * * *

3 THE COURT: Good morning. Please be seated.

4 MR. GREENBERG: Good morning, Your Honor.

5 MS. RODRIGUEZ: Good morning.

6 THE COURT: Sorry for the late start. I was fine-tuning some of my thinking
7 on the resolution of these things.

8 Does anybody have anything initially before we get down to business?

9 MS. RODRIGUEZ: No, Your Honor.

10 MR. GREENBERG: I don't believe we need to --

11 THE COURT: All right.

12 MR. GREENBERG: -- address anything else right now, Your Honor.

13 THE COURT: In preparing to hear argument and rule on these motions in
14 limine, it has caused the Court to not only have a couple of sleepless nights, but to
15 re-plow the ground that we have taken that has brought us to this point in this case,
16 including looking at past orders of the -- or, that is, Report and Recommendations
17 of our Discovery Commissioner trying to deal with this and wrestle with this problem
18 or this challenge to try and come up with what would be the basis, the most accurate
19 basis for a calculation that would answer the question of how much were each of
20 the employee class members paid and was it accurate, was it under what was
21 required by the Minimum Wage Act. I am reminded, have been reminded in going
22 through all of that --

23 Good morning. Come on in if you want, Mr. Nady.

24 MR. NADY: Thank you.

1 THE COURT: I am reminded of a couple of factors which stand out in almost
2 sore and painful relief as I go back and view those again in the context of the battle,
3 the battle royal which has been going on between these parties. First is the fact that
4 this is a lawsuit brought under the auspices and in reliance upon the Minimum Wage
5 Act of Nevada, not the federal laws in this area but a provision which is imbedded
6 in our Constitution. Whether I would think to put it in a Constitution doesn't matter.
7 I don't question what's in our Constitution. It's my job to interpret it and apply it and
8 enforce it.

9 The other thing that keeps sticking out to me that pops up in so much
10 of the discussion -- we even went back and we read the transcripts of the hearings
11 before the Discovery Commissioner, and the allegation which has been there
12 all the time by the plaintiffs that the defendants really have not complied with
13 NRS 608.115, Records of Wages, which requires an employer within 10 days of
14 a request by any employee to provide the total hours -- well, to provide everything
15 that counsel are probably more familiar with than I am as to what has to be
16 provided, but essentially the total hours employed in the pay period, noting the
17 number of hours per day and the net cash wage or salary, the deductions, the gross
18 wage, etcetera, etcetera. If any employee -- no doubt if any employee went to the
19 employer here, the defendant, and made such a request, the defendant by going
20 back to the trip sheets would be able to produce and perhaps has in instances
21 where maybe employees have made such a request.

22 But in the context of this litigation and particularly as a class action,
23 it seems that that is the unknowable. And so there's been a battle which has
24 attempted to provide another basis upon which to do the calculation to find out

1 whether or not the Minimum Wage Act contained in our Constitution has been
2 complied with, and that includes the battle over the QuickBooks and whether or
3 not that is really accurate or not or can be relied upon by the fact-finder in making
4 a decision. Another one that came up was the J-roll. And to each of these there
5 are objections raised by the defendants that these cannot provide a basis to make
6 a calculation to know whether or not there's compliance.

7 This was the subject before we even had gone through all of the
8 arguments that have brought us to this point. This was the subject of a motion filed
9 by the plaintiffs in May of 2015 to request the Court to appoint a special master paid
10 for by the defendants to compile the hours of work information as contained in the
11 trip sheets. There was argument back and forth by both sides as to whether that
12 was an appropriate thing for the Court to do. The defendants objected. Ultimately
13 the Court denied the motion and the reason that the Court gave at that time was
14 this: "The Court is not persuaded that the underlying reasons advanced by the
15 plaintiffs provide a sufficient basis to place the entirety of the financial burden of
16 such a process upon the defendants. Accordingly, the Court denies that request
17 without prejudice at this time." And then we went forward.

18 The entirety of the litigation process since that time to the present
19 convinces the Court that that indeed is not only an appropriate way to resolve this
20 issue, but is perhaps the only way to accurately -- with any accuracy resolve this
21 issue and for that reason if that motion is renewed at this time, I'm going to grant
22 it. It would mean a monumental task to be done before the date of -- what did we
23 calculate, something like August 3rd, I think, is the five year rule. I'm not entirely
24 positive if that is doable, so I would ask the plaintiffs if you have confidence that

1 that is something that a special master can do within that time frame and still allow
2 time, if need be, for the trial.

3 MR. GREENBERG: Your Honor, I think there is much of what Your Honor
4 is discussing that has a great deal of sense and merit, and then you're also raising
5 this question of utility and a sort of pragmatic application. To address it as a whole,
6 Your Honor, plaintiffs' request for the appointment of the special master was based
7 upon the burden and cost of that being borne by the defendants.

8 THE COURT: Uh-huh.

9 MR. GREENBERG: So we certainly would not renew the request for the
10 appointment of the special master if plaintiffs and the class had to bear the cost
11 of that process.

12 THE COURT: What I am attempting to indicate to you is that if the motion
13 is renewed as it was with the costs borne by the defendants --

14 MR. GREENBERG: Thank you for clarifying that for me, Your Honor. What
15 I would propose is this, Your Honor. The reality -- and I discussed this actually,
16 researched this with sources -- a statistical sampling of the trip sheets themselves
17 definitely would be meaningful. It wouldn't necessarily -- I mean, we are literally
18 dealing with a universe of about 300,000 trip sheets or something --

19 THE COURT: Uh-huh.

20 MR. GREENBERG: -- during the relevant time period. We have about
21 40,000 pay periods. Each pay period involves maybe five to ten, typically, trip
22 sheets, so I guess it could be more than 300,000. Can it be done? Absolutely it
23 can be done. There's no question it can be done. And we think it certainly should
24 be done. I'm sure defendants are going to argue that the cost of doing so --

1 THE COURT: All I'm interested --

2 MR. GREENBERG: -- is not justified.

3 THE COURT: All I'm interested in right now is your assessment of whether
4 or not it can be done within the time frame that we have here.

5 MR. GREENBERG: Well, it depends -- I mean, we are scheduled for trial
6 February 26th. Can it be done between --

7 THE COURT: No. That trial date would be vacated if we go down this road.
8 It would probably be reset at some point shortly before the calculated date when the
9 five year rule runs. And so the question becomes in something less than the entire
10 time between now, January 24th -- are we on the 24th?

11 MS. RODRIGUEZ: 25th.

12 THE COURT: 25th. Thank you. And probably August 3rd. Well, no,
13 between now and say the end of June can that be done?

14 MR. GREENBERG: Certainly that's a sufficient time frame, Your Honor.

15 THE COURT: Okay. All right.

16 MR. GREENBERG: I mean, it is a major undertaking, but we would renew
17 that request and ask that the Court enter an order appropriately. We will of course
18 work with defendants cooperatively to effectuate the goals of such an order.

19 THE COURT: This of course comes as a total surprise and shock, no doubt,
20 to both sides. Considering the amount of time that I have put into going back and
21 re-plowing all of this, I'm really not going to entertain more argument on the question.
22 If it is going to be done, it needs to be done immediately. The order needs to be
23 entered so that if the defendants choose to seek any appellate relief they can do so.
24 I stress again that in coming to this conclusion I have revisited the constitutional

1 imperative which is involved in this litigation. Probably no attorney gets fired up
2 about litigation arguments and issues back and forth than one which is based in the
3 Constitution, which is the basic underlying law of the land. Most often in my career,
4 at least, when we've been dealing with constitutional issues it's been in a criminal
5 justice context and we speak of due process and other things, largely due process
6 and how an individual's rights may be violated.

7 It is my conclusion that to -- that part of the very imperative to do
8 this at this point and to place the burden upon -- the financial burden upon the
9 defendants is the constitutional imperative which is involved here and the fact that
10 there is no attempt at such an accurate calculation by the defendants themselves.
11 So I think that we are required to do that another way, but the financial burden of
12 that should be visited upon the defendants.

13 MR. GREENBERG: Your Honor, I would just ask for one additional item.
14 Well, actually two additional things in respect to your proposed approach here. One
15 is that if you have someone who you are thinking would be appropriate as a special
16 master, if you would advise us. If not, we should get someone as quickly as possible
17 and we will suggest someone to the Court.

18 THE COURT: I was going to end this discussion by requesting one
19 nomination from each of you and also that we meet again in probably one week.

20 MR. GREENBERG: Okay. My other request, Your Honor, is that the findings
21 of the special master in respect to the hours worked per pay period be deemed
22 established as the working time for purposes of this litigation. Defendants have
23 continually insisted in this litigation, as Your Honor is aware from reviewing the
24 history, that the trip sheets do contain an accurate statement of the time.

1 THE COURT: I anticipate that that is another step along the way. Whether
2 the Court would make that finding I would leave to the argument of both sides. I am
3 fairly much assuming that it would, that the Court would, but the defendant hasn't
4 had an opportunity to fight that. And I don't want to go past -- for today I don't want
5 to go past what's already been litigated and both sides have had the opportunity to
6 advance their arguments for and against. As I said, my thought for today is to tell
7 you that's going to be the order of the Court and then meet again in a week, being
8 prepared with the nominations from each side and select the special master. At
9 that point finalize the order in this so that if the defendants want to seek relief from
10 it they can do so.

11 MR. GREENBERG: I have no further questions at this time, Your Honor.

12 THE COURT: I would not really be entertaining any motion to reconsider
13 on this order because this is the reconsideration.

14 MS. RODRIGUEZ: Well, Your Honor, hearing that, I would like an opportunity
15 to at least put my objection on the record.

16 THE COURT: Certainly.

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

18 THE COURT: But what I would suggest is rather than doing that now, you
19 may -- you could do it in writing if you wish, you know, between now and next week.
20 But if you want to do it orally, that's fine.

21 MS. RODRIGUEZ: I would, Your Honor.

22 THE COURT: Okay.

23 MS. RODRIGUEZ: -- just for your consideration over the next week before
24 we return to you because, you're right, it is quite shocking to receive this ruling this

1 morning from the Court because I felt very confident. I wanted to share some
2 numbers with you about the calculations, but it seems that you've already come
3 to that conclusion that their method may have some problems -- and this was on
4 a motion for summary judgment.

5 But specific to what the Court has just indicated this morning, Your
6 Honor stated that this was first brought before you in May of 2015.

7 THE COURT: Uh-huh.

8 MS. RODRIGUEZ: So the plaintiffs have had over two years to come up
9 with a methodology for calculation. They've had the trip sheets. They've had other
10 routes. They chose a route. They chose this Excel spreadsheet, Dr. Clauretie,
11 Mr. Bass route. At the end of the day that route and that methodology doesn't work
12 and they have not met their burden. So, that was their decision and in-between
13 there were a lot of red herrings, there was a lot of cost, thousands of dollars to the
14 defendant to chase W-4s, to chase cab manager data, to chase the trip sheets
15 themselves. I've turned all of this over to the Court to say while the defendant has
16 jumped through all these hoops at a lot of expense, a very big financial burden,
17 plaintiffs never even looked at any of the stuff that they made the defendants jump
18 through all the hoops.

19 So now the Court is saying plaintiffs have failed to meet their burden,
20 shifting the burden now to the defendants financially now again to basically start
21 over with what plaintiff should have done back in May of 2015. So I would ask the
22 Court to consider that this is a very large financial burden to the defendants that
23 the plaintiffs should share in, due to everything else that the defendants have had
24 to bear in-between there for two and a half years, Your Honor.

1 THE COURT: Let's assume that the plaintiffs had gone ahead and conducted
2 such a study themselves. I'm not sure they really would be able to or not. I assume
3 that was --

4 MS. RODRIGUEZ: They had the trip sheets, Your Honor. They had 300,000
5 of them.

6 THE COURT: And then let's assume further that in the end the Court found
7 that there was not compliance with the Minimum Wage Act in our Constitution and
8 therefore they prevailed to some extent in the lawsuit. Would not the costs that they
9 would soak up at that time still shift to the defendant?

10 MS. RODRIGUEZ: I would imagine so, Your Honor, but that's different from
11 what we're doing now. We're basically putting the cart before the horse and saying
12 now we -- again, the defendants have to prove a negative. They have to go through
13 -- they have to pay for a special master to find their own violations and to prove --
14 to show where there's no violations. That's the plaintiffs' burden to prove that.

15 THE COURT: I have to disagree at this point because of the operation of --
16 most particularly because of the operation of the law which I cited, NRS 608.115,
17 and the recognition that if you do that, in the context of the positions that have
18 been advanced in this litigation, at least, you wind up essentially eviscerating the
19 constitutional right which is represented in the Minimum Wage Act. I am significantly
20 impelled towards this conclusion because, again, I am satisfied that this is a quest
21 driven by or founded in the Constitution and therefore it must be accorded particular
22 deference when it comes to the ways that the Court might use to enforce the
23 Minimum Wage Act.

24 And I say that because -- with reference also to the record that's been

1 made of the past history of this defendant when it has been approached by other
2 entities, the audit that was done, etcetera, etcetera, and there still is no ability by this
3 defendant to produce the number that is requested in order to conduct this lawsuit.
4 The only answer has always seemed to be, well, there they are, it's in the trip sheets,
5 but I don't have to provide to anyone in a ready reference any kind of calculation of
6 those numbers, either individually or as a group whole. And I don't think that's what
7 the combination of that statute and that law require of an employer.

8 MS. RODRIGUEZ: You're reading it the opposite. The Court is reading it
9 the opposite, that the combination of the statute and the Constitution require that
10 the employer be able to produce it upon an individual's request, which I think the
11 Court acknowledged that A Cab would do that in any position, but to have it readily
12 available to a group who asks.

13 THE COURT: Yes, because it's the only way for someone to enforce. If you
14 have one individual, it's like other constitutional rights that the law, both the state law
15 and particularly the federal law says that recognizing the difficulties in one person
16 enforcing those things, if you're going to litigation to enforce such a right, the court
17 allows or is favorably disposed to allow parties a doable way to vindicate those rights.
18 In the area, for example, federal civil rights, you get fee shifting in the federal court,
19 whereas the normal rule is you don't have the fee shifting. Not only that, you get
20 fee shifting at an hourly rate that's kind of a lodestar and you get into that whole
21 analysis.

22 Well, if this lawsuit had been brought instead of as a class action --
23 because I've also considered is it appropriate to do -- am I doing this just because
24 this is a class action? My answer is no. Had this been some, I don't know how

1 many, 400, 500 individual lawsuits brought and a motion to consolidate brought,
2 I probably would have granted that if I were the one faced with the decision. Then
3 you would not have a class action and you would not have some of the barriers to
4 class action or limitations on the relief that can be sought. But there would still be
5 ample reason to band those together, at least for discovery purposes, and ultimately
6 I think we'd be at the same place. If I had the record before me and this were not
7 a class action but a consolidated band of individual lawsuits, I would arrive at the
8 same conclusion. It is not -- it amounts to an unreasonable restriction on the ability
9 of one to vindicate a constitutional right vouchsafed in the Nevada Constitution.

10 MS. RODRIGUEZ: I have a couple of questions, Your Honor --

11 THE COURT: Yes.

12 MS. RODRIGUEZ: -- just for -- there's a couple of concerns that immediately
13 strike me. One is -- and Mr. Greenberg and I were going to discuss this with you
14 today at the end of the motions -- the plaintiffs are willing to stipulate to not make
15 a claim for the 8.25 an hour. And Mr. Greenberg can speak to that; I think he'll
16 confirm. So that's going to be one thing that I would ask for clarification, if the Court
17 is asking us, then, to go back or asking the special master to look for any violations
18 based on the 7.25 an hour as opposed to the 8.25 an hour. That would be the first
19 issue that I want to address.

20 Secondly, the time frame that the special master will be looking at.
21 I think it's undisputed that there are no violations after the Thomas decision in June
22 of 2014, so I would suggest that the special master doesn't have to look at anything
23 past June 2014. But we would also need the Court's guidance on how far back
24 does the special master have to look because as Your Honor knows -- well, that

1 was on hold from the supreme court about the 2-year statute of limitations issue.
2 Defendants assert we should only go back to October of 2010. We appealed that
3 to the supreme court and they said basically wait until final judgment after this trial
4 for further guidance because it wasn't ripe. So I think we need some guidance on
5 how far back the Court is expecting us to go or to have the special master go.

6 The third problem I'm seeing --

7 THE COURT: Is there a reason why the Court would change the order
8 already entered?

9 MS. RODRIGUEZ: Well --

10 THE COURT: And I don't honestly recall what my order was on that.

11 MS. RODRIGUEZ: I'm trying to recall if it could go back to 2007 or 2009,
12 but it's pretty far back.

13 THE COURT: Yeah.

14 MS. RODRIGUEZ: And then there's actually the logistics of it because -- just
15 to give the Court a heads up, I'm waiting for the transcript on the defendant's motion
16 for summary judgment. I know the Court has signed that. But one of the issues
17 was this whole fraudulent breaks issue and that's not in the order. And I'm going to
18 ask the Court to reconsider the actual wording in the order. I haven't done that until
19 I get the transcript because the Court I believe got Mr. Greenberg's concession that
20 any kind of fraud was not going to be brought up --

21 THE COURT: Uh-huh.

22 MS. RODRIGUEZ: -- in the trial because then that would not be appropriate
23 for class action.

24 THE COURT: Uh-huh.

1 MS. RODRIGUEZ: But how do we go back and verify trip sheets when their
2 claim is based on the fact that the trip sheets are not accurate; that drivers were
3 forced to write in these fraudulent breaks? That's something that their clients would
4 have to say, like Mr. Murray and Mr. Reno said, one of them said in their deposition,
5 you know, I put down that I had two hours break and I really didn't take that. So,
6 how can a special master even ascertain that?

7 THE COURT: That's a fair question to ask Mr. Greenberg and I'll wait upon
8 his answer.

9 MR. GREENBERG: Your Honor, in respect to that particular question, once
10 we actually know what the trip sheets contain, which is what Your Honor is talking
11 about getting to the bottom of here, and what those hours in the trip sheets then
12 tell us based on what was actually paid because we do know what these individuals
13 were paid, nobody disputes that that's in the payroll records so we have to compare
14 the two to reach the conclusion, it may well be appropriate to simply limit the class
15 claims within that context, Your Honor. To the extent that some individual says
16 these hours for me are not the full hours, so therefore I should be entitled to more --

17 THE COURT: Uh-huh.

18 MR. GREENBERG: -- that they would have the right to litigate that issue
19 independently on their own. We would essentially decertify the class claims to that
20 extent. That is something I would certainly want to explore and I don't want to take
21 a position one way or the other on at this point, Your Honor, because we don't have
22 the record fully developed. But that comes to mind as --

23 THE COURT: And in any event, what I hear you saying is that we indeed
24 would not have claims of fraud raised within the context of this litigation.

1 MR. GREENBERG: Well, fraud is not the appropriate technical legal term,
2 Your Honor, but to the extent that any class member asserted that the trip sheets
3 were not accurate in respect to their hours --

4 THE COURT: Uh-huh.

5 MR. GREENBERG: -- that claim would be severed, it would be decertified
6 as part of the class claims, and their only entitlement to judgment in this case would
7 be based on what's in the trip sheets.

8 THE COURT: What's in the trip sheets.

9 MR. GREENBERG: Right. And to the extent that they say, well, there's
10 more, they would be free to litigate that individually, okay. I'm opening that as a
11 possibility, Your Honor. I am not committing to that because, again, we don't have
12 the record fully in front of us as to what information is contained in the trip sheets
13 and the process that you're now directing has not been completed. But that
14 comes to mind -- and by the way, Your Honor, whether I would support that sort
15 of approach, Your Honor certainly would have the power to take that approach if
16 you thought that was the way to manage the class claims. I'm just saying this is
17 not something that there is no potential tool or ability to manage, so I just wanted
18 to address that, Your Honor.

19 THE COURT: Okay.

20 MR. GREENBERG: In respect to the other issues that defense counsel was
21 raising, when they talk about the claims going back to 2007, Your Honor tolled the
22 statute of limitations in respect to a certain identified group of individuals because
23 of this question of notice, that there was no on-going compliance with the notice
24 requirements of the Constitution. So we're actually not looking at all of the pay

1 periods from October 2010 back to July 1st of 2007. We're looking at a much more
2 select group of these individuals who failed to get the notice. They are actually
3 identified. There's a list of these persons with their order. We know who they are.
4 So, you know, we can just review those individuals' records. We don't need to
5 review the records of individuals who are not members of the class, and there
6 are individuals who worked for the employer prior to October of 2010 who are not
7 members of the class because they weren't included within that toll, because that
8 order actually specifies the name of every individual who has a tolled claim and the
9 date that the toll goes back to. That was how we structured it, Your Honor --

10 THE COURT: Okay.

11 MR. GREENBERG: -- so it will be a more limited group.

12 In respect to examination of the trip sheets after July of 2014, our
13 class period runs to the end of 2015. It's not correct that there's no violations that
14 have been established after July of 2014. What is correct is that they are not
15 documented in the payroll records. And as Your Honor understands from reviewing
16 the parties' dispute, defendants are now coming before this Court and making
17 allegations that those payroll records themselves in respect to hours information are
18 not accurate, either, or at least they're not willing to accept that. I was prepared
19 to argue that point, but we're not arguing that point today. I appreciate that, Your
20 Honor.

21 So if we're going -- their position has consistently been that we should
22 examine the trip sheets, that is the record that we kept. As Your Honor has pointed
23 out, well, since that's how you kept the record you need to assemble it and be
24 able to provide the information from those records that the statute complies (sic).

1 We should have the information through the end of 2015, which is the class period,
2 and that's going to tell us whether there's reason to conclude there were violations
3 or not, Your Honor.

4 THE COURT: The defendants of course would say that we cannot go past --
5 what date? The middle of 2014, or is it --

6 MS. RODRIGUEZ: You mean when he filed his -- when he filed his
7 complaint? I believe he filed it in October of 2012. So based on a 2-year statute
8 of limitations -- am I speaking that right? That would be 2010.

9 MR. GREENBERG: That is --

10 MS. RODRIGUEZ: Or am I giving you an extra two years?

11 MR. GREENBERG: That is correct, Your Honor. The statute of limitations
12 applicable to the class claims in their entirety extends from October of 2010 and
13 the class period concludes under Your Honor's order at the end of 2015.

14 THE COURT: Okay.

15 MR. GREENBERG: There was this tolled group that we were discussing.

16 THE COURT: And so that would -- I don't see that that would change for
17 purposes of going forward with this. Am I misapprehending something or --

18 MS. RODRIGUEZ: Well, I'm surprised that he's taking the position about --
19 I'm trying to limit really what's just going to be a huge financial cost to the defendant
20 and I didn't think there was a dispute after July of 2014. So that's a whole 18 months
21 that -- or thereabouts, a year and a half, that I don't think that there was any liability
22 whatsoever, so why would we have a special master to go through 18 months of
23 thousands of trip sheets if really we're going to find a five dollar violation somewhere
24 in there for maybe somebody that was in error.

1 THE COURT: Well, so let me pose that question to Mr. Greenberg. Why
2 would we go past mid 2014 or whatever it is?

3 MR. GREENBERG: Your Honor, we have been trying to litigate this case to
4 judgment based upon the Court's rulings and how we can present the case within the
5 confines of those rulings. So we have looked extensively to the QuickBooks records
6 from 2013 to 2015. This was the subject of the partial summary judgment motion,
7 which we're not here to argue today further --

8 THE COURT: Uh-huh.

9 MR. GREENBERG: -- because of Your Honor's latest direction to us. So
10 we have not taken up the issue of whether the records in that 2013 to 2015 period,
11 the QuickBooks' hours are accurate or not at this point, simply because we haven't
12 had an opportunity to have the trip sheets examined. I will tell you, Your Honor,
13 that it has always been our position, as we were pointing out, back to 2015 when
14 we requested the appointment of a special master, that defendants, not having
15 complied with their obligation under the statute, should now have the obligation to
16 undertake the process that Your Honor is now directing. So our position hasn't
17 changed. We've just been trying to move forward in the context of the rulings Your
18 Honor has made in this case.

19 THE COURT: But I'm still not getting in all of this whether or not you seek
20 to get reimbursed, recompensed, whatever you want to call it, for some period after
21 mid 2014.

22 MR. GREENBERG: Well, Your Honor, we do. That is an issue. And it was
23 our intention to go to trial and to present our case and have the jury make the
24 findings it would. Your Honor has understood in the context of the prior motions

1 before the Court that it would be appropriate for the jury to come in with an
2 estimation, an average, and apply that to the relevant payroll records and come
3 up with a class-wide amount of damages. That was our intention, so --

4 THE COURT: What does the order that's on file say about that? Did we
5 cut it off at mid 2014?

6 MR. GREENBERG: No, you did not, Your Honor. And if Your Honor would
7 like further briefing on this, okay, defendants' expert actually conducted their own
8 very limited study of trip sheets for that 2013 to 2015 period. When he looked at the
9 trip sheets, he actually found there was more time recorded in the trip sheets than
10 in the QuickBooks records for those pay periods. He examined 20 or 40 pay periods
11 as a sample.

12 THE COURT: Okay.

13 MR. GREENBERG: So we have reason to believe that the examination that
14 Your Honor is proposing would be meaningful. The QuickBooks records may not
15 show -- the only reason the QuickBooks records show a violation prior to July of
16 2014, Your Honor, is because they were taking a tip credit. They were improperly
17 crediting themselves against the minimum wage with tips that the drivers were
18 taking.

19 THE COURT: So what I hear you saying is that you would want the special
20 master to make a study that would go into 2015?

21 MR. GREENBERG: To the end of the class period, which is December 31st,
22 2015. That would be consistent with Your Honor's order. This was our request
23 back in 2015.

24 THE COURT: I think that that is a detail that we would have to revisit next

1 week. I'm not prepared to say at this moment.

2 MS. RODRIGUEZ: That's fine, Your Honor. And I'll speak further with Mr.
3 Greenberg because I think he and I hopefully would get on the same page on this
4 because looking at their numbers, like I said, I think there's -- even based on what
5 he said, there was a tip credit issue up until July 2014. After that there shouldn't be
6 any liability whatsoever. There should be zero liability and anything that's in there
7 is going to be very minor. It might just be a typographical error on some employee.
8 But it doesn't make sense for a special master to go through thousands for that time
9 period. So I'll speak with him further and maybe we can address that next time.

10 THE COURT: Okay.

11 MS. RODRIGUEZ: What I didn't hear him say was about the 8.25 an hour.
12 If we can get on the same page about that?

13 MR. GREENBERG: Yes, we should address that issue, Your Honor. Your
14 Honor denied plaintiff's request to bifurcate and deal with this question of the
15 appropriate minimum wage rate, the 7.25 or 8.25 an hour rate, after a determination
16 is made as to the hours worked, okay. We made the request to the Court because
17 in our view the hours worked is the factual issue in dispute that can be readily
18 resolved on a class basis. Once we resolve that issue, we know what the hours
19 worked were. There will be some individuals who would be owed minimum wages
20 at 7.25 an hour. There would be some individuals who would be owed more at
21 8.25. Obviously anyone who is owed something at 7.25 would be owed something
22 at 8.25.

23 THE COURT: What I hear you saying is that there is not agreement with
24 the defendants --

1 MR. GREENBERG: No.

2 THE COURT: -- to limit it to the lower number.

3 MR. GREENBERG: No. Well, I'm trying to explain, Your Honor, what
4 plaintiffs' position is. Plaintiffs' position is that if we are not going to have a
5 bifurcation, okay, that the issue of the applicable rate will not be examined in a
6 separate proceeding after the hours are established, we don't see that we can
7 effectively bring that issue on a class basis for disposition before the Court. So
8 we have proposed to defendants, in light of Your Honor's ruling on the bifurcation
9 issue -- which we don't agree with but I'm not here to reargue it.

10 THE COURT: Right.

11 MR. GREENBERG: I'm just only going into the reasoning behind plaintiff's
12 position that it would be more sensible to decertify the class to the limited extent of
13 saying that the only claims that will be adjudicated here on a class-wide basis are
14 the class members' entitlement under the 7.25 an hour rate.

15 THE COURT: Okay.

16 MR. GREENBERG: If any individual class member believes that they are
17 entitled to the higher rate, they would then be free to litigate that issue independently,
18 but that would not be heard or determined as part of this proceeding in light of Your
19 Honor declining to proceed in the bifurcated fashion the plaintiffs were proposing.
20 So we are just simply trying to accommodate the realities of getting this case to
21 disposition, in light of Your Honor's order.

22 THE COURT: That would be a good idea. Yes.

23 MR. GREENBERG: Well, that's what we're trying to do, Your Honor. And
24 I know it's difficult and you have a hard job.

1 MS. RODRIGUEZ: We're in agreement with that. Mr. Greenberg and I spoke
2 about this this morning. We're in agreement with that about the 8.25 issue, but my
3 concern -- and this is what we wanted to bring to Your Honor, was that I don't want
4 to arrive at essentially a bifurcation again where if they prevail at trial at the 7.25,
5 then they're not precluded before a judgment is entered from raising the 8.25 again,
6 and then we are essentially back to bifurcating the trial.

7 THE COURT: Uh-huh.

8 MS. RODRIGUEZ: And also Your Honor has extended the 2-year statute of
9 limitations, so there's nothing to prevent these people from at any point litigating the
10 8.25 or Mr. Greenberg bringing back a class suit at 8.25. So I also want to see some
11 finality to it, so I asked him if we could decertify and voluntarily dismiss those claims.
12 But he was indicating he couldn't necessarily dismiss it on behalf of those individuals
13 and we'd need the Court's guidance on that, so that's where we're at is that we do
14 want to decertify but now is the time to litigate it. So it's defendant's position that
15 those claims need to be dismissed.

16 THE COURT: Okay. Well, that can be something that can be resolved at a
17 later point, I think. For our purposes -- for purposes of knowing what we'd be asking
18 a special master to do, I think what I'm hearing and what I would be anticipating
19 would be the order would be that it would only be at the 7.25 rate.

20 MR. GREENBERG: Yes, Your Honor, and that's fine. I would just point out
21 in terms of the special master's job, whether he calculates it at one rate or both
22 rates, this is not material because it's just an extra box on the Excel spreadsheet,
23 you know, in the spreadsheet just using a different number.

24 THE COURT: Well, and because, as you say, the only eventuality or the

1 thing from a plaintiff's standpoint you would want is to decertify and let them do
2 their own, so we're not looking at something that the special master would be
3 calculating.

4 MR. GREENBERG: That's right, Your Honor. I mean, Your Honor's order
5 denying the bifurcation was clear. We did not have argument on it, but Your Honor
6 issued a written decision and it's clear. I'm not here to try to --

7 THE COURT: Okay.

8 MR. GREENBERG: -- persuade Your Honor to revisit that.

9 THE COURT: Okay.

10 MR. GREENBERG: You're dealing with enough here. I'd be happy to
11 discuss it with you further if you wish. But if that's going to be the order and it's
12 going to stand, we believe those claims to that extra dollar an hour are not
13 appropriately brought to final judgment as part of this case. And those claims,
14 the only way we really believe would be appropriate is just to leave them to the
15 individuals --

16 THE COURT: Uh-huh. Okay.

17 MR. GREENBERG: -- and preserve their legal rights, such as they are,
18 outside the context of this litigation, Your Honor.

19 THE COURT: All right. But what I hear the defendant saying is that they
20 would be trying to get -- presumably before a judgment is entered here, they would
21 be trying to get those other individual claims dismissed. Right?

22 MS. RODRIGUEZ: That's correct, Your Honor.

23 THE COURT: So that is something that would have to be further -- a subject
24 of further motion work. But for purposes of what we're trying to accomplish here

1 today, it means that the special master would be asked to provide this work at the
2 7.25 rate, based upon that.

3 MR. GREENBERG: Yes, Your Honor.

4 MS. RODRIGUEZ: I appreciate that, Your Honor. I'm just thinking about --
5 since you're saying it's going to be subject to further motion and I would just like to
6 throw this out there, I think Mr. Greenberg and I are actually in agreement on this
7 issue. Making progress.

8 THE COURT: Mark that down, would you, please. We finally reached
9 something they're in agreement on.

10 MS. RODRIGUEZ: But it sounds to me like then what would have to happen
11 is if we're going to decertify those and dismiss them, perhaps there has to be some
12 kind of notice to the class then to say --

13 THE COURT: That makes sense.

14 MS. RODRIGUEZ: -- we're prepared to dismiss these; now is the time for
15 you to go get your own attorney or do your own action or do something --

16 THE COURT: Uh-huh.

17 MS. RODRIGUEZ: -- if you don't want your 8.25 action dismissed.

18 THE COURT: Uh-huh.

19 MR. GREENBERG: We would be agreeable to working with the Court and
20 defendants' counsel --

21 THE COURT: All right.

22 MR. GREENBERG: -- on some sort of notice process, if the Court felt that
23 was necessary. I don't believe it's actually necessary, Your Honor, because the
24 notice that went out to the class advised them that the class claims could be refined,

1 amended, limited prior to entry of final judgment. But if Your Honor felt that it was
2 important to do so --

3 MS. RODRIGUEZ: That's fine.

4 MR. GREENBERG: -- we would cooperate with that process.

5 THE COURT: Well, I'm only responding to the issues -- the issues as they're
6 presented by the attorneys. If you're in agreement as to that, then it might not be
7 a problem.

8 MS. RODRIGUEZ: No. If the notice does say that -- I haven't looked at the
9 notice in quite awhile, but if the notice says that, you know, he has the authority as
10 class counsel to do that, then I don't think there needs to be further notice, but that
11 would be up to the Court.

12 THE COURT: All right.

13 MR. GREENBERG: Your Honor has given us quite a bit to think about today,
14 unexpectedly, I think, for all counsel. You talked about us reconvening here in one
15 week --

16 THE COURT: Uh-huh.

17 MR. GREENBERG: -- next week on your calendar. Given, I mean, what
18 you've directed us to do, I don't know that Your Honor intends to address the
19 motions in limine or revisit the --

20 THE COURT: No.

21 MR. GREENBERG: Okay. I didn't think you would, Your Honor.

22 THE COURT: No.

23 MR. GREENBERG: We do need to bring Your Honor some suggestion or
24 position regarding the appointment of the special master prior to our reconvening.

1 THE COURT: As to who it would be.

2 MR. GREENBERG: Yes. And when would Your Honor like us to provide
3 that submission?

4 THE COURT: I would think if I could get it, you know, a day before we
5 reconvene, that should do it.

6 MR. GREENBERG: Okay.

7 MS. RODRIGUEZ: And, Your Honor, I'm sorry, I can't -- excuse me.

8 MR. GREENBERG: Go ahead.

9 MS. RODRIGUEZ: I can't be here February 1. I'm in Salt Lake on a
10 mediation.

11 THE COURT: Okay.

12 MS. RODRIGUEZ: But probably any other day should work.

13 THE COURT: Well, when can we do it so you still don't have to cancel your
14 European -- or is that already out?

15 MS. RODRIGUEZ: It's not yet, thank you. We have our conference
16 scheduled on the next day, February 2nd; Friday, February 2nd. I don't know if the
17 Court hears anything on Fridays.

18 THE COURT: Not typically, but there's nothing about this case that's typical,
19 so I could do that.

20 (Colloquy between the Court and the clerk)

21 THE COURT: Well, we might be able to do it Friday afternoon.

22 MR. GREENBERG: That is acceptable to the plaintiffs, Your Honor.

23 THE COURT: The problem from my standpoint is we kick it over to the next
24 week it's very difficult to get that kind of a time slot until Thursday, so.

1 MS. RODRIGUEZ: That's when our conference was set was Friday
2 afternoon, so we should all be available, I think.

3 MR. GREENBERG: Yes, we are.

4 THE COURT: All right.

5 MR. GREENBERG: If we could reconvene with Your Honor on Friday
6 afternoon, as you're proposing, that would be good.

7 THE COURT: All right, we'll do that.

8 THE CLERK: 1:30?

9 THE COURT: 1:30.

10 MR. GREENBERG: And, Your Honor, as part of our submission regarding
11 the appointment of a special master, I will very briefly -- would ask leave to provide
12 to Your Honor the documentation I was explaining about the very limited study of
13 those 2013 to 2015 trip sheets which actually came up with more hours worked --

14 THE COURT: Uh-huh.

15 MR. GREENBERG: -- than what was in the QuickBooks records, which was
16 the reason why we would like to have the study done by the master through the end
17 of 2015, because the representations defendants are making about how there was
18 no violation after July of 2014 is based on the QuickBooks records. What we're
19 saying is that we don't believe we should have to accept the information in the
20 QuickBooks records. And to the extent that we're moving for partial summary
21 judgment based on the QuickBooks records, as Your Honor knows, defendants
22 say the hours in the QuickBooks records in fact don't bind them and are not in fact
23 accurate. Honestly, Your Honor, we think the plaintiffs worked more hours than are
24 in the QuickBooks records.

1 THE COURT: Uh-huh.

2 MR. GREENBERG: But we've just been trying to bind them to that
3 representation in those records at a minimum, Your Honor. So, we can revisit this
4 at that time. I'm just saying I would like to present -- you know, it will just be a few
5 pages, a couple pages from me and the exhibit from their expert's review --

6 THE COURT: Uh-huh.

7 MR. GREENBERG: -- for Your Honor.

8 MS. RODRIGUEZ: Well, I would object to that, Your Honor, because I was
9 prepared as well to show where their numbers are inflated in their spreadsheets
10 and their math essentially does not work. And I know Your Honor doesn't want to
11 entertain -- that is the substance of the motion for partial summary judgment is that
12 their math does not work and their formula. So if they're going to then submit new
13 ones, I do have an issue with that because it sounds like the Court isn't even going
14 to go down that road.

15 THE COURT: It is unlikely that I will. If you want to submit something,
16 I suppose I'm not going to tell you don't submit it --

17 MR. GREENBERG: Thank you, Your Honor.

18 THE COURT: -- as long as it's, you know, a couple of pages. And if you
19 want to submit something, you're -- this is not motion work. Nobody is necessarily
20 bound by it. It may be that next Friday the only thing that it presents is a question
21 in my mind of whether I should entertain something different, in which event you
22 would each have the opportunity to argue it -- well, to present further authorities
23 in an argument.

24 MS. RODRIGUEZ: Well, just for clarification so that I'm prepared --

1 THE COURT: Yeah.

2 MS. RODRIGUEZ: -- without further shock, what are we talking about?
3 You're talking about additional supplement for July 2014 through the end of 2015?

4 MR. GREENBERG: Your Honor, what I'm talking about has nothing to do
5 with the pending partial summary judgment request. It has to do with defendants'
6 representation that the special master should not need to examine any trip sheets
7 after July of 2014. Your Honor was considering that, okay.

8 THE COURT: Uh-huh.

9 MR. GREENBERG: It's just about that. And what I'm trying to say is that
10 we have good reason to believe that those trip sheets should be examined because
11 after July of 2014 when they say there's no evidence of a violation, they're relying on
12 the QuickBooks records which have these hours in them which they are not willing
13 to attest to as being accurate --

14 THE COURT: Would not --

15 MR. GREENBERG: -- for purposes of our summary judgment motion, and
16 we actually don't concede are accurate.

17 THE COURT: Would not any such violations be individual -- in individual
18 cases and not something that would be under the purview of a class action?

19 MR. GREENBERG: Your Honor, they would be violations for individuals in
20 the class in the same sense they would be if they were in 2012 or 2010 and were
21 demonstrated by the trip sheets. It's no different. I mean, the records for how many
22 hours these individuals worked for each class member are on the trip sheets. This
23 has been defendants' consistent position throughout this litigation, as Your Honor
24 is aware, and that's not in compliance with 608.115. And that's why Your Honor

1 has adopted this process. What I'm trying to explain, Your Honor --

2 THE COURT: Yeah.

3 MR. GREENBERG: -- is there is no reason to limit the direction Your Honor
4 is taking us in to this proposed July 2014 review cut-off, so to speak, within the
5 scope of the special master's work. It should be through the end of the class period
6 because the reality is defendants do not have those hours per pay period records
7 that 608.115 requires, and if we had we wouldn't have to have this review conducted
8 by the special master.

9 MS. RODRIGUEZ: Your Honor, my problem is that he's proposing, I believe,
10 to turn in something new to you, some further study, every day, or I should say every
11 week. Discovery has been closed forever on this thing. We've done all our pretrial
12 disclosures, we've done all our expert reports, and I'm still getting supplements.
13 Supplemental spreadsheets, supplemental data. And I'm afraid that this delay is --
14 now they're still doing what they should have done six months ago. And I just don't
15 know what he's proposing because obviously it's something that's never been
16 produced before.

17 THE COURT: Well, it also may raise a question of whether having a special
18 master do these calculations is actually a viable way to resolve these issues. It may
19 be that there is no viable way to condense the issues down to a workable product
20 or project to be done. So I would wonder if we aren't actually raising a question
21 of whether what the courts consider -- well, telling you what I'm ordering to happen
22 is actually a viable thing.

23 So, enough said. You can submit what you want to. It is not -- as long
24 as it doesn't exceed five pages total. Total.

1 MR. GREENBERG: Your Honor, it's actually just an excerpt from their
2 expert's report. That's all it is.

3 THE COURT: All right. And if you wish to submit something, you may.
4 I'm not planning on ruling on anything. It will simply point out whether or not there
5 needs to be a little bit further motion work to determine the scope of what the special
6 master will be doing.

7 MR. GREENBERG: Yes, Your Honor. That was the sole subject that I was
8 trying to address, just the scope of the special master's chronology, so to speak,
9 that they're going to study.

10 THE COURT: All right.

11 MS. RODRIGUEZ: Is there a time frame for the submission, since apparently
12 he has --

13 THE COURT: The day before.

14 MR. GREENBERG: Yes, Your Honor.

15 THE COURT: Actually --

16 MS. RODRIGUEZ: I won't be here the day before, Your Honor, so I'd
17 appreciate --

18 THE COURT: Oh, okay.

19 MS. RODRIGUEZ: That's when I'm in Salt Lake, would be February 1st.
20 So -- but it sounds like he has something with him today, so I would like to see what
21 he's proposing to submit to the Court, not necessarily today, but if he could serve
22 me in the next couple of days.

23 MR. GREENBERG: Your Honor, I will provide -- today is Thursday -- I will
24 provide defendants by Monday with the portion of my submission that would address

1 just this very issue of the time period that the special master should study.

2 THE COURT: All right.

3 MR. GREENBERG: And I can have my submission to Your Honor in full
4 regarding a suggestion as to appointment of a special master by Wednesday for
5 a Friday hearing. Is that acceptable to defendants?

6 MS. RODRIGUEZ: Yes, that would be great. Thank you.

7 THE COURT: You know what, I would like to have your submission on the
8 special master by Monday, if that's possible. The reason being that I would like
9 to have a couple of days there to evaluate those things. That's an important
10 consideration.

11 MR. GREENBERG: I will do my best, Your Honor. I have to research this.
12 I have to try to find someone appropriate and so forth.

13 MS. RODRIGUEZ: And I'm thinking the same thing, Your Honor, in terms
14 of a special master --

15 THE COURT: Too fast?

16 MS. RODRIGUEZ: -- because my experience with special masters in the
17 past has been in construction defect litigation where they run the show. They make
18 sure everybody stays on track. Is the Court envisioning the special master to be the
19 actual person that is going to go through these trip sheets, or they're going to direct
20 a team to go through these trip sheets? Or what are we looking for in terms of the
21 qualifications of this special master?

22 THE COURT: As far as I had taken the concept was that they probably
23 would not be doing all these themselves, but they would be qualified to direct a
24 team of people who also are qualified to do that kind of work. But that's as far as

1 I've taken it and I'm -- I guess I might turn to the plaintiff again, since it was your
2 suggestion and your motion.

3 MR. GREENBERG: Your Honor, there are -- what we're talking about is
4 something that's similar to an audit that an accounting firm might conduct, okay.

5 THE COURT: Okay.

6 MR. GREENBERG: There are firms out there that actually deal with these
7 particular issues in wage and hour litigations that I have seen in passing that do
8 come in and they do compile reviews of records specifically for these purposes.
9 We don't need to hire a Big Six accounting firm, I think here, Your Honor, and
10 I think Your Honor presumably would not be inclined to do that because of the cost
11 involved with that.

12 THE COURT: The cost. That's correct.

13 MR. GREENBERG: I understand that, so I wouldn't be looking to hire Price
14 Waterhouse. But it is akin to what accountants or financial-type professionals do
15 in their normal course. So I need to research this and try to find someone hopefully
16 who has particular focus on this issue of reviewing hour employment records --

17 THE COURT: Okay.

18 MR. GREENBERG: -- in the context of these types of disputes. Hopefully
19 I can provide some packet of information or at least a couple pages of background
20 information of someone I would suggest. Hopefully they can give me some kind of
21 projection regarding what the costs are involved.

22 THE COURT: Uh-huh.

23 MR. GREENBERG: Obviously Your Honor doesn't want to impose excessive
24 costs on anyone here.

1 THE COURT: No.

2 MR. GREENBERG: There's no reason for that. It's not in the interest of the
3 class to seek excessive costs imposed on the defendants, either, if that's going to
4 impair their ability to financially satisfy any judgment in favor of the class. So these
5 are all considerations that need to be looked at. I'm going to get back to my office
6 and I'm going to get hot on it this afternoon for Your Honor, okay.

7 THE COURT: Okay.

8 MS. RODRIGUEZ: Can we have -- Excuse me, Mr. Greenberg.

9 MR. GREENBERG: Yes. Go ahead.

10 MS. RODRIGUEZ: Can we have through maybe Tuesday to try to find
11 someone like this?

12 THE COURT: Sure. Okay.

13 MS. RODRIGUEZ: Because we would basically have tomorrow to try to find
14 someone.

15 THE COURT: Sure. And really as I think about it, that's sufficiently important
16 that if for some reason we couldn't quite -- I wasn't prepared to finalize it by our
17 Friday hearing. That could still be done. Obviously we have to really move along
18 with this, but we don't have to say by Wednesday it's finalized. So, yeah, if you
19 need until Tuesday, that's fine.

20 MS. RODRIGUEZ: Thank you.

21 THE COURT: Or Wednesday. Let's say Wednesday.

22 MS. RODRIGUEZ: Just to try to find --

23 THE COURT: Yeah.

24 MS. RODRIGUEZ: -- someone that has the time immediately --

1 THE COURT: Yes.

2 MS. RODRIGUEZ: -- to jump into this and has the qualifications.

3 THE COURT: All right. Is that sufficient to paint the picture?

4 MR. GREENBERG: I will have my submission to Your Honor by Wednesday.

5 I will advise defendants on Monday about that other issue --

6 THE COURT: All right.

7 MR. GREENBERG: -- that I will be submitting to Your Honor as part of that
8 submission. We will be here on Friday at what time was that?

9 THE CLERK: 1:30.

10 MR. GREENBERG: 1:30.

11 THE COURT: 1:30. And if possible, what I would like is for plaintiffs at least
12 to submit an appropriate order, the type that you would have, you know, had this
13 motion been granted before.

14 MR. GREENBERG: Yes, Your Honor.

15 THE COURT: Hopefully by then, so that we could talk about the language
16 of the order as well.

17 MR. GREENBERG: I will forward a proposed order with the submissions on
18 Wednesday and I will be sure that defendants get it no later than that, and hopefully
19 we can confer about that in advance of Friday.

20 THE COURT: All right.

21 MS. RODRIGUEZ: And the trial date is vacated?

22 THE COURT: The trial date is vacated. Thank you.

23 MR. GREENBERG: Okay. Your Honor, yes, that's Your Honor's
24 determination. I understand. I just -- it makes me a little nervous vacating the trial

1 date until we actually have the settled order on this issue, but that's your judgment
2 call. I understand, Your Honor.

3 THE COURT: Well, we're going to go down this road. I'm convinced it is
4 the appropriate thing to do with this kind of a case. If we have to set a trial in July
5 so that we don't run afoul of the 5-year rule, then we'll do it.

6 MR. GREENBERG: I understand, Your Honor.

7 THE COURT: And there's no sense trying to do that now because I don't
8 even know the scope of such a trial. That is yet to be talked about and resolved
9 then.

10 MR. GREENBERG: I understand, Your Honor. Thank you. Thank you for
11 your help.

12 THE COURT: All right. Thank you all.

13 MS. RODRIGUEZ: Thank you.

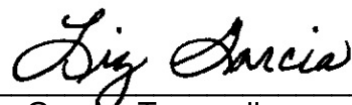
14 MR. GABROY: Thank you, Your Honor.

15 THE COURT: I don't get to do any of the about 30-page brief that my law
16 clerk produced on these discussions we were going to have today, but thank you all.
17 We'll see you at 1:30 next Friday.

18 (PROCEEDINGS CONCLUDED AT 10:20 A.M.)

19 * * * * *

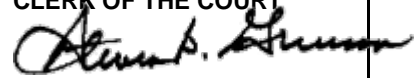
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21 ATTEST: I do hereby certify that I have truly and correctly transcribed the
22 audio/video proceedings in the above-entitled case to the best of my ability.

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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
FRIDAY, FEBRUARY 2, 2018

TRANSCRIPT RE:
STATUS CHECK: APPOINTMENT OF SPECIAL MASTER

APPEARANCES:

For the Plaintiffs:	LEON GREENBERG, ESQ. DANA SNIEGOCKI, ESQ. CHRISTIAN GABROY, ESQ. KAINE MESSER, ESQ.
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For the Defendants:	ESTHER C. RODRIGUEZ, ESQ. MICHAEL K. WALL, ESQ.
---------------------	--

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

001312

1 LAS VEGAS, NEVADA, FRIDAY, FEBRUARY 2, 2018, 10:15 A.M.

2 * * * * *

3 THE COURT: Good morning again.

4 MR. GREENBERG: Good morning.

5 THE COURT: We should let our record reflect that while we were waiting for
6 some technical difficulties to be resolved with our JAVS system, I met with counsel
7 in chambers and discussed informally the matters that were to be resolved today in
8 preparation of entering the final order that will appoint a special master. We've had
9 a wide-ranging discussion about a number of things. I think that it's appropriate for
10 each side, if they wish to, to make any record of what we said in chambers. Other
11 than that, I anticipate just going right back through the same things that we talked
12 about but on the record this time, and hopefully having discussed it somewhat
13 informally we'll be able to quickly get through the things that -- and resolve the things
14 that remain to be resolved in order for the Court to enter an order.

15 We talked about -- well, let me just ask counsel, does either side feel
16 a need to make a record of things that were discussed in chambers? If so, I'm
17 happy to have you do so.

18 MS. RODRIGUEZ: I do, Your Honor. Thank you. Esther Rodriguez for the
19 defendants. Just to make sure that my objection is clear about the proposed order,
20 I would like an opportunity to submit revisions to the Court before you sign this.
21 But the primary objection is that the last time we were before the Court, the Court
22 made a determination that the only accurate method to determine hours for the
23 class and for the class period was a review -- an actual review of the trip sheets
24 by a special master. I would like to remind the Court that that has been the position

1 of the defendants for five years. That's always been the position, that the trip sheets
2 are the source document in which hours can be determined. You need hours to
3 determine -- plaintiff needs hours to determine damages and thus to determine any
4 type of liability and we've always stated that.

5 So the proposed order, however, is going far beyond what the Court
6 instructed us last week because it is asking the special master to not only calculate
7 hours but to calculate the pay that each driver was looking at and then to calculate
8 any underpayment of the violation of minimum wage. So basically we're asking the
9 special master to do what the plaintiffs should have done all along. They've never
10 done that.

11 I just want to renew my motion to the Court that summary judgment is
12 appropriate because it was plaintiffs who chose a different methodology, which the
13 Court has now determined was not appropriate. The actual review of the trip sheets
14 was necessary. I believe that they have failed to meet their burden of proof. We're
15 far past the close of discovery. We're on the eve of what was supposed to be trial.
16 And now we're in a do-over position to allow the plaintiffs at the defendants'
17 expense to now basically work up their case.

18 So that's my standing objection to Your Honor's order, but I think that
19 the order needs to -- if the Court chooses to proceed, we need to look at what you
20 instructed us last week, which is the calculation of the hours; limit it to that. As far
21 as the time period that we're discussing, the 2014 to 2015, I represented to the
22 Court that based on the plaintiff's numbers and our review again, any liability for
23 July 2014 through December 2015 is going to be very, very minimal. We calculated
24 it out to be, based on just rounding up or rounding down, it's going to be about

1 \$100 for the entirety of the class for that period. We don't believe that that's a
2 cost-effective review of trip sheets. But I just wanted to have that objection on the
3 record, Your Honor.

4 THE COURT: So instead of reviewing the trip sheets for that period, what
5 would you suggest?

6 MS. RODRIGUEZ: I suppose I can make an offer of judgment for \$100
7 from 2014 to 2015. But, you know, we discussed this, Your Honor. I'm not going
8 to change the defendants' position that it's only by an accurate review of the trip
9 sheets themselves -- a review of the trip sheets themselves that any liability can
10 be established.

11 THE COURT: Uh-huh. I made some general statements about why the
12 Court felt that ultimately it has turned out that the plaintiff's motion in 2015 to appoint
13 a special master may be not only the best way to resolve this dispute, but it may be
14 the only way. And I indicated that the reason that I would agree that it should be the
15 defendants who bear the burden of this, the cost of this is because they have not
16 provided the record-keeping. They have not provided the items which the statute
17 requires them to provide.

18 If we look at NRS 608.115, Records of Wages, it clearly requires an
19 employer to maintain records showing for each pay period the following information:
20 the gross wage, services, food, deductions -- and that's where a lot of these
21 categories of things come out -- tips, as well as tip supplement and other things.
22 And then the net cash paid to the employee and the total hours employed in the
23 pay period by noting the number of hours per day, as well as give the date of
24 payment.

1 It is both the gross wage, the net cash paid, as well as the total hours
2 employed which is at issue in this case. And I cannot determine that there is any
3 other rational or reasonable way to arrive at, first of all, the resolution of the question
4 of liability. Were they underpaid or not requires calculations based on these things.
5 And for that reason I do not view the plaintiffs' proposal as going way beyond what
6 the Court had ordered. I think that if there was agreement that the QuickBooks,
7 which I believe cover '14 and '15, correct, 2014 and '15, if they clearly depicted
8 the things that are required in this statute, then there would be no need to do an
9 analysis of the underlying trip sheets. That would mean they would have to reflect
10 the gross wage and the net cash wage or salary paid to each employee for each
11 pay period.

12 If there is not agreement that the QuickBooks reflect that in a way that
13 allows a person to figure out whether they were underpaid or not, then I think that
14 we have to go to the trip sheets. If the defendant, on the other hand, agrees that
15 the QuickBooks reflect in some clear fashion these numbers -- and I guess we're
16 talking mostly about the net cash paid, right? That's the -- is that the operative
17 number we're dealing with?

18 MR. GREENBERG: If you're using that term simply to exclude everything
19 paid except the tips, then that would be correct, Your Honor.

20 THE COURT: Yeah.

21 MR. GREENBERG: Because the tips aren't really paid by the employer,
22 but they are taxable --

23 THE COURT: Okay.

24 MR. GREENBERG: -- so the employer has to report them to the IRS.

1 THE COURT: So if there's agreement that the QuickBooks readily reflect
2 that number, then I would agree, Ms. Rosenberg, (sic) that the -- what did I say,
3 Rosenberg? -- Ms. Rodriguez, I would agree that we don't need to do the underlying
4 trip sheets for that. But if I'm understanding, you do not agree that those numbers
5 can be taken.

6 MS. RODRIGUEZ: I think we discussed that in chambers, Your Honor.
7 Well, two things. Let me try to respond. I will pull actual pay stubs and QuickBooks
8 data because I believe that that figure is there and I'll submit that to the Court with
9 copies to Mr. Greenberg if it's readily available, which I think it is. And also, I think
10 we discussed that Plan B was that if Mr. Greenberg already has a spreadsheet,
11 which he indicated he has already calculated that by itself without any other factors
12 taken into consideration, we may be able to reach a stipulation on that as well.
13 So I don't think that ultimately that's going to be a number that we have to have
14 a third party go back and re-calculate. I do believe it is readily available from one
15 of those two sources.

16 THE COURT: All right. I hope that that is the case. Then what I would
17 expect is that counsel would get together today and resolve that question of whether
18 or not the special master needs to go through the trip sheets for that time period
19 or whether it is a readily ascertainable number in the QuickBooks.

20 MR. GREENBERG: Your Honor --

21 THE COURT: Yes?

22 MR. GREENBERG: -- there's some confusion going on here. The QuickBooks
23 data has the pay information for the entire pay period -- the entire time period we're
24 dealing with, all the way back to 2007.

1 THE COURT: Uh-huh.

2 MR. GREENBERG: However, for the 2013 to 2015 period, those last three
3 years, it also purports to contain hours worked information.

4 THE COURT: Okay.

5 MR. GREENBERG: Now, plaintiff moved for partial summary judgment
6 based on a combination of that information, --

7 THE COURT: Uh-huh.

8 MR. GREENBERG: -- the wage information in the QuickBooks and the hours
9 information in the QuickBooks from 2013 to 215. We have never agreed that those
10 hours of work information in the QuickBooks are in fact accurate. The trip sheets --
11 the evidence we have, and this was in the supplement I gave Your Honor, is that
12 the trip sheets will actually show more hours of work information. The QuickBooks
13 hours of work information for that three year period is understated. But nonetheless,
14 because defendants relied on that and have represented them as accurate in this
15 proceeding, we believe we're entitled to partial summary judgment based on those
16 hours. When you look at that three year period in the QuickBooks, starting in July of
17 2014 you're not going to see any violation for minimum wage purposes because the
18 violation that's there prior to then has to do with the tip credit; the fact that internally
19 they were applying the tips against their minimum wage obligation.

20 THE COURT: Uh-huh.

21 MR. GREENBERG: But we have never conceded that there's nothing owed
22 after July of 2014 and we are confident that if you go and examine the trip sheets
23 you're going to find a great deal more hours that the drivers worked than is in the
24 QuickBooks records, which means that there is going to be a minimum wage liability

1 that we haven't yet calculated. And you can't calculate from the face of the
2 QuickBooks records because the QuickBooks' hours for that period just aren't
3 accurate, Your Honor.

4 So there's nothing for us to discuss about that. Your Honor has
5 already made the finding that the appropriate thing to do here is to go to the trip
6 sheets and get the hours out of the trip sheets for the pay periods, since the
7 employer did not keep those records. They didn't keep them accurately, either,
8 in respect to the 2013 to 2015 period. This is demonstrated by their own expert
9 who actually reviewed a bunch of the trip sheets --

10 THE COURT: Yeah.

11 MR. GREENBERG: -- for that period, and I included that in my supplement.
12 So there's no reason to limit the chronology of the trip sheet review, Your Honor.
13 The trip sheets should be reviewed. The special master should report on the
14 findings as to pay period hours that are found.

15 In respect to arriving at an understanding as to what each driver was
16 paid each pay period, absolutely I will work with defense counsel to review what
17 I've already provided to them. And if we can agree that the spreadsheets provided
18 accurately set forth the total gross wages for each driver for each pay period, then
19 the special master doesn't need to calculate that amount from the QuickBooks
20 data.

21 THE COURT: So in that event, if there is that agreement, the special master
22 would need to calculate only the hours?

23 MR. GREENBERG: They would need to calculate the hours to go with each
24 of those pay periods, Your Honor. We would know what each pay period is in terms

1 of what they were paid and what the hours were. I would request that the special
2 master at that point simply determine the deficiencies at the 7.25 an hour rate
3 because it's as a matter of law at that point. There's no reason we should then
4 be coming before Your Honor and arguing over 25,000 lines in an Excel file as to
5 whether those are in fact correct or not. I mean, defendants have not conceded
6 anything in terms of what we've presented to the Court so far in connection with the
7 partial summary judgment motion. It's a simple arithmetical calculation, Your Honor.
8 It should be entrusted to the special master to perform and it will essentially cost
9 him nothing to do.

10 And as a matter of law if you pay the individual \$100 and you work
11 him 100 hours, it's only \$1 an hour, so you owe him another 6.25 to make up to
12 7.25 an hour. There is no reason that we should be leaving this as an unresolved
13 issue within the scope of the special master's work. The special master should
14 ascertain the hours, he should have the amount paid every pay period, which is
15 what is required under the statute the defendants were supposed to keep. He
16 should either get that from the agreement of the parties, or if necessary he'll go to
17 the original QuickBooks data and figure out the gross amount paid each pay period
18 and then tell us what the deficiency is at the 7.25 an hour rate, if any, Your Honor.

19 THE COURT: So the plaintiff would have no problem proceeding ahead
20 with the special master on that basis, with the understanding that if for some reason
21 the -- and how this would happen, I don't know, but if it turned out that the plaintiff
22 did not prevail as to the hours worked issue, whether the QuickBooks were accurate
23 or not, then at the end of the day whenever judgment time comes around, plaintiff
24 could be required to pay for that portion of the special master's work.

1 MR. GREENBERG: Well, Your Honor, I suppose that could be part of the
2 requirement.

3 THE COURT: I would think --

4 MR. GREENBERG: I'm not concerned with that because it's clear from the
5 investigation we've done that there are significant amounts of money owed to the
6 class. In fact, the defendants don't disagree that there is.

7 THE COURT: Yeah. The short answer may be that if we -- even with that
8 understanding you've got apparently defense experts that say -- that show that
9 that's not accurate. Is that right?

10 MR. GREENBERG: The defendants' expert has attested for the period
11 we have hours in the QuickBooks records from 2013 to 2015, those hours are
12 understated. That is his conclusion. He examined approximately 30 pay periods.
13 Of the 30 pay periods, he found that the trip sheets had more hours stated in them
14 for about 27 or something.

15 THE COURT: All right. Then the way that the order should be finalized
16 is that the special master will calculate those numbers from the trip sheets, with
17 the understanding that it may be that it may be that at the end of the day here it's
18 possible that the Lord -- that the Court -- good grief -- that the Court -- where did
19 that come from? That the Court may alter the allocation of who pays for what parts
20 of the special master's work. While I don't anticipate that that would happen, I think
21 to my mind it comes down to this. If the defendants show that they did comply by
22 virtue of the QuickBooks with an accurate depiction of what the net cash was and
23 the total hours for that pay period, then it may be that the Court would say, well,
24 then it's not appropriate to order the defendants to pay for that and it may get shifted

1 over to the plaintiffs responsibility.

2 While I don't anticipate, at least from what the plaintiff is telling me,
3 while I don't anticipate that that would happen, I suppose there needs to be at least
4 -- so that nobody is surprised, I'm looking at arriving at a just determination here
5 of what the liability, if any, of the defendants is and including in that whether or not
6 they complied with the statute because that is the basis that I have used to say that,
7 yes, I think the defendants must pay for this study.

8 MR. GREENBERG: The order as presented to Your Honor can specifically
9 note that the Court is reserving the possibility in the future that it may impose a
10 portion of the special master costs --

11 THE COURT: All right.

12 MR. GREENBERG: -- upon the plaintiffs, depending upon its findings.
13 And that will just be clear in the order, if Your Honor would like that.

14 THE COURT: Okay. All right. Now, one of the things we talked about also
15 in chambers was the names submitted by the defendant do not have any C.V.,
16 Curriculum Vitae or anything else that indicates to the Court what they might
17 anticipate might be charged for those services. And I would very much like to
18 have them before selecting anyone to be the special master here. Another thing
19 we discussed is the Court's hope that if possible we do not have to go outside of
20 the state and perhaps not outside of Las Vegas to find our special master. Given
21 that we have a time crunch here, it seems to me that even with the communications
22 of today it may add a little bit of extra time if we have to communicate things to
23 someone who's outside the state.

24 MR. GREENBERG: Yes, Your Honor.

1 THE COURT: So -- and as I understand it, Ms. Rodriguez, the three that
2 you suggested are all within the state, correct?

3 MS. RODRIGUEZ: Yes, Your Honor.

4 THE COURT: All right.

5 MS. RODRIGUEZ: And I can get those CVs to you quite quickly.

6 THE COURT: All right.

7 MR. GREENBERG: Your Honor --

8 THE COURT: Yes?

9 MR. GREENBERG: -- if I could just address the third nominee of Ms.
10 Rodriguez, Christine Lambrecht (phonetic). I do have an objection to that.
11 Ms. Lambrecht was designated as an expert witness in the Thomas v. Yellow Cab
12 litigation that I prosecuted. She also has a long-standing relationship with the
13 industry in the form of the Yellow-Checker-Star company --

14 THE COURT: Uh-huh.

15 MR. GREENBERG: -- that she has consulted to --

16 THE COURT: Okay.

17 MR. GREENBERG: -- prior to the litigation. So I don't believe she would be
18 an appropriate person to be appointed special master involving this sort of dispute
19 with this industry.

20 THE COURT: All right. Well, I'll bear that in mind. If you still wish to submit
21 her C.V., you may do so.

22 MS. RODRIGUEZ: I will, Your Honor. I've never had any contact with her.
23 She's never been an expert witness for me.

24 THE COURT: Okay.

1 MS. RODRIGUEZ: I don't know if any of these proposed special masters
2 have ever served as a witness on behalf of Mr. Greenberg or on behalf of plaintiffs
3 in a class action. Perhaps we can get that similar disclosure right now.

4 THE COURT: Sure.

5 MR. GREENBERG: Your Honor, I have no prior relationship with any of the
6 people I have nominated --

7 THE COURT: Very good.

8 MR. GREENBERG: -- as an expert, as a consultant in any matter.

9 THE COURT: Now, the problem, Ms. Rodriguez, is I need this like yesterday.
10 Can you get it to me by tomorrow?

11 MS. RODRIGUEZ: Today's Friday? Is today Friday? Yes.

12 THE COURT: Oh, yeah. Hello. By Monday, then.

13 MS. RODRIGUEZ: Oh, yes. Absolutely, Your Honor. Yes. I'm not sure
14 these people -- I haven't submitted things to them like Mr. Greenberg did, so I
15 don't know if they can work up a budget and a proposal by Monday on what they
16 anticipate, but I'll do the best I can, certainly.

17 THE COURT: Very good. And what I think is also important is the question
18 of whether or not they are equipped to handle something --

19 MS. RODRIGUEZ: Right.

20 THE COURT: -- of this magnitude in this short of time. And when I say short
21 of time, I'm accepting Mr. Greenberg's estimation that it should be around 45 days
22 that this project takes, at which point we will at the very least be in a position to
23 figure out whether or not a trial is yet to be considered or whether we don't need
24 a trial.

1 MS. RODRIGUEZ: So as far as moving forward on the proposed order, can
2 we get a revision that Mr. Greenberg and I can work together to incorporate some of
3 the things that we talked about in chambers in terms of, like, start times, end times,
4 and the columns and things that the special master is to look at?

5 THE COURT: If you can do that by Monday. And if you disagree with the --
6 or would you? Are you saying that you would anticipate that that would be an order
7 that you would --

8 MS. RODRIGUEZ: Stipulate?

9 THE COURT: Yeah, stipulate to or something.

10 MS. RODRIGUEZ: I would hope so, based on what we talked about, but --

11 THE COURT: You never know.

12 MS. RODRIGUEZ: -- which is, you know, taking out the file -- the things to
13 be deleted and the things to be added and whether we can agree upon the pay.

14 THE COURT: Yeah. I recognize that asking you two to agree on anything
15 is probably a 50/50.

16 MS. RODRIGUEZ: Challenge.

17 THE COURT: 50/50 at best.

18 MS. RODRIGUEZ: 50/50.

19 MR. GREENBERG: Probably less than that, Your Honor.

20 Your Honor, what I would propose, given the urgency here as well,
21 is the form of order I submitted to the Court with my supplement actually is not
22 really complete in terms of giving instructions regarding like the missing end time
23 we were discussing in chambers. And I actually had drafted an order addressing
24 that, but now we've had some further discussions about perhaps how that should

1 be addressed. What I was going to say, Your Honor, is given the urgency here
2 Your Honor could certainly enter the order as I've previously given to Your Honor
3 on Monday --

4 THE COURT: Uh-huh.

5 MR. GREENBERG: -- and we can simply get an amended order to Your
6 Honor giving the special master those instructions so the appointment can be
7 made and they can get geared up and get to work. That is a possibility, Your Honor.
8 I'm just mentioning it to the Court. I don't know how the Court wishes to proceed.

9 THE COURT: Yes, and if we had to do that then I would do that. I would
10 rather, though, at least begin by hopefully Monday having an order that both sides
11 agree at least accurately depicts what the Court is trying to do.

12 MR. GREENBERG: I will work diligently with defendants' counsel, to forward
13 to them, say, I hope no later than three o'clock this afternoon a revised order
14 pursuant to our discussions in chambers.

15 THE COURT: All right.

16 MR. GREENBERG: Defendants are essentially asking for inclusion of
17 additional information --

18 THE COURT: Uh-huh.

19 MR. GREENBERG: -- to be gathered by the special master. We have no
20 objection to that being done, Your Honor.

21 THE COURT: All right. Do we need to discuss on the record anything about
22 we had looked at one of the -- I don't know what you call this page.

23 MR. GREENBERG: A trip sheet, Your Honor.

24 THE COURT: Trip sheet. That is a trip sheet, huh?

1 MR. GREENBERG: Yes, Your Honor.

2 THE COURT: The infamous trip sheet. Okay.

3 MR. WALL: Front and back.

4 THE COURT: And we had talked about having a separate column to depict
5 whether or not the special master was using something other than what normally
6 fits in the time-end box to calculate the time end, namely either the time when a
7 meter depicts, which was in the middle column, or when the car was gassed up at
8 in this case Arco, which is in the left-hand column at the top. Do we need to discuss
9 or make any decision about that?

10 MR. GREENBERG: I think we have an agreement, and I will confirm with
11 defense counsel, that in the event of this circumstance where there is no time out
12 stamp, the special master should note those two times, those two other times --

13 THE COURT: Okay.

14 MR. GREENBERG: -- and provide a calculation based on those times.
15 And that can be investigated further, but it should be noted in detail in his review
16 of the trip sheets. Is that correct, counsel?

17 MS. RODRIGUEZ: I'm agreed. Yes.

18 THE COURT: Okay, very good. Very good. Anything else that we need
19 to resolve before locking you all up in a room together until the proposed order
20 is produced?

21 MR. GREENBERG: Well, again, Your Honor, I will get that revised order
22 to defense counsel I hope by three o'clock today. I do anticipate getting it to
23 Your Honor, say by three o'clock on Monday.

24 THE COURT: All right.

1 MR. GREENBERG: And hopefully Your Honor will be able to sign that order
2 Monday or Tuesday. We do need to move as quickly as possible here.

3 THE COURT: That is my intention.

4 MR. GREENBERG: Otherwise --

5 THE COURT: And I should tell you, my intention is to sign this, whatever
6 it is I'm going to sign to resolve these kinds of issues, to sign it and to have it on
7 record as of Monday, recognizing, as you have said, that it may be that it has to
8 be amended from time to time to account for things encountered along the way.

9 MR. GREENBERG: Yes, Your Honor, and I appreciate that. And you
10 asked if we could just make anything on the record here. I would just like to put
11 a statement on the record here, Your Honor, that plaintiffs have agreed, and it was
12 discussed in chambers, to significantly reduce the burden of the special master's
13 cost by clearly over fifty percent by agreeing to an appropriate statistical analysis
14 and summary of the trip sheets to arrive at the information that we're seeking to
15 get here, so that a determination of the merits of this case can be made. Plaintiffs
16 would agree to that and would agree to be bound by that. Defendants have not
17 taken up plaintiffs on that offer, but I wish that to just simply be clear on the record
18 because I do anticipate the defendants will be seeking appellate review --

19 THE COURT: Yes.

20 MR. GREENBERG: -- based upon an allegation that this is unduly
21 burdensome. And it is not the intention of plaintiffs to unduly burden the defendants
22 with the special master appointment. It is not in the interest of my clients to see that
23 undue resources are devoted to the cost of the special master, as those resources
24 may not be able to pay my clients' claims.

1 THE COURT: Is that accurate, Ms. Rodriguez, that you would not stipulate
2 to a statistical sample -- how does that go?

3 MR. GREENBERG: A statistical sampling of the trip sheets --

4 THE COURT: Of the trip sheets.

5 MR. GREENBERG: -- to arrive at the hours worked for purposes of --

6 THE COURT: As opposed to going through all of them.

7 MS. RODRIGUEZ: Your Honor, it's the defendants' position that it's a day
8 late and a dollar short and this remains plaintiffs' burden of proof. So it's a little late
9 in the game to suggest now at this point a statistical sampling, so at this point we
10 would not agree to that.

11 THE COURT: Why is it? What that sounds like is had it been proposed
12 earlier you would have.

13 MS. RODRIGUEZ: Well --

14 THE COURT: That would be very surprising to me.

15 MS. RODRIGUEZ: I think the Court has made a determination now at this
16 stage and that remains our position, which has always -- I don't know how many --
17 I don't want to continue to say a hundred times defendants have always been very,
18 very clear we need to look at the trip sheets. They didn't want to look at the trip
19 sheets. Now, unfortunately, the defendants are bearing the cost for a review of
20 the trip sheets.

21 THE COURT: Uh-huh.

22 MS. RODRIGUEZ: And he's correct, I do anticipate that, you know, this
23 is not going to be the end of the story here, especially in what he represented in
24 chambers that it's his intent to do away with the defendants' trial altogether, to have

1 the special master do the work of the plaintiff and then just submit it for judgment.
2 So I do believe that's inappropriate, and now he's even wanting to shortcut it even
3 more to do just a statistical sampling. His experts could have done a statistical
4 sampling.

5 THE COURT: The only question is whether the defense would agree to
6 using a statistical sample as opposed to --

7 MS. RODRIGUEZ: Right.

8 THE COURT: -- looking at all the trip sheets. And the answer is they would
9 not?

10 MS. RODRIGUEZ: Not at this stage, no.

11 THE COURT: Yeah. All right.

12 MR. GREENBERG: Your Honor, the only other issue the Court may elect
13 to address right now is I anticipate once the order is entered, hopefully on Monday,
14 defendants will be seeking a writ or appellate review and presumably will be coming
15 here to ask for a stay of any actual proceeding of this case further while that
16 application is made. I'm not saying Your Honor should address that issue right now,
17 but you might find it efficient to do so. That's simply why I'm mentioning it.

18 THE COURT: Okay.

19 MS. RODRIGUEZ: A writ on what? On the Court's -- the order that he's
20 going to sign Monday?

21 THE COURT: Yeah. That's what I understood him to be saying.

22 MR. GREENBERG: Yes, Your Honor. I anticipate when the order is entered
23 the defendants are going to seek to file their writ and they're going to ask Your
24 Honor, presumably, to stay the proceedings and the work of the special master

1 pending their seeking of such relief, which they have the right to do. It's just that
2 might bring us back here and I don't know if the Court wants to address that now.
3 It might be efficient to do so.

4 THE COURT: Well, I don't think --

5 MR. GREENBERG: That's why I mention it, Your Honor.

6 THE COURT: I don't have it before me right now, the question or the issue.
7 I probably don't need to address it. The only thing I would say is you could probably
8 anticipate what I will do based on my belief, so tardily arrived at, that there is not
9 another reasonable way to proceed with any sense of accuracy in this lawsuit, and
10 largely because there has been such a fight all the way through at every stage, at
11 every turn. Anyway, so the chances that I would grant a stay -- I wouldn't say that
12 I wouldn't, but if I did it wouldn't be very long because this needs to get resolved.

13 MR. GREENBERG: I understand, Your Honor. I'm not suggesting Your
14 Honor should address this now. It was just a thought.

15 THE COURT: All right. Okay. Anything you want to say on that, Ms.
16 Rodriguez?

17 MS. RODRIGUEZ: No. Thank you, Your Honor.

18 THE COURT: Okay.

19 MR. GREENBERG: Thank you, Your Honor.

20 THE COURT: All right. Then that will be the end of it. Thank you all for
21 your help. I anticipate, as I said, we'll get this order signed and in place by Monday.
22 Thank you all.

23 MS. RODRIGUEZ: Thank you, Judge.

24 MR. GREENBERG: We are -- the Court is not scheduling us for further

1 status on this at this time?

2 THE COURT: No. I anticipate I will get a final proposed writ, and if any
3 objections are noted, they may be noted. I will look at them and then I will make
4 the determination here's what's going to be the final writ, at least for now --

5 MR. GREENBERG: Yes, Your Honor.

6 THE COURT: -- so that we can get started.

7 MR. GREENBERG: I agree. We need to move forward quickly, Your Honor.

8 THE COURT: Okay. Thank you all.

9 MR. GREENBERG: Thank you, Your Honor.

10 MS. RODRIGUEZ: Thank you.

11 (PROCEEDINGS CONCLUDED AT 10:49 A.M.)

12 * * * * *

13

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

16 

17 Liz Garcia, Transcriber
18 LGM Transcription Service

19

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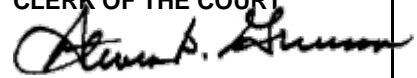
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Attorneys for Defendants

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' MOTION FOR
BIFURCATION AND/OR TO LIMIT ISSUES FOR TRIAL PER NRCP 42(B)

PLEASE TAKE NOTICE that an Order Denying Plaintiffs' Motion for Bifurcation And/Or

...

...

...

...

...

to Limit Issues for Trial per NRCP 42 (B) was entered by the Court on February 2, 2018. A copy of the Order is attached hereto.

DATED this 2nd day of February, 2018.

RODRIGUEZ LAW OFFICES, P. C.

/s/ Esther C. Rodriguez, Esq.
 Esther C. Rodriguez, Esq.
 Nevada State Bar No. 006473
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 Las Vegas, Nevada 89145
Attorneys for Defendants

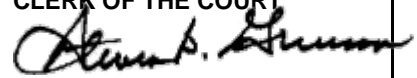
CERTIFICATE OF SERVICE

I HEREBY CERTIFY on this 2nd day of February, 2018, 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
Co-Counsel for Plaintiffs

Christian Gabroy, Esq.
 Gabroy Law Offices
 170 South Green Valley Parkway # 280
 Henderson, Nevada 89012
Co-Counsel for Plaintiffs

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



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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 BIFURCATION AND/OR TO LIMIT

ISSUES FOR TRIAL PER NRCP 42 (b)

Plaintiffs' Motion for Bifurcation and/or to Limit Issues for Trial per NRCP 42(b) came on for hearing before this Court on the Chambers Calendar on December 7, 2017. Oral argument was not entertained but the parties were represented in their briefings to the Court. Plaintiffs were represented by their attorneys, Leon Greenberg and Dana Sniegocki of Leon Greenberg Professional Corporation. Defendants were represented by their attorneys, Esther C. Rodriguez of Rodriguez Law Offices, P.C., and Michael K. Wall of Hutchison & Steffen, LLC.

...

1 Having considered the pleadings and motion papers on file herein, the Court DENIES
2 Plaintiffs' Motion for Bifurcation and/or to Limit Issues for Trial per NRCP 42(b), except to the
3 extent that Plaintiffs seek to admit evidence of damages by representative sampling, pattern or
4 practice evidence, or other approximation.

5 Pursuant to the minute order distributed December 21, 2017, the Court finds the following:
6 NRS 608.115 requires, in relevant part, that employers keep records of its employee's wages and
7 hours worked for each pay period. NRS 608.115. Plaintiffs argue that because Defendants failed to
8 keep these records, and because employees do not have the records nor a duty to keep the records,
9 Plaintiffs should be allowed to present evidence of the employees' average hours worked per shift.
10 Defendants argue that it kept records of the actual hours its employees worked in the form of
11 handwritten tripsheets; and that evidence of approximation is inadmissible in lieu of the precise
12 data.

13 The Court further finds that Defendants' tripsheets document the hours each of its
14 employees worked during any given shift. Because the tripsheets are handwritten physical
15 documents, compiling data from the records requires litigants to undertake the task of locating and
16 compiling each employee's several tripsheets for each of the thousands of pay periods in question.
17 NRS 608.115 does not specify a particular medium in which employers must keep the records;
18 however, an employer cannot avoid liability under Nevada's Minimum Wage Act by keeping
19 records in a form that makes it virtually impossible for litigants to challenge the sufficiency of
20 compensation paid. NRS 608.115 requires that employers keep a record of its employees' hours
21 per pay period; the Court finds Defendants' trip sheets do not do so. In this case, an approximation
22 would provide a reasonably expeditious means of calculating and allocating damages, whereas an
23 individual calculation for each class member would impose impossible burdens on the litigants.
24 See *Bell v. Farmers Ins. Exch.*, 115 Cal.App. 4th 715, 753 (2004).

25 Defendants understandably argue the disadvantages of such approximation evidence, and
26 we acknowledge that such an approach necessarily yields an average figure that will overestimate
27 or underestimate the right to relief of individual employees. See *Id.* We have weighed the
28 disadvantages of such evidence against the opportunity to vindicate an important constitutional

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1 mandate in a manner that does not impose an undue burden on the court or the litigants. See *Id.*
 2 Like under-compensation cases that employees have brought under the Fair Labor Standards Act,
 3 calculation of damages on an individualized basis in this case would be impracticable and would
 4 undermine the purpose and utility of class actions. See *Smith v. Lowe's Home Centers, Inc.*, 236
 5 F.R.D. 354, 357 (S.D. Ohio 2006).

6 For the foregoing reasons, and for other reasons argued by the Plaintiffs, the Court
 7 ORDERS the following:

8 Plaintiff may present at trial evidence of approximate damages so long as he makes an
 9 ultimate approximation (not merely advances a model by which damages could be approximated),
 10 so long as there is a sufficient basis from which a reasonable inference of damages could be drawn,
 11 and so long as the evidence is otherwise admissible. Defendant may counter by advancing
 12 evidence of its employees precise shift length, by advancing its own approximation and
 13 demonstrating its superior accuracy, or by advancing other evidence that would tend to negate the
 14 reasonableness of the inference to be drawn from Plaintiff's evidence. See *Anderson v. Mt.*
 15 *Clemens Pottery Co.*, 328 U.S. 680, 688 (1946).


16 **IT IS SO ORDERED.**

17 DATED this 26 day of Jan, 2018.

18 
 19 _____
 20 DISTRICT COURT JUDGE
 21 *KP*

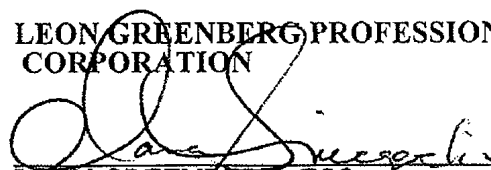
22 Submitted by:

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

24 By: 
 25 Esther C. Rodriguez, Esq.
 26 Nevada State Bar No. 6473
 27 10161 Park Run Drive, Suite 150
 28 Las Vegas, Nevada 89145
 Attorneys for Defendants

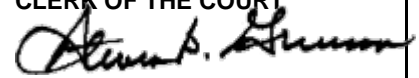
Approved as to form and content:

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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 February
18 7, 2018.

19 Dated: February 8, 2018

20 LEON GREENBERG PROFESSIONAL CORP.

21 /s/ Leon Greenberg

22
23 Leon Greenberg, Esq.
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27 Tel (702) 383-6085
28 Attorney for the Plaintiffs

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/s/ *Sydney Saucier*

Sydney Saucier

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8 Esther C. Rodriguez, Esq.
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9 10161 Park Run Drive, Suite 150
Las Vegas, NV 89145

Steven D. Grierson

ORDER

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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 GRANTING
PLAINTIFFS' MOTION TO
APPOINT A SPECIAL MASTER**

Hearing Date: February 2, 2018
Hearing Time: 9:00 a.m.

On January 25, 2018, with all the parties appearing before the Court by their respective counsel as noted in the record, the Court granted plaintiffs' motion for rehearing of plaintiffs' prior request to appoint a special master pursuant to Nev. R. Civ. P. 53, such request being made as part of Plaintiffs' Motion for Class Certification originally filed on May 19, 2015. Such request was originally denied by the Court in its Order entered on February 10, 2016. In revisiting that prior order and entertaining the argument of counsel for the parties at a continued hearing held on February 2, 2018, the Court hereby finds:

The parties do not dispute that the wages paid the class members every pay period are accurately set forth in the preserved Quickbooks records of defendant A-Cab. The parties cannot, at this time, present to the Court any agreed upon record of

1 the total hours worked during each of those pay periods by each class member.
2 Plaintiffs have maintained throughout this litigation that defendants failed to keep a
3 record of the total hours worked by each of the class members per pay period as
4 required under NRS 608.115. NRS 608.115 requires an employer to “establish and
5 maintain records of wages for the benefit of his or her employees, showing for each
6 pay period.....[t]otal hours employed in the pay period by noting the number of hours
7 per day.” Defendants have maintained throughout this litigation that the only way to
8 determine the hours worked by the plaintiffs and the class members is to consult the
9 tripsheets. Defendants assert that those tripsheets set forth an accurate record of the
10 amount of time that the plaintiffs and the class members worked. Yet those tripsheets
11 do not show the “total hours employed in the pay period.” They record the time of day
12 a taxicab driver started their shift, the time of day they ended that shift, and the amount
13 of non-working break time that occurred during the shift.

14 In light of the above, the Court finds that the appointment of a Special Master is
15 the appropriate solution to determine the hours worked each pay period by each class
16 member and the amount of minimum wages, if any, that each one is owed based upon
17 A Cab’s records. The Special Master is being appointed to report on the hours
18 worked, and the wages paid, as documented in A Cab’s admittedly accurate records; to
19 what extent that information in those records demonstrates wages of less than the
20 minimum wage (that “lower tier” rate is \$7.25 an hour since July 1, 2010) were paid
21 during any pay periods; and the amount of any such minimum wage deficiencies for
22 each class member.

23 The Court finds such a Special Master appointment pursuant to NRCP Rule
24 53(b) is appropriate in respect to the class members’ claims that are established by the
25 records the Special Master will review. Such claims will not require any
26 determination by a jury and must be determined as a matter of law based upon those
27 records. The Court also finds that such a Special Master appointment is appropriate
28 under NRCP Rule 53(b) as the resolution of the class members’ claims present

1 complicated issues. Whether minimum wages are owed for any particular pay period
2 is quite simple when the relevant information (hours worked and wages paid) is
3 known. But in this case that information must be gathered from over 200,000 trip
4 sheets, a complex process. Similarly, performing that calculation on many thousands
5 of pay periods for approximately 1,000 class members is also complicated and
6 laborious.

7 The Court also finds a compelling imperative in so appointing a Special Master,
8 at defendants' expense at this time, to perform this task is found in the Nevada
9 Constitution, which provides for the most stringent protections for Nevada's
10 employees to ensure they are paid the required minimum wage. It also directs this
11 Court to grant all relief available to effectuate its purpose of securing the payment of
12 minimum wages owed to Nevada employees. The Court reserves a final
13 determination pertaining to which party will bear the costs or a portion thereof of the
14 Special Master following the final report of the Special Master.

15 THEREFORE IT IS HEREBY ORDERED that Michael Rosten and the firm of
16 Piercy Bowler Taylor & Kern of Las Vegas, Nevada, is appointed Special Master in
17 this case by the Court. The purpose of such Special Master appointment is to
18 determine for each class member, based upon the hours of work set forth in their trip
19 sheets for each pay period, and the wages they were paid in each such pay period as set
20 forth in A Cab's Quickbooks records, the unpaid minimum wages they are owed by A
21 Cab pursuant to Article 15, Section 16, of Nevada's Constitution (the "MWA") under
22 the "lower tier" or "health insurance provided" minimum wage rate. That
23 determination is to be made for all class members for all pay periods falling entirely
24 within the class period of October 8, 2010 through December 31, 2015. That
25 determination is also to be made for those class members who were granted a statute of
26 limitations toll pursuant to this Court's Order entered on June 7, 2017 for all pay
27 periods occurring entirely after the statute of limitations toll date listed for them in Ex.
28 "A" of that Order and prior to December 31, 2015; and

1 IT IS FURTHER ORDERED that in determining the hours of work shown by a
2 trip sheet, the Special Master shall accept as correct the characterization of time as
3 "breaks" or "meals" or non-working time in the trips sheet as accurate and subtract all
4 such time from the interval between the start and end time for the shift as recorded on
5 the trip sheet. The Special Master in their report shall also note the indicated start and
6 end time of "break" or "meal" time entry on each trip sheet. In the event that no shift
7 end time is recorded or fully legible on a trip sheet the Special Master shall indicate in
8 their report the times on that trip sheet's copy of the printed receipt that included
9 "Meter Details" and that trip sheet's copy of the printed fuel purchase receipt and use
10 the earlier of each time to arrive as a "shift end" time for purposes of calculating the
11 hours worked during the shift. If no legible "Meter Details" or fuel purchase receipt
12 time exists on that trip sheet the Special Master shall not calculate any hours of work
13 for that trip sheet and that shift and shall record that they are unable to arrive at a
14 working hours total, or perform a minimum wage underpayment calculation, for the
15 class member for the pay period including that trip sheet. In determining all wages
16 paid to a class member during a pay period the Special Master shall include all items
17 of taxable income paid by A Cab to the class member during the pay period as
18 recorded in A Cab's Quickbooks records but shall not include any amounts identified
19 as "Tips" or "Tips Supplemental." The Special Master shall rely on the parties'
20 stipulated agreement as to the wages paid to the class members each class period if the
21 parties so agree to stipulate.; and

22 IT IS FURTHER ORDERED that A Cab shall, forthwith, provide the Special
23 Master all records necessary for the performance of its appointment and as the Special
24 Master requests. The first meeting of the parties and the Special Master directed by
25 NRCP 53(d)(1) is dispensed with. The Special Master shall deliver the report of their
26 findings to the Court and the parties no later than 45 days from the Special Master's
27 receipt of the deposit specified in this Order.


28 The report so furnished shall state the total amount of unpaid minimum wages

so owed, if any, for each class member; the amount of hours each class member was found to have worked each pay period for A Cab; and the amount of wages within the meaning of the MWA they were paid each pay period by A Cab. The report shall also indicate every pay period for every class member that the Special Master finds the records reviewed contained incomplete or not fully legible information and for which no determination on whether proper minimum wages were paid could be made. At the request of any party, the Special Master shall provide the report's foregoing findings in an Excel file.

IT IS FURTHER ORDERED that the costs of the Special Master shall be borne by the defendant A Cab who shall, within 10 days of the entry of this Order deposit with the Special Master the amount of \$25,000 for their services, the Court also expressly reserving the possibility that it may in the future direct some portion of the Special Master's cost be shifted to the plaintiffs if the Special Master's report documents circumstances that the Court finds warrant it doing so.;

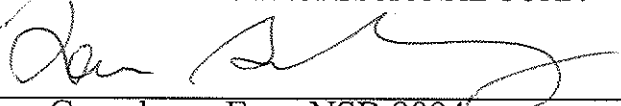
IT IS FURTHER ORDERED that the Court will not be entertaining a motion for reconsideration of this order by the defendants.

IT IS SO ORDERED.


Honorable Kenneth Cory
District Court Judge

2-7-18
Date

LEON GREENBERG PROFESSIONAL CORP.


Leon Greenberg, Esq. NSB 8094
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Attorney for the Plaintiffs

2/6/18
Date

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3 Approved as to Form and Content:
4

5 *Not Approved*

6 Esther C. Rodriguez, Esq. NSB 6473
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11 Attorney for the Defendants

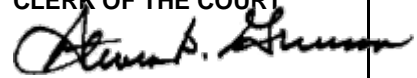
Date

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

MICHAEL MURRAY, et al,

Plaintiffs,

vs.

A CAB TAXI SERVICE, LLC, et al,

Defendants.

CASE NO. A-12-669926

DEPT. NO. I

BEFORE THE HONORABLE KENNETH CORY, DISTRICT COURT JUDGE

THURSDAY, FEBRUARY 15, 2018

TRANSCRIPT RE:
APPOINTMENT OF SPECIAL MASTER

APPEARANCES:

For the Plaintiffs:

LEON GREENBERG, ESQ.
DANA SNIEGOCKI, ESQ.
CHRISTIAN GABROY, ESQ.
KAINE MESSER, ESQ.

For the Defendants:

ESTHER C. RODRIGUEZ, ESQ.

ALSO PRESENT:

CREIGHTON J. NADY

RECORDED BY: Lisa Lizotte, Court Recorder

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001346

1 LAS VEGAS, NEVADA, THURSDAY, FEBRUARY 15, 2018, 10:13 A.M.

2 * * * * *

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

5 THE COURT: Will counsel enter their appearances, please.

6 MR. GREENBERG: Leon Greenberg, Dana Sniegocki, Christian Gabroy
7 and Kaine Messer for plaintiff.

8 MS. RODRIGUEZ: Good morning, Your Honor. Esther Rodriguez for the
9 defendants. And Creighton J. Nady is present as well.

10 MR. NADY: Good morning.

11 THE COURT: Good morning. Thank you all for being able to come on short
12 notice. I thought that it was important that we try and get through this latest issue
13 as quickly as possible in order to proceed ahead with all dispatch and all due speed
14 on the Court's previous order.

15 I have a packet of documents which I have received and which I will
16 make a record of. The first is the order granting plaintiff's motion to appoint a
17 special master. As you will recall, I advised the parties on January 25th, I'm sure
18 as a surprise to both sides, that the Court was going to grant the motion which had
19 been filed some two years previously, May 19th of 2015, to appoint a special master
20 and the Court indicated the reasons why it was doing so. You will recall we met
21 approximately a week after that to try and attend to the details necessary and make
22 -- and get that to proceed ahead with all dispatch. After both sides nominating
23 several parties and of course the Court selected Mr. Rosten from Piercy Bowler,
24 then I received an email on Monday, February 12th, from Michael Rosten, who

1 indicates as follows. It was actually addressed to my JEA, Joan Lawson. "Joan,
2 as we discussed, I have attached correspondence received last week related to
3 our special master appointment which addresses the issue of our managing
4 shareholder's brother being a cab driver for A Cab. But after close of the class
5 period, because of counsel's disagreement this seems a prime issue for
6 consideration by Judge Kenneth Cory."

7 And with that I received the letter of February 9th from Ms. Rodriguez
8 and a responsive letter dated the same date, February 9th, from Mr. Greenberg.
9 Upon receiving these and looking at them, as you can probably tell from the order
10 which I then entered on February 13th -- it was filed that date, anyway, and signed
11 on that date, I entered a minute order first indicating why I was just proceeding
12 ahead and modifying the previous order. Much of my concern is that we not stop
13 and sort out issues that could arise along the way if we had a more deliberative
14 process. We're at a different stage of the passage of time in this case. And on
15 that basis and because I indicated that it is possible that any local firm who might
16 be appointed in the place of Michael Rosten and Piercy Bowler might have some
17 connection to one side or the other, and if so then we would have a further issue
18 along the way that wouldn't make any progress towards the significant job that
19 needs to be done by the special master in this case. And on that basis I entered
20 the order of February 13th.

21 I then received from Ms. Rodriguez a fax dated February 13th which
22 transmits her letter of the same date in which she raises objection to the fact --
23 mostly, I think, and you can correct me if I'm wrong, Ms. Rodriguez, mostly to the
24 fact the Court had ordered the defendant to pay the bill of Mr. Rosten. That letter

1 included a number of allegations which prompted plaintiff's counsel then on the
2 next day, Valentine's Day, to send a letter -- it looks like I have the original of the
3 letter. I don't know, it must have been hand delivered. It indicates copies to
4 Esther Rodriguez and Michael Wall by email. I'm not clear at this point -- I assume,
5 Ms. Rodriguez, that you received this letter by email. At any rate, this is where
6 Mr. Greenberg is at pains to clarify the record from his perspective or clarify the
7 allegations presented by Ms. Rodriguez in her letter from the previous day.

8 That brings us to this point, and I thought I'd better get the people
9 in here because we're going to wind up with some kind of a giant issue that once
10 again takes time away from the work at hand based on these allegations of -- and
11 this certainly is not the first time that we've had counsel, rather than dealing with
12 the issues of the case, have taken to sniping at each other.

13 At any rate, to the extent that I'm accurate, Ms. Rodriguez, that your
14 objection in your most recent letter was that your client is being made to pay for
15 what Mr. Rodriguez -- I'm sorry, what Mr. Rosten has done, which I don't know if
16 there's a bill yet from him, whether we know how much that is, but the objection
17 to the defendant having to pay.

18 My view, and I'll hear from both sides before I rule on this, but my
19 view is that it's not untoward to have the defendant pay for the objection raised
20 to this local firm. It is unclear to me -- I mean, I don't have -- I have not made a
21 ruling and I aspire not to make a ruling on the issue of whether the brother of the
22 managing partner of Piercy Bowler actually is a member of this class. My purpose
23 in modifying the motion was to eliminate any possibility of this sort of thing, at least
24 as best as possible. So the only thing that I have in mind that I think needs to be

1 sorted out is this last objection raised by Ms. Rodriguez to having to pay for the bill
2 of Mr. Rosten and the firm of Piercy Bowler.

3 Ms. Rodriguez, do you have further argument to make in that regard?

4 MS. RODRIGUEZ: I do, Your Honor. Thank you. And you're correct, that
5 is the primary objection with the present draft order that was submitted to the Court.
6 There was a series of emails where the -- Mr. Greenberg sent me the proposed
7 email and I think gave me an hour or so to respond before he submitted it to the
8 Court. I actually didn't even see any of his email correspondence until about three
9 hours later --

10 THE COURT: Uh-huh.

11 MS. RODRIGUEZ: -- so that's why my letter came later in the day. I was
12 out of the office until later that afternoon.

13 But when Your Honor -- when we met at chambers and Your Honor
14 asked me to go back and talk to our proposed names and get some further budget
15 and C.V. and things like that, I did that. And I know that one of those proposed
16 people, Mr. Liano (phonetic) that we submitted, did substantial work over the
17 weekend reviewing things to try to put together a proposal as well, to be considered
18 by the Court for special master. And I assume all the other people that Mr.
19 Greenberg contacted, as well as I did, did work. None of those people have
20 submitted a bill to me, and I don't know if they've submitted a bill to Mr. Greenberg,
21 because that was part of the work --

22 THE COURT: I wouldn't expect them to do so.

23 MS. RODRIGUEZ: To be considered by the Court for appointment. That
24 was part of -- if you wanted to be considered, this is what the Court is asking you

1 to do. So I would not expect that we would be billed for any of that information
2 that was submitted to Mr. Rosten. That was one of my arguments before, was like,
3 I don't even know what has been submitted to Mr. Rosten.

4 THE COURT: Uh-huh.

5 MS. RODRIGUEZ: And that's going to be one of my requests to the Court
6 is that we no longer engage in any kind of ex parte communications with these
7 special masters. I don't think it's proper. And I argued this before when we met
8 in chambers that one party should not be communicating with select data --

9 THE COURT: What's the ex parte communication?

10 MS. RODRIGUEZ: I don't know. I don't know. I don't know what was
11 submitted to Mr. Rosten. I'm waiting to see his bill to see what he's reviewed.
12 In his proposal, along with some of the other folks, they said --

13 THE COURT: Oh, you mean prior to?

14 MS. RODRIGUEZ: Between Mr. Greenberg and the special master. Correct.
15 The proposed special master.

16 THE COURT: But you're talking about prior to --

17 MS. RODRIGUEZ: Correct.

18 THE COURT: -- the Court entering any order?

19 MS. RODRIGUEZ: Right. Right. I'm not talking about the most recent --

20 THE COURT: Well --

21 MS. RODRIGUEZ: -- thing that Your Honor just clarified this morning, that
22 it was an email from Mr. Rosten to the Court that apparently he didn't copy either
23 one of us on that as well --

24 THE COURT: Yeah.

1 MS. RODRIGUEZ: -- I'm assuming. I'm assuming Mr. Greenberg didn't
2 have notification of Mr. Rosten's communications with the Court, which I don't think
3 was altogether proper, either. Basically my problem with Mr. Rosten is I don't know
4 if he's ever been considered as a special master, but the very basic primer thing
5 that you do is run a conflicts check. Before I talked to any of these folks that we
6 submitted to the Court, I said here are the attorneys, here are the parties that are
7 involved, run a conflicts check before I even give you any additional data. It doesn't
8 appear that Mr. Rosten did that. I don't know if the guy that you've now appointed,
9 if he's done that; if Mr. Greenberg asked any of these people to run a conflicts
10 check. And it's not a matter of that they just have a relative out there that's a
11 cab driver. This is an actual current cab driver of A Cab that is the brother of the
12 managing shareholder of this firm.

13 THE COURT: Uh-huh.

14 MS. RODRIGUEZ: If there had been any circulation to the partners or the
15 managing shareholder to say this is who we're going to be involved with is A Cab --
16 I don't think that was done until obviously, what, two weeks later after -- or ten days
17 later after he's received notification of doing the proposal and doing the submission
18 to the Court. So that's my objection, is you should have started right there, run a
19 conflicts check and then you would know to raise that, to put the parties on notice.
20 I think Mr. Greenberg probably wouldn't even have submitted him if Mr. Rosten
21 had said my brother -- I mean, the brother works at A Cab.

22 THE COURT: Well, if he's a cab driver for A Cab, are you saying that you
23 would expect a putative special master, someone who is being considered, to run
24 a conflicts check with every member of the class, all the taxi drivers?

1 MS. RODRIGUEZ: No, absolutely not.

2 THE COURT: Well, how else --

3 MS. RODRIGUEZ: First of all, A Cab is one of the smallest cab companies
4 in town. There's not that many drivers to begin with, compared to something like
5 Frias or Yellow-Checker-Star or anything like that. So this is a very limited group.
6 So -- and Mr. Greenberg's response saying I've represented over 20,000 people
7 in the Las Vegas valley, so I have no idea who I've represented or whether there's
8 ever been a conflict and eventually probably somebody is going to be related, I think
9 that is a far stretch from the reality of going to a CPA firm and saying is your brother
10 a current cab driver of A Cab. I mean, that conflict is fairly obvious. I found three
11 people that don't have a relative at A Cab or that have never been represented
12 by Mr. Greenberg with my first phone calls. So that's also my problem with
13 understanding --

14 THE COURT: Well, that are currently cab drivers, but of those --

15 MS. RODRIGUEZ: Ever.

16 THE COURT: Okay. So, how many members of the class do we have?

17 MS. RODRIGUEZ: How many members of the class?

18 THE COURT: Mr. Greenberg, do you know?

19 MR. GREENBERG: Your Honor, there are in excess of 1,000 individuals.

20 THE COURT: I'm sorry, how many?

21 MR. GREENBERG: I would say in excess of 1,000.

22 THE COURT: All right.

23 MR. GREENBERG: There's some lack of precision there. It certainly is more
24 than 500, less than 1,500, Your Honor.

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

2 MS. RODRIGUEZ: And whether one of those cab drivers at A Cab is going
3 to be related to a managing shareholder of a CPA, I think the statistics are fairly low,
4 Your Honor, in reality.

5 THE COURT: Well, of course for this type of objection we wouldn't be limited
6 to the managing partner, either. Wouldn't it be anybody who's much of anything
7 with Piercy Bowler? So, I guess -- well, okay, let me -- go ahead and finish with
8 your --

9 MS. RODRIGUEZ: Well, along those lines, Your Honor --

10 THE COURT: And my question is really is your objection to having to pay
11 Mr. Rosten and Piercy Bowler for the time -- and I will say you brought up, you
12 know, what about -- are they supposed to pay for everything they did before they
13 were appointed, and my answer would be no.

14 MS. RODRIGUEZ: Okay. That's fair, Your Honor, and I appreciate that.
15 Part two, then, is from the time that they've been appointed, A Cab, per your order,
16 is supposed to furnish them with all of the trip sheets and all of the QuickBooks
17 data, etcetera, for them to review. We have not provided that to Mr. Rosten. And
18 I was just discussing that with Mr. Greenberg this morning that I'm glad I hadn't
19 provided that to him because he probably would have billed the heck out of it and
20 now we've been paying for it. So, Mr. Rosten should not have done any work as
21 of this date unless --

22 THE COURT: Well, it strikes me that perhaps we're objecting before we
23 know whether there's an issue.

24 MS. RODRIGUEZ: Exactly. I don't know. Maybe he's not even going to

1 submit a bill, but it's in your order for him to work up a bill and submit it to A Cab,
2 so that is my objection.

3 THE COURT: Well, certainly there's opportunity. One of the reasons I
4 made it 10 days to make a payment was to give opportunity to object if you found
5 anything --

6 MS. RODRIGUEZ: Uh-huh.

7 THE COURT: -- untoward in the billing. But what I am most concerned
8 with at this point is not having what I consider a side issue do anything to stop the
9 process of getting this matter brought to completion.

10 MS. RODRIGUEZ: Okay.

11 THE COURT: And so if there remains some objection to the bill after it's
12 submitted, certainly there would be opportunity to object to it without sort of hijacking
13 the process. So what I was concerned with when I saw this flurry of emails going
14 back and forth, allegations of ex parte communications and all manner of things,
15 you know, it goes -- I mean, I wouldn't be surprising anyone with the remark or the
16 observation that there is certainly less than the usual cordiality between counsel
17 in this case, and I don't want that to interfere with the litigation itself.

18 MS. RODRIGUEZ: Absolutely not, Your Honor. But I think you can probably
19 put yourself in my position where I've sent a letter to Mr. Rosten. Mr. Rosten was
20 very ambiguous about disclosing the conflict, anyway. First he sat on it. Then he
21 said, oh, by the way, my managing shareholder has a brother who works at A Cab.
22 So I had to ask him, can you give me a name? Can you tell me who this is? And
23 then he said -- I wish I had brought his email. I think I probably have it. He said
24 something like, oh, he's just a lowly cab driver at A Cab named Dennis Donahue.

1 And then I had to go back and find out, well, who is this person?

2 So the first part of that, I was very uncomfortable with Mr. Rosten's
3 handling of that whole situation, as I mentioned. I mean, this is basic attorney
4 protocol to have your client check for a conflict. I don't know if Mr. Greenberg asked
5 him to check for a conflict, but if he's ever being considered for a special master,
6 he should know to check for a conflict. That's the very first thing.

7 Number two is, I sent him a letter, then, saying I've consulted with my
8 co-counsel, I've consulted with my client. He's a current cab driver. We're asking
9 you to recuse yourself.

10 THE COURT: Uh-huh.

11 MS. RODRIGUEZ: I don't hear anything back. The next thing I hear is a
12 minute order from this Court.

13 THE COURT: Uh-huh.

14 MS. RODRIGUEZ: So obviously I'm thinking, well, what has triggered the
15 minute order? Who submitted things to the Court? I don't know if it's Mr. Greenberg
16 or Mr. Rosten.

17 THE COURT: Well, I would not really --

18 MS. RODRIGUEZ: I kind of suspected it wasn't Mr. Greenberg, that it was
19 Mr. Rosten, but I don't know. I'm sure he doesn't know.

20 THE COURT: Well, I would have been surprised if Mr. Rosten had handled
21 it any other way than to turn it over to the Court --

22 MS. RODRIGUEZ: Uh-huh.

23 THE COURT: -- the way that he did. I wouldn't have expected him -- at that
24 point he is -- he has been appointed.

1 MS. RODRIGUEZ: Right.

2 THE COURT: And it wouldn't make sense for him, in my way of thinking,
3 to engage then in some further conversation with you or with Mr. Greenberg about
4 the matter, other than to say, wait a minute, there's an issue that's been presented;
5 here you go, Judge. I mean, that's kind of the way I took the email that he sent.

6 MS. RODRIGUEZ: Except that we didn't see -- we were not privy to that
7 email, Your Honor. And I would think if he knows enough -- I looked at his proposal
8 again and he's put paragraphs in there about being appointed as a quasi-judicial
9 and we should receive immunity and not be sued and this and that. He knows
10 enough to put that in his proposal, but he doesn't know enough to copy the parties
11 on communications to the Court or to run a conflicts check. So I am very pleased
12 to see that Your Honor is considering somebody else because I don't know Mr.
13 Rosten. I've never had one discussion with him. But I think his handling thus far
14 did not -- it showed a lack of professionalism in his handling.

15 THE COURT: All right.

16 MS. RODRIGUEZ: Where, number two --

17 THE COURT: Well, he's not here to defend himself --

18 MS. RODRIGUEZ: I don't know him, Your Honor, but.

19 THE COURT: -- and I don't propose to go into making a record against
20 someone who is not here to defend themselves because they got appointed as a
21 special master.

22 MS. RODRIGUEZ: I understand. But part two of your order says that the
23 Court is accepting or giving some credibility to the fact that Mr. Greenberg has said
24 because I've represented 20,000 people it's impossible to have a local firm come in

1 and handle this. That's what I'm understanding is your reasoning for appointing
2 an out-of-state person now.

3 THE COURT: My reasoning came as much from your letter as it did Mr.
4 Greenberg's.

5 MS. RODRIGUEZ: Okay. I think there's plenty of qualified local people,
6 so this is --

7 THE COURT: Well, that's not even on the table at this point.

8 MS. RODRIGUEZ: Well --

9 THE COURT: I made the appointment --

10 MS. RODRIGUEZ: Okay.

11 THE COURT: -- and I do not wish to change it again.

12 MS. RODRIGUEZ: Well --

13 THE COURT: Part of the reason why I selected Piercy Bowler was that I --
14 I don't remember if they were the absolute cheapest, but they were certainly less
15 than bringing in some outside firm.

16 MS. RODRIGUEZ: Uh-huh.

17 THE COURT: And I think I even made a comment in court at some point
18 when we were meeting subsequent to the Court's order -- subsequent to January
19 25th when I indicated I was granting that motion that I would have loved to have
20 used a local firm --

21 MS. RODRIGUEZ: Uh-huh.

22 THE COURT: -- and do away with communications problems. But I would
23 not and I will not allow a potential issue such as the one that's come up with this to
24 happen rather than get the work done. And it seems to me at this point the most --

1 the way that's most likely to do away with this kind of an issue because of somebody
2 in the special master's operation knows somebody on one side or the other of this
3 litigation, the way to do it is I'm going to use somebody outside, so I have appointed
4 Resolution --

5 MS. RODRIGUEZ: Dr. Saad.

6 THE COURT: Yes.

7 MS. RODRIGUEZ: S-a-a-d? Okay.

8 THE COURT: Yes.

9 MS. RODRIGUEZ: And that's fine, Your Honor, but your question this
10 morning was about any obstacles that are going to prohibit the parties from moving
11 forward and that's why I'm raising this issue right now because I would like to know
12 whether Dr. Saad has even run a conflicts check so we don't run into anything else.
13 Since the first guy didn't, I don't know if this guy has --

14 THE COURT: Uh-huh.

15 MS. RODRIGUEZ: -- or what the relationship is with Mr. Greenberg. You
16 know, how he found this person. If we could get a little bit of that, then we know
17 there's not going to be an obstacle to the appointment of this person.

18 THE COURT: Well, certainly I will ask Mr. Greenberg to speak to that.
19 However, the time to object, I think, was when the names were submitted. The
20 time for each of you to object to what had been submitted was then.

21 MS. RODRIGUEZ: And I think I did, Your Honor. I did submit -- I asked
22 at that point -- we had this discussion in chambers where you said, well, you know,
23 go back and get some additional information.

24 THE COURT: Okay.

1 MS. RODRIGUEZ: But I had no idea that these people hadn't run a conflicts
2 check and I just -- again, I thought that was a basic understanding, that we would
3 not be having a current employee of A Cab or a current cab driver. So we're back
4 to square one, and so I'm asking what has --

5 THE COURT: All right. Well, let's ask --

6 MS. RODRIGUEZ: -- has a conflicts check even been run with Dr. Saad.

7 THE COURT: Let's ask Mr. Greenberg to speak to that.

8 MR. GREENBERG: Your Honor, there is a conclusion being voiced to the
9 Court that Mr. Rosten did not run a conflict check, okay. I cannot speak to what he
10 did or did not actually do. I can only speak to my communications with him. And
11 when he was initially contacted, as was every one of -- I believe there were five or
12 six nominees I gave the Court -- every single one of those nominees did inquire
13 with me about any conflict based upon their firm's involvement in other matters.

14 THE COURT: You say they did inquire of you?

15 MR. GREENBERG: They did inquire and they were provided with a copy
16 of the complaint, the pleading in the case --

17 THE COURT: Okay.

18 MR. GREENBERG: -- so they could satisfy themselves that there was no
19 conflict.

20 THE COURT: Okay.

21 MR. GREENBERG: What they did at that point I can't speak to, obviously,
22 Your Honor. So -- and Mr. Saad and Resolution Economics, Dr. Saad did that as
23 well and assured me.

24 Now, the Court is aware, in my view, this question of conflict is sort of

1 expanded by defendants beyond all kind of workable sort of sensibilities, but that's
2 not the issue here, Your Honor. Your Honor has made your decision how to handle
3 this. What Mr. Rosten did or didn't do, his services rendered in the six days he was
4 actually special master, those are all collateral issues I don't -- from my view, Your
5 Honor, I don't see that this is something that I should be addressing unless the
6 Court wishes --

7 THE COURT: No, I do not.

8 MR. GREENBERG: -- to hear from me about any of that, okay.

9 THE COURT: I do not.

10 MR. GREENBERG: Okay. The only thing I would like to hear today, and
11 I had a brief conversation with Ms. Rodriguez before Your Honor took the bench,
12 is a commitment from defendants to deliver to Dr. Saad overnight the necessary
13 materials so he can commence his work, which consists of the trip sheets which
14 are approximately 300,000 individual PDFs. I mean, I actually have with me today
15 the hard drive that was provided to me by defendants in the litigation which has
16 about three-quarters of those materials. Ms. Rodriguez represented to me before
17 you took the bench that she has everything prepared. She's prepared to give it
18 to the special master directly, which is fine. I mean, that way if it comes directly
19 from defendants there will be no question that there was any contamination or
20 mishandling by me in terms of getting the source materials to the special master.

21 THE COURT: Uh-huh.

22 MR. GREENBERG: So it's the trip sheets. Ms. Rodriguez has also advised
23 me that defendants want the special master to work with the raw QuickBooks data --

24 THE COURT: Uh-huh.

1 MR. GREENBERG: -- and come up with the gross wage numbers. There
2 was a provision in the order from February 7th saying the parties could potentially
3 stipulate as to what the gross wage amounts were --

4 THE COURT: Uh-huh.

5 MR. GREENBERG: -- per pay period because we've done work on that
6 on my end. Defendants are declining to enter into that agreement, which is fine.
7 They will also provide the raw QuickBooks data and that will be part of the special
8 master's work. I just want to see that the materials get to the special master as
9 soon as possible so he can get this done and we can meet the time pressures of
10 the litigation, Your Honor. So I have nothing further I need to address to the Court
11 or feel important to address to Your Honor besides that, unless you have questions.

12 THE COURT: Okay. So you do not know whether any conflicts check was
13 made or what was done in that regard?

14 MR. GREENBERG: It was represented to me by Mr. Rosten and every single
15 nominee I gave you --

16 THE COURT: No, I'm not talking about Rosten. I'm talking about Mr. Saad.

17 MR. GREENBERG: Yes, it was represented to me by Mr. Saad and his firm
18 that they did a conflicts check as well.

19 THE COURT: Okay.

20 MR. GREENBERG: I can only tell you what they represented to me and
21 what they requested of me when I initially contacted them.

22 THE COURT: Okay.

23 MR. GREENBERG: That was one of the first things they asked was, well,
24 we need to know who the parties are.

1 THE COURT: And then what they would have available in order to do that
2 would be the complaint.

3 MR. GREENBERG: They would have the complaint, which would identify
4 the parties and counsel.

5 THE COURT: Uh-huh. All right. Okay, does that answer -- thank you.

6 Does that answer your question?

7 MS. RODRIGUEZ: To an extent. Part two of that is how Mr. Greenberg
8 found this person. Does he have a prior relationship with him? Because the
9 problem here is that the special master is being used, as Your Honor has heard
10 my arguments before, as an expert in this. So I think that needs to be disclosed as
11 well, is what is the relationship with current plaintiffs' counsel in this matter between
12 Mr. Greenberg's firm and Dr. Saad.

13 THE COURT: Perhaps we should have done that with all -- with everyone
14 and had both sides do that, but we did not.

15 MR. GREENBERG: Your Honor, I have no relationship with Resolution
16 Economics or Dr. Saad. I have never consulted with them. I have never contacted
17 them in a previous matter about possibly retaining them as an expert. I found
18 them on-line, as I did another Los Angeles-based firm that was also submitted
19 as a nominee for Your Honor. I found them because this is an area that they have
20 a history of doing work on regarding wage and hour litigation and consulting and
21 records review. Essentially I went to Google and I just searched on-line for
22 expertise using those sort of key words and this was one of the firms that came up.
23 That was how I contacted them. I would note, by the way, Your Honor, that if you
24 review their C.V. and history they have largely worked as consultants for employers

1 in these sorts of litigations, not for plaintiffs.

2 THE COURT: I'm sorry? They have --

3 MR. GREENBERG: They have largely worked for employers, for defendants
4 in wage and hour litigations.

5 THE COURT: Okay.

6 MR. GREENBERG: They are not someone who, for lack of a better term,
7 is somehow a plaintiff's --

8 THE COURT: Yeah.

9 MR. GREENBERG: -- you know, expert, as people might think sometimes
10 of certain experts. So I have no -- again, I have no relationship with them. I had no
11 prior contact with them until I guess January 25th. I mean, we came here, we saw
12 Your Honor and I got to work as Your Honor instructed. That day or the next day
13 I started reaching out --

14 THE COURT: Okay.

15 MR. GREENBERG: -- to potential special masters.

16 THE COURT: All right. Ms. Rodriguez.

17 MS. RODRIGUEZ: Your Honor, in the hearing Mr. Greenberg's response in
18 terms of -- it appears that he's asked Dr. Saad to do his conflicts check, but we have
19 to hear it exactly from Mr. Saad. So what dawns on me, with the Court's permission,
20 is perhaps I can ask Dr. Saad in a letter to go ahead and put it in writing to all the
21 parties that he has in fact run a conflicts check and that that will not be an obstacle
22 in moving forward, just so that we have it clear and it doesn't turn out later there is
23 a problem with one of the parties. Would that be acceptable to the Court? And I will
24 cc Mr. Greenberg on it, with a very brief saying this is a discussion today; can you

1 make sure that you've run a conflicts check?

2 THE COURT: I will do that. However, I think it strikes me that I don't want
3 the impression to remain, if there is such an impression, that if anyone in the special
4 master's business operation has some relationship with someone who has ever
5 been a cab driver for A Cab that that disqualifies them. I'm satisfied, frankly, that
6 given that this individual Donahue is not a member of the class, for reasons most
7 recently pointed out by Mr. Greenberg in his letter of -- I don't recall which date, but
8 I don't view that anyone who knows somebody or is even related to someone who
9 has ever been a cab driver or even ever been a cab driver for A Cab automatically
10 disqualifies the special master. I'm trying to --

11 MS. RODRIGUEZ: I don't think we're taking that position, either, Your Honor.

12 THE COURT: I'm sorry?

13 MS. RODRIGUEZ: We're not taking that position, either.

14 THE COURT: Okay.

15 MS. RODRIGUEZ: I think this is a little bit -- a few steps higher.

16 THE COURT: All right. Well, that seemed to be, if nothing else, a sub rosa
17 issue between counsel in your exchange of letters. At any rate, my purpose here
18 today is not to try and deal with every single potential issue or question that could
19 arise. My purpose here today is to give opportunity to make a record regarding the
20 things that have transpired here and to make clear that I expect to move forward
21 with this special master. He's being given a very short period of time to do a
22 significant amount of work and I don't want anything to interfere with that. My one
23 concern about either side contacting Dr. Saad -- I think it's Doctor, maybe it's Mister,
24 I don't know -- Mr. Saad and raising questions is that he will stop the work that

1 is to be done and do this instead, and I don't want that to happen. So --

2 MS. RODRIGUEZ: Your Honor, I would think a conflicts check takes like
3 five minutes.

4 THE COURT: Well, maybe so, but the conflicts check of which you have
5 spoken has thus far with the previous special master embroiled us in, you know,
6 days if not weeks worth of questioning and raising of issues. This needs to get --

7 MS. RODRIGUEZ: And I would like that clarified, Your Honor. I tried to do
8 that in my letter because I think the implication was that somehow the defendants
9 -- I want that to be clear as well -- that we've been sitting on your order, but we
10 haven't. It was the special master who gave this last late disclosure. And the same
11 day that he indicated I have this conflict or I have this potential issue --

12 THE COURT: Uh-huh.

13 MS. RODRIGUEZ: -- I addressed it immediately --

14 THE COURT: Well, certainly.

15 MS. RODRIGUEZ: -- and then I've been waiting to hear from Mr. Rosten, but
16 all I got was your minute order. That's why I'm just asking the Court to appreciate
17 the limited response that I'm getting from both the special master -- nothing, which is
18 nothing, and then just getting -- receiving the Court's minute order saying, you know,
19 the parties have been sitting on this and I'm concerned that it's not moving along.
20 And that's why I'm raising these issues now. It's like let's get Dr. Saad to make
21 sure there's not a conflict, and part two of that, what I raised with the Court is, okay,
22 now we're going out of state because of plaintiffs' representations that I'm going
23 to have a conflict with everybody in town, which I'm telling you is a stretch because
24 I managed to find three that don't have a conflict.

1 THE COURT: No. No, that's not the reason we're going out of state. Not
2 that only, as I already indicated. My reason for doing that was what I saw in both
3 of your letters, that there was a potential that one side or the other was either going
4 to have some contact, some relationship which would cause us then to stop the
5 process, the deliberative process, and go through an entire issue within the issue.
6 And I didn't want to do that and that's why I went out of state.

7 MS. RODRIGUEZ: Well, let me tell you where my concern is.

8 THE COURT: Let's do this. If you want to write a letter, that would be fine.
9 I would ask you to send a draft of it to Mr. Greenberg before you send it and give at
10 least a day for Mr. Greenberg to register any objection, which he hopefully will not
11 have to such a letter, so that we at least, you know, ventilate this stuff before the
12 question is even put to the special master.

13 Meanwhile, I do not want the work of the special master to stop. I do
14 not want to wait to transmit the materials to the special master --

15 MS. RODRIGUEZ: That's what I was getting to, Your Honor.

16 THE COURT: -- while we make this further inquiry.

17 MS. RODRIGUEZ: This is why -- and I apologize, you can see I'm anxious to
18 tell you part two of this as to why I'm asking about why we're going to an out-of-state
19 firm, and it's because we're going to run into a problem, as I see it, maybe not, with
20 an out-of-state firm in that, yes, I have the trip sheets ready to mail to him on an
21 external hard drive which encompasses the time period of 2010 forward, as well as
22 all of the QuickBooks data which I can put on a hard drive as well. That stuff can be
23 mailed to Los Angeles. But for the three years prior to that the Court has ordered,
24 the 2007 period on, those trip sheets are in banker's boxes, large banker's boxes.

1 And we anticipated that the special master would do exactly what the Department
2 of Labor did, which is come to the A Cab premises. Of course, we can deliver them
3 locally to an office if that was going to be the case, because these are -- there's
4 probably like ten banker's boxes per year, so that's an additional maybe thirty boxes
5 per month.

6 THE COURT: Well, it may well be that the special master has to come here.

7 MS. RODRIGUEZ: Well, so that was my concern, Your Honor. What are
8 we going to do? Put a special master up for a month here in Las Vegas and --

9 THE COURT: Well, perhaps so, but all I can say is if your client had complied
10 fully with the law -- and I'm not saying he has violated the law that's in issue here, but
11 we already know that there was non-compliance with the federal law in this respect.
12 Had he kept the records that he was supposed to, we wouldn't be having this difficult
13 assignment for a special master.

14 MS. RODRIGUEZ: I'm sorry, Your Honor. You said that he -- there's notice
15 that he's violated federal law?

16 THE COURT: Was that not the conclusion of the federal agency, Department
17 of Labor, that the records had not been kept in the --

18 MS. RODRIGUEZ: No. Absolutely not, Your Honor.

19 THE COURT: -- format?

20 MS. RODRIGUEZ: No. We have that audit that says there's no record-
21 keeping violations.

22 THE COURT: Okay. All right. At any rate, it is because your client chooses
23 to keep the records in the format --

24 MS. RODRIGUEZ: Right.

1 THE COURT: -- that he has kept them that we are left with this. To me --
2 of course I'm not used to doing the work of a special master, but to me it's a
3 Herculean task.

4 MS. RODRIGUEZ: It is.

5 THE COURT: And so that, I'm afraid, is of your client's own doing.

6 MS. RODRIGUEZ: But it's an additional very large expense to either ship
7 100 banker's boxes or whatever it's going to be to Los Angeles or to put the special
8 master up in a hotel for 45 days in Los Angeles (sic) at -- I don't know what he's
9 going to bill. I think he's said \$700 an hour or something in his proposal, or maybe
10 that was Mr. Rosten. And that's why I'm asking, are we having to go out of state
11 based on plaintiffs' representations that we can't find a local firm that doesn't have
12 a conflict?

13 THE COURT: It is not plaintiff's statements alone which have caused me
14 to believe that we need to go out of state. It is both of you. It is the fact that we are
15 still here at this point arguing about the --

16 MS. RODRIGUEZ: The brother of the shareholder.

17 THE COURT: What's the word I'm looking for? Arguing about details that
18 don't have to do with the actual work of getting the calculations done.

19 MS. RODRIGUEZ: Your Honor, I'm happy to move on. I have everything
20 ready to go.

21 THE COURT: Okay.

22 MS. RODRIGUEZ: But that was a major conflict. And I'm sorry that the
23 Court doesn't see that that way, that the current taxicab driver being the brother of
24 the shareholder does not in the least pass the smell test.

1 THE COURT: All I've said is that I have made no conclusion that someone
2 who is not a member of the class has a -- automatically presents a conflict for the
3 special master.

4 MS. RODRIGUEZ: I understand that. And I guess what I'm trying to ask the
5 Court is that the Court take into consideration I believe that having an out-of-state
6 firm is probably going to even double the price. We've seen the estimates at a
7 quarter to a half a million dollars as estimates, projected estimates. I think if we
8 have to have a special master travel to Las Vegas for 45 days or we have to ship
9 everything out, we're looking at a substantial increase. And I do believe that there
10 are well-qualified local firms, either submitted by myself or Mr. Greenberg, that are
11 not going to have a conflict that could do this job. So I'm just asking the Court to
12 consider that.

13 THE COURT: All right. I've considered it and I do not agree that it makes
14 sense for us to essentially remain in Las Vegas. If there's a potential for conflict
15 based upon the large number -- relatively large number of members of the class
16 and the possibility that if any of them have any relationship at all with someone on
17 the special master's team, that automatically that knocks out the special master.
18 I'm trying to do away with that issue. And it seems to me that the best way, the
19 cleanest way to do that is to go outside of our community and to bring in somebody
20 who's less likely -- we don't know, but it's less likely that someone from out of state
21 is going to run into those kinds of relationships.

22 Mr. Greenberg.

23 MR. GREENBERG: Your Honor, you made your decision clear. Just to flesh
24 out the record here a little bit, in respect to this issue of certain trip sheets for the

1 earlier period allegedly not being available in PDF format but being in boxes on
2 paper, any special master who's going to do this work would much prefer to have
3 it in PDF in an image format because the review process will run far quicker than
4 looking at paper copies. So it is in defendants' interest, whether it's a local person
5 or an out-of-state person, to get all of those materials scanned, which can be done in
6 an automated fashion and put into PDF files and given to whoever the special master
7 is. And it's very easy to send a single hard drive PDF file to L.A. rather than 100
8 banker's boxes.

9 So the problem that they are complaining about, Your Honor, is really
10 one that they're going to have to deal with whoever the special master is. And it
11 certainly isn't in their interest to see the special master have to spend twice as much
12 time reviewing materials because they're in paper form than whether they were
13 provided in PDF form. It is in their interest to convert those paper materials into
14 electronic form, which they can do. And as Your Honor has pointed out, this is really
15 their burden under the circumstances. We don't need to discuss this further, Your
16 Honor. I just want to make clear on the record sort of the totality of the circumstance
17 that they're raising.

18 THE COURT: So I'm going to tell you what I want to tell you but I don't want
19 you to respond to it.

20 MR. GREENBERG: Thank you, Your Honor. The only other suggestion
21 I would have is we can call Dr. Saad right now and try to get him on the phone and
22 see if he will clarify this issue in respect to a conflicts check. I have no problem if
23 defendants' counsel wants to call them directly on the phone and talk to them, too,
24 if we can't reach him right now or if the Court doesn't want to even try to do that right

1 now, and satisfy themselves that he has investigated this. I don't think Your Honor
2 is anticipating Dr. Saad or any special master to actually go through a list of
3 potentially a thousand or twelve hundred or eight hundred names of people, you
4 know, who are class members in this case and then vet each one of those against
5 their staff of fifty employees in their firm. You understand what I'm saying, Your
6 Honor.

7 THE COURT: I understand.

8 MR. GREENBERG: So by all means I have no problem if defendant wants
9 to satisfy themselves that there's no further with this. As Your Honor is expressing,
10 I want to get this moving ahead.

11 THE COURT: Do you prefer to make a phone call or do it in writing, Ms.
12 Rodriguez?

13 MS. RODRIGUEZ: I'd prefer to have it in writing, Your Honor.

14 THE COURT: All right. So it will be submitted to you. Please, if you have
15 objection to the letter, please register it immediately so that we can deal with this.

16 MR. GREENBERG: Could we have a commitment from defendants to
17 overnight these materials to Dr. Saad, the ones they already have available, so
18 he'll be in receipt of them by Friday? With the understanding that they need to
19 satisfy themselves regarding any conflict issues. They have a day to do that.
20 They can send him a letter right now today. I don't need to see the letter in
21 advance. They can just copy me on it. I don't need to approve it, Your Honor.
22 But I'd like to see --

23 THE COURT: No. In light of these issues, I want it submitted to you first.

24 MR. GREENBERG: Yes, Your Honor.

1 THE COURT: And you can do a quick turn-around. You can notify defense
2 counsel you have no objection immediately and then we'll go forward. But yes,
3 the materials do need to be transmitted to Mr. or Dr. Saad, and can you do that by
4 overnight mail?

5 MS. RODRIGUEZ: Well, we're talking about the external hard drives, but
6 how are we going to handle the box issue? That's my concern is how do we handle
7 -- I mean, I can go to A Cab right now and figure out how many boxes we're talking,
8 but I think it's over 100 banker's boxes. And to suggest that now they all be
9 scanned in, I've priced that out before and they run anywhere from 50 cents to
10 \$1.00 per page to scan, so that's another 300,000; several hundred thousand
11 dollars just to get them scanned, as Mr. Greenberg is suggesting, to get even them
12 put on a hard drive. And that's going to delay the process as well. So I as well don't
13 want to delay the process and I think it's very easy for a special master -- I mean,
14 I'm a paper person rather than -- those PDF files, you have to open each PDF file
15 to go through them, and this is -- they'll pull out the sheets, they'll see the front and
16 the back and see all the start times that we're asking them to look at. So, the paper
17 is very easy to work with.

18 THE COURT: Well, then perhaps you need to put in your letter that you --
19 to state those facts to him and determine --

20 MS. RODRIGUEZ: What his preference is?

21 THE COURT: Yeah. How he's going to do that.

22 MS. RODRIGUEZ: Okay. That makes sense, Your Honor.

23 THE COURT: But I don't want any of this to stop the progress, so I expect
24 what you do have to be overnighted to Dr. Saad.

1 MS. RODRIGUEZ: I can do that.

2 THE COURT: Anything else?

3 MR. GREENBERG: No, Your Honor. Your Honor has directed we proceed
4 as I was requesting, and most of the materials will be in Dr. Saad's possession
5 tomorrow if they're overnighted today.

6 THE COURT: Okay.

7 MR. GREENBERG: And I understand there is a question of these earlier
8 materials and that will have to be dealt with, as Your Honor has been discussing.

9 THE COURT: All right.

10 MS. RODRIGUEZ: I have to kind of back up a little bit because when he
11 asked for things to be overnighted, you indicated -- the Court indicated you wanted
12 this conflicts thing done first. So do you want that conflicts done today and then
13 we'll get it overnighted?

14 THE COURT: I don't expect even the -- at this point --

15 MS. RODRIGUEZ: Uh-huh.

16 THE COURT: -- I don't expect even the conflicts check to hold up the
17 progress of getting this on the road. So I want the materials that you have, which
18 I assume is the QuickBooks, to be overnighted to Dr. Saad.

19 MS. RODRIGUEZ: Okay. No problem.

20 THE COURT: At the same time, you're going to transmit a letter which
21 inquires of him what conflicts check he's done. Okay?

22 MS. RODRIGUEZ: I understand, Your Honor. Thank you.

23 MR. GREENBERG: Thank you, Your Honor. And just to clarify for the
24 record, the materials that are available immediately to overnight are both the

1 QuickBooks payroll information and the October 2010 later trip sheets, because
2 those are electronic.

3 THE COURT: And those are also on the hard drive, are they?

4 MS. RODRIGUEZ: What I have are the trip sheets. All of the 300,000,
5 I believe it's like 300,000 on an external hard drive that can be overnighted to him.
6 Do I have an address for him on his proposal?

7 MR. GREENBERG: Yes, there is an address that's on the -- it's at Exhibit B
8 of --

9 MS. RODRIGUEZ: Just so Your Honor is aware, exporting those onto the
10 external hard drive is in itself not an easy task. A Cab has had to hire a third party,
11 Mr. Morgan, to go back and extract all of that and to put it onto the hard drive. So
12 again, I just want to emphasize to the Court we've been attempting to comply and
13 doing what we can --

14 THE COURT: Good.

15 MS. RODRIGUEZ: -- until we got further direction from the Court, and that's
16 why it's ready to go. The QuickBooks is also -- I'm hoping that they can finish
17 copying that onto a separate external hard drive today and I can overnight it -- what
18 is today, Thursday -- tonight as well. Otherwise, it will -- also, it could probably go
19 out first thing in the morning tomorrow and he can receive it on a Saturday delivery
20 or Monday delivery. I'm not sure. I can try to overnight it in the morning as well.

21 THE COURT: All right.

22 MR. NADY: That will shut down our computer while we do that.

23 MS. RODRIGUEZ: Yeah.

24 THE COURT: All right. Thank you.

1 MR. GREENBERG: Yes, Your Honor.

2 THE COURT: We then are finished and this hearing is concluded.

3 MS. RODRIGUEZ: Thank you.

4 MR. GREENBERG: Thank you, Your Honor.

5 (PROCEEDINGS CONCLUDED AT 11:02 A.M.)

6 * * * * *

7

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

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Liz Garcia, Transcriber
LGM Transcription Service

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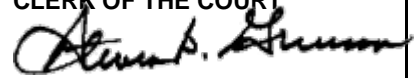
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Attorneys for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-12-669926-C

Dept.: I

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that the Court entered the attached Order Modifying
Court's Previous Order of February 7, 2018 Appointing a Special Master. That Order
is attached hereto.

Dated: February 16, 2018

LEON GREENBERG PROFESSIONAL CORP.

/s/ Leon Greenberg

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

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5 || NOTICE OF ENTRY OF ORDER

TO:

8 Esther C. Rodriguez, Esq.
9 RODRIGUEZ LAW OFFICES, P.C.
10 10161 Park Run Drive, Suite 150
Las Vegas, NV 89145

Dana Sniegocki

ORDER
LEON GREENBERG, ESQ., SBN 8094
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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 MODIFYING COURT'S
PREVIOUS ORDER OF
FEBRUARY 7, 2018
APPOINTING A SPECIAL
MASTER**

On February 7, 2018, the Court entered an Order Granting Plaintiffs' Motion to Appoint a Special Master. That Order appointed as a Special Master in this case Michael Rosten of Piercy Bowler Taylor & Kerns in Las Vegas, Nevada. Since entry of that Order, the Court has received correspondence from Defendants' counsel, Esther Rodriguez, concerning a purported conflict of interest with the appointment of Mr. Rosten as Special Master. The Court has also received a responsive letter from Plaintiffs' counsel, Leon Greenberg.

As of this writing, it has been at least nineteen (19) days since the Court Ordered that a Special Master be appointed, and yet inadequate progress is being made toward implementation of that Order. The Court is extremely concerned with the passage of time in this matter for reasons previously expressed.

In order to prevent one more issue from injecting itself into these proceedings,

and in light of the possibility that any local firm may trigger another objection due to purported conflicts of interest, the Court rescinds its appointment and its selection of Michael Rosten and the firm of Piercy Bowler Taylor, & Kerns as Special Master and selects Dr. Ali Saad and the firm of Resolution Economics to be the Special Master in this case. Mr. Rosten and Piercy Bowler Taylor & Kerns may present their bill for services rendered to the Defendant A Cab who shall have 10 days to pay the same and this matter will proceed to its conclusion.


The Court's Order of February 7, 2018 appointing a Special Master is hereby amended to substitute Dr. Ali Saad and the firm of Resolution Economics where that Order referred to Michael Rosten and the firm of Piercy Bowler Taylor & Kerns. The various time limits for action to be taken under that Order shall now commence from the date of entry of this Order. All other terms of the Court's Order of February 7, 2018 in this case shall remain in effect.

IT IS SO ORDERED.


Honorables Kenneth Cory
District Court Judge

Feb 13, 2018
Date

LEON GREENBERG PROFESSIONAL CORP.


Leon Greenberg, Esq. NSB 8094
LEON GREENBERG PROFESSIONAL CORP.
2965 S. Jones Boulevard - Ste. E-3
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Tel (702) 383-6085
Attorney for the Plaintiffs

2/13/18
Date

Approved as to Form and Content:

NOT Approved
Esther C. Rodriguez, Esq. NSB 6473
RODRIGUEZ LAW OFFICES P.C.
10161 Park Run Drive - Suite 150
Las Vegas, Nevada, 89145
Tel (702) 320-8400
Attorney for the Defendants

Date

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IN THE SUPREME COURT OF THE STATE OF NEVADA

A CAB TAXI SERVICE, LLC; A CAB, LLC;
AND CREIGHTON J NADY,
Appellants,
vs.
MICHAEL MURRAY; AND MICHAEL RENO,
INDIVIDUALLY AND ON BEHALF OF
OTHERS SIMILARLY SITUATED,
Respondents.

Supreme Court No. 72691
District Court Case No. A669926

FILED

MAY 07 2018

Elizabeth A. Brown
CLERK OF COURT

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Elizabeth A. Brown, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"We reverse the district court's order granting the preliminary injunction."

Judgment, as quoted above, entered this 6th day of April, 2018.

IN WITNESS WHEREOF, I have subscribed
my name and affixed the seal of the Supreme
Court at my Office in Carson City, Nevada this
May 01, 2018.

Elizabeth A. Brown, Supreme Court Clerk

By: Amanda Ingersoll
Chief Deputy Clerk

A - 12 - 669926 - C
CCJV
NV Supreme Court Clerks Certificate/Judgr
4744087



IN THE SUPREME COURT OF THE STATE OF NEVADA

A CAB TAXI SERVICE, LLC; A CAB,
 LLC; AND CREIGHTON J NADY,
 Appellants,
 vs.
 MICHAEL MURRAY; AND MICHAEL
 RENO, INDIVIDUALLY AND ON
 BEHALF OF OTHERS SIMILARLY
 SITUATED,
 Respondents.

No. 72691

FILED

APR 06 2018

ELIZABETH A. BROWN
 CLERK OF SUPREME COURT
 BY  DEPUTY CLERK

ORDER OF REVERSAL

This is an appeal from a district court order granting an injunction in a constitutional minimum wage action. Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge.

Appellants A Cab Taxi Service, LLC, A Cab, LLC, and Creighton J. Nady (collectively, ACTS) and respondents Michael Murray and Michael Reno (collectively, Murray) are parties to a class action which involves claims under the Minimum Wage Amendment of the Nevada Constitution. In the order certifying the class, the district court excluded another individual, Jaminska Dubric, from participating in the class.

Dubric later filed a separate action against ACTS (the Dubric action), alleging that ACTS was not paying employees the constitutionally mandated minimum wage. In the Dubric action, ACTS and Dubric were in settlement negotiations and jointly moved the district court to be certified as a class. While the motion to certify was pending, Murray filed a motion to enjoin ACTS from entering into a settlement agreement with Dubric. The district court granted the injunction, precluding ACTS from entering a

18-13224

settlement with Dubric and requiring ACTS to withdraw the motion to certify. ACTS appeals the order granting the injunction.

The decision to grant an injunction is within the district court's discretion, and we will not disturb that decision "absent an abuse of discretion or unless it is based on an erroneous legal standard." *Univ. & Cmty. Coll. Sys. of Nev. v. Nevadans for Sound Gov't*, 120 Nev. 712, 721, 100 P.3d 179, 187 (2004); see also *Dixon v. Thatcher*, 103 Nev. 414, 417, 742 P.2d 1029, 1031 (1987) ("As a general rule, we will not overturn the district court's ruling on a preliminary injunction. However, where . . . we conclude that the district court erred, we will not hesitate to do so." (citation omitted)). "Before a preliminary injunction will issue, the applicant must show (1) a likelihood of success on the merits; and (2) a reasonable probability that the non-moving party's conduct, if allowed to continue, will cause irreparable harm for which compensatory damage is an inadequate remedy." *Nevadans for Sound Gov't*, 120 Nev. at 721, 100 P.3d at 187 (internal quotation marks omitted). NRCP 65(d) requires the district court's order granting a preliminary injunction to "set forth the reasons for its issuance; . . . be specific in terms; [and] describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained." However, "the lack of a statement of reasons does not necessarily invalidate a permanent injunction, so long as the reasons for the injunction are readily apparent elsewhere in the record and are sufficiently clear to permit meaningful appellate review." *Las Vegas Novelty, Inc. v. Fernandez*, 106 Nev. 113, 118, 787 P.2d 772, 775 (1990).

Here, the district court's order enjoining ACTS in the Dubric action fails to satisfy the minimum requirements to support injunctive relief under NRCP 65(d). Moreover, our review of the record demonstrates that

the reasons for the injunction are not readily apparent or sufficiently clear. Thus, we conclude that the district court's grant of a preliminary injunction was an abuse of discretion. Accordingly, we reverse the district court's order granting the preliminary injunction.

Douglas, C.J.
Douglas

Cherry, J.
Cherry

Gibbons, J.
Gibbons

Pickering, J.
Pickering

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

Stiglich, J.
Stiglich

cc: Hon. Kenneth C. Cory, District Judge
Ara H. Shirinian, Settlement Judge
Rodriguez Law Offices, P.C.
Hutchison & Steffen, LLC/Las Vegas
Leon Greenberg Professional Corporation
Eighth District Court Clerk

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CERTIFIED COPY

This document is a full, true and correct copy of
the original on file and of record in my office.

DATE: May 1, 2018

Supreme Court Clerk, State of Nevada

By Angela Deputy

IN THE SUPREME COURT OF THE STATE OF NEVADA

A CAB TAXI SERVICE, LLC; A CAB, LLC;
AND CREIGHTON J NADY,
Appellants,
vs.
MICHAEL MURRAY; AND MICHAEL RENO,
INDIVIDUALLY AND ON BEHALF OF
OTHERS SIMILARLY SITUATED,
Respondents.

Supreme Court No. 72691
District Court Case No. A669926

REMITTITUR

TO: Steven D. Grierson, Eighth District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: May 01, 2018

Elizabeth A. Brown, Clerk of Court

By: Amanda Ingersoll
Chief Deputy Clerk

cc (without enclosures):
Hon. Kenneth C. Cory, District Judge
Hutchison & Steffen, LLC/Las Vegas
Rodriguez Law Offices, P.C.
Leon Greenberg Professional Corporation

RECEIPT FOR REMITTITUR

Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on MAY 07 2018.

HEATHER UNGERMANN 

Deputy District Court Clerk

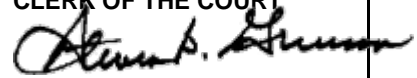
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APPEALS

MAY 07 2018

CLERK OF THE COURT

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1 **TRAN**

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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 WEDNESDAY, MAY 23, 2018

14 ***TRANSCRIPT RE:***
15 **PLAINTIFFS' MOTION FOR MISCELLANEOUS RELIEF**

16 **APPEARANCES:**

17 For the Plaintiffs: LEON GREENBERG, ESQ.
18 CHRISTIAN GABROY, ESQ.

19 For the Defendants: ESTHER C. RODRIGUEZ, ESQ.

20 ALSO PRESENT: TRENT L. RICHARDS, ESQ.

21
22
23
24 RECORDED BY: Lisa Lizotte, Court Recorder

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1 LAS VEGAS, NEVADA, WEDNESDAY, MAY 23, 2018, 1:33 P.M.

2 * * * * *

3 THE COURT: This is the time set for a portion of the pending motion by
4 the plaintiff asking for various forms of relief. And we are here, as I understand it,
5 to determine whether or not the Court should grant the motion only insofar as to
6 order coordination between this case and the case pending in Department 25.
7 Is that correct?

8 MR. GREENBERG: Your Honor, that was my request for immediate
9 attention from the Court and I apologize that the circumstances have brought me
10 before the Court on that in such a hasty manner. But, yes, that is the limitation of
11 what I would implore the Court to act on today. And of course the Court has been
12 dealing with very difficult circumstances and I appreciate that, Your Honor. The
13 balance of the other matters before the Court and the April 17th motion can certainly
14 wait some period of time for attention from the Court, I believe.

15 THE COURT: What is it precisely that you're asking the Court to order?
16 You're not asking consolidation, you're asking coordination.

17 MR. GREENBERG: Yes, Your Honor. Coordination would mean that both
18 the Dubric proceeding and the Murray proceeding would be before Your Honor in
19 Department 1 for all further disposition and consideration of any matters raised in
20 each case. It is conceivable, as I noted in my filing of April 17th, that the Dubric
21 plaintiff might benefit from the work of the special master contemplated and directed
22 in this proceeding because the information, the factual information relating to her
23 individual claim presumably would be gathered through that process. But the idea
24 is that the Dubric proceeding would be considered separate and apart because she

1 has independent counsel and she has availed herself of her opportunity to litigate
2 separately rather than proceed in the Murray case.

3 But the purpose, of course, of the coordination, Your Honor, is to
4 insure that there is no overlapping of conflict between the two actions such as in
5 proposed class proceedings that have been raised in Department 25, Your Honor.
6 Whatever Rule 23 type relief Dubric believes is appropriate can be raised to Your
7 Honor. We're not trying to preclude Ms. Dubric or her counsel from proceeding in
8 any fashion before this Court as is proper. We're simply trying to insure the efficient
9 and proper course of justice here, Your Honor. I think Your Honor understands my
10 position in that regard, so I don't want to consume your time by simply retreading
11 history here that Your Honor has been involved with.

12 THE COURT: What would be the difference between in this case
13 coordination and consolidation?

14 MR. GREENBERG: Well, it's a good question, Your Honor, and I have to
15 confess I'm not sure I have a completely precise answer for Your Honor. I termed
16 it as coordination simply because Ms. Dubric is not in fact a member of the class
17 because she has elected to sue individually, but the reality is the issues are in fact
18 the same. I mean, she is making the same nature of claim here that she was not
19 compensated for minimum wages as required by the Constitution, and therefore
20 presumably the same issues of law and issues of fact would likely be posed and
21 would be common to her as it is to the Murray class members and the Murray
22 plaintiffs.

23 So, you know, to the extent that there was going to be a trial
24 disposition, I don't know why in fact it would have to be a separate disposition for

1 her. I mean, I simply was being cautious, Your Honor, in terms of how the Court
2 would proceed, but I don't know necessarily that a consolidation would not be
3 appropriate either, Your Honor. It's a question of how you're going to define the
4 parameters of what is going to be heard together and determined -- how it's going
5 to be determined between the cases going forward.

6 THE COURT: Okay. Let me ask Ms. Rodriguez. Is that your understanding
7 of what the plaintiff was asking this Court to do?

8 MS. RODRIGUEZ: Good afternoon, Your Honor. Esther Rodriguez for the
9 defendants. And my condolences to the Court for your loss.

10 THE COURT: Thank you.

11 MS. RODRIGUEZ: And I would like to mention that Mr. Nady wanted to
12 be here but he switched a large employee meeting to this afternoon in order to be
13 here this morning and then when we switched things he couldn't notify the 200
14 employees. And Mr. Wall wanted to be here but he's currently in the hospital.

15 THE COURT: Mr. Wall is?

16 MS. RODRIGUEZ: So I'm the last person standing here on the defense
17 side for now.

18 THE COURT: Wow.

19 MS. RODRIGUEZ: Yes, he's had some health issues. He wanted to --
20 he also sent me a text saying he was pushing for the hospital personnel to let him
21 out so that he could be here for the hearing, but apparently he's still in the hospital.

22 THE COURT: Let's go off the record for a minute, will you, please.

23 (Briefly off the record)

24 MS. RODRIGUEZ: Well, in answer to your question, Your Honor, I was

1 a little confused about what the plaintiff was seeking as well. I filed an opposition
2 to everything that was out there just to make sure I was covered on all the issues.
3 If we're just talking about the consolidation/coordination issue, I tried to research
4 that issue as well. Everything that I have seen in the Nevada Civil Practice Manual
5 indicates that for all purposes consolidation and coordination are the same in the
6 Eighth Judicial District Court handled under EDCR 2.50. So I think it's just -- what
7 do they say, half a dozen of one and six of the other?

8 THE COURT: Yeah.

9 MS. RODRIGUEZ: I think they're the same, consolidation and coordination.
10 There's no case law to indicate there's --

11 THE COURT: Okay.

12 MS. RODRIGUEZ: So I think that's what he's asking for is consolidation.
13 And of course our opposition is basically these cases have been around forever,
14 but at this point the procedural posture of both of them is very, very different.
15 Consolidation or coordination is something that is used, from what I could tell from
16 the case law, for purposes of judicial economy at the beginning of the cases to
17 coordinate discovery, coordinate depositions, all those type of things.

18 At this point the defense has defended two class action cases, two
19 sets of experts, two sets of depositions, two sets of discovery. One has gone
20 through settlement conference and one has reached resolution through the
21 mandatory settlement conference, whereas the case that is before Department 1,
22 it's our position that we're basically at the very early stages, again now working with
23 the special master numbers and waiting to see if we will be ready for trial before the
24 five year -- the expiration of the five year rule, etcetera. Your Honor knows where

1 we are on the case in Department 1, but that's very different from where we're at
2 in Department 25.

3 THE COURT: What sort of discovery was conducted in the other case in
4 Department 25?

5 MS. RODRIGUEZ: Well, we did depositions, we did written discovery.
6 Depositions from both sides. And Mr. Richards is also present as plaintiff's counsel
7 in that matter. I know he hasn't had an opportunity to speak but he is present.

8 THE COURT: Okay. Why don't you come on up, Mr. Richards. You've
9 got a dog in this hunt, apparently. You filed an opposition as well, I believe.

10 MR. RICHARDS: Yes, I did, Your Honor.

11 THE COURT: Okay.

12 MS. RODRIGUEZ: And the parties in that matter decided that the most
13 beneficial way to come to an idea or an understanding of what type of minimum
14 wage claims we were looking at was to jointly hire an independent third party expert.
15 So that is every different from what has happened in this case where we've hired
16 a plaintiff's expert and a defendant's expert for both parties, and as you know we
17 both have motions pending against each other that their expert reports are not
18 appropriate and shouldn't be admitted, etcetera. So in terms of the discovery, we
19 worked in providing information to Ms. Nicole Omphs, an independent CPA, who
20 came up with a report. She presented that to Judge Wiese during the settlement
21 conference and that's how we basically reached a settlement agreement.

22 THE COURT: So the expert was an accountant?

23 MS. RODRIGUEZ: Correct.

24 THE COURT: Okay.

1 MS. RODRIGUEZ: She's a CPA.

2 THE COURT: A CPA.

3 MS. RODRIGUEZ: Beta Consulting.

4 THE COURT: And what sort of records was she relying on for her numbers?

5 MS. RODRIGUEZ: I didn't actually sit with her to go through those records,
6 but payroll records were provided to her, as well as QuickBooks information.

7 THE COURT: The QuickBooks. Okay.

8 MS. RODRIGUEZ: Paystubs. She went through the paystubs. She went
9 through the time sheets. Basically the items that we offered at all times to the
10 plaintiffs in this matter.

11 THE COURT: Uh-huh.

12 MS. RODRIGUEZ: It's just that the plaintiffs in the Dubric matter chose to
13 look at them, chose to have this expert review them. And the defendants made
14 a decision we're not admitting to any liability in the settlement agreement with the
15 Dubric class members, but they've made a decision to settle based on cost of
16 defense and cost of continued litigation in the matter before Judge Delaney. So
17 that's how we agreed upon the settlement with the Dubric class members. But
18 that's set for hearing tomorrow for preliminary approval and that's something that
19 we still have to present to Judge Delaney. We have to do prove-ups. We have to
20 demonstrate to that district court judge that it is a valid settlement that is appropriate
21 for all the class members in that particular class or in that case.

22 So we're at the early stages of that presentation. As you know, as Your
23 Honor is aware, that's -- it's not a rubber stamp, as has been alleged in some of
24 these pleadings. We still have to do our work and question -- it's my understanding

1 we're going to have Ms. Omps, who is the CPA, present tomorrow at the hearing
2 before Judge Delaney. We will cross-examine her. The judge will have an
3 opportunity to make sure that everything is in order and that the class is protected.

4 THE COURT: The calculation which she made, I don't know where I've
5 read this or maybe I heard it in a previous argument, was somewhere between two
6 hundred and some-odd thousand and four hundred, a high four hundred number,
7 I think. Is that correct?

8 MS. RODRIGUEZ: That's about right, Your Honor. Yes.

9 THE COURT: So how do you -- I mean, that's not a finite number, obviously
10 it's a range. So how do you -- how would you arrive at a number in that case?

11 MS. RODRIGUEZ: Well, first of all, one of the things that I'm planning to
12 present to Department 25 tomorrow is that, if anything, it's consistent with all of the
13 class action settlements that have been occurring in the other district court cases
14 for taxicab companies in the Eighth Judicial District Court and which Mr. Greenberg
15 has been counsel for those. He's resolved the matter with a couple of other cab
16 companies, Nellis Cab Company and Desert Cab Company, who have more drivers
17 and the settlements have come lower than what ultimately A Cab is paying in this
18 matter to the Dubric. So comparables are a way to see if it's a fair settlement.

19 THE COURT: Yeah. And so it isn't a matter of trying to figure out what
20 the precise number is. You guys presumably in your settlement have arrived at a
21 number. Is that right?

22 MS. RODRIGUEZ: Well, we have arrived at a number, yes.

23 THE COURT: And it's somewhere between this high and this low number?

24 MS. RODRIGUEZ: Correct.

1 THE COURT: And that's -- okay.

2 MS. RODRIGUEZ: But it was also based on the specific numbers that the
3 Department of Labor determined when they went record-by-record in the four year
4 audit that was done by the Department of Labor at A Cab. They came up with a
5 figure for a 2-year time period. And Ms. Omps also looked at -- re-reviewed that,
6 what the DOL had looked at in terms of wages, hours, and what they determined
7 was a fair resolution. And she used that also as a ratio to determine what would be
8 a fair resolution for the time period that we were now speaking of.

9 THE COURT: Uh-huh. Okay. Let me go back to Mr. Greenberg. And I will
10 hear from you, Mr. Richards, before we're done if you care to.

11 Mr. Greenberg, the history of this case includes a -- what was to me,
12 at least, a surprising result in the supreme court when, as we all know, they reversed
13 my granting of a preliminary injunction. I have taken occasion to look at the brief
14 that you provided to the supreme court. I'm having a difficult time figuring out what
15 the supreme court is instructing or intending for me to do because I cannot tell
16 whether -- as you know, there was the injunction, the order that was done one day
17 because of a press of time. As I recall it had to be entered immediately in order
18 to prevent some untoward action, I think maybe the next day or some such thing.
19 And then the next day I filed the supplement, which gave my Rule 65 reasoning
20 and analysis.

21 The supreme court in their order did not mention the supplement and
22 only said that this Court had not met the requirements of Rule 65 and had not --
23 I don't recall the exact terms, but had not sufficiently presented the rationale, the
24 facts, the circumstances, etcetera, made findings that would underlie and are always

1 required on Rule 65. And the reason that I was surprised was that I thought that
2 because of what I -- the reasoning I put in the supplement, it presented a -- more
3 a matter of institutional analysis and not a matter of a fact-specific case.

4 It seemed to address what whose courts, federal courts, at least, and
5 some state courts that have addressed the matter have found to be a valid concern,
6 that being this notion of a reverse auction, or in other words, of defendants buying
7 their peace by somebody else jumps into the case -- in this case Mr. Richards, I'm
8 afraid that would be you, you and Mr. Bourassa -- and ultimately winds up being
9 willing to settle out for some figure less than what the first filed case attorneys would
10 and clients would agree to. And those cases and the article that I referred to in that
11 did seem to present a very significant and well thought out concern. And yet our
12 supreme court said nothing about that, did not say you're all wet, Cory, we don't
13 agree with that analysis of any kind of reverse auction situation, that's no good,
14 or yes we do. Or we agree perhaps with one part but not another. All it said was
15 there wasn't enough underlying basis. I wish I could recall the words. I have it here
16 somewhere.

17 MR. GREENBERG: On page 2 of the published order it states, Your Honor:
18 "Here the district court's order enjoining A.C.T.S. in the Dubric action fails to satisfy
19 minimum requirements to support injunctive relief under NRCP 65 (d). Moreover,
20 our review of the record demonstrates that the reasons for the injunction are not
21 readily apparent or sufficiently clear."

22 THE COURT: So that leads to my question. And you were there and
23 I wasn't. Was there any discussion before the supreme court of what was in the
24 supplement? And, you know, you probably can figure out where I'm going. I'm

1 wondering if they were aware of it.

2 MR. GREENBERG: Your Honor, there was not. Most of the questioning
3 from the bench came from Justice Hardesty, who inquired mostly about the issues
4 and the history in the district court. But I would also just urge Your Honor to
5 understand the background of the appeal. The defendants appealed your injunction
6 not arguing that you had exceeded your discretionary grant of authority under the
7 appropriate facts and law, but that you were without the power at all to issue such
8 an injunction. That was the sole issue they raised on appeal in their briefing. That
9 was the sole issue I responded to in my briefing which Your Honor reviewed. When
10 I appeared to argue this, Justice Hardesty questioned this issue most severely as to
11 whether there was in fact jurisdiction for you to issue such an injunction. I advised
12 him that in fact their own precedence confirmed that you have this authority by citing
13 to him --

14 THE COURT: Now, was this -- was there a differentiation between subject
15 matter jurisdiction versus personal jurisdiction?

16 MR. GREENBERG: No. It was just a question as to whether you had the
17 authority to issue an injunction which had the effect of stopping a proceeding,
18 another district court proceeding.

19 THE COURT: But doesn't that in turn depend upon whether one agrees
20 with the rationale that was explained in the supplement to the preliminary injunction --

21 MR. GREENBERG: Well --

22 THE COURT: -- or not. If one does not agree with that rationale, then
23 indeed the district court would not have power.

24 MR. GREENBERG: Well, Your Honor, if you simply didn't have subject

1 matter jurisdiction to issue any such injunction, then it doesn't matter what the facts
2 or circumstances were that were before Your Honor. You just didn't have jurisdiction
3 or power or authority to do it. That was the argument made on appeal. When I
4 argued this with Justice Hardesty, he was very concerned about that and I actually
5 cited to him the Metcalf case at 274 P.5 and I actually have a copy for Your Honor.
6 I brought it because I thought you might raise questions about the proceedings in
7 the supreme court.

8 THE COURT: What was the question that he had then?

9 MR. GREENBERG: It was whether you -- well, whether you had any power
10 to issue this injunction. Because you do -- the supreme court's order doesn't say
11 you have no power.

12 THE COURT: Uh-huh.

13 MR. GREENBERG: It doesn't say it was beyond your authority, your subject
14 matter jurisdiction. It simply says your findings are not sufficiently documented in the
15 order that was issued. They elected to examine that issue sua sponte on their own
16 at argument. That's why, if you read my brief, Your Honor, there's no discussion
17 of the record justifying your injunction because this wasn't raised by the appellants
18 before the court.

19 THE COURT: Uh-huh.

20 MR. GREENBERG: So as is typical in most appeals, the supreme court
21 isn't going to examine issues that aren't raised by the appellant. But they have the
22 power to do so. They elected to do so in this case at oral argument. There was no
23 mention of your supplemental order. I understand your supplemental order, Your
24 Honor, addressed the institutional issue of having the reverse auction situation occur,

1 conflicting class actions which could be to the detriment of the class as well as the
2 judicial process overall. There was no discussion of that. I don't know if they
3 examined your supplemental order. This was not addressed in my briefings because
4 of the nature of the appellant's appeal and what they rested on in their briefings.

5 THE COURT: Okay.

6 MR. GREENBERG: But what I would point out about this issue, Your Honor,
7 is that there was also colloquy between Justice Hardesty and myself during the
8 course of the argument and that they couldn't discern from the record whether in fact
9 there would be a conflicting class action certified by Department 25. And appellants
10 argued that that was not in fact established by the record and therefore there was no
11 -- it was premature, I guess one would say, for such an injunction to be issued on the
12 record before then because they couldn't find in the record any conflict. The fact of
13 the matter is that --

14 THE COURT: In other words, they could not find that the class -- well, just
15 to boil it down, that if relief were granted in the Department 25 case, it would thereby
16 take away from any relief that could be granted in the Department 1 case.

17 MR. GREENBERG: Exactly, Your Honor, that it would in fact impinge upon
18 what Your Honor had already asserted jurisdiction over by class certification here
19 in the Murray action. Now, Your Honor could issue a new injunction and make that
20 finding and I can provide the finding to you because I've analyzed the proposed
21 settlement. The proposed settlement that they assert to give the Court would resolve
22 minimum wage claims from 2009, as they propose, or more likely from 2013 because
23 of the applicable statute of limitations, through some future date of judgment. Your
24 Honor has already certified this class from 2007 through the end of 2015, so clearly

1 there is a substantial overlap of claims. And I mean, this could be -- these findings
2 could be made in an order, detailing in the record of the proceedings why there is
3 a conflict and why the injunction is justified and Your Honor could sign that and
4 presumably it would meet the concerns of the supreme court which said that we just
5 don't understand why this was necessary because we don't see it actually made
6 in the order.

7 The institutional concerns Your Honor raised apparently were not
8 sufficient for them under these circumstances. They wanted specific particularized
9 findings as to the facts and proceedings ongoing in this case and in the Dubric
10 case that supported the injunction your order issued. And I apologize, Your Honor,
11 I should have had the Court make those findings. It was not done and I urged the
12 supreme court to allow that to be done upon remand but they declined to do that.
13 They simply dissolved the injunction and returned the case as it was.

14 I've proposed coordination, Your Honor, simply because that is within
15 Your Honor's clear discretion. And it would certainly answer the issues, the concerns
16 that are raised here.

17 THE COURT: Why -- then why would I not interpret the supreme court's
18 order on remand the same way that apparently Judge Delaney does, which is --
19 I get it from reading the transcript is that you can't do that, which I took to mean
20 one district court cannot effectively, not by ordering something within the other
21 department but by ordering the defendants before -- in this case Department 1, if
22 it has impact on going forward in another department with the same or similar class,
23 that a district court cannot do it. Why would I not interpret it as -- more broadly?

24 MR. GREENBERG: Because that wasn't the finding in the supreme court's

1 order. And as I was saying, the Metcalf case was precisely the circumstances that
2 Your Honor faced. In Metcalf there was a divorce proceeding initiated by one
3 spouse based upon a contract that they had signed. That proceeding was moving
4 ahead. The other spouse sued in a separate proceeding and said I need to
5 invalidate this contract, and that contract was providing the underlying basis for
6 the divorce proceeding. The second district court enjoined the husband from
7 proceeding in the initial divorce action. The supreme court found that the second
8 court had the power to issue that injunction and refused a writ to dissolve it because
9 the circumstances were such that the second court had the party, the husband
10 before it, the circumstances justified issuing the injunction because if the divorce
11 proceeding had gone ahead it concerned support and allowance for attorney's fees
12 in the divorce proceeding which was denied under the contract that was being
13 disputed in the second proceeding. So there was a clear issue related between
14 these proceedings that was impacting the interest of the wife in that case and it was
15 found justified, Your Honor.

16 So, Your Honor had and does have the authority under supreme court
17 precedent. And again, I cited this to Justice Hardesty and he wrote down the
18 citation. I saw him on the bench do so. And we got the order we got, which doesn't
19 question your authority or power to issue the injunction you issued. It simply rests
20 upon a failure from their examination of the record and their examination of the
21 order to specify the particular facts and circumstances underlying and justifying your
22 exercise of that power, Your Honor.

23 THE COURT: Then how would -- and I don't ask you this because I think
24 this is likely, but how would the Court fashion appropriately a preliminary injunction

1 under those circumstances? Is what they are saying and what I'm to understand
2 that before any district court could do -- effectively enter such an order, they would
3 have to be able to be prepared to make a lot of findings of fact about what's going
4 on in the other case? In other words, who's involved in the class, what's the
5 definition of the class? In our case, you know, which years are involved? I mean,
6 what is this -- what is the missing findings of fact or -- yeah, findings of fact that the
7 supreme court was --

8 MR. GREENBERG: The missing findings of fact in the record in terms of
9 the order I submitted in your supplemental order, Your Honor, is the actual precise
10 overlap that I was describing between the proposed class claims. The fact of the
11 matter is this case was certified for class disposition over two years before they're
12 proposing to certify for class disposition the same claims. Your Honor has assumed
13 subject matter jurisdiction over those claims in this proceeding. They are part of
14 this proceeding. The supreme court --

15 THE COURT: Well, okay, but what I want to know is what would the -- as
16 you interpret the supreme court, what would they require in a preliminary injunction for
17 the kind of issues we're dealing with in order to satisfy the particularity requirement?

18 MR. GREENBERG: Well, we would review the record that was presented
19 in the Dubric case, the proposed settlement that was being set forth, explain how
20 the time frame covered by that settlement and the claims covered and proposed to
21 be released by that settlement are coextensive with the claims already certified
22 before this Court chronologically and by their nature as well.

23 THE COURT: Because without that, nobody looking in can make a
24 determination of whether it really purports to subvert the claims pending in this

1 department or not. Right?

2 MR. GREENBERG: Your Honor, I have to concede the logic there and that
3 essentially is where the supreme court left this off and said, well, we look at this
4 record, we look at the initial order, your supplemental order, it doesn't contain those
5 kind of detailed findings, and it's true, Your Honor.

6 THE COURT: Okay.

7 MR. GREENBERG: And, you know, maybe we could have done better. I
8 could have done -- not maybe -- certainly I could have assisted the Court better with
9 this process. And again, I apologize, I did not, but these things happen, Your Honor,
10 as Your Honor understands.

11 What I wanted to point out, a related issue, though, here --

12 THE COURT: Well, before we get on to related issues --

13 MR. GREENBERG: Yes.

14 THE COURT: -- let me ask Ms. Rodriguez a similar question. How am I to
15 interpret the supreme court's order?

16 MS. RODRIGUEZ: Well, Your Honor, Mr. Wall, of course, is a lot better
17 qualified to answer that. He wrote the brief, he argued it before the supreme court.
18 I kind of envisioned that, you know, we may be speaking about the injunction, but
19 I would put my objection that he's asking for an injunction now and when he spoke
20 to the Court he sounded like he was actually asking for intervention again, both
21 of which have been addressed, because he was talking about getting all this
22 information and everything -- the same arguments he made before Judge Delaney --

23 THE COURT: Yeah.

24 MS. RODRIGUEZ: -- and I don't if the Court is aware, but he's been denied

1 twice intervention before Judge Delaney. And he has --

2 THE COURT: Yes, I am aware.

3 MS. RODRIGUEZ: He has an emergency writ to the supreme court to stay
4 that on this intervention issue.

5 THE COURT: Oh, I didn't know that.

6 MS. RODRIGUEZ: He's trying to stay 25.

7 THE COURT: But what I'm really interested in at the moment is how do
8 I interpret what the supreme court said. In other words, do you know whether the
9 supreme court reviewed the supplement that --

10 MS. RODRIGUEZ: When I spoke to Mr. Wall -- and again, I have no direct
11 knowledge. Mr. Richards actually attended the hearing.

12 THE COURT: Ahh.

13 MS. RODRIGUEZ: I was not present at the hearing, so I don't know if he
14 recalls that or not.

15 THE COURT: Well, we'll drill him next, then.

16 MS. RODRIGUEZ: But in my discussions with Mr. Wall it was my
17 understanding that your supplement or the Court's supplement was addressed --

18 THE COURT: Okay

19 MS. RODRIGUEZ: -- because I was puzzled by the actual order, but, you
20 know -- and I questioned Mr. Wall, I said, well, did the court consider both of those
21 things? And I think that there was a substantive discussion about the underlying
22 claims and who had jurisdiction and things like that. But I was not present --

23 THE COURT: Okay.

24 MS. RODRIGUEZ: -- and I didn't write it.

1 THE COURT: All right.

2 MS. RODRIGUEZ: I just would reiterate that I just received this reply
3 yesterday saying that the scope of this hearing was going to be limited to the
4 discussion of the coordination of cases.

5 THE COURT: Oh.

6 MS. RODRIGUEZ: So if we're going to get into the substance of the
7 injunction, I would ask for a continuance on this hearing because Mr. Wall can
8 certainly speak to the reasoning of the injunction and I think that that's important.
9 It's an important issue for the Court. And I would ask the Court to reconvene --
10 if you're going to reconsider on the injunction, please allow the defendants to be
11 heard by appellate counsel on this issue because I did not prepare to argue on the
12 injunction.

13 THE COURT: Well, if we had all the time in the world that certainly would --
14 I think you can tell from my actions in the past that I would certainly accommodate
15 you, but it seems to me we're kind of on the brink of something and that is that,
16 you know, I need to know what the supreme court was thinking in order to know
17 how to best proceed now. If the supreme court is telling me a district court does not
18 have that authority --

19 MS. RODRIGUEZ: Right.

20 THE COURT: -- in other words, we reject the reasoning that I put forth in
21 the supplement and which I -- I think you can tell with which I agree, I can see that
22 it would be all the reasons that mitigate in favor of a class action go out the window
23 if you start multiplying the losses by having two lawsuits involving the same claims
24 going at the same time.

1 MS. RODRIGUEZ: Well, and I think that the same arguments -- that's why
2 I brought to the Court the attention of the intervention because those are -- they're
3 different terminology and they're different procedural mechanisms all to get to the
4 same result.

5 THE COURT: Uh-huh.

6 MS. RODRIGUEZ: He's tried an injunction. He's tried the same argument
7 with intervention and now that question is going up to the supreme court per Mr.
8 Greenberg's filings --

9 THE COURT: Uh-huh.

10 MS. RODRIGUEZ: -- on does he have the right to intervene into
11 Department 25.

12 THE COURT: Yes, but that's a different question than whether one district
13 court has the power to --

14 MS. RODRIGUEZ: To enjoin.

15 THE COURT: -- to put a preliminary injunction in like I did, which I maintain
16 does not intrude into -- I mean, it doesn't seek to order anybody that it doesn't have
17 before it, but it certainly does have the net effect --

18 MS. RODRIGUEZ: It does.

19 THE COURT: -- of stopping a proceeding in another case.

20 MS. RODRIGUEZ: It does, and I agree, Your Honor. And that's why I'm
21 envisioning that the end result is all the same, whether you're trying it through an
22 injunction or an intervention. And I understand the Court's concern of the specific
23 question of enjoining --

24 THE COURT: Sure.

1 MS. RODRIGUEZ: -- one district court enjoining the other, but the end
2 result is stopping the proceeding before Department 25. And that's what this
3 coordination/consolidation, whatever the word is that the plaintiff is currently
4 seeking, that's the end result they want. They want to stop --

5 THE COURT: Uh-huh.

6 MS. RODRIGUEZ: -- the proceeding before Department 25. So it's our
7 position that that's improper. An injunction was improper and an intervention has
8 been deemed to be improper --

9 THE COURT: Uh-huh.

10 MS. RODRIGUEZ: -- and now a coordination or consolidation to stop a
11 resolution is improper.

12 THE COURT: Why was the injunction improper? I didn't -- I not only wasn't
13 present at the supreme court, I didn't read your brief, I'm afraid --

14 MS. RODRIGUEZ: Right. Well --

15 THE COURT: -- because I was more interested to know whether Mr.
16 Greenberg raised it.

17 MS. RODRIGUEZ: That makes two of us, Your Honor.

18 THE COURT: Yeah.

19 MS. RODRIGUEZ: And again, you know, usually Mr. Wall is in here saying
20 I'm not trial counsel so I don't have this background information --

21 THE COURT: Yeah, I know.

22 MS. RODRIGUEZ: -- and I unfortunately am in that position that I did not
23 handle the appeal.

24 THE COURT: Yeah, you make a good team. Yeah.

1 MS. RODRIGUEZ: So that has -- that's been his baby.

2 THE COURT: Yeah.

3 MS. RODRIGUEZ: He handled the appeal.

4 THE COURT: Well, let's ask Mr. Richards the same question. Do you see
5 what I'm trying to get at?

6 MR. RICHARDS: I do, Your Honor.

7 THE COURT: Was there, in other words, a rejection of the notion that one
8 district court could in any circumstance enjoin a party before it in such a fashion that
9 it impacted and effectively brought to a halt the lawsuit in another sister department,
10 or was it -- were they saying we don't really reach that point, we just say you didn't
11 have the Rule 65 requirements in terms of the rationale and, you know, there's a
12 whole host of requirements, the likelihood of success, etcetera, etcetera --

13 MR. RICHARDS: Yes, Your Honor.

14 THE COURT: -- that that was not spelled out? What's your take on it?

15 MR. RICHARDS: Good afternoon, Your Honor.

16 THE COURT: Good afternoon.

17 MR. RICHARDS: And our condolences as well.

18 To address Your Honor's questions that I've been overhearing, first,
19 I don't recall the supplement being discussed.

20 THE COURT: Okay.

21 MR. RICHARDS: It may have been a passing reference when they were
22 kind of reviewing the timeline of how things happened in the underlying action, but
23 I don't actually recall them discussing it. I do recall them discussing the order itself,
24 the primary order --

1 THE COURT: Yeah.

2 MR. RICHARDS: -- because I believe it was Justice Stiglich held it up and
3 pointed out that Mr. Greenberg's name was in the title, in the header --

4 THE COURT: Yeah.

5 MR. RICHARDS: -- when pointing out the problem.

6 THE COURT: Well, it wouldn't surprise me of any court getting -- if they're
7 only reviewing the bare order itself --

8 MR. RICHARDS: I understand.

9 THE COURT: -- that you would say what they said. But that's what raised
10 the question in my mind, well, did they not read the supplement or did they reject the
11 supplement? How do I know what they meant? What do they mean by this order?

12 MR. RICHARDS: I understand. And you've asked several times, so that's
13 my take.

14 THE COURT: Yeah.

15 MR. RICHARDS: I don't recall it being actually addressed.

16 THE COURT: Okay.

17 MR. RICHARDS: They did discuss the net effect of the result, which was
18 to cause an injunction against the defendant from doing something caused the
19 defendants to not be able to do something in another action.

20 THE COURT: In another action.

21 MR. RICHARDS: And there was a discussion of that net effect. They were
22 aware of that.

23 THE COURT: What do you recall, if you could help me -- I mean, was the
24 discussion -- well, I would anticipate any court and the supreme court would say

1 we better be careful if we are going to allow this and it could only be under certain
2 limited circumstances. And who knows what they would say after that.

3 MR. RICHARDS: There was a discussion about the net effect being that --

4 THE COURT: Yeah.

5 MR. RICHARDS: -- the other case stalled out.

6 THE COURT: Yeah. Yeah.

7 MR. RICHARDS: The other case couldn't proceed.

8 THE COURT: Yeah.

9 MR. RICHARDS: I don't recall really specifics about it. I don't know if the
10 video is available online. They usually save those or broadcast them.

11 THE COURT: Yeah. Well, in any event, we're going to be long past the
12 need for it I think after today because --

13 MR. RICHARDS: I understand. I can tell you the comments from the
14 bench seemed to right from the get-go suggest that there's a high bar for issuing
15 an injunction, injunctive relief --

16 THE COURT: Uh-huh.

17 MR. RICHARDS: -- and that the order or whatever they had before them
18 that they were assessing did not come close.

19 THE COURT: Yeah. Okay.

20 MR. RICHARDS: Not even in a close way --

21 THE COURT: Yeah.

22 MR. RICHARDS: -- but was far. That's my recollection of what I observed
23 at the --

24 THE COURT: As I indicated, even the supplement -- I think I indicated this,

1 maybe I didn't -- even the supplement that I filed does not go through all of the
2 analysis that you typically do in a preliminary injunction --

3 MR. RICHARDS: Right.

4 THE COURT: -- including, you know, the likelihood of success, etcetera,
5 etcetera, etcetera. But my view of the rationale was that it's an institutional thing.
6 It doesn't -- it is not fact specific. It's about how do we allow class actions to
7 proceed through the courts. Do we allow what are essentially competing class
8 actions to go through? Do we buy into this reverse auction notion that simply says
9 that if somebody can figure out a quicker way to get to a judgment then they can
10 effectively toss out the original class action or not.

11 MR. RICHARDS: I understand. And both parties at oral argument
12 requested that the court issue a more thorough opinion on the subject matter. Both
13 parties presented to the court that it was important public policy going forward --

14 THE COURT: Yeah. Yeah.

15 MR. RICHARDS: -- and it would be very helpful for the district courts to
16 have some guidance in the future.

17 THE COURT: Yeah.

18 MR. RICHARDS: And both parties asked for a very thorough briefing --
19 a very thorough decision.

20 THE COURT: Yeah.

21 MR. RICHARDS: I haven't spoken to whether either party thinks the
22 decision that came out was thorough enough, but both asked for thoroughness.
23 I'm not sure if it's really there.

24 THE COURT: Well, at least -- you know, that's why I'm having to ask --

1 MR. RICHARDS: It was asked.

2 THE COURT: -- you all because I can't tell from reading the order whether
3 there's any indication of whether our supreme court thinks that any district court
4 ought to ever again even consider -- I mean, I was -- I think I put it at least in the
5 supplement I filed. I would be extremely leery of filing such an injunction that has
6 the effect of stopping a case in a sister court and that's why I put at the end of that
7 that I can't make the determination, really, only our supreme court can.

8 MR. RICHARDS: I understand.

9 THE COURT: So I thought I had teed it up for we'll get some, you know,
10 further light and knowledge, at least, and I didn't get it.

11 MR. RICHARDS: On to Your Honor's other, the Court's other comments.

12 THE COURT: Yes.

13 MR. RICHARDS: The Court's concern about a reverse auction business
14 from the Court's supplement is well taken and noted. I don't know if the Court has
15 seen the joint motion for class certification or whatever it was titled that was filed in
16 the Dubric matter. It includes the proposed -- it includes the settlement agreement,
17 it includes the proposed notice and it includes the report from Beta Consulting.

18 THE COURT: A report from?

19 MR. RICHARDS: From Beta Consulting, the CPA. The neutral CPA.

20 THE COURT: Is that Ms. Omps?

21 MR. RICHARDS: Omps.

22 THE COURT: Omps. Yeah.

23 MR. RICHARDS: Yes.

24 THE COURT: I have not seen all of that. I did see --

1 MR. RICHARDS: If the Court would like, I can --

2 THE COURT: There was a letter or report from her in your case that --

3 MR. RICHARDS: It's kind of been removed from the motion itself --

4 THE COURT: Yeah. Okay.

5 MR. RICHARDS: -- but a copy of the motion is public record in that case
6 and I'm happy to provide a copy to the Court if it would help in some analysis
7 because of the Court's concerns about the reverse auction should be addressed.

8 THE COURT: I'm not sure -- I'm not sure, given the order from the
9 supreme court, whether I'm supposed to. I mean, I'm really --

10 MR. RICHARDS: I understand.

11 THE COURT: -- trying to figure out whether I should.

12 MR. RICHARDS: I just want to make it available.

13 THE COURT: I appreciate that offer, but --

14 MR. RICHARDS: So that brings us to really a discussion of --

15 THE COURT: -- to what end? You know, what if I decided, oh, gee, this
16 is really a reverse auction. They've really -- it's ten cents on the dollar of what the
17 case -- this case is ostensibly worth, at least, and so what? What if I thought that?
18 What am I going to do, enter another preliminary injunction?

19 MR. RICHARDS: I guess that jumps me ahead in my thing I wanted to
20 cover. To the extent some sort of consolidation or coordination is not granted,
21 I would expect -- and the supreme court doesn't have to stay the case in front of
22 Judge Delaney because of the appeal, I would anticipate that we would go to the
23 hearing tomorrow on the joint motion to approve the class settlement. Judge
24 Delaney would hear it. In the event she would approve it, notices would be mailed.

1 People would have 45 days to opt out. And then a final fairness hearing would be
2 held 105 days after that, at which time people are welcome to come, comment, and
3 then we would go from there.

4 THE COURT: Uh-huh.

5 MR. RICHARDS: That is all premised on the possibility of her approving it.
6 If she doesn't approve it I'm not sure where that puts us. I guess we're back fighting
7 it out in that court.

8 THE COURT: Yeah.

9 MR. RICHARDS: To the extent that this Court would grant some sort of
10 consolidation or coordination, however we want to put it, I would ask the Court right
11 now for a date for the hearing because we're going to bring the same motion. The
12 motion has been filed and it is pending.

13 THE COURT: You would ask for a date for which hearing?

14 MR. RICHARDS: A hearing on the Dubric and defendant's joint motion for
15 approval of class action.

16 THE COURT: Okay. All right.

17 MR. RICHARDS: Because that's where we're at in that case.

18 THE COURT: Yeah.

19 MR. RICHARDS: We've done a lot of work. We did a lot of discovery.
20 My counterpart is correct, we did written discovery, we did depositions. There's a
21 mountain of data because of so many employees. Ultimately we decided we would
22 use a neutral expert that we would both communicate. That was Ms. Omps from
23 Beta Consulting. She looked at all the stuff. She was allowed to go to defendant's
24 office and actually get on their computers. And then we sat down with Judge Wiese

1 for a settlement conference.

2 THE COURT: What's your view of review of what the expert considered?
3 besides the QuickBook records, what was considered?

4 MR. RICHARDS: My understanding of what she considered is the payroll
5 records of A Cab. And I don't want to misstate, so her record would be --

6 THE COURT: Yeah.

7 MR. RICHARDS: -- the controlling thing of what she considered, her report.
8 But she considered their records, so it included QuickBook files and some other
9 files. I guess there's some hard files that are located there. She did review and
10 consider the material between A Cab and the Department of Labor on that dispute.

11 THE COURT: Uh-huh.

12 MR. RICHARDS: And ultimately what she came up with or presented to us
13 to try and distill down this massive amount of data was a range of numbers --

14 THE COURT: Uh-huh.

15 MR. RICHARDS: -- somewhat based -- not based on doing specific per
16 person numbers --

17 THE COURT: Uh-huh.

18 MR. RICHARDS: -- saying, oh, Jack is owed so much and Jane is owed
19 so much --

20 THE COURT: Uh-huh.

21 MR. RICHARDS: -- and then totaling them up, but on more of an aggregate
22 method of saying it appears that we're shorting people this percentage and that if
23 we apply this percentage to the payroll numbers these are the ranges we get to.
24 So it wasn't a hard --

1 THE COURT: So it would contemplate no adjustment of what amount each
2 class member got in terms of adjustment between individual class members, but
3 only as a given percentage or some such thing applied to the whole. How would
4 you --

5 MR. RICHARDS: Applied to the entirety of the payroll. And then that was
6 the basis of trying to negotiate a settlement.

7 THE COURT: Uh-huh.

8 MR. RICHARDS: And then that payroll -- we have to turn back around in
9 the event that the class action is approved and that payroll, that settlement would be
10 divided up amongst the people based on how many hours they worked. So it's not
11 a process by which we already know that Jack and Jane are owed X and Y --

12 THE COURT: Uh-huh.

13 MR. RICHARDS: -- and are pushing it through. It's a process in which we
14 aggregate how much we think they're shorting on their payroll and then dividing that
15 up, if that makes sense.

16 THE COURT: Okay. Yeah.

17 MR. RICHARDS: And maybe --

18 THE COURT: In her -- in the consideration of Ms. -- is it O-m-s?

19 MR. RICHARDS: Omps.

20 MS. RODRIGUEZ: O-m-p-s.

21 THE COURT: O-m-p-s. Ms. Omps.

22 MS. RODRIGUEZ: Yes.

23 THE COURT: Am I saying that right?

24 MS. RODRIGUEZ: Yes.

1 THE COURT: Ms. Omps. I forgot what I was going to ask. It will come
2 to me. Okay. Did you have anything else at this point?

3 MR. RICHARDS: Yeah. What I was going to do is spend a brief moment
4 discussing the comparison because that really seems to be where this kind of
5 hinges upon, and it's just sort of assumed that they overlap completely or whatever
6 is going on, so I thought I'd take a moment.

7 THE COURT: Yeah.

8 MR. RICHARDS: We've done the work of taking the class notice that the
9 Court signed and issued in this case and comparing it to the proposed class notice
10 and the settlement agreement that was reached in the Dubric case --

11 THE COURT: Uh-huh.

12 MR. RICHARDS: -- trying to align those and seeing where the difference
13 is. As was pointed out earlier, this class, pursuant to the notice, runs from July 1st,
14 2007 to December 31st, 2015. That's 3,105 days. The Dubric class runs from April
15 1st, 2009 to September 30th, 2016. That's 2,739 days. The overlap between the
16 two of them, Dubric overlaps the Murray case approximately 70 percent -- excuse
17 me, 79 percent, 80 percent --

18 THE COURT: Uh-huh.

19 MR. RICHARDS: -- of the time frame. And the Murray case class overlaps
20 the Dubric case, overlaps 90 percent of the Dubric case.

21 THE COURT: Uh-huh.

22 MR. RICHARDS: Okay. The scope. The Murray class pursuant to the
23 class notice is for a failure to pay minimum wages -- it doesn't specify how -- and
24 for a failure to pay NRS 608.040, which is the employer is required to give you your

1 last check within three days of --

2 THE COURT: Uh-huh.

3 MR. RICHARDS: Again, it doesn't specify where that goes. The Dubric
4 class is for a failure to pay minimum wage by crediting tips towards the minimum
5 wage earned before calculating a minimum wage allotment.

6 THE COURT: Uh-huh.

7 MR. RICHARDS: And cases have come out and said that is not allowed.
8 You have to just calculate without accounting for tips the minimum wage that the
9 people should be getting based on the hours worked. So in that respect I guess
10 the Dubric class appears to be much smaller both in time frame and in scope.

11 THE COURT: Uh-huh.

12 MR. RICHARDS: The Murray case is against A Cab Taxi Service LLC,
13 A Cab LLC and Mr. Nady. The Dubric class is against A Cab LLC and A Cab Series
14 LLC, Employee Leasing Company. That is the proper name of the entity that is
15 employing these employees. And Your Honor can see that from Murray and Reno's
16 own paystubs at the top say A Cab Series LLC, Employee Leasing Company. But
17 I'm not sure that they were named in the complaint in Murray/Reno.

18 THE COURT: Okay. Okay.

19 MR. RICHARDS: Both classes are opt out classes.

20 THE COURT: Uh-huh.

21 MR. RICHARDS: The size. The Murray class is of an unknown size to me.
22 The Dubric class is approximately 210 individuals per the settlement agreement.

23 The resolution. The Murray case is headed for trial, I understand,
24 before the end of the year because it comes up against the five year rule. The

1 Dubric case, we were making good progress towards going to trial but we were
2 able to get things resolved at a settlement conference before Judge Wiese. So the
3 current posture is ready to resolve.

4 THE COURT: So Dubric had not reached any -- like a cut-off date for
5 dispositive motions or anything like that?

6 MR. RICHARDS: We're not at a dispositive motion -- we're not at a cut-off
7 date for any of those. Discovery has closed.

8 THE COURT: Okay.

9 MR. RICHARDS: And then we went to a settlement conference.

10 THE COURT: Uh-huh. Okay.

11 MR. RICHARDS: But I just thought a quick recitation of kind of where these
12 overlap and don't overlap might be helpful.

13 THE COURT: What's your view of the preclusive effect upon my case of
14 Dubric settling out?

15 MR. RICHARDS: It would appear that employees are going to fall in both
16 lawsuits.

17 THE COURT: Okay.

18 MR. RICHARDS: It would appear that certain employees, and I think
19 perhaps Murray and Reno specifically because my understanding is that they left
20 A Cab quite a long time ago, would not be included in the Dubric lawsuit because
21 they're part of that 20 percent that predates the Dubric lawsuit, Dubric class action.

22 THE COURT: Uh-huh.

23 MR. RICHARDS: Again, I'm not sure what the failure to pay minimum wage
24 is really based upon before Your Honor, but we're not -- ours is very specific as to

1 the way the tips were credited, is how this is a failure to pay minimum wage. And
2 we're not involved in the failure to pay the last paycheck to people after they left.

3 THE COURT: Uh-huh.

4 MR. RICHARDS: So I would have to admit that people are going to get
5 caught up in both and might settle out with the Dubric one or opt out, but just based
6 on the pleadings they don't appear to be complete overlaps of the same exact thing.

7 THE COURT: Let me ask Ms. Rodriguez., what do you think the preclusive
8 effect, if any, would be of the Dubric judgment as against proceeding further in our
9 case?

10 MS. RODRIGUEZ: Well, I agree for the most part with Mr. Richards on his
11 assessment about there's some overlap and I think that the drivers would ultimately
12 have a choice. They are aware, apparently, with the notices that have been sent out
13 from the Reno matter. They're going to get a notice from the Dubric matter with an
14 explanation and they would ultimately have a choice, do they want to resolve the
15 case or do they want to opt out and proceed with Mr. Greenberg. And then there
16 are some specific periods that are not touched at all. Basically he would still remain
17 with -- this Court has extended the statute of limitations back to 2007. That's not
18 touched at all under the Dubric settlement. And then the Dubric settlement does
19 have an end date and that's been extended as well for Mr. Greenberg. So it's not
20 going to eliminate the case at all before Department 1. That will still proceed.

21 I do want to correct one thing that I disagree with Mr. Richards about,
22 and that is the procedural posture of what is in Department 25, because I think
23 everything kind of came to a head when we were actually at the calendar call
24 because we were set for a trial as well, so all dispositive motion deadlines and

1 everything is done in that case. We were -- we had a trial date when we announced
2 the settlement and decided to go with that route. But --

3 THE COURT: Well, so as far as preclusive effect --

4 MS. RODRIGUEZ: Uh-huh.

5 THE COURT: -- 79 percent, he said, of the -- I'm not sure I've got this right
6 -- 79 percent of the Dubric drivers are also included in the Murray case? Is that the
7 way it goes?

8 MS. RODRIGUEZ: That's the first time I hear those figures, but I would not
9 -- I would not doubt that.

10 THE COURT: Would you repeat how you said that?

11 MR. RICHARDS: Yeah. Can we use the ELMO, by chance?

12 THE COURT: Sure. Yeah.

13 MR. RICHARDS: Sometimes its easier to show it.

14 THE COURT: Yeah.

15 (Colloquy regarding technical issues with visual equipment)

16 MR. RICHARDS: All right. So I've placed in the dates per the notices.

17 THE COURT: Uh-huh.

18 MR. RICHARDS: So if I go to the notice of class action for Murray/Reno
19 case --

20 THE COURT: Uh-huh.

21 MR. RICHARDS: -- it says, Class action for all taxi drivers employed at
22 A Cab who were employed at any time from July 1st, 2007 to December 31st, 2015.
23 And then I did the same thing for the Dubric matter. These are the dates per the
24 settlement agreement and proposed class notice for that matter. Total of the days.

1 And the overlap here, they overlap for 2,465 days, which comprises almost 80
2 percent of the Murray case and almost 90 percent of the Dubric case. So as you
3 can see, there's going to be people on the front end that are covered by Murray not
4 covered by Dubric and there are people on the back end that are covered by Dubric
5 but won't be covered by Murray. But there's a share of people that are going to be
6 in the middle covered by both.

7 THE COURT: So is the net effect of that that assuming that Dubric goes
8 forward and comes to a judgment -- or I guess it's not a judgment, is it?

9 MR. RICHARDS: It would be a settlement, I suppose.

10 THE COURT: And dismissal, I suppose?

11 MR. RICHARDS: Yes. And a release.

12 THE COURT: Okay. And a release.

13 MR. RICHARDS: Assuming that goes forward, the Murray case would be --

14 THE COURT: Would lose 90 percent.

15 MR. RICHARDS: Eighty.

16 THE COURT: Eighty?

17 MR. RICHARDS: Yes.

18 THE COURT: Oh, that's the smaller one, then, huh?

19 MR. RICHARDS: Murray would lose 80 percent of its days.

20 THE COURT: I thought what this 90 percent figure was is that Dubric
21 comprises 90 percent of the Murray case. Not so?

22 MR. RICHARDS: No.

23 THE COURT: The other way around.

24 MR. RICHARDS: Ninety percent -- the other way around. Ninety percent

1 of the Dubric matter overlaps or is -- 90 percent of the Dubric matter is covered by
2 Murray, is what that means.

3 THE COURT: Okay. So, 79 percent of Murray is covered by Dubric.

4 MR. RICHARDS: Correct.

5 THE COURT: So that part would settle out and this lawsuit would continue
6 to go forward but with roughly 80 percent of it gone --

7 MR. RICHARDS: Correct, Your Honor.

8 THE COURT: -- in terms of the amount of damages.

9 MR. RICHARDS: The dates -- assuming it was for the same scope, the
10 dates would be limited to January 1st, 2007 to April 1st, 2009, and that assumes
11 that we're talking about a failure to pay minimum wage.

12 THE COURT: Oh. But doesn't it -- is there not -- I see, because the Dubric
13 ending date is later than the other, all of that is gone. It would only be the --

14 MR. RICHARDS: '07 to '09.

15 THE COURT: -- '07 to '09 numbers. Okay.

16 MR. RICHARDS: Conceptually it could extend past '09 to the extent that
17 their claims don't apply to failure to pay minimum wage by accounting for tips --

18 THE COURT: Uh-huh.

19 MR. RICHARDS: -- and this NRS 608 matter that the Dubric matter doesn't
20 address.

21 THE COURT: Okay.

22 MR. RICHARDS: Alternatively --

23 THE COURT: Is 608 the requirement to file -- to keep records?

24 MR. RICHARDS: The requirement to pay the last paycheck within three days.

1 THE COURT: Oh, okay.

2 MR. RICHARDS: And the inverse would be correct, I suppose, to the
3 extent if this case were to resolve it would -- you know, without Dubric, Dubric would
4 then be parred down to only 10 percent remaining, which would run from December
5 31st, 2015 to 9/30/2016, would remain for the Dubric one.

6 THE COURT: Okay, I see. Thank you.

7 MS. RODRIGUEZ: Can you leave that up there just for once second?

8 MR. RICHARDS: Yeah.

9 MS. RODRIGUEZ: If I may add just one thing to that time frame, just so
10 Your Honor is aware.

11 THE COURT: Sure.

12 MS. RODRIGUEZ: It's also our belief, and I made this argument before,
13 that from the time that the Thomas decision came out in July of 2014 --

14 THE COURT: Uh-huh.

15 MS. RODRIGUEZ: -- any liability or any underpayment is just going to be
16 merely a typographical error because we believe that A Cab was 100 percent
17 compliant; 99.9 percent. That's the time period that I said we shouldn't even have
18 a special master look at because anything is going to be a typo. And that's where
19 the Court said we would consider maybe having the plaintiffs pay for it. But I want
20 you aware of that time period, July 2014 forward, which is under the Dubric matter
21 primarily, we don't believe there's any liability. And then between October of 2010,
22 pretty much the same time period that Mr. Greenberg filed, the October 2010 period
23 for two years through the 2012 period was covered by the DOL settlement. So
24 monies have already been paid out and there will be very little --

1 THE COURT: Did those monies go to the drivers?

2 MS. RODRIGUEZ: Yes.

3 THE COURT: Okay.

4 MS. RODRIGUEZ: \$140,000.

5 THE COURT: Okay.

6 MS. RODRIGUEZ: So what I'm trying to emphasize to the Court is that the
7 Murray case will still have a substantial portion to proceed upon with the early part
8 of their claims, the 2007 through 2009, which is not covered under the Dubric
9 settlement. That's all I wanted to mention, Your Honor.

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

11 MR. GREENBERG: Your Honor --

12 THE COURT: Yes?

13 MR. GREENBERG: -- if I may?

14 THE COURT: Yes.

15 MR. GREENBERG: We've had a discussion, I don't know, for fifteen or
16 twenty minutes regarding the nature of the proposed settlement in Dubric and how
17 that would relate to the claims before Your Honor in Murray. A lot of representations
18 have been made to Your Honor about that and I can certainly address those, Your
19 Honor, but instead of doing that or before doing that if Your Honor would like to hear
20 on that subject from me, what I would submit is that this discussion that's gone on
21 explains why we need consolidation/coordination between these two cases, Your
22 Honor. If Your Honor grants the coordination, precisely the motion that Mr. Richards
23 is contemplating having before the Court will be before the Court.

24 I'm not proposing that the defendants rights or Ms. Dubric's rights be

1 abridged or limited in any fashion in terms of presenting this proposal to the Court
2 for scrutiny on the merits, and I of course would advise the Court at that time as to
3 what the issues are regarding the relationship of the claims, the infirmities as I
4 perceive them in respect to the proposal. This is why we need the coordination or
5 consolidation, Your Honor, so there won't be an appeal potentially, because if they
6 proceed before Judge Delaney, it is my position Judge Delaney has no subject
7 matter jurisdiction for anything that's been certified in this case. Judge Delaney
8 feels otherwise. That is her position. I understand that. We're not here to argue
9 the merits of that.

10 But if these cases remain unconsolidated, non-coordinated, and a
11 settlement goes forward before Department 25, there will be an appeal on that
12 basis. Whereas, on the other hand, Your Honor, if these cases are brought together
13 before Your Honor for consolidation or coordination, there is no question that Your
14 Honor would have subject matter jurisdiction. So that issue will be completely
15 removed from the mix here and that is clearly not in the interest of the class
16 members to be faced with that circumstance and appeal. This is separate and
17 aside from the question of whether there is in fact a reverse auction going on here;
18 whether in fact the proposed settlement that Dubric and defendants are asking the
19 Court to review in Department 25 and has now been discussing with Your Honor
20 should in fact secure final approval.

21 And this of course brings us to Your Honor's statements about the
22 institutional concerns that motivated the issuance of your injunction over a year
23 ago. Those institutional concerns are addressed in the federal system, and this is
24 discussed at page 9 of my OST, through the multi-district litigation panel where what

1 you do in these circumstances where you have overlapping class action cases is
2 you bring them all before a single court to insure that we don't have these kinds of
3 problems. And that's what I'm imploring Your Honor to do. And this process -- there
4 is no suggestion whatsoever in the supreme court's order that that process would be
5 improper or in any way impinge upon anybody's rights. The defendants and plaintiff
6 Dubric will be fully free to come before Your Honor and get the same relief in a
7 timely fashion that they were seeking in Department 25. There's no question of
8 Your Honor in a de facto sense enjoining a party from seeking relief. I would submit
9 the defendants have never in fact been enjoined from seeking the settlement relief
10 they wanted because they could have always brought this settlement before Your
11 Honor without my support. They didn't need my support to have Your Honor
12 approve a class action settlement and give the class members an opportunity to
13 consider it and exclude themselves.

14 THE COURT: How would I consider a class action settlement without their
15 attorney participating here?

16 MR. GREENBERG: Well, Your Honor, ultimately you're the fiduciary of the
17 class, not me. I'm the advocate for the class. Your Honor would have to hear me,
18 but Your Honor could overrule my concerns and can certainly approve it. I'm not
19 saying as a pragmatic matter Your Honor would want to do that.

20 THE COURT: Yeah. Yeah.

21 MR. GREENBERG: And the proposed settlement is clearly improper. But
22 I don't believe this is the forum to address that issue. I mean, I could spend a fair
23 amount of time explaining to Your Honor why the representations made to the Court
24 in the last twenty minutes before I got up to speak really are not correct, they're

1 inadequate. But that should be something we would hear after this case -- these
2 cases are consolidated, that we remove any threat or problem that is posed by the
3 separate proceedings before separate jurists as to the overlapping claims. There
4 is no dispute here that there are overlapping claims, Your Honor. And I have not
5 heard any explanation from either defendant's counsel or Ms. Dubric's counsel
6 as to how their rights to judicial relief are going to be impaired by the grant of
7 consolidation or coordination that I'm asking. There is no suggestion in their briefs
8 that it would be. This is just a question of efficiency, avoiding judicial forum
9 shopping and insuring the smooth operation of the courses of justice here. That's
10 all I'm asking for the Court to do by granting the coordination.

11 In retrospect, obviously I should have come before Your Honor fifteen
12 months ago and requested this in lieu of the preliminary injunction Your Honor
13 issued, and I apologize to the Court for not doing that. But that clearly would have
14 been the better course, as I was explaining is the course in the federal proceedings,
15 the federal court system where they deal with multi-district litigations with overlapping
16 class action claims on a frequent basis where they've actually institutionalized the
17 judicial panel on multi-district litigation. Your Honor essentially would be functioning
18 for purposes of this court, the Eighth Judicial District Court, as a MDL panel, so to
19 speak, by bringing these two overlapping class action cases together.

20 So in reality, Your Honor, it's a very narrow issue that's before the
21 Court. Does Your Honor have questions or thoughts in terms of its understanding
22 as to what I am advocating for the Court --

23 THE COURT: Yes.

24 MR. GREENBERG: -- or what I can assist the Court in understanding?

1 THE COURT: Yes. I return to the initial question. You're asking for the
2 Court to grant coordination of the cases as opposed to consolidation. Now, let me
3 tell you what my understanding is of the difference between those two and it's just --
4 it may be correct or it may not. It's just based on the experiences that I've seen
5 in our district court, is that coordination typically is where you're on the front end
6 with the two or more cases that you're going to coordinate and you typically are
7 coordinating the discovery, with the idea that once discovery is through the cases
8 then go back out to the original departments to handle the motion work, whereas
9 consolidation is once they're there, they're there; that department keeps it.

10 I note that Rule 2.50 talks about coordination or consolidation for less
11 than the ultimate -- I don't remember the words exactly, but it seems to contemplate
12 that you could have consolidation for less than going all the way through trial. But
13 I don't think -- I don't perceive that that's really what you're asking me. You're
14 asking the Court to, whether you call it coordination or consolidation, to take both
15 cases together all the way through to the end, whatever end that may be. And that
16 presumably that would involve this Court ruling on the motion for -- to approve the
17 settlement for the Dubric defendants and then proceed -- assuming that the Court
18 granted it, then proceeding ahead with the balance of the class members or the
19 balance of the time periods that are -- that would be left in Murray. Is that correct?

20 MR. GREENBERG: Absolutely, Your Honor. Your Honor would have to
21 weed through the proposed class settlement being proposed by Ms. Dubric and
22 defendant's counsel, review that, approve it to the extent it felt it warranted approval
23 or not approve it and then proceed from that point. Your Honor would have to
24 resolve that issue. I mean, to the extent that there was to be a consolidation for

1 less than all purposes, then the less than all purposes would be for the purposes of
2 any class disposition. If Your Honor somehow was to reach a point where there's
3 not going to be any class disposition beyond what Your Honor has directed and
4 determined and there still is an individual claim out there, which I guess could be
5 Ms. Dubric's individual claim, then perhaps that would proceed separately to trial
6 in some capacity. But I don't know that that really is germane, Your Honor.

7 THE COURT: Well, it sounds like if the Court were to proceed that way
8 that you would want the Court to not have the master, the special master proceed
9 ahead until that issue had been resolved of what was taken away by the Dubric
10 case, if anything. In other words, what was excised out.

11 MR. GREENBERG: That would be -- I would --

12 THE COURT: But my question is we're already on a -- pretty much a dead
13 run to get the special master to operate, to make the findings and then for the Court
14 to proceed ahead before the five year rule runs.

15 MR. GREENBERG: Yes, Your Honor.

16 THE COURT: So where would we get the time to sort through what sounds
17 like would be some pretty thorny issues raised by you as to whether this Court
18 should grant the preliminary approval and ultimate approval of the settlement of the
19 Dubric case?

20 MR. GREENBERG: I'm prepared to come in and argue the merits of that
21 on fairly short notice, Your Honor. Give me ten days from now; two weeks. I can
22 do it. I'm intimately familiar with the infirmities of the settlement and I am sure when
23 I brief that to Your Honor, Your Honor will agree that it does not merit preliminary
24 approval. But I don't think this is the time and place for us to discuss it, Your Honor.

1 THE COURT: No. But I think that I have a duty to try and figure out -- I
2 mean, I don't want to, for the benefit of putting these cases together to prevent kind
3 of all the ills that were adverted to in my supplement, I don't think I want to put at risk
4 the resolution of the entire matter if it came to that within the five year rule. In other
5 words, if I take on the Dubric case I'm still stuck with the five year rule under Murray,
6 correct?

7 MR. GREENBERG: You are, Your Honor. I don't see what would prevent
8 you from continuing a stay in Murray while you simply separately consider the
9 Dubric proposal, since it does overlap with the Murray class action settlement --
10 class action, excuse me, certification previously granted. You'll dispose of the
11 Dubric matter and then decide how to proceed in Murray. As you understand, the
12 Murray --

13 THE COURT: If the Court did that, that would -- and if the Court approved
14 the settlement, then that would greatly reduce the work of the special master,
15 wouldn't it?

16 MR. GREENBERG: It would definitely impact the Murray proceedings.
17 I agree, Your Honor. And I am --

18 THE COURT: Well, do you agree specifically that it would reduce the
19 amount of work that the special master would have to do?

20 MR. GREENBERG: There would be no purpose to the special master's
21 assignment in respect to matters, time frames, the materials that involve claims
22 resolved in Dubric. I mean, if we resolve claims in Dubric for the class for this
23 month, then there's no need for the special master to review materials related to
24 that month. I would agree, Your Honor, absolutely.

1 THE COURT: Okay.

2 MR. GREENBERG: It would impact the Murray proceedings in that fashion.
3 And it is for Your Honor to determine the best way to proceed here. I am supportive
4 of whatever course Your Honor charts. I believe Your Honor is going to be fair
5 and scrupulous in reaching the merits of whatever is before Your Honor. It makes
6 perfect sense to me for you to grant the consolidation or if you want to call it
7 coordination, stay the proceedings in Murray, deal with the desire of the Dubric
8 parties to bring their proposed settlement before Your Honor, which everyone
9 acknowledges does have an overlapping effect on the Murray litigation. Reach a
10 determination as to that proposed settlement by Dubric and defendants and then
11 take it from there.

12 THE COURT: Without indicating that I would favor that, Ms. Rodriguez,
13 what's your view of the ability of the Court to follow that course?

14 MS. RODRIGUEZ: I disagree, Your Honor. And I didn't mean to kind of
15 laugh when you looked over in my direction, but I knew you were coming this way
16 because I don't -- I'm trying to envision that and I don't think you can have half a
17 stay like he's proposing; that you can consolidate the cases as he's advocating for
18 but then stay half of it and just consider the other part.

19 And I think what he's trying to do is preserve his five year rule, which
20 is one of the things that Mr. Richards mentioned. Mr. Richards went through a
21 whole list of why these parties, the two plaintiffs and the two cases have conflicting
22 interests, and that's a real big one is that Mr. Greenberg is facing a five year rule
23 problem, Mr. Richards is not. And there is case law to say that when the Court aligns
24 -- attempts to align parties with conflicting interests, consolidation is inappropriate.

1 And that's what -- I think this is bringing it to a head and this is a very important issue
2 for the Court to consider.

3 THE COURT: Did you cite that to me in your opposition?

4 MS. RODRIGUEZ: I did not, Your Honor, because I was trying to -- this
5 afternoon trying to figure out the difference between consolidation and coordination
6 and that's where I saw it, but it is in the Nevada Civil Practice Manual.

7 THE COURT: Well, if you figure that out, let me know where.

8 MS. RODRIGUEZ: I can tell you right now. It says, Consolidation may be
9 improper if it results in aligning parties who have conflicting interests. And that's
10 Dupont v. Southern Pacific Company, 366 F.2d 193, a Fifth Circuit case. Or --

11 THE COURT: And you would argue that if you have two -- a consolidated
12 case with competing plaintiffs or disagreeing plaintiffs, that you -- they have
13 competing interests?

14 MS. RODRIGUEZ: Conflicting interests is the term.

15 THE COURT: Conflicting interests.

16 MS. RODRIGUEZ: And I think these two parties definitely have --

17 THE COURT: Yeah.

18 MS. RODRIGUEZ: -- conflicting interests. One party wants to resolve,
19 wants to move forward. The other party, there is no interest in resolving.

20 THE COURT: How would we be -- if we did what he's suggesting --

21 MS. RODRIGUEZ: Uh-huh.

22 THE COURT: -- and brought them together but then waited and considered
23 the Dubric settlement, how would we -- how would we wind up with --

24 MS. RODRIGUEZ: I think that really changes the picture for the defendants.

1 If the Court is going to consolidate the cases and basically make them one case,
2 is what you're doing when you consolidate cases, I think then that jeopardizes the
3 Dubric class members as well because then they as well -- if they're one and the
4 same, they're facing a five year rule issue as well. And that's certainly an issue that
5 the defendants would --

6 THE COURT: You mean you think that the five year rule in Murray would --
7 could cut off the Dubric plaintiffs?

8 MS. RODRIGUEZ: If they're one and the same now. I mean, I don't know
9 if there's case law on that issue --

10 THE COURT: I doubt that.

11 MS. RODRIGUEZ: -- but that's one of the things that comes into
12 consideration. I think it definitely changes the disposition of the Dubric matter and
13 the amount of money. The only reason that the defendants really want to go
14 forward in resolving the case with Dubric is because we signed on the dotted line
15 over a year ago. I believe the settlement was reached in probably February of 2017
16 or thereabouts. It's been over a year. And so if either party tries to back out at this
17 point once the supreme court said you're free to move forward, then I think the other
18 party could certainly move to enforce the settlement agreement. There's case law
19 on that.

20 THE COURT: Yeah.

21 MS. RODRIGUEZ: And everybody has signed. Everyone -- all the plaintiffs
22 and the defendants and counsel have all signed, so we have an agreement in place
23 that can be enforced, because as time has shown -- and I can tell you Mr. Nady
24 is not really happy about learning that his colleagues have all resolved with Mr.

1 Greenberg for a lot less money. So, if anything, Mr. Nady is ending up having to
2 pay twice as much to -- with the Bourassa settlement than his colleagues have paid
3 in settlements with Mr. Greenberg. So he would love to get out of the settlement
4 agreement and pay probably 50 percent, half of what we've agreed to, but there
5 is an agreement in place and we're prepared to move forward. A deal is a deal,
6 so to speak, and so we can justify it.

7 And that's one of the reasons we can justify it in front of Judge
8 Delaney is to show there's like 1,200 other drivers that are in Nellis Cab or Desert
9 Cab. They've settled for like \$300,000. A Cab's amount, once you look at the
10 settlement agreement of the money, the attorney's fees, everything that goes into
11 the Dubric settlement agreement, it's at the same rate, and this is a company that
12 has probably a third of those drivers.

13 THE COURT: Would it be accurate to tell Mr. Nady that in all likelihood
14 those other companies did not fail to maintain the records that they were supposed
15 to maintain?

16 MS. RODRIGUEZ: I don't believe so, Your Honor. I think they're very
17 much -- they all use the same systems. Everybody is in the same boat. And in fact,
18 there's now cases in front of Judge Bell that haven't even been -- she hasn't even
19 certified the class. Those were just individuals, as I've argued. So of course as
20 defense counsel, you know, I'm having to justify why are we even going forward
21 as a class --

22 THE COURT: Uh-huh.

23 MS. RODRIGUEZ: -- when that was always our argument that Mr.
24 Greenberg doesn't even have enough claimants to even certify the class. Judge

1 Bell said there wasn't even numerosity to justify a class certification. So there's all
2 kinds of issues. There's a lot of problems with the plaintiffs' case. And that went
3 into consideration --

4 THE COURT: With 200 drivers they don't have enough? Oh, 200 was the
5 number that you have.

6 MS. RODRIGUEZ: Right, in the agreement.

7 THE COURT: Yeah. And what was the number of drivers that Murray
8 involves?

9 MR. GREENBERG: Your Honor, we're seeking partial summary judgment
10 for about 400 drivers in an amount that's equal to the entirety of the proposed
11 settlement in Dubric.

12 THE COURT: Okay.

13 MR. GREENBERG: And that partial summary judgment only covers a two
14 year period, Your Honor.

15 THE COURT: Yeah.

16 MR. GREENBERG: And again, what was decided in other cases, Nellis
17 Cab or what have you, this is not germane to what's before Your Honor.

18 THE COURT: Understood. Understood.

19 MS. RODRIGUEZ: And we can address --

20 THE COURT: I was just trying to learn as much as I can as I go along.

21 MR. GREENBERG: Yes, Your Honor. I understand and I want to inform
22 the Court and I want to be respectful of the Court's time. Your Honor is being very
23 inquiring and inquisitive and as counsel it's our job to help you.

24 THE COURT: Uh-huh.

1 MR. GREENBERG: Your Honor, I have no problem if you lift the stay and
2 you set an expedited hearing on their proposed settlement. I am prepared.

3 THE COURT: You're aware that we have lifted the stay as of yesterday?

4 MR. GREENBERG: Yes, I understand, and you can -- as far as I'm
5 concerned, it is fine to leave the stay running -- I mean, excuse me, to leave the
6 case in active status. We will be back. As I said, we can come back at the end of
7 next week if Your Honor was able to accommodate us and go through the briefings.
8 And I will get briefings to Your Honor to oppose this. Your Honor, the reason why --

9 THE COURT: I'm sorry, to oppose?

10 MR. GREENBERG: To oppose the proposed preliminary approval in
11 Dubric. I understand Your Honor has been discussing --

12 THE COURT: Oh. Oh, yeah.

13 MR. GREENBERG: -- the utility of resolving the Dubric proposed settlement
14 before directing further proceedings in Murray. I understand the utility of that, Your
15 Honor, and I am not disagreeing with that. But what I want to point out is the 41(e)
16 issue can be waived by defendants. We are now facing pressure under 41(e) in
17 significant part because defendants did not comply with your order's initial directions
18 regarding the special master. They didn't pay the special master. He ceased doing
19 his work. They never paid the \$25,000. He's now \$41,000, based on his last
20 communication. Your Honor stayed the case and suspended his work.

21 THE COURT: Now, is that from the current special master or was that --

22 MR. GREENBERG: That's from the current special master, Your Honor.

23 THE COURT: It's forty-one?

24 MR. GREENBERG: It's \$41,000. That was his last email that he sent us.

1 THE COURT: I thought that was -- who was the one we started with?

2 MS. RODRIGUEZ: I don't remember his name.

3 MR. GREENBERG: There was a gentleman here in Las Vegas. There was
4 an objection. He had a relatively small --

5 THE COURT: Okay. All right.

6 MR. GREENBERG: -- \$1,000 or \$2,000 bill, which I don't know what
7 happened to that claim, Your Honor.

8 THE COURT: Okay.

9 MR. GREENBERG: But my point is part of what I asked in the OST, Your
10 Honor, because I was seeking contempt regarding the defendants failure to comply
11 with the special master's order, was that if Your Honor is going to give them a
12 further opportunity to comply, you condition it upon them agreeing to waive the 180
13 day period under Rule 41(e) if they're going to cure themselves of that contempt.
14 Your Honor has the power to do that. They are clearly in violation of the order.

15 I understand Your Honor is trying to be fair to everyone, give everyone
16 an opportunity to comply, acknowledge the difficulties and circumstances of all the
17 parties, and you have to use your best judgment and discretion in doing that, Your
18 Honor. You have a difficult job. I understand that. But when we talk about the
19 41(e) issue and the limitation on jurisdiction of the Court after the five years run
20 and the potential impact on the class, which Your Honor is charged with, you know,
21 looking after as I am charged with advocating for, I think there's some countervailing
22 interests there that would sort of weigh in favor of Your Honor conditioning some
23 waiver from defendants in lieu of a finding of contempt, since they have violated the
24 order and they haven't paid the \$25,000 for the special master. And Your Honor

1 envisioned the special master finishing his work on an expedited basis so we could
2 be back before Your Honor, resolve this issue -- the entire case potentially on a
3 dispositive motion, which I think would be appropriate, or if not, at least moving it
4 immediately to trial with the benefit of the special master's findings.

5 So the course Your Honor charted in this case several months ago by
6 directing that I think is fine and I'm not asking the Court to deviate from it. But to the
7 extent that there's been an obstacle posed to that course moving smoothly within
8 the confines of 41(e), it does rest on defendants because they have not complied
9 with the special master order.

10 Be that as it may, Your Honor, if Your Honor wants to just simply leave
11 the case in active status, our 41(e) time at this point because of the stay that Your
12 Honor issued in March would now run in the beginning or middle of October, okay.
13 So there is time, okay, as long as we move it --

14 THE COURT: I thought it was even further than that. I'm glad you told me
15 that.

16 MR. GREENBERG: Excuse me? I'm sorry, Your Honor.

17 THE COURT: I thought it was even further out than that.

18 MR. GREENBERG: It might be.

19 THE COURT: It went from August to October? Well, that's quite away.

20 MR. GREENBERG: It's about two months, Your Honor --

21 THE COURT: Okay.

22 MR. GREENBERG: -- that the case has been under stay status, maybe
23 a little more than that, maybe ten weeks or something. But my point, Your Honor,
24 is I am pleased to work with whatever the Court directs in respect to getting all of

1 these issues before Your Honor to avoid inefficiencies, the smooth course of justice
2 here and preserve the rights of all the parties. Your Honor is trying to be fair to
3 everybody here. I appreciate that. I'm not asking the Court to bar the defendants
4 or Ms. Dubric from presenting their proposed settlement to the Court, as I've
5 emphasized before.

6 THE COURT: Speak to me, then, of the objection raised by Ms. Rodriguez
7 that it's not appropriate for consolidation when it's -- and I dare say you don't -- you
8 probably don't get around it by calling it coordination. I mean, if you can't have
9 competing interests or conflicting interests of the plaintiffs for consolidation, you
10 probably can't have it for coordination, either.

11 MR. GREENBERG: Well, Your Honor has made a finding that Mr. Murray
12 and Mr. Reno and Mr. Sergeant should be appointed class representatives and
13 certified the class, so if there's a conflict between Dubric and the class, how could
14 the Dubric settlement possibly be approved? I mean, if what they're saying is that
15 coordination is not possible, then they must also mean that a settlement in Dubric
16 of these claims is not possible, either. There's got to be a continuity of interest here
17 based upon what they're claiming should proceed in Department 25. It doesn't
18 make any sense, Your Honor. Do you understand? These are all persons who
19 were taxi driver employees for defendants. They're all presenting the same claims
20 against defendants involving unpaid minimum wages. It is the same issues of law,
21 it is the same issues of fact. What were they paid, what were their hours of work?

22 There's no explanation to Your Honor what the conflict is. What the
23 conflict is is one of personal interest, which is why the Dubric settlement cannot
24 proceed, because Ms. Dubric is clearly involved in self-dealing here with her

1 counsel, with defendants. But this is all to be considered in the future when Your
2 Honor examines the merits of their proposed settlement because they have to
3 show that their proposed settlement class is justified, that there's a unity of interest
4 between Ms. Dubric as the representative in the class, the settlement is fair. Your
5 Honor understands where I'm getting at here.

6 THE COURT: Uh-huh.

7 MR. GREENBERG: And we will reach all of those issues. I don't think we
8 can possibly get into them now in any sort of detail.

9 THE COURT: No.

10 MR. GREENBERG: But again, Your Honor, I am fully prepared -- today
11 is Wednesday. I'm prepared to come back here, you know, Friday of next week
12 if Your Honor wants or whenever Your Honor can set this for a merits hearing
13 regarding the proposed Dubric settlement. Let's get this resolved in a coordinated
14 fashion, consolidated fashion before Your Honor and then we can move forward
15 with Murray at that point. We have time to do it if Your Honor is willing. And I urge
16 Your Honor to do so because the interest of justice clearly requires this, as I think
17 Your Honor appreciates, that we don't want to have a conflict between a separate
18 proceeding going forward, a question of subject matter jurisdiction, an appeal. This
19 is going to serve no one's interest, Your Honor. It will certainly impair the interests
20 of the class members to have that sort of chaos result if Your Honor denies a
21 consolidation here.

22 THE COURT: Okay.

23 MR. GREENBERG: Thank you, Your Honor.

24 MS. RODRIGUEZ: Your Honor, I would just like to respond to --

1 THE COURT: All right.

2 MS. RODRIGUEZ: -- just the accusation. I don't appreciate -- I don't know
3 what he means by this self-dealing --

4 THE COURT: Oh.

5 MS. RODRIGUEZ: -- and this stuff that's in the pleadings, but he's
6 represented that to this Court, to the supreme court, to Judge Delaney that we have
7 this collusion going on. And I just want to reiterate that we did this through Judge
8 Wiese.

9 THE COURT: Well, isn't that -- isn't that part of the argument of -- well, of
10 all the authorities that I put in the supplement that that's what it leads to, it tends to
11 open the door and actually kind of push the parties together to accomplish that?

12 MS. RODRIGUEZ: Well, you know --

13 THE COURT: It's not -- it's not as I view it, anyway, and that's why I was
14 careful to point out in that supplemental that I was not casting aspersions on any
15 of the present counsel.

16 MS. RODRIGUEZ: Oh, no. I didn't gather that from the Court at all.

17 THE COURT: But if you -- as an institution if you allow that kind of thing
18 to go forward, you just -- you're practically inviting --

19 MS. RODRIGUEZ: Well, not --

20 THE COURT: -- competing class actions to --

21 MS. RODRIGUEZ: I'm glad you -- excuse me.

22 THE COURT: -- you know, cut the slats out from under the -- whichever
23 one was first filed. What would have prevented -- it's probably too late now, but
24 what would have prevented someone from filing yet another competing class action,

1 you know, a year ago? Well, you reached a settlement a year ago. Let's say a year
2 and a half ago and attempted to, you know, cut the slats out from your class?

3 MS. RODRIGUEZ: I'm glad you brought that up, Your Honor, because that
4 was -- I was listening to what the Court was saying earlier about that concern and
5 the way to stop that and that's why you do have these motions to consolidate under
6 Rule 23 as well for class actions, is way back in 2015 when Dubric, Ms. Dubric filed,
7 and this was something that Judge Delaney addressed in denying intervention was
8 the timeliness. And I would ask the Court to consider the timeliness of the timing of
9 them now wanting to consolidate. You consolidate, you coordinate at the beginning
10 of the case or when you learn of this case.

11 And Mr. Greenberg has known about this case, he's watched it very
12 carefully, but he waited until everything was done, the defendants had defended it
13 in both cases. I can't emphasize this enough. That's why it bothers me that we're
14 accused of collusion because we've done everything by the book, by the rules,
15 followed -- go to a mandatory settlement conference, reach a resolution. Mr.
16 Richards just indicated everything we still have to do to prove to Department 25.
17 We've gone boom, boom, boom, met all the qualifications and worked in good faith
18 to reach a resolution to pay the drivers, and then being accused of collusion. There's
19 no evidence of collusion.

20 THE COURT: Uh-huh.

21 MS. RODRIGUEZ: So -- and the way to prevent somebody from coming
22 in and trying to get another bite at the class action is when Mr. Greenberg learns of
23 that he can move to consolidate right then and there. But he didn't. He never has
24 until after Mr. Bourassa's group settles the case. Then all of a sudden he says, oh,

1 now we need to consolidate them. That doesn't make any sense. That's why I
2 started my argument at the very beginning for the Court to consider the procedural
3 posture of both of these cases because they're very different cases, they're different
4 plaintiffs, they're different defendants, they're different time frames, they're different
5 causes of action and one is facing a five year rule, one is not. And it's improper
6 to consolidate them at this point. Maybe back in 2015 that would have been a
7 consideration and the defendants probably would have agreed to it as well because
8 it would have saved the defense a lot of money to do one set of discovery, one
9 expert, one deposition, one set of motions, everything else, but now at this point --

10 THE COURT: Why didn't the defense move for it?

11 MS. RODRIGUEZ: I don't know. We didn't consider it.

12 THE COURT: Okay.

13 MS. RODRIGUEZ: I guess because we were making progress with the
14 Bourassa group and there were so many other issues with Mr. Greenberg, you
15 know. And I guess we would stay here another two hours if I wanted to go through
16 all the discovery problems that we've had in the Murray matter, as opposed to we
17 have had very -- I don't think we've been in front of the Discovery Commissioner one
18 time with the Dubric matter. The parties have worked together, just as I do in all
19 of my cases. I've never -- and I emphasized that to the Discovery Commissioner,
20 I've never been before her on any other matter other than the Murray/Reno matter,
21 which I think we were there at least every week with discovery problems.

22 THE COURT: Okay. Anything else? Let's take five minutes.

23 MR. GREENBERG: Yes, Your Honor.

24 (Court recessed from 3:06 p.m. until 3:13 p.m.)

1 THE COURT: Please be seated.

2 What I have before me today is a motion to grant -- I keep wanting
3 to say collaboration -- coordination or I suppose consolidation. At some point the
4 question or the argument was made, you know, where are the authorities for it.
5 Well, there don't appear to be a lot of authorities either direction. To some extent
6 it's left to the discretion of the Court. However, in this case it seems to me that if
7 I grant such a motion it's going to be argued and perhaps perceived as a second
8 bite at an injunction; having failed with an injunction that the Court then proceeded
9 to simply grant a motion which had the same effect of putting the brakes on the
10 Dubric matter until the Court could make some kind of determination that would
11 I suppose homogenize Dubric with Murray.

12 When I granted the preliminary injunction it was with the thoughts in
13 mind which eventually wound up in the supplement. That is, that I believed that the
14 argument was forceful that it is -- from an institutional standpoint it is -- will not lead
15 to an acceptable level of justice to allow essentially competing class actions without
16 doing something to bring them together. And we don't have what they have on the
17 federal level with the -- not multi-district litigation, what do you call it? Well, they
18 do some of that with multi-district litigation, but where you have several causes of
19 action that must be resolved together in order to homogenize it. So they have a
20 fairly -- a much more straightforward methodology for accomplishing that.

21 I don't really know a good way under circumstances of these two
22 cases to bring them together in any way that is better than leaving them separate.
23 And I say that largely through consideration of the five year rule and how it would
24 complicate this Court bringing to a conclusion the case that I do have in front of me

1 within the five year rule. As counsel will recall, I made a determination some time
2 ago when we were facing trial that the trial was going to wind up being nothing more
3 than a battle of the experts and that the problem was that we did not have readily
4 adducible or provable facts from which a jury or the Court could fashion a judgment.
5 And the reason was or at least a majority of the reason I think has to come to rest
6 on the shoulders of the defendant for not complying with the statutory requirement.

7 There is another consideration which was in the back of my mind
8 when I granted the preliminary injunction, and because we were under such a time
9 constraint also did not make it into the order, and that is that I haven't lost sight of
10 the fact that the particular cause of action that we're dealing with has to do with a --
11 not a statutory provision but a constitutional provision, one that was submitted to
12 the public and the public voted on it. In my mind, actions like that command a
13 respect such that I suppose in my mind I thought that the format that the preliminary
14 injunction which I entered, the format that it took was sufficient to make the point
15 and to justify it. It turns out the Court was wrong and I'm still left with the question
16 of how do I interpret the order that was entered by the supreme court. Do I believe
17 that on review again, as it surely would be, that that court would say that it was an
18 appropriate use of the local Rule 2.50 to consolidate or coordinate these cases?
19 I don't know. I don't have that warm and fuzzy feeling that tells me that it would be
20 a decision that would receive the approbation of our supreme court and it makes
21 me disinclined to go out on any limbs here.

22 Furthermore, I am disinclined because, as I've already indicated, of the
23 complication that I foresee between one case having a five year rule staring it in the
24 face and a complicated resolution that's going to have to involve a special master,

1 and the other being ready to resolve but not facing any five year rule. And I suppose
2 you can probably tell that from a consideration of those factors I've determined that
3 I should not grant the motion and I will decline to grant the motion.

4 That being the case, I am not ruling on the suggested -- well, at least
5 adverted to, a renewed motion for a preliminary injunction. All I know from the
6 supreme court order was that what was submitted was incomplete and did not have
7 the sufficient factual findings of fact or recitations that satisfied the supreme court,
8 that a new precedent would be set. I guess I'd have to say I don't fault the supreme
9 court that in -- well, a lowly district court, of course, should never fault the supreme
10 court, but it may be difficult -- it may be too much to ask the supreme court to in
11 essence set down a new rule that did not have all of the particularity of a preliminary
12 injunction that had many findings of fact that would really show the importance of
13 effectively setting a new rule. So I am not inclined to do so.

14 By saying that I am not ruling on a renewed motion for a preliminary
15 injunction, if you want to do that you're free to file it. I'll be happy to entertain
16 whatever motions the parties file. In the meantime, I'm going to consider that our
17 case needs to move forward. In doing so, I return to the point that I made once or
18 twice during this hearing that it occurs to me that the reason why this case, the
19 majority of the reason, certainly there's been no end of skirmishing between counsel
20 in this case that has slowed it down, but I can't conceive that this case would be
21 staring at the five year rule if the records had been kept by the defendants that were
22 mandated to be kept.

23 With that in mind, I am disinclined to allow a lot of any further holding
24 up of this matter by nonpayment of what's going to be required in order to get our

1 special master to complete the work. I am inclined, and I'll hear from you on this
2 just on the question of whether to reimpose a stay or whether to leave the stay off.
3 I'm inclined to leave the stay off, to have the parties in in about a week on the
4 balance of the motion or the motions comprised in this multi-faceted motion or
5 anything else that's on the docket. I am also inclined to require Mr. Nady to be here
6 and to show that he has deposited with the Clerk of the Court the \$41,000, twenty-
7 five of which should have been set aside from quite some time ago, as was the
8 order of the Court.

9 I want the special master to go forward. It's the only option that I have,
10 not having any ability to homogenize or harmonize these two cases. We're going
11 to simply go forward with the case that we have and that means I want the special
12 master to be cut loose. I will not ask him to until we have the payment from Mr.
13 Nady and -- well, from the defendants, and I would advise that I would be ready to
14 consider any number of motions for consequences if it's not paid. You cannot hold
15 this up anymore. This case has to go forward. If they're not going to be together,
16 or in any event whether they're together or not, this case has to be resolved. I'm
17 not going to break the five year rule. I will ask plaintiff's counsel to recalculate the
18 five year rule as it stands to this point and to file something with the Court prior to
19 the hearing that I'm going to set next with your calculation. And then I'll ask defense
20 counsel to respond if they have something different.

21 MR. GREENBERG: Your Honor, I will get something on file by the end of
22 this week.

23 THE COURT: Huh?

24 MR. GREENBERG: I will get a statement on file by Friday of this week,

1 Your Honor.

2 THE COURT: Excellent. We don't need to be ready to set trial by the next
3 hearing, which I think I will set on next Friday at ten o'clock in the morning.

4 MS. RODRIGUEZ: Is that June 1st, Your Honor? Is that June 1st?

5 THE COURT: Is that the 1st? Okay. I'll accept that.

6 THE CLERK: It is.

7 MS. RODRIGUEZ: It was a question. I wasn't sure.

8 THE CLERK: It is.

9 THE COURT: Yeah. I don't have the calendar. Anyway, June 1st, then,
10 at ten o'clock.

11 MS. RODRIGUEZ: Your Honor, for clarification, because you said
12 something earlier that I did not understand.

13 THE COURT: Uh-huh.

14 MS. RODRIGUEZ: Is this -- I read the minute order. It says, "The stay
15 previously imposed by the Court is hereby lifted for purposes of the May 23rd
16 hearing."

17 THE COURT: Yes.

18 MS. RODRIGUEZ: So I thought it was just lifted for purposes of this
19 hearing.

20 THE COURT: That's all -- that's all I knew for sure.

21 MS. RODRIGUEZ: Is it my understanding that it was lifted as of yesterday?

22 THE COURT: I'm sorry?

23 MS. RODRIGUEZ: Earlier the Court said it was lifted as of yesterday, that
24 the stay was lifted.

1 THE COURT: Oh. Well, I anticipated that by filing a minute order that says
2 the stay is lifted that it was lifted as of yesterday.

3 MS. RODRIGUEZ: Okay.

4 THE COURT: Does that --

5 MS. RODRIGUEZ: But only for purposes of the hearing?

6 THE COURT: Yes.

7 MS. RODRIGUEZ: We weren't free to file other things? Because I've had
8 a number of things pending and I just have not filed them --

9 THE COURT: Okay.

10 MS. RODRIGUEZ: -- because we were under a stay.

11 THE COURT: Yeah. Well, I think it's time to lift the stay and get down to
12 business.

13 MR. GREENBERG: Yes, Your Honor. I would request that Your Honor
14 consider a long pending motion for partial summary judgment for which supplements
15 were submitted on January 9th to Your Honor.

16 THE COURT: Uh-huh.

17 MR. GREENBERG: I really don't feel we need --

18 THE COURT: We'll set that on -- I mean, you have in your big motion
19 partial summary judgment and I think that's just -- is that not just a boiled down
20 version of what your separate motion for summary judgment is?

21 MR. GREENBERG: Your Honor, it was really just my intention to draw the
22 Court's attention to that long pending matter --

23 THE COURT: Yeah.

24 MR. GREENBERG: -- which we've discussed a number of times with Your

1 Honor. Your Honor directed supplemental briefings on January 9th. I'm not
2 suggesting Your Honor should hear further argument on it. I have nothing new --

3 THE COURT: Okay.

4 MR. GREENBERG: -- that I would add in support of that. I'm just asking
5 that the Court consider making a determination on that perhaps in advance of our
6 hearing next week because I believe it is quite germane, as Your Honor was saying,
7 to getting this proceeding concluded in a timely fashion to respect the interests of
8 the class members.

9 THE COURT: Remind me, if you would, did you guys already argue it?

10 MR. GREENBERG: Yes, we did, Your Honor. It was argued actually in
11 December.

12 THE COURT: Four times?

13 MS. RODRIGUEZ: Four times. And this Court has denied it and then
14 partially granted part of it, so we've argued it several times --

15 THE COURT: Yeah. Yeah.

16 MS. RODRIGUEZ: -- and we have a ruling. I'm not sure why he's renewing
17 it again. And of course then my argument is that that motion is based on his expert
18 data and I've had -- the Court had all of those things set when down the route for
19 the special master.

20 THE COURT: Yeah. Yeah.

21 MS. RODRIGUEZ: But the Court had the defendants' motion to strike his
22 experts and the company reports which formed the basis of his motion for summary
23 judgment.

24 THE COURT: Uh-huh.

1 MS. RODRIGUEZ: So I don't believe that it's fair to just skip over that and
2 then just say, well, set my motion for summary judgment again.

3 THE COURT: Is there some part of your motion for partial summary
4 judgment that has not been ruled on?

5 MR. GREENBERG: Yes, Your Honor. This was discussed on January
6 2nd. I have the transcript actually right here. I could give Your Honor a copy of the
7 transcript. You directed supplemental briefings, which were given to Your Honor
8 on January 9th by both parties.

9 THE COURT: Uh-huh.

10 MR. GREENBERG: The issue remaining from December is that in
11 December Your Honor entered minutes making a liability finding --

12 THE COURT: Uh-huh.

13 MR. GREENBERG: -- and as we had discussed subsequent to that,
14 I believe it was a December 14th hearing, in this case a liability finding requires
15 a damages finding --

16 THE COURT: Sure. Yeah.

17 MR. GREENBERG: -- because you can't be owed something unless you
18 know what you're owed. So it's not about -- so there was much discussion. I don't
19 want to rehash the discussion. If Your Honor would benefit from the transcript, I
20 could give Your Honor a copy of the transcript right now --

21 THE COURT: Okay.

22 MR. GREENBERG: -- or I can have it filed with the Court. Whatever I can
23 do to assist. My point is --

24 THE COURT: Well, give it to me after court. I'm really not inclined to simply

1 rule on -- enter any further order without hearing from counsel. I'm sorry, I'm not
2 good enough to remember what happened in this case, you know, with that passage
3 of time.

4 MR. GREENBERG: I understand, Your Honor. And I don't want -- you've
5 been very generous with your time, I don't want to take up more of your time now.
6 We will return next Friday at 10:00 a.m.

7 THE COURT: Uh-huh.

8 MR. GREENBERG: As I understand it, Your Honor will entertain the
9 various requests for relief that were presented in my April 17th filing at that time,
10 in light of defendants' compliance with Your Honor's instruction today regarding
11 that deposit for the special master.

12 THE COURT: Yeah.

13 MR. GREENBERG: Whether that is or is not made will bear presumably
14 on Your Honor's consideration of those requests.

15 THE COURT: So that includes hold defendants in contempt, strike their
16 answer, grant partial summary judgment, direct a prove-up hearing. The coordinate
17 we've already done.

18 MR. GREENBERG: I appreciate Your Honor being clear about what will be
19 before the Court next Friday and what Your Honor is looking for defendants to do
20 in the interim that will bear upon Your Honor's consideration on June 1st of those
21 requests.

22 THE COURT: Okay.

23 MS. RODRIGUEZ: And to lift the stay, but Your Honor has already ruled
24 that the stay is lifted.

1 THE COURT: Yeah.

2 MS. RODRIGUEZ: Okay.

3 THE COURT: I've already lifted the stay. So the stay is off as of yesterday,
4 unless and until such time as the Court reimposes it.

5 MS. RODRIGUEZ: And the Court then -- are you determining or do you
6 want to look at the transcript first before determining we're hearing the summary
7 judgment again next Friday?

8 THE COURT: Well, that's a good point. I'd better look at that now, then.

9 MR. GREENBERG: I have a copy of the transcript right here, Your Honor.

10 THE COURT: All right.

11 MR. GREENBERG: May I approach?

12 THE COURT: Yes. Uh-huh. Thank you. And do you know where that
13 was?

14 MR. GREENBERG: It is largely discussed after about page 20 of the
15 transcript, Your Honor. It's discussed actually prior to the end of the hearing, Your
16 Honor, from the middle to the end.

17 MS. RODRIGUEZ: Your Honor, while you're looking, may I make a quick
18 call to verify I don't have a conflict next --

19 THE COURT: Yeah, sure.

20 MS. RODRIGUEZ: Thank you.

21 THE COURT: All I see the Court saying is "Uh-huh," "No," "Uh-huh,"
22 "Thank you," so I must have already passed the point you're looking at. Was it
23 before discussing the punitive damage claim?

24 MR. GREENBERG: The initial motion -- well, the motion -- the first part

1 of the motion hearing was concerned actually with defendants' summary judgment
2 motion, I believe, Your Honor. And then as I said, about midpoint of the hearing until
3 the end there's a discussion as to the December 14th ruling. And then towards the
4 end there's a discussion as to Your Honor directing the filing of the supplements,
5 which were filed on January 9th by both parties.

6 THE COURT: I'll tell you what, you're much more familiar with this than
7 I am. Why don't I hand this to you and you find me, if you would, where it is you
8 want me to focus.

9 MR. GREENBERG: Yes, Your Honor. Here we discussed the minute order
10 from December 14th, Your Honor, where there was this discussion as to a liability
11 finding. But there was this issue, as I was mentioning to Your Honor, that in this
12 case a liability finding is not really separate from a damages finding. And from that
13 point forward I believe Your Honor will see what was discussed and what Your
14 Honor directed regarding the filing of supplements.

15 THE COURT: Okay. So we're on page 41 of the transcript of the hearing
16 on January 2nd of this year.

17 MR. GREENBERG: Yes, Your Honor.

18 THE COURT: I'm having a hard time finding anything that tells me that
19 I either dealt with all of the motion for partial summary judgment or didn't, so help
20 me out.

21 MR. GREENBERG: Well, I do have the supplement here that was filed.
22 Both sides filed supplements -- I can give them to Your Honor -- on January 9th --

23 THE COURT: So --

24 MR. GREENBERG: -- because Your Honor did direct it in the transcript

1 that supplements be filed to clarify --

2 THE COURT: The part that you're interested in me finding is the part
3 where I ordered supplements to be filed?

4 MR. GREENBERG: That was near the end of the transcript. Your Honor,
5 I only presented this to assist Your Honor in understanding the prior proceedings
6 that took place in respect to this issue, as I was pointing out to Your Honor on
7 page 41 forward. You have about a 60-page transcript there, so it's where that was
8 discussed. I also have the transcript from the December 14th hearing, where at the
9 conclusion Your Honor confirmed that there was going to be further consideration of
10 these issues regarding the fact that making a liability finding separate from an actual
11 assessment of the amount of damages that's found is not what is possible, really,
12 given the nature of this case.

13 THE COURT: Uh-huh. Lisa, do you have the same transcript if I give this
14 back to him?

15 COURT RECORDER: Yeah, we can print it out.

16 THE COURT: Okay. I'm going to have to take a look at this after. This is
17 too extensive for me to deal with and tell.

18 MR. GREENBERG: I understand, Your Honor.

19 THE COURT: My general recollection, though, is -- I believe is tracking
20 yours, that we never did really resolve all of the issues that had been raised in the
21 motion for partial summary judgment.

22 MR. GREENBERG: Yes, Your Honor. And I do have the December 14th
23 transcript where Your Honor did conclude with a confirmation that we would receive
24 further instructions and guidance from the Court as to the disposition of that motion.

1 THE COURT: Okay. So that we're clear, tell me what it is that you think
2 remains of the motion for partial summary judgment.

3 MR. GREENBERG: The review of the QuickBooks records which contain
4 the hours worked from 2013 to 2015 demonstrate --

5 THE COURT: Accepting those? In other words, the Court accepting them?

6 MR. GREENBERG: Accepting the defendants' records. Yes. The
7 defendants testified that we reviewed the trip sheets from 2013 to 2015, we put the
8 hours in the QuickBooks. So every pay period we have an hours amount, we have
9 a wage amount. When you divide the hours into the wages for those two periods,
10 they come out to less than \$7.25 an hour --

11 THE COURT: Okay.

12 MR. GREENBERG: -- which is the minimum wage, for about 400 persons.
13 That's a total of about \$174,000 when we examine the ones that are over \$10, not
14 dealing with de minimis amounts. There's no contested issue of fact as to those
15 calculations. We provided a printout which contains I believe about 12,000
16 individual pay periods which were analyzed in an Excel file. It's the materials that
17 were produced by the defendants that they swore were accurate in respect to the
18 hours in there and the wages in there. Defendants had that spreadsheet and in fact
19 it's been introduced. I have a printout here. It's hundreds of pages. Every week
20 that you can check the math and check the numbers. They have not disputed any
21 single arithmetic calculation there dividing the hours into the wages is wrong or that
22 any of the information that's in there was not the information in the QuickBooks
23 originally which they gave to me.

24 THE COURT: Was there evidence submitted by them in opposition or was

1 it relied upon argument?

2 MR. GREENBERG: There was no evidence, Your Honor. The argument
3 that came before Your Honor in January was that, well, we dispute that you can rely
4 on these materials.

5 THE COURT: Uh-huh.

6 MR. GREENBERG: And Your Honor was questioning, well, can't plaintiff
7 rely on them because they came from you and you were ordered to produce them
8 in discovery, the QuickBooks materials.

9 THE COURT: Uh-huh.

10 MR. GREENBERG: And that was why Your Honor directed supplemental
11 briefing so Your Honor could review this further. That was the point of the January
12 9th supplemental briefings was to confirm that these are the materials defendants
13 produced in discovery pursuant to Court order. And under oath at a 30(b)(6)
14 deposition Mr. Nady testified that those QuickBooks records contain the true hours
15 of work that they had collected for the drivers. In fact, he testified that they even
16 contained more time than was in the trip sheets because they made an additional
17 allowance for other work that the drivers were doing. This is in the record in the
18 supplement. It was actually in the record previously but it was emphasized and
19 extracted more in the supplement for the ease of the Court to understand.

20 So there is no disputed material issue of fact of any sort regarding
21 what these drivers were paid and the hours they worked for the period 2013 through
22 2015. And it's for that reason we have sought the partial summary judgment for
23 the \$174,000 approximately, Your Honor. Now, there are other issues. We're not
24 necessarily saying that they didn't work more time or whatever. There are other trial

1 issues. There's other time periods we're dealing with in the court. But in respect to
2 this particular issue, this particular time period, there is no dispute.

3 THE COURT: What time period does this cover, roughly?

4 MR. GREENBERG: It covers from January of 2013 through December of
5 2015.

6 THE COURT: Okay, to the end of the class period, of the suit period?

7 MR. GREENBERG: That is correct, Your Honor, the last two years of the
8 class period.

9 THE COURT: Okay. All right. Is there any reason why we couldn't just
10 argue that?

11 MS. RODRIGUEZ: We have argued it several times, Your Honor. And
12 obviously I didn't bring that large set of pleadings again to argue his motion for
13 partial summary judgment, but that's what I -- like I said, the Court has already
14 denied it.

15 THE COURT: Let me interrupt you one second.

16 (The Court confers with the clerk)

17 THE COURT: Our best memory is -- I mean, it wouldn't make sense
18 logically that I didn't -- I'm inclined to think that I denied it because then we went to
19 the special master --

20 MS. RODRIGUEZ: Exactly.

21 THE COURT: -- to provide the evidence that the Court had said was not.
22 Now, if you want to re-raise that, I mean, I suppose you can, but I'm afraid we
23 wouldn't be able to do it next week.

24 MS. RODRIGUEZ: That's what I was going to say, Your Honor, because

1 I haven't had an opportunity to respond, but that's exactly where we left it was that
2 the Court had already denied it again at that point, because what he said is we're
3 relying on the defendants' experts. And I said no, you're relying on your
4 interpretation of the defendants' experts. Your expert reports is what they submitted.
5 And then we're back to square one where I've argued that's not admissible. And the
6 Court said this is such a mess, let's let the special master deal with it.

7 MR. GREENBERG: Your Honor, no such ruling was made --

8 THE COURT: Okay.

9 MR. GREENBERG: -- when we appeared and Your Honor directed the
10 appointment of the special master. There is no order or entry in the court docket
11 since January 9th when those supplements were submitted. There was no
12 discussion in any transcript of any proceeding with Your Honor resolving that issue.
13 What happened is we came in, it was approximately January 23rd, and it was
14 intended Your Honor was going to address that, and instead the appointment of the
15 special master --

16 THE COURT: Ahh.

17 MR. GREENBERG: -- was undertaken at that time because Your Honor
18 had been reviewing this case in preparation for the trial setting and had reached the
19 conclusion that that is how we should proceed.

20 THE COURT: Uh-huh.

21 MR. GREENBERG: So it was simply deferred. It was not resolved, Your
22 Honor. There was no ruling made. And given the pressing need to resolve this
23 case, as Your Honor has noted --

24 THE COURT: Uh-huh.

1 MR. GREENBERG: -- it should be ruled upon. I believe, again, that this
2 is all very accurately set out in the parties' supplements. The record is before the
3 Court. We have the transcripts of the hearings from December 14th and January
4 2nd when this was also discussed.

5 THE COURT: Here's what I'll do. I don't want any more briefing on it.
6 The record is what it is. If you believe that I did rule on it, then please let me know.
7 Otherwise, I'm going to allow you both to argue it or reargue it.

8 MS. RODRIGUEZ: Uh-huh.

9 THE COURT: And it won't be next week. It will have to be following that.
10 Next Friday we would be looking at motion to hold the defendants in contempt.
11 Well, so without -- oh, okay, and a motion to strike their answer.

12 MR. GREENBERG: Yes, Your Honor.

13 THE COURT: I guess that's the end of it, isn't it?

14 MR. GREENBERG: Well, yes, Your Honor. The request was to take
15 action --

16 THE COURT: Yeah.

17 MR. GREENBERG: -- in respect to the defendants' failure to abide by the
18 order regarding the special master, which would be a contempt finding and some
19 remedial finding to move the case towards a judgment and an expedited finding of
20 judgment for the plaintiffs, for a prove-up hearing and so forth.

21 THE COURT: All right. So we'll be looking at the motion to hold the
22 defendant in contempt and to strike their answer. Defendants in contempt.

23 MS. RODRIGUEZ: Your Honor, just for clarification because my
24 understanding -- I filed the motion for stay because Mr. Nady could not make the

1 \$25,000 deposit. And when I read the Court's minute order granting the stay, it
2 indicated that it was allowing Mr. Nady that time to come up with the \$25,000
3 deposit.

4 THE COURT: Uh-huh.

5 MS. RODRIGUEZ: And now I understand the Court's order that he needs
6 to make a \$41,000 deposit with the Court Clerk. Correct?

7 THE COURT: Yes.

8 MS. RODRIGUEZ: Okay. But Mr. Greenberg's position is we're in contempt
9 or the defendants are in contempt because they haven't paid the \$25,000 --

10 THE COURT: Uh-huh. Uh-huh.

11 MS. RODRIGUEZ: -- during the stay. Is it the Court's position that that
12 money should have been paid during the stay?

13 THE COURT: I don't know. I suppose that's what you both will be arguing
14 next Friday. And rather than me trying to rule on that now, I'll defer on that until next
15 Friday.

16 MR. GREENBERG: Yes, Your Honor.

17 THE COURT: Next Friday at 10:00 a.m.

18 MS. RODRIGUEZ: Does the Court want me to prepare an order on the
19 motion to coordinate or consolidate, at least on that portion?

20 THE COURT: Uh-huh. Yep.

21 MS. RODRIGUEZ: Because in reviewing the minute orders -- and I'll try to
22 bring this by next Friday as well because very early on I believe there was a ruling
23 by the Court denying his motion for partial summary judgment, which normally I
24 would prepare the order but it said Mr. Greenberg to prepare the order. That order

1 has never been submitted or prepared and I think that's why --

2 THE COURT: Okay.

3 MS. RODRIGUEZ: -- we just continue to keep arguing and arguing --

4 THE COURT: All right.

5 MS. RODRIGUEZ: -- because there's no order being submitted.

6 THE COURT: Well, if you can find -- if you find that and it says that he's to
7 prepare it, you can go ahead and prepare it and present it.

8 MS. RODRIGUEZ: Thank you, Your Honor.

9 THE COURT: Okay. All right. So we'll see you at ten o'clock next Friday.
10 That is a week from this Friday.

11 MS. RODRIGUEZ: Thank you.

12 MR. GREENBERG: Thank you, Your Honor.

13 MR. GABROY: Thank you, Your Honor.

14 THE COURT: June 1st. Thank you.

15 (PROCEEDINGS CONCLUDED AT 3:50 P.M.)

16 * * * * *

17

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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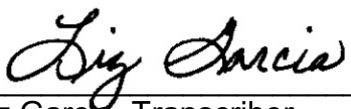
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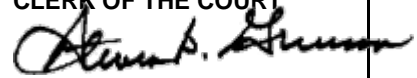
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Liz Garcia, Transcriber
LGM Transcription Service

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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 BEFORE THE HONORABLE KENNETH CORY, DISTRICT COURT JUDGE
12 FRIDAY, JUNE 1, 2018

13 **TRANSCRIPT RE:**
14 **PLAINTIFFS' MOTION TO HOLD DEFENDANTS IN CONTEMPT;**
15 **STRIKE THEIR ANSWER**

16 **APPEARANCES:**

17 For the Plaintiffs: LEON GREENBERG, ESQ.
18 CHRISTIAN GABROY, ESQ.
KAINE MESSER, ESQ.

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

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

22
23
24 **RECORDED BY:** Lisa Lizotte, Court Recorder

001464

001464

1 LAS VEGAS, NEVADA, FRIDAY, JUNE 1, 2018, 10:01 A.M.

2 * * * * *

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

5 THE COURT: Will counsel enter your appearances, please, for the record.

6 MR. GREENBERG: Leon Greenberg and Christian Gabroy for plaintiffs,
7 Your Honor.

8 MS. RODRIGUEZ: Good morning, Your Honor. Esther Rodriguez and
9 Michael Wall for the defendants. And present also is Creighton J. Nady, the owner
10 of A Cab.

11 THE COURT: Good morning. Please be seated. As a matter of
12 housekeeping, as I indicated in the last hearing we will not be dealing today with the
13 motion for partial summary judgment, which leaves us with two matters, the motion
14 to hold the defendants in contempt and the motion to strike the answer. I am going
15 to hear the motion for partial summary judgment next Wednesday afternoon at 1:30.

16 I have received the defendants' -- I think it's the most recent offering,
17 response to plaintiff's additional declaration, which indicates that the defendant is
18 unable to pay or to post the \$41,000 which the Court had previously ordered to be
19 deposited with the Clerk in order to cover the special master's fees. As a part of
20 that explanation and in an apparent attempt to show that the defendant was not
21 intending to be contemptuous, the defendant demonstrates that essentially his
22 business is insolvent, which leads to the question of does that mean that the Court
23 should appoint a receiver for the corporate defendant? That is something to be
24 considered, I suppose.

1 But let's move to the issue of the day on whether or not the Court
2 should hold the defendant in contempt of Court for -- essentially for failure to pay
3 the required \$41,000. While there were other things included within the plaintiff's
4 briefing on the matter, I would like to ask plaintiff's counsel to indicate or summarize,
5 if you would, what actions on the part of the defense would cause the Court to hold
6 the defendants in contempt of Court.

7 Mr. Greenberg.

8 MR. GREENBERG: Your Honor, we appeared before Your Honor on
9 January 25th, which is when Your Honor directed from the bench your determination
10 and decision on reconsideration to appoint a special master. The order was entered
11 actually in February. I'm not going to recite the whole history here. Your Honor is
12 well familiar with it. As a result of that direction taken by the Court, the trial of this
13 case was continued. Your Honor on January 25th indicated that your mind was
14 made up to take that course, that you would not grant a rehearing. Defendants
15 were on notice as of that date that they were going to have to proceed to pay the
16 special master to have the review of the trip sheets done pursuant to, you know,
17 their statutory obligation so that the Court could render a just and appropriate
18 determination as to the class claims. This whole case, as Your Honor well
19 understands, essentially concerns a factual issue of what hours these class
20 members worked. We know what they were paid. Nobody is arguing about what
21 they were paid. We have the records.

22 They never paid the special master, Your Honor. Your Honor is aware
23 of that. They say they don't have the money. Well, they could have sought relief in
24 bankruptcy court. They still can if they really don't have the money. I don't think this

1 is a question of them not being able to pay, Your Honor. I think clearly they made
2 a decision simply not to pay and they've managed to continue to litigate this case.
3 One of the issues that was raised by defendants was the fact that in the Dubric case
4 the supreme court denied my request for an emergency stay. What they didn't tell
5 Your Honor is that the supreme court has also directed a very prompt answer to my
6 writ petition and that answer is due June 11th and they've indicated there will be
7 no extensions for filing a response to that request for writ relief. So they clearly are
8 going to pay their counsel a considerable amount of money to continue to litigate
9 this case, the writ proceedings in Dubric.

10 In terms of their financial submissions, we can discuss that, Your
11 Honor, and I actually have relevant information that I could provide to Your Honor
12 in detail countering their assertions of insolvency or lack of financial resources, but
13 I don't know that that's necessarily what the Court wants to delve into and I'm not
14 sure it's necessarily what we should be going over today. So you can let me know
15 about that, Your Honor. But --

16 THE COURT: But the basis for holding the defendants in contempt would
17 be the nonpayment of the special master funds?

18 MR. GREENBERG: Well, the injury -- and the injury to the class, Your
19 Honor. I mean, you know, we were scheduled to proceed to trial in February. Your
20 Honor had directed a more suitable method, a more fair and just method, which
21 from defendants' own assertions in this court they should not object to, which is
22 to have the trip sheets reviewed so that the amount of time worked by each class
23 member can be precisely identified. They have consistently taken that position in
24 this litigation that that is the only way to do a proper accounting of what their liability

1 may be. The Court essentially took the defendants up on their position and directed
2 that this case be disposed of in that fashion and defendants have refused to
3 cooperate. The class members are prejudiced. They would have gone to trial in
4 February.

5 THE COURT: Refused to cooperate by nonpayment?

6 MR. GREENBERG: By nonpayment. The work cannot be completed
7 without payment to the special master. They haven't paid. They could -- potentially
8 they could come in and propose some alternative mechanism. It's too late for this
9 now, Your Honor, but they could have come in and proposed a statistical sampling,
10 a stipulation regarding what these hours were that we could present to the Court
11 as being fair and just to the class members. There are other ways to go about this.
12 Defendants have refused to engage in that approach. They've insisted continuously
13 that the only way to assess damages in this case is by accounting for each driver's
14 shift based on the trip sheet records. And now they're refusing to cooperate and
15 move forward with what the Court has ordered.

16 There's no doubt about it, Your Honor. I mean, defendants' position,
17 as communicated yesterday in their submission to the Court, is essentially imploring
18 Your Honor to reverse course and simply void your order first articulated from the
19 bench on January 25th and then the subsequent February orders about how this
20 case was going to be disposed of. Your Honor indicated in January you were not
21 going to entertain rehearing on this. And given the progress of this case and what
22 we're dealing with, clearly there is injury to the class if Your Honor doesn't stay the
23 course here and enforce your order. And that's why the contempt finding should be
24 made. I had discussed in my submission to the Court suggestions for appropriate

1 protocols to set forth a prove-up hearing. I don't know if Your Honor wants to
2 discuss that or Your Honor was just asking me to address the question of the merits
3 of whether contempt should --

4 THE COURT: Yeah, not at this point because we're talking about the first
5 motion, the motion to hold them in contempt.

6 MR. GREENBERG: Well, I understand, Your Honor. And until Your Honor
7 makes a finding that contempt is found and that a default should be entered, we
8 can't get to this question as to what proceedings would follow at that point. So I
9 appreciate it should be one thing at a time. But I don't want to take up the Court's
10 time excessively and tread over ground and history that I know the Court is familiar
11 with here, so candidly, Your Honor, I don't know how much more I can tell Your
12 Honor as to why the contempt should be issued. Your Honor's order was clear,
13 the history is clear. The special master clearly has not been able to proceed with
14 his work. The progress of this case is delayed.

15 In the interim, defendants have directed their energy to the parallel
16 Dubric proceedings, at great cost to defendants, no doubt, which is to the prejudice
17 of the class. And, you know, that of course Your Honor is not going to address.
18 We were here the other week and Your Honor declined to consolidate the actions.
19 I understand that, but there's going to be a whole parallel proceeding that's going
20 to be there. We're already in the supreme court on that writ petition I mentioned
21 to Your Honor. Presumably there could be a post-judgment appeal there as well.
22 And what essentially defendants are doing is they're struggling to delay these
23 proceedings through their contemptuous conduct, the violations of the Court's order,
24 and trying to proceed in Dubric as quickly as possible as a litigation tactic to defeat

1 any entry of judgment in this case, which is far older and Your Honor quite sensibly
2 wants to get this case to disposition as quickly as possible, given -- I know Your
3 Honor is working real hard on it. You're giving us a lot of your time. I appreciate it.

4 So I don't know what more I could add. If there's questions, I'd be
5 happy to answer them, Your Honor.

6 THE COURT: Okay.

7 MR. GREENBERG: Thank you.

8 THE COURT: Thank you.

9 Ms. Rodriguez, if your clients are unable to pay the \$41,000 for the
10 special master, I must inquire, at least, as to how they expect to pay any settlement
11 amount in the Dubric case.

12 MS. RODRIGUEZ: I was going to address --

13 THE COURT: If they can't pay \$41,000, it's clear that they would not be
14 able to make good on any settlement in that case.

15 MS. RODRIGUEZ: Sure, Your Honor, and I understand that that would
16 have been the first question that would pop up in my mind as well. But if I first may
17 speak to a couple of the comments that Your Honor was asking as to why the
18 defendant should be or should not be held in contempt.

19 THE COURT: Uh-huh.

20 MS. RODRIGUEZ: I want to make it clear, to refresh the Court's
21 recollection, that this has been nearly five years of defending this case since it's
22 been filed in 2012 and the defendants have complied with every order from this
23 Court, as well as multiple, multiple orders from the Discovery Commissioner at great
24 expense. The defendants have spent hundreds of thousands of dollars defending

1 this matter as well as the class action matter in the Dubric case as well. That one,
2 fortunately, has come to resolution. And I tried to make it clear in my pleadings as
3 well that there have been multiple attempts to try to resolve this matter as well in
4 good faith, and that all of those efforts have been rejected thus far by the plaintiffs
5 in this matter.

6 So there's not any bad faith and failure to comply with this Court,
7 it's just that at this point after five years, due to the financial circumstances of the
8 taxicab industry, which has been very hit hard by other industries like Uber and Lyft,
9 the taxicab authority or the taxicab industry has taken a great financial hit in general.
10 And that hit really hard with A Cab, which is a smaller company, and that was just
11 on the verge of getting its restrictions lifted when Uber was allowed to come in. So
12 that's why I turned in the financial documents so that the Court would see that this
13 year alone the company is losing \$30,000 a month or so and last year was at a
14 negative half a million dollars.

15 So this guess goes also in answering the Court's question of the
16 expectation of the payments for the Dubric settlement. When A Cab entered into
17 the settlement with Dubric, that was nearly two years ago. That was in December
18 of 2016 and there was a very different financial picture at that point. And as I
19 explained before Judge Delaney, who had a very thorough hearing as to whether
20 she would pre-approve the class as well as the settlement, one of the items of
21 consideration was that Mr. Nady would not necessarily enter into that settlement
22 at this point, knowing that the other cab companies have settled for significantly
23 less. I think Mr. Greenberg and some of the other plaintiffs' counsel are recognizing
24 that the money just isn't out there for the taxicab companies. The documents that

1 I supplied to the Court show that the settlement in the Dubric matter is significantly
2 higher than the comparable ones that have settled by the other cab companies.
3 But Mr. Nady intends to honor what he signed back in December of 2016 for the
4 Dubric settlement after going through the settlement conference.

5 So in terms of how he intends to fund that, that's what I indicated in my
6 briefing was that he intends to -- well, first of all, the settlement calls for installment
7 payments to pay the settlement, as opposed to what is being sought here for a
8 deposit of \$250,000 or even \$41,000 in a lump sum and immediate. The installment
9 payments are provided for in the Dubric settlement and we have had --

10 THE COURT: How much are the installment payments?

11 MS. RODRIGUEZ: Approximately \$18,000 a month. However, in
12 discussions with the Bourassa firm they indicated that it would be satisfactory to
13 them if payments were made at perhaps \$10,000 a month and extending the time
14 period because there's going to be a lot of time period to process the claims and
15 process the notices and things like that. So they're very workable in terms of the
16 installment payments, recognizing that things have changed since December of
17 2016 in terms of A Cab's financial ability.

18 THE COURT: How would your client make even \$10,000 a month payments
19 if the business is insolvent?

20 MS. RODRIGUEZ: Well, he's here to testify about that. What he's being
21 doing so far, as I indicated in my briefing, is selling off personal assets, as well as
22 laying off a number of administrative personnel, as well as cutting the hours of his
23 administrative and management personnel. He's basically got his general manager
24 working very few hours and anybody who is non-essential personnel he's trying to

1 cut down in all of those outgoing expenses to keep the company afloat. So --

2 THE COURT: So in any event, you would have \$10,000 a month to pay off
3 the Dubric settlement, but not \$10,000 a month to pay the special master?

4 MS. RODRIGUEZ: Well, Your Honor, and that's exactly what I was trying to
5 convey to the Court, that it's always been my understanding the Court wants to see
6 payments made to the taxicab drivers, but any monies that he is struggling to put
7 together, instead of it going to fund a settlement to the taxicab drivers, that would
8 be going to a special master who -- his estimated cost is exceeding the settlement
9 that's been reached for the class. The special master is estimating \$250,000 and
10 the settlement reached is \$225,000 or thereabouts.

11 THE COURT: My problem is, what I hear you saying is that I should take
12 into account what's happening in Dubric in the course of ordering what the Court
13 would do without regard to any other case in this matter. And it seems to me that
14 the only way -- possible way I can interpret the supreme court's reversal of the
15 preliminary injunction order is that this Court is simply to run it's own case. It's not
16 supposed to coordinate, it's not supposed to take account of the other and, you
17 know, try to harmonize it any way. It's just supposed to let both of these things
18 run their course on their own.

19 I indicated last time, I think, that I really questioned when I read the
20 supreme court's order whether they had the benefit of reading the supplement that
21 I filed to that preliminary injunction because in my view that seemed to satisfy what
22 the supreme court found was lacking in the preliminary injunction. In other words,
23 if the basis is an institutional or judicial policy consideration, then it seemed to me
24 and actually still does that --

1 MR. WALL: Your Honor, they did have that. It was before them and it was
2 fully briefed before them.

3 THE COURT: So there is no comment on it, there is no instruction to this
4 Court, so the only thing I can conclude is that the entire rationale was rejected. And
5 this Court is supposed to take care of this case and I can't see that I can do that and
6 do what you're asking me to do, which is to take into account in a finding of whether
7 or not your client is in contempt of Court the fact that he's also got another lawsuit
8 going over here and that he's got a settlement to be paid.

9 MS. RODRIGUEZ: Well, that's part one, Your Honor. But I think this may
10 alleviate the Court's concern and I appreciate what the Court is indicating in that
11 regard. The difference here is that as Mr. Richards from the Bourassa firm
12 explained the last time we were here, he was explaining the overlap of some of the
13 claimants. So if those claimants in the Dubric matter settle, choose to settle, take
14 the money and dismiss their claims, they are essentially out of this particular part
15 of this class action. And what Mr. Richards demonstrated, as the Court may recall,
16 on the overhead was the overlap of some of the people that fall basically in-between
17 in this Murray/Reno case. Mr. Greenberg still has the front end and Mr. Greenberg
18 still has the tail end, and then as well as anybody who chooses to opt out. So if
19 you have the claimants in the Dubric matter resolve their case, dismiss their claims,
20 then those serve as res judicata for their claims in this court as well.

21 So what we're trying to say, we're not trying to ask Your Honor, as Mr.
22 Greenberg said, to just void your order. What would make sense is to obtain some
23 finality to who is going to resolve their claims, who is going to be out, and then that
24 doesn't make any sense as to the special master to calculate those people if they

1 have already dismissed their claims. Obviously, as Your Honor is aware, part of
2 reaching a settlement from the defendants' perspective is to stop the bleeding, stop
3 the cost of defense, and if they chose that in the Dubric matter to go out and pay
4 the settlement, stop the cost of defense for those claimants, essentially if they move
5 forward they're still doing the same thing. They paid a settlement and they're having
6 to pay the special master to calculate those claimants who have already resolved.

7 So we're not asking the Court to vacate its order or that there's not an
8 intent to comply with that order. What I suggested is just --

9 THE COURT: You're asking the Court to stop the proceeding.

10 MS. RODRIGUEZ: Just for approximately 90 days until there's some
11 finality, some final approval. I mean, if there's no final approval and that settlement
12 is out the door, we're back before Your Honor with the full class. But if some
13 claimants go ahead and resolve that settlement, they've got final approval, then
14 there's no reason for that chunk of people for the special master to have to do the
15 calculations at the defendants' expense. And I would just ask, that's when the Court
16 could consider the financial difficulties here that why would you pay to calculate for
17 these claimants if they've chosen to settle their claims? You would be defunding --
18 taking that money to pay the claims to pay a special master's calculations that are
19 essentially moot. They're not going to be relevant if these people choose to go
20 ahead and accept the monies in their pockets. And that's all we're trying to do here
21 is make sure there are monies.

22 THE COURT: What you just said doesn't apply to all of the people in the
23 class, though, does it?

24 MS. RODRIGUEZ: Absolutely. That's correct. Anybody who opts out and

1 anybody who's not in that settlement in the Dubric -- that's why I'm saying go ahead
2 and stay and then we know, okay, now the 2007 to 2009 folks, all these other
3 people have opted out. All the current people, let that go off to the special master
4 for calculation. I don't think he'll charge \$250,000. I think it will be significantly
5 less if we know who we're dealing with. And if we -- especially if we have specific
6 names, he can do the calculations for those people. So we're not -- that's down the
7 road, but that will give a lot more opportunity both for the defendant to acquire the
8 monies to move forward for both cases, but it's not -- and it's not prejudicial to Mr.
9 Greenberg because I know his concerns are the five year rule, but any stay, if it's
10 like a 90-day stay, that's going to toll his five year concerns.

11 THE COURT: Okay. Mr. Greenberg, what do you say to what Ms.
12 Rodriguez has argued here?

13 MR. GREENBERG: Your Honor said something very appropriate, which
14 is that in your view the position this case is in and Your Honor has been put in by
15 the supreme court's decision is simply to proceed with this case in its entirety based
16 on the record in this case and not based upon considerations raised by defendants
17 regarding the Dubric proceedings. And I would implore Your Honor to take that
18 approach. I don't believe there is any other rational or reasonable approach that
19 you can take at this point that is fair to the class members. I mean, we could get
20 into an extended discussion. I have lots of factual materials I could present to
21 Your Honor regarding the infirmities of the Dubric proceedings, the fact that those
22 proceedings are going to consume even more litigation resources and expenses
23 of defendants in responding to the current writ, post-judgment appeal potentially in
24 the event that the writ does not grant relief, that final approval has not been granted,

1 it will not be secured ultimately on appeal even if Judge Delaney happens to grant it,
2 that it's not in the interest of the class.

3 But none of that that we were just saying, Your Honor, should really
4 be in the Court's mind here. Your Honor has this case before it. Your Honor has
5 charted a course in this case. To now stay this case so that potentially a possible
6 theoretical resolution of some of these class claims can be afforded by the
7 defendants in another proceeding is prejudicial to the class, Your Honor. I'm class
8 counsel here, Your Honor. I have not been paid anything for my work in this case.
9 And as I'm sure Your Honor understands, I am not exaggerating when I say I
10 personally have expended over 1,000 hours of attorney time on this case during
11 the course of this litigation between multiple appellate work motions. Your Honor
12 is aware of this. There's a limit to my resources as well. The class interests are
13 not going to be furthered by allowing defendants to continue in this fashion because
14 what they're really doing, Your Honor, is evading the course of proceedings here.
15 If you grant the stay, then we're going to go litigating Dubric and I'm going to have
16 to expend presumably --

17 THE COURT: You're saying that because of your contention that they
18 aren't really without funds, they simply are -- (inaudible).

19 MR. GREENBERG: If Your Honor wants me -- I mean, I'm reluctant to
20 discuss this on the record because I was provided with certain financial documents
21 in the course of this litigation --

22 THE COURT: Well, let's not --

23 MR. GREENBERG: -- that were confidential, so I don't know that I should
24 even raise it, Your Honor.

1 THE COURT: Then let's not. But I guess my question to you is why should
2 the Court or do you want the Court to appoint a receiver for the business in order
3 to make a more accurate determination of whether or not there is contemptuous
4 conduct or whether it is simply an impossibility?

5 MR. GREENBERG: Well, Your Honor, if the class claims here are in
6 excess of the value of the business, which Your Honor was discussing, this
7 representation of insolvency by the defendants, then presumably a receiver would
8 make sense to be appointed to marshal the assets, to figure out the best way to
9 distribute funds to the plaintiffs, to maintain the business operation in the interest
10 of the class members. So I would certainly support that, but this is also essentially
11 the process that the bankruptcy court would follow if defendants would simply bring
12 their situation before the bankruptcy court. They're pleading that they have no
13 funds here.

14 THE COURT: I can't control that and neither can you.

15 MR. GREENBERG: I understand, Your Honor. I'm just -- the reason why
16 I'm getting to that point is that what I'm getting to here is I think what the Court
17 should do is grant the default, have an expedited system to assess the damages
18 and then appoint the receiver to run the business, if necessary, to satisfy the
19 judgment.

20 THE COURT: How would I find -- you're saying find him in contempt, find
21 the defendants in contempt. Then as a result of that, as a sanction strike the
22 answer and then hold a default prove-up hearing?

23 MR. GREENBERG: Yes, Your Honor.

24 THE COURT: How would I do that in an instance where the defendants

1 claim that they're not being contemptuous, they simply don't have the money?

2 What would be my basis for a finding that, oh, yes, you can?

3 MR. GREENBERG: Because, Your Honor, they have alternative relief. If
4 they can't comply with this Court's order, they can go to bankruptcy court and seek
5 financial protection. Your Honor can't just accept the representations of the party
6 that they can't comply financially with Your Honor's order. It's making a mockery
7 of Your Honor's authority in the order Your Honor issued. They need to comply.
8 If they can't comply, then they face the consequences. Just like if I'm a judgment
9 creditor suing somebody on a note, they pay the note. If they don't, the Court will
10 enter a judgment. If they don't pay the judgment then there's judgment enforcement
11 processes that are available.

12 Why is it any different in this case, Your Honor? Your Honor issued
13 an order. Your Honor has clearly directed that this process go forward as discussed
14 in January. Defendants are refusing. They say they can't. Well, if they can't, then
15 they will face the consequences and they'll have to demonstrate that to the Court.
16 I can't collect on a judgment as a judgment creditor, I mean, when the debtor has
17 nothing to attach. I understand that, Your Honor. But again, if defendants'
18 representations are true, there is a process where they can have their assets
19 marshaled, creditors' claims addressed, their interests addressed. It's called the
20 bankruptcy court.

21 I absolutely support Your Honor appointing a receiver in an appropriate
22 fashion in this case to manage the situation if that is what Your Honor believes is
23 appropriate. I can see that making a lot of sense, okay, based on defendants'
24 representations. But what I would like to see the Court do is also make a finding

1 that the class members are going to get their relief after all of this long course of
2 events they deserve, which is a finding, an assessment of what they are in fact
3 owed. And that finding needs to be made in light of the defendants' continual
4 litigation position in this case.

5 Your Honor has focused on their violation of their statutory obligation
6 to keep the records of the hours worked. Defendants have consistently insisted that
7 the trip sheets need to be examined to determine those hours. They now refuse to
8 engage -- undertake that necessary examination. They never kept the records as
9 they should have in the first place under the statute. We're dealing with a State
10 constitutional claim. Your Honor has weighed all of these issues in formulating the
11 approach that Your Honor directed in January and appointed the special master.
12 Defendants are non-compliant. We need to reach --

13 THE COURT: And you think -- you're comfortable that you could support
14 that argument before the supreme court if the court finds the defendants to be in
15 contempt of Court and they then run a writ? You think you can successfully argue
16 that in the face of the claim that they simply are unable to make these payments,
17 that the Court can simply say, well, that's too bad, you're in contempt of Court?

18 MR. GREENBERG: Absolutely, Your Honor. If the financial resources
19 aren't there, then they're just like any other judgment debtor or defendant who
20 comes before the Court and can't meet a financial obligation. A financial judgment
21 is entered against them and the judgment takes its path. Maybe they can get
22 discharged from the judgment in bankruptcy court. The bankruptcy court will
23 marshal the assets and determine what to do at that point. Your Honor --

24 THE COURT: You keep talking about bankruptcy court, but I don't have

1 the apparently warm, fuzzy feeling that you do that if this Court enters such an order
2 that the defendants will simply run over and file in bankruptcy court. I don't know.

3 MR. GREENBERG: Well, then we have mechanisms to enforce Your
4 Honor's judgment and a receiver at that point may well be necessary to take control
5 of the assets to see that Your Honor's order is followed and that the class members
6 rights are respected and satisfied. Your Honor, the problem --

7 THE COURT: Do you have some authority for the proposition that where
8 a defendant, a potential contemnor -- is that right, contemnor? A person who could
9 potentially be held in contempt puts evidence before the Court that they simply can't
10 afford it, that the Court is free to find them in contempt anyway?

11 MR. GREENBERG: Your Honor, in this situation where --

12 THE COURT: No. My question is do you have any case authority or any
13 other authority that the Court can use?

14 MR. GREENBERG: Your Honor, we know that in a criminal matter, okay,
15 you know, you can't imprison someone for nonpayment of a fine when they don't
16 have the financial resources to pay, or at least there is jurisprudence in our country
17 of that fact. And this is not a question of imprisonment, Your Honor, it's a question
18 of civil responsibility for claims that are made under the Constitution of the State of
19 Nevada. There is no reason that the defendants are in a different situation than a
20 tort defendant, a contract defendant, and anyone who has a civil money obligation
21 to pay.

22 Now, in respect to appointing a receiver, Your Honor, what concerns
23 me is that the defendants' assets have essentially gone to fighting this litigation.
24 Mr. Nady at a deposition I conducted of him last year basically confirmed that they

1 have spent over a million dollars, clearly they have spent over a million dollars by
2 now in litigation costs fighting this case. They are determined to spend whatever
3 assets exist of the defendants fighting this case, engaging in the Dubric
4 proceedings, so forth and so on Your Honor. Is a receiver taking control of the
5 defendants going to have the power to actually marshal the assets and run the
6 business and put an end to this course of conduct? I don't know. I mean, if we
7 were in bankruptcy -- I don't know exactly what Your Honor would contemplate in
8 respect to appointing a receiver.

9 I want to see this case resolved. Defendants were talking about the
10 desire for finality, you know, in respect to the Dubric proceedings. We could have
11 had finality in this case a long time ago if we had proceeded promptly as Your Honor
12 directed in January and defendants had complied. They did not.

13 So, Your Honor, something needs to be done here. To simply allow
14 defendants to come before the Court and say we don't have the money, we can't
15 pay, Your Honor is saying, well, they presented evidence they can't pay. Well,
16 again, I could present counter-evidence. I mean, it's public record that Mr. Nady
17 own property that has a value in excess of a million dollars. I can show you the
18 deed. There's no mortgage on it. He's trying to sell it right now. I can also present
19 to the Court evidence relating to the 2015 and 2016, I believe, financial returns of
20 the business which were given to me confidentially. That's why I wasn't mentioning
21 them in the record. They paint a very different picture of the financial status of
22 this defendant during the course of this litigation. Essentially the money has been
23 used --

24 THE COURT: I can't really consider something that's not before the Court.

1 MR. GREENBERG: I'm happy to put it into the Court. They gave it to me
2 during the -- pursuant to an order of the Discovery Commissioner, which Your Honor
3 ratified and it was to be held confidentially. We could introduce it under seal before
4 Your Honor right now if Your Honor would like to examine this and the record won't,
5 you know, be made public in respect to the discussion of what's in those documents.

6 THE COURT: Okay.

7 MR. GREENBERG: This is up to Your Honor. I don't believe that we
8 should even be engaging in an investigation as to whether they can pay or not
9 because these are just their assertions, Your Honor. For us to go and actually start
10 to hold an evidentiary hearing on that issue --

11 THE COURT: Would you like to have the opportunity, then, to submit
12 some actual authority to the Court for the proposition that when the defendant
13 demonstrates that they -- or puts forward, you know, evidence that seems to
14 buttress the notion that they simply don't have the money, that the Court can hold
15 them in contempt anyway for not paying the money?

16 MR. GREENBERG: Your Honor, how can I possibly -- unless I hire an
17 accountant to go through the books of A Cab and examine --

18 THE COURT: I'm not asking for evidence, I'm asking for authority, case
19 authority. Do you have some authority for that proposition?

20 MR. GREENBERG: Your Honor --

21 THE COURT: You may be right, but I haven't seen the authority.

22 MR. GREENBERG: Your Honor, I don't know that there's authority either
23 way because I don't know that any jurist at least in this state, certainly, has ever
24 examined this issue and contemplated the appropriate approach, or whether the

1 approach should deviate in that situation from the status of any other civil defendant
2 in any other case who's liable for any other financial obligation and can't pay it.
3 They face a judgment for the obligation. I can certainly research that and advise the
4 Court as to the results of my research, but what I'm addressing is my concern that
5 Your Honor is essentially allowing the defendants to come in here and make nothing
6 more than assertions that they can -- that there is such evidence that they don't
7 have the funds. And what I'm trying to communicate to Your Honor is there in fact
8 is no competent evidence that that is true.

9 And if Your Honor actually wanted to consider a competent record
10 on that issue, we would have to have much more extensive exploration into the
11 financial resources of the company, of the defendant, how they've been handling
12 the business, such as a receiver no doubt would engage in in running the business,
13 and I suppose Your Honor could appoint a receiver for that purpose as well. But
14 you don't have any evidence, competent evidence before Your Honor to reach a
15 conclusion that that is in fact true. In fact, the competent evidence is quite the
16 contrary. The defendants continue to litigate this case. They're going to be
17 responding to that proceeding by June 11th in the Nevada Supreme Court. They
18 haven't sought financial relief in the bankruptcy court and they don't have to.

19 The reason why I keep raising that, Your Honor, is that if they're not
20 seeking relief in the bankruptcy court, I submit it creates a presumption to Your
21 Honor that their representations they have no financial resources to pay the special
22 master are worthless. They shouldn't be afforded any credibility whatsoever
23 because, again, they continue to litigate these matters, they continue to spend
24 considerable sums on that litigation. As Your Honor was pointing out, they're

1 making a financial commitment, supposedly, to settle in the Dubric case. How are
2 they going to do that? There was all sorts of discussion about that. We don't even
3 know whether that discussion is accurate or not, Your Honor. But there's nothing
4 before the Court supporting this conclusion that they cannot in fact pay the special
5 master.

6 THE COURT: Well, what do you call this, what they submitted, then?
7 Affidavit and financial indicating that the company is upside down. What do you
8 call that if it's not evidence?

9 MR. GREENBERG: Well, if Your Honor would like me to actually address
10 that I definitely can, Your Honor. The financial statement here, for example, that is in
11 the record as opposed to the other ones I have which, as I said, I was not presenting
12 because they were confidentially given to me, indicate that as of December 31st,
13 2017 there is total equity of 363,000. There is equity in the business, Your Honor.

14 THE COURT: I'm sorry, where are you?

15 MR. GREENBERG: This is on -- this is annexed to Mr. Nady's declaration.
16 Exhibit B, the first page of the annexed balance sheets indicate that there is equity
17 of 363,000 at the end of 2017. Do you see that, Your Honor? It's at the bottom of
18 that sheet.

19 THE COURT: You're talking about his affidavit?

20 MR. GREENBERG: I'm talking about the balance sheet that was presented
21 to support the claim.

22 THE COURT: Oh. All right.

23 MR. GREENBERG: Your Honor was reaching the conclusion that the
24 business is insolvent. What I'm trying to point out --

1 THE COURT: Okay. I see it.

2 MR. GREENBERG: -- is that the financials submitted don't actually show
3 that, Your Honor.

4 THE COURT: I see where you are.

5 MR. GREENBERG: Okay.

6 THE COURT: So they have a total equity of 363,000.

7 MR. GREENBERG: Okay. So the business has value as of December
8 31st, 2017. There's equity in the business. I mean, that's what the financial
9 statement says, Your Honor. We can't verify whether this is accurate at all. I mean,
10 we don't know how they're valuing the assets, how they're valuing the liabilities. For
11 example, Your Honor, the liabilities that appear on this balance sheet may be held
12 by other entities controlled by Mr. Nady. We don't know that. There's no way to
13 actually verify what's represented here without a detailed forensic accounting of the
14 business itself such as a receiver might conduct, as Your Honor was mentioning.
15 But if we continue, Your Honor, and we go through to the balance sheet for March
16 31st, 2018, three months later we're showing an equity of \$186,000, okay.

17 THE COURT: Uh-huh.

18 MR. GREENBERG: Now, the business may be currently losing money,
19 but if there's equity of \$186,000, where is the \$41,000 to pay the special master?
20 This is effective as of March 31st. They were supposed to pay the special master
21 \$25,000 in February. Where is it? If they didn't have the money in cash in the
22 business at that time, if they've got equity and these financial statements are
23 in fact correct, clearly they could have gotten a loan. They had security for a loan
24 of \$180,000 in equity, is what they're saying. So whatever limited information is

1 presented here, Your Honor, does not corroborate on its face what the defendants
2 are claiming.

3 THE COURT: Okay.

4 MR. GREENBERG: And again, we can't even trust this information without
5 a forensic accounting because we don't really know what's going on with the
6 business. And again, Your Honor, just to revisit the point, I think the Court needs to
7 apply a presumption that it cannot accept their representations of financial inability
8 to pay, given the fact that they have not filed for bankruptcy relief. If they don't
9 have -- they know that this litigation is ongoing. They know the Dubric litigation is
10 ongoing. They have very expensive legal fees to pay. They can obviously put
11 that all to rest, ask for reorganization, liquidation, whatever financial relief in the
12 bankruptcy court. They haven't done it, Your Honor. So then, Your Honor, to
13 accept them to come in here and say, well, Your Honor, we really just don't have
14 the resources to deal with this financial obligation, I don't see how Your Honor can
15 give that the time of day given these circumstances.

16 THE COURT: Okay.

17 MR. GREENBERG: Thank you.

18 THE COURT: Ms. Rodriguez.

19 MS. RODRIGUEZ: Your Honor, I think Mr. Greenberg danced around
20 the question that the Court posed, which was to provide the authority to find the
21 defendant in contempt when he has provided the evidence that there is a financial
22 struggle currently. And again, we're not asking the Court to vacate its order and its
23 directive about the special master. We're just asking for what makes sense, which
24 is to get some finality of who is going to be in this class and then the special master

1 can make that determination. And I think it's logical to think that the special master's
2 \$250,000 is going to be significantly lessened. But, you know, Mr. Greenberg is
3 complaining about how he's out so much money in trying to litigate this case. Part
4 of the reason that Mr. Nady and A Cab is in this position has been the cost of
5 defending this case. I indicated to the Court it spent hundreds of thousands of
6 dollars in defending the case, most of which have come from the escalating motions
7 to compel repeatedly. I think there's been no less than six motions to compel filed
8 by the Greenberg Law Firm that at the end of the day never came to fruition.

9 The Discovery Commissioner would order the defendant to go back
10 and produce hundreds of thousands of documents and do all kinds of -- hire people
11 to run cab manager data, to do all these things that on the eve of trial it was very
12 clear it was frivolous. It was just making the defendant jump through all these hoops
13 and run up the litigation costs. So, yes, I'm agreeing with his figure that there's
14 been, you know, half a million dollars to a million dollars in defending this case that
15 could have been resolved most likely very early on, just as the Dubric case was
16 resolved. But there's been some unreasonable expectations on the other side.

17 THE COURT: If the corporate defendant has equity of 363,000, why can
18 they not secure the funds to comply with this Court's order?

19 MS. RODRIGUEZ: Well, I think we're talking 180,000 was what the current
20 one indicated and I think banks -- it would make sense to Your Honor that the
21 bank is going to look at a negative cash flow of half a million dollars year end and
22 consider that in making any type of loan. A Cab is not in a position to obtain a loan
23 if they're at a negative revenue of half a million dollars. And these were documents
24 that were prepared by a CPA. These are the same figures that are submitted to

1 the government, to the Federal Government in IRS statements, as well as to the
2 Taxicab Authority. So, you know, if there's any question as to the legitimacy, as
3 Mr. Greenberg is indicating, and the Court wants to hear further from the CPA,
4 we can bring the CPA and have him testify to the Court. But I think we have to go
5 back to the original question of, you know, is there authority to find him in contempt.
6 And I would reiterate to Your Honor --

7 THE COURT: So let me ask you that. Do you have any authority for the
8 proposition that in the face of an order of the Court to fund a certain amount for a
9 special master that a company that has as of the end of 2017 a net equity of
10 363,000 cannot fund the money? Well, no, let me rephrase that.

11 MS. RODRIGUEZ: I understand the Court's question.

12 THE COURT: Do you have any authority for the proposition that that is not
13 -- that the posture we're in evidence-wise is not -- would not buttress the Court in
14 finding your clients in contempt?

15 MS. RODRIGUEZ: Well, first of all, I think we need to look at the current
16 figures and the reality that there is no -- there are no funds. And, yes, Your Honor,
17 I did look at -- I did some preliminary research.

18 THE COURT: Well, when the Court first ordered the amount to be paid,
19 there was -- the business was worth at that point approximately 363,000 in equity.
20 That's the end of last year. It was January, I believe, when I ordered it, was it not?

21 MS. RODRIGUEZ: I believe it was right before trial, Your Honor. I think it
22 was in February of this year. I don't have the order with me, but I know that we were
23 here on dispositive motions and asking the Court to basically dismiss the plaintiff's
24 case, and the Court at that point went back to the appointment of the special master

1 at that stage. So, and we still would -- you know, we don't believe that that's
2 necessarily an appropriate step to order at the end of discovery and at the end of
3 dispositive motions. But, you know, that's an issue that Your Honor has already
4 ruled upon and at this point A Cab is not complying just because there is not
5 \$250,000 to pay the special master.

6 THE COURT: Forty-one is what was required.

7 MS. RODRIGUEZ: I understand that, Your Honor. But, you know, it's like
8 pulling blood from a stone.

9 THE COURT: Is your client not in an ability to bond around that, to post a
10 bond for 41,000?

11 MS. RODRIGUEZ: Your Honor, I can't make these representations. Mr.
12 Nady is here. He can answer the Court's questions. Or again, I can bring the CPA
13 in to answer that. I'm not going to make those representations because I personally
14 have not reviewed their financial records. I don't purport to be a CPA or good with
15 numbers in the first place. So if Your Honor has some concerns about that, Mr.
16 Nady is present.

17 What we're here to talk about is whether there is a deliberate intent
18 to not comply with this Court's order and I can represent to the Court that there
19 has never been an intent not to comply with this Court's order or the Discovery
20 Commissioner's orders. And that's a major reason as to why the defendant is in
21 the financial difficulty that it is today is due to the very, very expensive litigation costs
22 in this matter.

23 THE COURT: Mr. Greenberg, on December 7th the Court granted your
24 order or your motion to allow proof by statistical sampling and I assume that had

1 something to do with the filing of this motion for partial summary judgment, which
2 we're not really going to argue until Wednesday. My question, though, is if you
3 know, in your view going by way of statistical sampling only affords you the ability
4 to ask for the partial summary judgment which you have and could not be relied
5 upon by plaintiff or plaintiffs to resolve the entire matter?

6 MR. GREENBERG: Your Honor, I have to confess confusion regarding
7 your reference to a determination about the use of statistical sampling in this
8 litigation. I'm not quite clear about the scope of the order Your Honor is referring to.
9 But to answer Your Honor's questions directly, okay, the partial summary judgment
10 motion before the Court does not rely on statistical sampling of any form. It relies
11 strictly on the examination of approximately 14,000 pay period records of defendants.
12 All we did was look at those records, look at the hours that are reported in those
13 records. Those hours are in the QuickBooks records. And the amount of wages
14 paid for those hours also in the QuickBooks records for every single pay period.
15 Starting in 2013, defendants' internal record-keeping policy shifted and they reviewed
16 the trip sheets contemporaneously -- this is their testimony -- accurately calculated
17 the hours every day, every pay period and put it in QuickBooks.

18 THE COURT: Okay.

19 MR. GREENBERG: And that is their testimony. That's the record before
20 the Court in the partial summary judgment motion. So based on that testimony,
21 based on the amounts that they actually paid each of those pay periods that's in
22 the QuickBooks records, we ran the numbers. It's a simple formula. Your Honor
23 understands this. That's the basis for the partial summary judgment motion.

24 In respect to statistical samplings used in this case, defendants --

1 Your Honor, it's really too late to go down that road at this point, given the direction
2 Your Honor took in January. If defendants had been willing to come in and say yes,
3 we will -- rather than pay this amount for the special master's report, we probably
4 could have gotten the special master's costs down considerably by using a reliable
5 statistical sample approach. This is done in these kinds of cases. Defendants did
6 not come forward to do so. I would have been pleased to agree to that. You know,
7 their position has always been --

8 THE COURT: And the plaintiffs are not in a position to, then?

9 MR. GREENBERG: Your Honor, we were not in a position to move forward
10 with this case besides in the fashion we did. We hired Dr. Clauretie. We hired
11 Charles Bass. They reviewed the defendants' records. Dr. Clauretie, as you know,
12 is an economist. He is familiar with mathematical analysis, damages analysis. He
13 gave a report. We're prepared to bring him in and testify at trial. Defendants hired
14 their own expert at a cost of \$50,000. That might well have been enough of a cost
15 to do a statistical analysis. Their expert did not do a statistical sampling analysis
16 and he offered no opinion as to the wisdom of doing so when he was deposed or
17 in his report. Defendants' position has consistently been to present this litigation to
18 the Court in a posture most difficult for plaintiffs to prove their damages and collect
19 anything.

20 THE COURT: One question, then. What was the purpose of the plaintiff in
21 filing the motion to accept statistical sampling which the Court granted in December?

22 MR. GREENBERG: Your Honor, again, I am really not sure what the Court
23 is referring to. I mean, if you want to take a break, I have the entire case file on my
24 computer. I could certainly find out what Your Honor is referring to and review it

1 and be able to refresh my memory and intelligently inform the Court and answer
2 the Court's questions on that. I believe what I may have been asking -- I think this
3 is what it is, Your Honor, is that -- and actually Your Honor did issue an order. It is
4 coming back to me. Your Honor may be familiar with the Anderson v. Mt. Clemens
5 case. There was an issue -- which is a historic U.S. Supreme Court case dealing
6 with claims under the Fair Labor Standards Act. The issue Your Honor is referring
7 to is that we wanted the Court to rule that it would be sufficient to charge the finder
8 of fact, presumably the jury, with the ability to draw a just, reasonable inference and
9 approximation of the hours worked for the class members to arrive at a damages
10 conclusion because in fact there were no precise records for most of the periods of
11 time at issue prior to 2013 when the put them in the QuickBooks. We don't have a
12 precise record of the hours that were worked every single pay period. Your Honor
13 granted that motion and said that we will proceed to a determination under that
14 approach, the Mt. Clemens approach, given the nature of the claims at issue.

15 And the rationale behind Mt. Clemens is that you simply can't allow an
16 employer to not keep the records and then defend the case by saying, well, plaintiff
17 can't prove exactly how much hours they worked every single week to precisely
18 quantify their damages. That defense, by the way, is essentially the defense the
19 defendants have continually taken in this case, which is that we have to review
20 every single trip sheet to figure out the hours and quantify them exactly for every
21 pay period for every individual; otherwise no proper judgment can be entered. Your
22 Honor rejected that argument and indicated the Court would allow us to proceed to
23 present the case for resolution based on the Mt. Clemens approach. I think that's
24 what Your Honor is speaking to.

1 THE COURT: That's right.

2 MR. GREENBERG: And that approach, Your Honor, could include
3 statistical sampling. And I mean, essentially we were going to come into the court
4 and present expert testimony. We have the Excel models that were constructed by
5 Mr. Bass based on defendants' records that were reviewed by Dr. Clauretie. And
6 we would present at trial, if necessary, this was contemplated, what the damages
7 would have been based upon -- assuming a 10-hour work shift, because we know
8 the number of shifts they worked.

9 THE COURT: So it was merely for trial purposes?

10 MR. GREENBERG: Right. Well, we know how many shifts the class
11 members worked. That is a piece -- the piece of information we have. We know
12 that Mr. Smith worked five shifts or ten shifts in a two week pay period. And we
13 know how much he was paid for that pay period. So if we come up with an estimate
14 of how long each of those shifts were, we can then make a determination as to
15 whether he was underpaid and if he was underpaid, how much. So the jury would
16 be charged at the time of trial with reaching an approximate number based on the
17 evidence and testimony presented.

18 THE COURT: So I think your answer to my question is that it was -- you
19 filed that motion only for purposes of trial, not for purposes of, for example, for use
20 in some fashion with a special master or to be the basis for a motion for summary
21 judgment or partial summary judgment.

22 MR. GREENBERG: That is absolutely correct, Your Honor.

23 THE COURT: All right.

24 MR. GREENBERG: And just to refresh the Court's memory, of course in

1 December when this issue was before the Court, Your Honor had rejected at that
2 time my request in 2015 for the appointment of the special master --

3 THE COURT: That's right.

4 MR. GREENBERG: -- and for a more precise finding to be made. So this
5 was how we proposed to bring the claims to resolution. So hopefully that's
6 somewhat helpful in informing the Court and answering the Court's questions on
7 that issue.

8 THE COURT: I think I got the answer, yes.

9 MR. GREENBERG: To return to the issues we were discussing, Your
10 Honor, the question of the contempt finding, the current issues before the Court,
11 I could repeat much of what I've already told the Court about what the proper
12 approach should be here. I would point out, by the way, I keep hearing a sum of
13 \$250,000 that's projected for the special master cost. It was actually \$180,000.
14 Still a significant amount, I acknowledge, Your Honor. But if Your Honor was to
15 appoint a receiver to manage the business, that could get to the bottom of this.
16 The receiver could be charged to simply marshal the assets and report back to the
17 Court and determine what the best course of action is in respect to the management
18 of the business in respect to the class members' interests and preserving those
19 interests appropriately.

20 Your Honor did certify this case under B(2) as well as B(3), and so
21 you have broad injunctive powers to issue an injunction, a stay, and a receiver
22 appointment on behalf of the class to take control of the defendant's business based
23 upon their representation that they can't comply with the Court's orders to bring this
24 case to disposition. And the receiver would have also the power to determine how

1 the case will be litigated. I mean, Your Honor would instruct the receiver to report
2 back to Your Honor and Your Honor would then take appropriate further steps.
3 I have no difficulty with that approach if that is the approach Your Honor wants
4 to take. I think it would have a lot of merit. But as Your Honor knows, I've also
5 advocated other courses of action today --

6 THE COURT: Uh-huh.

7 MR. GREENBERG: -- and in my submission to the Court. But the bottom
8 line here from my perspective, Your Honor, is the Court needs to act to enforce its
9 order and to take action here.

10 THE COURT: Uh-huh.

11 MR. GREENBERG: We cannot -- allowing -- what defendants want the
12 Court to do is simply to stay this case, allow these parallel proceedings to proceed,
13 continue to exhaust my time and resources litigating that case, which may never
14 reach final judgment, or maybe if it does reach final judgment, then have to engage
15 in a post-judgment appeal to the supreme court. Rather than see this case proceed
16 as it can very swiftly and could have perhaps already to a final judgment -- which
17 is not going to be subject to attacks regarding subject matter jurisdiction. I mean,
18 Your Honor was the first case here. Your Honor did certify these claims for class
19 disposition initially. I do not understand how Judge Delaney can assert she has
20 subject matter jurisdiction. It's like an auto accident person, a victim bringing two
21 different lawsuits and then deciding which -- you know, the second lawsuit they're
22 going to go ahead with or something. I mean, it's one case, it's one claim. Your
23 Honor has appointed me as class counsel. I'm trying my best here to look out for
24 the class members' interests.

1 And again I could continue to go down a lot of these rabbit holes and
2 trails about where the money is, where it went, the history here. I will point out to
3 Your Honor that there was a representation made that the difficulty in this case
4 solely rests with plaintiffs and the defendants have essentially come before this
5 Court in a very compliant and obedient fashion and therefore, you know, the
6 contempt isn't warranted. And I can understand the theory behind imposing a
7 contempt finding is that one would perhaps look at the history of a party's conduct
8 previously in the proceedings. And this is actually discussed in my papers where
9 the supreme court has specifically said, you know, look, if you're going to grant a
10 default, you're going to impose these kinds of sanctions, you can look at this course
11 of conduct.

12 The fact of the matter, and this is in Exhibit G of my OST, defendants
13 were sanctioned and quite harshly criticized by the Discovery Commissioner in an
14 order that was entered in March of 2016 that Your Honor signed assessing \$3,400
15 of costs against them. That involved a deposition of Mr. Nady where he put
16 obscenities in the record. He acted in a completely inappropriate fashion in respect
17 to my examination of him, as found by the Discovery Commissioner. I'm not just
18 giving my opinion here. These were findings that were made by the Court. Those
19 proceedings -- that course of events delayed these proceedings by about 15 months
20 in terms of production of these vital cab manager and the QuickBooks records that
21 had to be produced that we've been over before, Your Honor.

22 So the defendants' history here is not as counsel was representing to
23 Your Honor a little while ago. There is a prior finding here of contempt and evasion
24 of the Court's directives in bad faith. And I think the Court may or should keep that

1 in mind in respect to ruling on this current request.

2 Is there anything else I can assist the Court with?

3 THE COURT: No.

4 MR. GREENBERG: Thank you.

5 MS. RODRIGUEZ: Your Honor, I'll just respond briefly to a couple of
6 comments, particularly this last one pertaining to the Discovery Commissioner.

7 THE COURT: All right, recognizing that it's his motion, he gets the last
8 word.

9 MS. RODRIGUEZ: That's fine, Your Honor. It's just that I think his
10 reference to the sanctions from the Discovery Commissioner -- and I consulted with
11 appellate counsel on this because I would love to have the Discovery Commissioner
12 rehear that motion that defendants were sanctioned. That was the one time that
13 they were sanctioned. And I think if she knew at the end of the day that all of the
14 representations that were made by plaintiff's counsel as to everything he needed
15 from the cab manager data, at the end when we were here for the eve of trial that
16 every one of his experts admitted that they never even looked at any of that data,
17 I think there would not be sanctions in place because we have always made the
18 representation that he just needs to look at the trip sheets, he needs to look at the
19 wage information. He had everything that he's ever needed from the beginning of
20 the case since 2012, never looked at it.

21 And I think the Court somewhat recognized that when we were here
22 on dispositive motions, that his experts were subject to not being admitted. And
23 if he couldn't get in -- the reason I'm saying that, Your Honor, is we were talking
24 about this statistical sampling, which we challenged. We brought that to the Court's

1 attention and I think the Court then moved forward in appointing a special master --
2 and I don't have your specific order, but that's where you indicated that the only way
3 to come to an accurate calculation was to actually look at these trip sheets and the
4 payroll information, everything that the defendant has said from the beginning of the
5 case that Mr. Greenberg just refused to look at. And that's where all this hundreds
6 of thousands of dollars has been is producing all of these things that he never
7 needed in the first place. W-4 records that were copied, you know, a stack high.
8 Health information, spousal information, dependents information. All these things
9 that on eve of trial every single person that he had as a witness indicated, no, we
10 never even looked at any of that stuff.

11 So for him then to say that the defendants are posturing and have
12 made this so difficult in defending this litigation, I think our position has always been
13 the same that all of those things were unnecessary. Let's look at the documents
14 that you really need to come to any calculation of underpayment and move forward,
15 which is what the plaintiffs have always refused to do and now want to do it at the --
16 on the defendants' dime.

17 But that's why the Court needs to consider where we're at in this
18 litigation. You know, we're close to a five year rule running. We're at the end of
19 discovery, we're at the end of all these motions to compel. And the plaintiffs have
20 some severe problems with their case. I know that he's indicating the Dubric case
21 isn't worth anything and the Court should just move forward in granting our
22 judgment. Well, we would assert no, they have some serious problems with their
23 case and that's something that if he's really protecting his drivers, as he's indicating,
24 then he would allow the Dubric settlement to go forward so that these drivers can

1 get some money. He's trying to take that money from them by paying it to a special
2 master rather than letting the money go forward into the drivers' pocket.

3 And just the other comment I would make is he keeps saying that I'm
4 throwing this \$250,000 around that the special master is charging. I'm getting that
5 directly from his declarations because he's been demanding an immediate deposit
6 of \$250,000, Your Honor.

7 THE COURT: Okay. Does that prompt any further comment?

8 MR. GREENBERG: Your Honor, I probably did suggest that the Court
9 make that deposit.

10 THE COURT: Well, let me make this preface. I don't think I heard anything
11 just now that really bears upon the issues and the questions that we are attempting
12 to address now, which is whether there should be a finding of contempt.

13 MR. GREENBERG: But my final --

14 THE COURT: What I hear both of you doing is making a lot of argument
15 but without a factual or legal basis upon which I can posit a response.

16 MR. GREENBERG: There's been a lot of discussion of more peripheral
17 issues involving this litigation, Your Honor. I don't want to spend more time on that.
18 I would just like to -- unless there's something else I can assist the Court with, I'd
19 like to just really emphasize to Your Honor we need a prompt plan, schedule for
20 finality and final judgment in this litigation as rapidly as possible. I mean, what's
21 going on in the Dubric proceedings is completely constructed to prevent that, Your
22 Honor. It's in the interest of the class, it's in the interest of justice. My resources are
23 not unlimited, as I've told Your Honor. I want to get this case to final judgment. This
24 is the reason why the contempt should be issued. We should have an expedited