

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 4

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129	Case Appeal Statement	08/12/20	11	2685–2688
134	Case Appeal Statement	02/23/21	11	2711–2716
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95	Claim of Exemption from Execution – A Cab Series, LLC, Administration Company	10/04/18	8	1993–1998
94	Claim of Exemption from Execution – A Cab Series, LLC, CCards Company	10/04/18	8	1987–1992
97	Claim of Exemption from Execution – A Cab Series, LLC, Employee Leasing Company Two	10/04/18	9	2005–2010
93	Claim of Exemption from Execution – A Cab Series, LLC, Maintenance Company	10/04/18	8	1981–1986
98	Claim of Exemption from Execution – A Cab Series, LLC, Medallion Company	10/04/18	9	2011–2016
96	Claim of Exemption from Execution – A Cab Series, LLC, Taxi Leasing Company	10/04/18	8 9	1999–2000 2001–2004
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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
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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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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 NRCP Rule 54 and the Nevada Constitution	10/12/18	9	2017–2041
141	Plaintiffs' Motion for Entry of a Modified Judgment as Provided for by Remittitur	02/14/22	13	3065–3221
142	Plaintiffs' Motion for Entry of Modified Award of Pre-Judgment Attorney's Fees as Provided for by Remittitur	02/16/22	13 14	3222–3250 3251–3272
102	Plaintiffs' Motion to File a Supplement in Support of an Award of Attorneys Fees and Costs Per NRCP Rule 54 and the Nevada Constitution	10/29/18	9	2143–2155
176	Plaintiffs' Motion to Lift Stay and Have Pending Motions Decided	08/12/22	20	4868–4882
164	Plaintiffs' Motion to Reconsider Award of Costs	06/16/22	17 18	4202–4250 4251–4356
159	Plaintiffs' Motion to Stay, Offset, or Apportion Award of Costs and/or Reconsider Award of Costs	05/31/22	16 17	3934–4000 4001–4089
184	Plaintiffs' Omnibus Brief Pursuant to the Court's Order of September 19, 2022	09/30/22	22	5301–5309
187	Plaintiffs' Opposition to Defendants' Motion for Costs	11/04/22	22	5330–5333
180	Plaintiffs' Reply to Defendant's Opposition to Plaintiffs' Motion to Lift Stay and Have Pending Motions Decided	09/13/22	20	4967–4983
86	Plaintiffs' Reply to Defendants' Opposition to Plaintiffs' Motion to Amend Judgment	09/20/18	7	1681–1737
104	Plaintiffs' Reply to Defendants' Opposition to Plaintiffs' Motion for an Award of Attorneys Fees and Costs as	11/08/18	10	2295–2303

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

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

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

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

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

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

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

CERTIFICATE OF SERVICE

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

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

1 MR. GREENBERG: The Defendants --

2 DISCOVERY COMMISSIONER: It is not to torture the Defendants.

3 MR. GREENBERG: Your Honor, there is no evidence in this record that there is any
4 burden on the Defendants to give me the marital status as recorded in the QuickBooks.

5 DISCOVERY COMMISSIONER: I think --

6 MR. GREENBERG: They have it.

7 DISCOVERY COMMISSIONER: I think there's a lot of evidence to suggest that
8 they have given you plenty of information that you're going to need to prove your case. I
9 don't understand what the payroll problem is, but if you have the W2s, and you have the
10 prices of the premiums, where, if at all, do we have a designation as to what they took, that
11 you know what they took, right? If they took insurance, you know what specifically they
12 took. You can tell by the deduction of the premium.

13 MR. GREENBERG: Whether they enrolled is irrelevant, Your Honor. It's the cost
14 that -- it's the cost to them based on their family status that we're discussing.

15 And, Your Honor, just to clarify for the record, I do not actually have the W2s,
16 but I have the information that goes into them --

17 DISCOVERY COMMISSIONER: Okay.

18 MR. GREENBERG: -- because I have the payroll.

19 DISCOVERY COMMISSIONER: And you're satisfied with that information in
20 terms of its support for their earning capacity --

21 MR. GREENBERG: Your Honor, I have --

22 DISCOVERY COMMISSIONER: -- from the employer.

23 MR. GREENBERG: -- the earnings information. I have the earnings information.

24 DISCOVERY COMMISSIONER: Okay.

25 MR. GREENBERG: There's no question about that. What I am requesting be

1 produced is simply every employee has to have a tax deduction based on whether they're
2 married, or they're single, and if they claim dependents. It's in their computer system. It
3 would take literally a few minutes to produce that to me, Your Honor.

4 DISCOVERY COMMISSIONER: If that were true, it would have been done.

5 MR. GREENBERG: How do you know that would have been done, Your Honor?
6 Defendants have no --

7 DISCOVERY COMMISSIONER: Because we've been here five million times.

8 MR. GREENBERG: Your Honor, the Defendants have no interest in corroborating
9 who was or wasn't qualified through the insurance. The burden of proof is on me, Your
10 Honor. Why would they want to assist me in establishing those facts? They have no
11 motivation to do so.

12 DISCOVERY COMMISSIONER: But why not send out -- I'm just asking.

13 MR. GREENBERG: Because --

14 DISCOVERY COMMISSIONER: Because you do this type of litigation. I,
15 obviously, do not. But I am asking the question. We know the class, right?

16 MR. GREENBERG: Yes, Your Honor.

17 DISCOVERY COMMISSIONER: We know the identity of the class members. Why
18 not send out a survey? They're your clients, right?

19 MR. GREENBERG: Your Honor, they're -- to answer your question directly, okay,
20 the burden and the cost and the effectiveness of doing so to vindicate the class claims is
21 extremely marginal in these situations. There are at least a thousand class members. To
22 collect that information from all of them during the relevant period, to get them to respond,
23 the purpose, again, of the class proceeding here is to vindicate the rights of the class
24 members that are too small for them to take action on individually or they're too uninformed
25 or not able to act on for whatever reason, okay?

1 Your Honor, these are constitutional rights. There's a public policy here that
2 these minimum wages should be paid. The Defendants can easily produce. We are talking
3 literally a few minutes of time to pull that information from Defendants' computer system
4 versus what Your Honor is talking about as an inquiry individually with 1,000 class
5 members that you're going to put on class council. It is not justified under the circumstances
6 here. If Your Honor disagrees, we will have our record and --

7 DISCOVERY COMMISSIONER: I'm --

8 MR. GREENBERG: -- you'll make your decision accordingly.

9 DISCOVERY COMMISSIONER: I'm --

10 MR. GREENBERG: I understand, and I respect your prerogative to make that
11 decision, Your Honor.

12 DISCOVERY COMMISSIONER: I am trying to think outside the box here and
13 come up with some ideas of how you can get this information effectively. If you're telling
14 me it's too expensive, it's too difficult, to contact all -- a thousand members, and it's not
15 going to work, then that -- I will take that into account.

16 Let me hear from Ms. Rodriguez.

17 MS. RODRIGUEZ: Well, I --

18 DISCOVERY COMMISSIONER: What -- I think I understand what the issue is.
19 Now, all you all had to do was offer the health insurance.

20 MS. RODRIGUEZ: Right.

21 DISCOVERY COMMISSIONER: We know there's a period of time that you didn't
22 offer spousal coverage. There will be damages for that. I'll let Judge Cory or the jury figure
23 that out.

24 But the issue is if you paid the lower rate.

25 MS. RODRIGUEZ: Right.

1 DISCOVERY COMMISSIONER: If it was even something that would have
2 affected --

3 MS. RODRIGUEZ: Correct.

4 DISCOVERY COMMISSIONER: -- this particular employee.

5 MS. RODRIGUEZ: Right.

6 DISCOVERY COMMISSIONER: And we don't know. There might be five, there
7 might be ten, there might be five hundred, I don't know.

8 MS. RODRIGUEZ: Right.

9 DISCOVERY COMMISSIONER: The problem is it's not probably sufficient enough
10 for you all to say we offered the insurance because you still have to offer it at a price point
11 that satisfies the law in Nevada, which is it can't be over ten percent. So we're going to have
12 to have the price of the insurance relative to the income for each of the individuals; in order
13 to be able to ascertain that, we would have to know the number of dependents or the spouse.
14 Now, they might have chosen not to take the insurance, but that doesn't change the fact that
15 it had to be offered and it had to be offered at the price point that would make it a real offer.
16 That's the problem as I read the case.

17 I don't have any problem with what you've provided me. I can see that
18 insurance was offered. There was a six-month or so period there was a problem; it's been
19 corrected.

20 MS. RODRIGUEZ: Right.

21 DISCOVERY COMMISSIONER: You all will have to figure out how best to deal
22 with that. But, having said that, the issue is -- and I do see a missing gap on 2012-2013
23 employee and spouse. There's no separate --

24 MS. RODRIGUEZ: Oh, it's -- they were grouped together, but spousal coverage was
25 offered at that time. I think --

1 DISCOVERY COMMISSIONER: With the children?

2 MS. RODRIGUEZ: Is that the one that said family?

3 DISCOVERY COMMISSIONER: Right.

4 MS. RODRIGUEZ: Right. That's children and spouse.

5 DISCOVERY COMMISSIONER: Okay. So you couldn't just cover your spouse
6 alone?

7 MS. RODRIGUEZ: I think I -- you know, I'm sorry, Your Honor. I didn't pull --

8 DISCOVERY COMMISSIONER: Because that might be a problem --

9 MS. RODRIGUEZ: -- the supplement --

10 DISCOVERY COMMISSIONER: -- for you.

11 MS. RODRIGUEZ: -- but I think we gave Mr. Greenberg a -- he asked for a specific
12 date and further detail, so I think we actually gave him further detail on the cost, but if that
13 needs further clarification, I'm happy to divvy that up, but.

14 DISCOVERY COMMISSIONER: Well, that may be a problem only because the
15 amount jumps from forty-nine-twenty-one to three hundred dollars, and I don't know if
16 that's going to satisfy that ten percent.

17 MS. RODRIGUEZ: What time period was that, Your Honor, 'cause I had the --

18 DISCOVERY COMMISSIONER: I have 2012 to 2013 I have a gap that I have no
19 number for employee and spouse on the sheet you gave me.

20 MS. RODRIGUEZ: I think that might fall under Health Plan of Nevada, and they did
21 separate between employee spouse and employee children, so there should be some rates on
22 that. I'll -- I can divvy that up.

23 DISCOVERY COMMISSIONER: That needs to be filled in.

24 MS. RODRIGUEZ: Okay. No problem.

25 MR. GREENBERG: Thank you, Your Honor. That is an important detail.

1 DISCOVERY COMMISSIONER: Right, and you did mention that in your brief.

2 MS. RODRIGUEZ: I think I may have given that to you, but I will double-check.

3 DISCOVERY COMMISSIONER: It needs to be verified, and I would update your
4 schematic to include that.

5 MS. RODRIGUEZ: Okay. No problem.

6 DISCOVERY COMMISSIONER: All right. So then the question becomes is it a
7 real offer of insurance, and the only way we know that is to be able to determine the cost
8 relative to the gross taxable income, which would be you have payroll, or W2, or --

9 MS. RODRIGUEZ: Payroll information.

10 DISCOVERY COMMISSIONER: Right.

11 MS. RODRIGUEZ: Right.

12 DISCOVERY COMMISSIONER: All right. So we have the payroll information.
13 What we don't have, the final missing component to all of this, is whether the employees that
14 made part of the -- made up the class had a spouse or dependents, and if they were offered
15 coverage that they could reasonably afford in light of this case, i.e. it couldn't be over ten
16 percent of their income.

17 So how are we going to figure that out? Okay. Obviously, my survey idea was
18 not very exciting, but --

19 MS. RODRIGUEZ: I actually would support that because I don't think that the tax
20 forms are going to be as reliable as the employees' own completion of that information
21 because the tax forms that he is wanting, as I understand it, a lot of times people will either,
22 depending on their tax preferences, will either put extra dependents or they'll not put their
23 dependents. It's for purposes of tax filing, and --

24 DISCOVERY COMMISSIONER: Well --

25 MS. RODRIGUEZ: -- that's not going to be an accurate reflection.

1 DISCOVERY COMMISSIONER: But the Court does say it would include what was
2 filed with the federal government on tax returns, so the last time I checked, fraudulent tax
3 returns gets you a lovely vacation in one of our federal penitentiaries.

4 MS. RODRIGUEZ: No, I'm not talking about the actual tax returns. I'm sorry. I
5 didn't communicate that correctly.

6 DISCOVERY COMMISSIONER: But the Court did.

7 MS. RODRIGUEZ: Right.

8 DISCOVERY COMMISSIONER: The Court talked about it. Taxable income is a
9 term of art when pertaining to federal income taxes, and what they're saying is it's ten
10 percent of the employee's gross taxable income from the employer, but it does not include
11 tips or other types of income that do not come from the employer.

12 So they're talking about it being taxable income, but they're also saying it
13 comes from the employer only. So they specifically excluded wages or tips from that
14 calculation, so we would be looking at the payroll.

15 MR. WALL: He's asking for W4s, and W4s are not tax returns, and there are many
16 reasons that are not fraudulent for putting on that --

17 MS. RODRIGUEZ: That's what I was talking about.

18 MR. WALL: I can put on that as many dependents as I want to in order to make my
19 deduction whatever I want it to be so long as I stay within the range that is required by the
20 IRS. So, for example, if I have other things that I have for deductions, and I don't want too
21 much to be taken out of my check, I can put down any number I want, and as long as I come
22 within that -- that's not a fraud. So the W4s won't show the information he wants.

23 DISCOVERY COMMISSIONER: I understand --

24 MS. RODRIGUEZ: That was the form --

25 DISCOVERY COMMISSIONER: -- people --

1 MS. RODRIGUEZ: -- I was referencing, Your Honor.

2 DISCOVERY COMMISSIONER: Yeah. Okay. Thank you. I understand that
3 people take different deductions for different reasons. Depends on how much you make as
4 well. So people are making decisions the best they can --

5 MS. RODRIGUEZ: Right.

6 DISCOVERY COMMISSIONER: -- for that purpose. But what we have to do is
7 verify. We have to verify in some fashion that is reasonably supported as to whether or not
8 the employees had spouses or families and were offered coverage, which they were, but to
9 ensure that that coverage did not exceed ten percent of their taxable gross income.

10 So there is the first step of determining whether they were single, married, had
11 children, and it has to be offered. It doesn't mean they have to take it, but it has to be
12 offered, and it has to be an appropriate offer, which means they can't exceed ten percent of
13 their taxable income, gross taxable income. All right. So I'm open to suggestions at this
14 point.

15 MS. RODRIGUEZ: Well, let me say this, Your Honor, now that I kind of have an
16 understanding of what he's looking for. Would you allow me to -- if we're talking about a
17 thousand W4s I guess is the representation I think he just said --

18 DISCOVERY COMMISSIONER: But I'm not -- I'm somewhat inclined to --

19 MS. RODRIGUEZ: Understand what --

20 DISCOVERY COMMISSIONER: -- accept Mr. Wall's --

21 MS. RODRIGUEZ: Okay. All right.

22 DISCOVERY COMMISSIONER: -- analysis. I'm not sure. I mean, we can turn
23 over the W4s. I can have you do that.

24 MS. RODRIGUEZ: Right.

25 DISCOVERY COMMISSIONER: The problem is I don't know if that really will

1 provide the information that the Plaintiffs are looking for. They say it's in the payroll. I'm
2 not sure it is.

3 MS. RODRIGUEZ: Right.

4 MR. GREENBERG: Your Honor, the W4 has a specific box -- and you can look at it.
5 It's at Exhibit L of my moving papers, the form. It has a specific box where the employee
6 must indicate whether they are married or single. That is extremely determinative of this
7 issue for almost all of the class members, okay? Not a hundred percent. I understand in
8 terms of how many dependents they claim, as Mr. Wall was pointing out, that is not a
9 determinative fact on this issue. But if they're certifying on this form, which it is a federal
10 tax form that they are single or married --

11 DISCOVERY COMMISSIONER: Yes, it is.

12 MR. GREENBERG: -- there should be a presumption that that's a correct
13 representation, Your Honor. It is extremely germane to determining this issue.

14 We have the information right there. Your Honor, the single or married status
15 is in the QuickBooks because they have to use an appropriate tax withholding table based
16 upon whether they're claiming they were married or single.

17 DISCOVERY COMMISSIONER: But that's putting quite a burden on the
18 Defendant. What I want to do is get you the information without overly burdening the
19 Defendant to obtain it for you because I don't think that's right either.

20 MR. GREENBERG: Your Honor, there is no record whatsoever that that would be a
21 burden on the Defendant. And if Your Honor wishes, I will get a QuickBooks expert to
22 come in here and you could have an evidentiary hearing. I'll get you a declaration --

23 DISCOVERY COMMISSIONER: I don't --

24 MR. GREENBERG: -- explaining that this information can be easily exported in a
25 report to me from --

1 MS. RODRIGUEZ: All I --

2 MR. GREENBERG: Mr. Nady, at his deposition, testified that his belief that he could
3 produce this from the QuickBooks system easily.

4 DISCOVERY COMMISSIONER: Okay. So we're going to do this one of two ways.
5 I don't think the W4 forms are going to be helpful. Yes, they will allegedly certify if they
6 were married or not. But if that information is also on the QuickBooks, as you say it is, that
7 can be pulled off if they're married or not. At some point you're going to have to verify that
8 with these people, but I, you know, I mean, what are we doing here? We are just -- this
9 discovery process has cost a lot of time and money for everybody, and we have to get
10 beyond it. You've got to get this case ready for trial and get it tried, so I don't know how
11 difficult it is to pull off the W4 forms from the information that you all have. I can't imagine
12 that it's all that difficult.

13 But in terms of verifying the dependents, you know, and the spouse, Ms.
14 Rodriguez, where might that be in your system?

15 MS. RODRIGUEZ: I don't think it's in the system, Your Honor. And I think it's
16 going to have to be directly from a one-on-one discussion with each employee as to their
17 personal tax preferences and whether --

18 DISCOVERY COMMISSIONER: Well, it's not a --

19 MS. RODRIGUEZ: -- they chose to --

20 DISCOVERY COMMISSIONER: -- tax preference though. See --

21 MS. RODRIGUEZ: Well, on the W4.

22 DISCOVERY COMMISSIONER: It's a fact.

23 MS. RODRIGUEZ: Yeah.

24 DISCOVERY COMMISSIONER: Everybody know what a fact is, 'cause I'm
25 thinking right now we don't know what facts are. A fact --

1 MS. RODRIGUEZ: No. I --

2 DISCOVERY COMMISSIONER: -- is what is true --

3 MS. RODRIGUEZ: Right, exactly.

4 DISCOVERY COMMISSIONER: -- and not what is false.

5 MS. RODRIGUEZ: I'm --

6 DISCOVERY COMMISSIONER: Either they're married --

7 MS. RODRIGUEZ: -- saying the same thing.

8 DISCOVERY COMMISSIONER: -- or they're not.

9 MS. RODRIGUEZ: Right.

10 DISCOVERY COMMISSIONER: Either they have children or they don't. This is
11 not an optional. This is not aspirational. This is not an alternative fact.

12 MS. RODRIGUEZ: If they don't --

13 DISCOVERY COMMISSIONER: This is a fact.

14 MS. RODRIGUEZ: If they don't inform the employer -- I mean, I'm happy to try to
15 run this stuff. I want to turn it over as well, Your Honor. I just don't know how best to give
16 him accurate information. It seems, as you first suggested, that he has the best access to that
17 with his clients, but --

18 DISCOVERY COMMISSIONER: Well, you have the access too. They're your
19 employees, or at least some of them are still.

20 MS. RODRIGUEZ: Well --

21 DISCOVERY COMMISSIONER: Many of them may have gone.

22 MS. RODRIGUEZ: -- very little. If he's saying that it's a class of over a thousand,
23 A Cab has about 200 drivers, so --

24 DISCOVERY COMMISSIONER: Right, now.

25 MS. RODRIGUEZ: -- no, the majority are not employees.

1 DISCOVERY COMMISSIONER: Or were former employees.

2 MS. RODRIGUEZ: Right, exactly.

3 DISCOVERY COMMISSIONER: Do -- can you pull your W4s off the --

4 MS. RODRIGUEZ: I will ask the payroll person. I'm going over there right now
5 after this hearing, so --

6 DISCOVERY COMMISSIONER: All right.

7 MS. RODRIGUEZ: -- I'd be happy to ask.

8 DISCOVERY COMMISSIONER: Okay. And then Mr. Greenberg is really
9 confident that it's not a big deal to pull off of the payroll a documentation of whether they
10 were married or had children.

11 MR. GREENBERG: Whether they told the company they were, yes.

12 MS. RODRIGUEZ: Right, exactly, whether they told the company or not.

13 DISCOVERY COMMISSIONER: Well, that's not the test though under the rule.

14 MR. GREENBERG: I understand, Your Honor. It's my position that it should be
15 their burden to show that they complied. This is an issue that Judge Cory preliminarily
16 examined and said I will return to this.

17 DISCOVERY COMMISSIONER: I think your burden is to prove damages.

18 MR. GREENBERG: Your Honor, he --

19 MS. RODRIGUEZ: And Judge Cory did not --

20 MR. GREENBERG: -- stated he would --

21 MS. RODRIGUEZ: -- do that.

22 MR. GREENBERG: -- he would return to this upon further record as to who has the
23 burden.

24 DISCOVERY COMMISSIONER: Okay.

25 MR. GREENBERG: There is a burden here. We know that --

1 DISCOVERY COMMISSIONER: Yeah.

2 MR. GREENBERG: -- Your Honor.

3 DISCOVERY COMMISSIONER: Yes.

4 MR. GREENBERG: Is it my burden to show that they were not provided with the
5 insurance availability, or is it their burden to show they were provided with the insurance
6 availability?

7 DISCOVERY COMMISSIONER: Well, you're going to have to have your class
8 member prove bad faith. I mean, I think I've come full circle, and I know you're not excited
9 about the survey, but how are you going to find out this information?

10 You're not going to take everyone's deposition. You're probably not going to
11 meet with everybody. You're probably not going to be able to track down all the former
12 employees, right? I mean, you're going to do the best you can, but you've probably gotten
13 some return envelopes on the class certification.

14 MR. GREENBERG: Your Honor, again, if Your Honor is making a determination
15 that to produce the information I am requesting regarding the marital status from the
16 QuickBooks indicators is too burdensome, that is Your Honor's prerogative to make that
17 determination.

18 DISCOVERY COMMISSIONER: I don't have enough information to --

19 MR. GREENBERG: Well --

20 DISCOVERY COMMISSIONER: -- make that determination.

21 MR. GREENBERG: -- Your Honor, I would point you to Mr. Nady's testimony; it's
22 Exhibit A. It's his deposition, page 258. He was asked about this. It's at -- starting at
23 Exhibit A, page 258, line 16:

24 Are you aware that the status, married or not married, controls the deductions
25 that are required in an employee's payroll?

1 I do.

2 So it is correct that for every employee at A Cab their status for tax purposes is
3 recorded as either married or unmarried?

4 I do.

5 So if I wanted to find out the identity of every single or married driver as
6 currently recorded, would I be able to ascertain that from the QuickBooks?

7 MS. RODRIGUEZ: Your Honor, I'm not sure --

8 MR. GREENBERG: And he ultimately says it's on the payroll. It's part of -- and it's
9 required, yes, so, you know.

10 MS. RODRIGUEZ: Your Honor, I'm not sure why we're arguing about this 'cause
11 I'm happy to -- I'm going to find out.

12 DISCOVERY COMMISSIONER: Okay. So here's what we're going to do today. I
13 am going to require that the Defendant produce the W4s for the Defendants' employees
14 during the time frame at issue in this case, the drivers, the former drivers, current drivers. I
15 will maintain those confidentially under a protective order that they're only going to be
16 utilized in this litigation only, and they will be maintained confidentially until such time as
17 otherwise ordered by the District Court Judge. They will, of course, be able to be shared
18 with the experts to be able to facilitate the prosecution of the case, so --

19 MR. GREENBERG: Yes, Your Honor.

20 DISCOVERY COMMISSIONER: -- the W4s will be produced --

21 MR. GREENBERG: Thank you, Your Honor.

22 DISCOVERY COMMISSIONER: -- for the employees during that time frame, in
23 addition to which Ms. Rodriguez is instructed to go back and take a look with your person at
24 A Cab --

25 MS. RODRIGUEZ: Okay.

1 DISCOVERY COMMISSIONER: -- to determine whether or not on the payroll you
2 have a way of identifying those employees that were married or married with dependents,
3 and --

4 MS. RODRIGUEZ: As reported to the employer.

5 DISCOVERY COMMISSIONER: And then -- as reported to the employer.

6 MS. RODRIGUEZ: Right.

7 DISCOVERY COMMISSIONER: I mean, you can't do beyond that, and I'm not sure
8 that's going to be verification enough, but I'll let Judge Cory worry about that.

9 MR. GREENBERG: Yes, Your Honor.

10 DISCOVERY COMMISSIONER: I'm not going to worry about that.

11 So I will need you to confirm, one way or the other, whether or not that
12 information, in fact, is available and can be pulled off -- pulled up and printed out without
13 too much difficulty. I'm crossing my fingers that you can do this.

14 But, again, I'll make it clear that it's only the information provided to the
15 Defendant, not that the Defendant is responsible at this juncture for verifying it.

16 MR. GREENBERG: Yes, Your Honor.

17 DISCOVERY COMMISSIONER: Just what they were told by their employees, the
18 employee drivers that constitute this class.

19 MR. GREENBERG: Yes, Your Honor.

20 MS. RODRIGUEZ: Thank you.

21 DISCOVERY COMMISSIONER: Okay? For the time frame at issue. Now, I
22 understood that the time frame goes through December of last year, is that right?

23 MR. GREENBERG: The class is currently certified for damages through December
24 31st, 2015.

25 DISCOVERY COMMISSIONER: Okay.

1 MR. GREENBERG: There is a motion pending to extend that time period, Your
2 Honor.

3 DISCOVERY COMMISSIONER: Okay. But let's, just so we don't have to revisit
4 these issues, go to the present time.

5 MR. GREENBERG: Yes, Your Honor.

6 DISCOVERY COMMISSIONER: I just don't -- I don't want to be back here on
7 these issues. I want you all to have a trial date and have the information you need.

8 MS. RODRIGUEZ: Your Honor, I would respectfully request otherwise, that we
9 only do the period --

10 DISCOVERY COMMISSIONER: Okay. So here's what I'm going to recommend
11 that you do, Ms. Rodriguez. Do it all. Only turn over through December 31st, 2015.

12 MS. RODRIGUEZ: Thank you.

13 DISCOVERY COMMISSIONER: But have everything else ready to go --

14 MS. RODRIGUEZ: Yes.

15 DISCOVERY COMMISSIONER: -- because if that deadline is extended by Judge
16 Cory, I don't want to have another motion to compel on this because you're refusing to turn
17 it over.

18 MS. RODRIGUEZ: I understand.

19 DISCOVERY COMMISSIONER: So I would --

20 MS. RODRIGUEZ: And that makes sense.

21 DISCOVERY COMMISSIONER: -- prepare everything, have it ready to go if need
22 be, but at least for now turn over all the information through the class certification period,
23 which is December 31st of 2015.

24 MS. RODRIGUEZ: Correct. I will.

25 DISCOVERY COMMISSIONER: And that would include all the W4s up to that date

1 for all the employees, and hopefully that will be an easy search, I'm hoping.

2 MR. GREENBERG: Your Honor, that would also have to include the payroll, of
3 course, through the present date, that we would need to do the damages analysis we've --

4 DISCOVERY COMMISSIONER: You have the payroll.

5 MS. RODRIGUEZ: He has --

6 MR. GREENBERG: I have it through December 31st, 2015, Your Honor. If the --

7 DISCOVERY COMMISSIONER: Okay.

8 MR. GREENBERG: -- class period is extended, I'm going to need that as well for the
9 extended period.

10 DISCOVERY COMMISSIONER: Right. I do understand that, and I --

11 MS. RODRIGUEZ: I understand that.

12 DISCOVERY COMMISSIONER: What I would -- you know --

13 MS. RODRIGUEZ: Yes.

14 DISCOVERY COMMISSIONER: -- focus on getting this information for now --

15 MS. RODRIGUEZ: Right.

16 DISCOVERY COMMISSIONER: -- understanding that you may have to be prepared
17 to give over the other information. What I don't want to do is I just don't want to see
18 another motion on this. I just want --

19 MS. RODRIGUEZ: Right.

20 DISCOVERY COMMISSIONER: -- it taken care of. If the Judge extends the period
21 of class certification, then you'll need to update your discovery accordingly. If it's easier
22 now when you're pulling this information off to go ahead and do it and segregate it out, but
23 hold on to what you may need to produce in the future, that's fine as well.

24 MS. RODRIGUEZ: Understood.

25 DISCOVERY COMMISSIONER: Okay.

1 MR. GREENBERG: That makes a lot of sense, Your Honor.

2 DISCOVERY COMMISSIONER: Anything further? Oh, and you are going to
3 confirm the rate for the employee and spousal coverage from that 2012 to 2013 period.

4 MS. RODRIGUEZ: I will.

5 DISCOVERY COMMISSIONER: And I would update my diagram and provide a
6 copy to Plaintiffs' counsel.

7 MS. RODRIGUEZ: I will.

8 DISCOVERY COMMISSIONER: Now, I believe you all are coming back here --

9 MR. GREENBERG: We are here on --

10 DISCOVERY COMMISSIONER: -- in the near future.

11 MR. GREENBERG: -- February 8th. There's also another branch of this motion
12 regarding the production of these Excel files of hours worked, the compilations from the trip
13 sheets, Your Honor, called J Roll.

14 DISCOVERY COMMISSIONER: I'm really not sure exactly what that is, to be
15 candid with you, and I'm not sure we're ever going to really find that out. I think that's what
16 he called -- the employer called it, but I think for all practical purposes, you should focus on
17 what you know you need, and that is the payroll, which you have, the information on
18 whether the employee was single, married, or with dependents, and that information you will
19 have, and then the rates for the insurance, and with the exception of one year for the
20 employee and spouse, you have those rates. So this should be, at this point, if you have all
21 that other information, you should be able to calculate whether or not the Defendant offered
22 health insurance within the parameters as defined by the Constitution of the State of Nevada
23 as well as the Supreme Court.

24 MR. GREENBERG: Your Honor, in respect to these J Roll Excel files, you have two
25 declarations, including from the payroll manager, through 2013, that these compilations of

1 the trip sheets were created, they were used to create the payroll. You have Mr. Nady's
2 deposition testimony confirming that was done.

3 But we don't have those hours in the payroll prior to 2013, but if the --

4 DISCOVERY COMMISSIONER: Do you need it? Think about that. You're saying
5 yes, but do you really need it, because what if what you have right now already shows that
6 they didn't offer the health insurance that -- within the parameters, that was --

7 You've already indicated to me, based on -- just let me finish. You've already
8 indicated to me, based on the payroll records you have, that the health insurance that was
9 offered was not within the ten percent.

10 MR. GREENBERG: Yes, Your Honor.

11 DISCOVERY COMMISSIONER: So why do we need to go further?

12 MR. GREENBERG: Your Honor, the hours these individuals worked determines
13 their damages. That's -- I mean, if the pay per pay period was high enough --

14 DISCOVERY COMMISSIONER: No, it doesn't.

15 MR. GREENBERG: -- they have no damages, depending upon the hours they
16 worked. If I only worked ten hours, and I made \$100, well, that's more than enough to
17 qualify for minimum wage. But, on the other hand, if I worked 50 hours for \$100, that's
18 only \$5 an hour. The hours the individuals worked per pay period is critical to the factual
19 and damages determination in this case.

20 Defendants have produced payroll records that contain that information from
21 January 1st, 2013, forward. They have produced nothing else that contains those hours
22 worked information, but their testimony now is that that information was collected
23 contemporaneously, was used to prepared the payroll, it was collected and put in this J Roll,
24 these Excel files, from the daily record from the trip sheets, but it was -- but the hours
25 worked did not pass into the payroll system prior to 2013.

1 So I want the Excel files so I can see what they reported these individuals as
2 working. As Your Honor was saying, I have the burden of proving the damages. I have to
3 prove my case. Presumably, I have to prove what hours these individuals worked during the
4 relevant period of time. The Defendants have the record in the J Roll. They used these
5 records to determine what they were going to pay these individuals if they were complying
6 with minimum wage. We have this from the declaration of the former payroll manager who
7 was doing the payroll prior to 2013. She testifies that these Excels were used to do the
8 payroll and to see that they were complying with the minimum wage requirements.

9 Well, where are they, Your Honor? Mr. Nady says --

10 DISCOVERY COMMISSIONER: Isn't that the payroll?

11 MR. GREENBERG: -- they should be --

12 DISCOVERY COMMISSIONER: Didn't he just call that a J Roll? Wasn't that his
13 idea of a little sense of humor?

14 MS. RODRIGUEZ: Yes.

15 DISCOVERY COMMISSIONER: Isn't it the same thing?

16 MS. RODRIGUEZ: Yes.

17 MR. GREENBERG: Your Honor, there is no evidence whatsoever. This is an
18 assertion made by counsel. I have no --

19 MS. RODRIGUEZ: No.

20 MR. GREENBERG: Mr. Nady, both in --

21 MS. RODRIGUEZ: It's not an assertion made by counsel. That's in the deposition.

22 MR. GREENBERG: Your Honor, this is in my reply

23 DISCOVERY COMMISSIONER: All right. I --

24 MR. GREENBERG: Mr. Nady ultimately denies knowledge as to what J Roll is. He
25 first admits that, yes, it was used in the fashion I was describing to Your Honor and that it

1 should be in their computer system, and it can be produced. And then --

2 DISCOVERY COMMISSIONER: Ms. --

3 MR. GREENBERG: Yes, I'm sorry, Your Honor.

4 DISCOVERY COMMISSIONER: I understand.

5 Ms. Rodriguez, what is the situation with the J Roll production?

6 MS. RODRIGUEZ: Your Honor, I went back and talked to my client again. He
7 confirms what he said in his deposition, which was attached to my papers, 'cause he's cut
8 short --

9 DISCOVERY COMMISSIONER: Okay. Let's just go --

10 MS. RODRIGUEZ: But --

11 DISCOVERY COMMISSIONER: Just move forward. Just answer the question.

12 MS. RODRIGUEZ: He basically said J Roll is QuickBooks. All of that information
13 we have turned over to Mr. Greenberg. He asked for the specifics of the trip sheets that also
14 show the hours, show start times, end times, break times, everything he wants. He should
15 have those today. We've been copying 500,000, so if he wants any more specific, I don't
16 know what else I can give him. We've given him everything, and I --

17 DISCOVERY COMMISSIONER: So what you're going to give him today is what
18 you would characterize as the, quote-unquote, J Roll documents.

19 MS. RODRIGUEZ: No. He's had that. He's had the QuickBooks.

20 DISCOVERY COMMISSIONER: What are you giving him today?

21 MS. RODRIGUEZ: The additional trip sheets that he wanted copied onto an external
22 hard drive. I'm giving that to him once he -- I'm getting the invoice today of how much the
23 external hard drive cost and how much it took Mr. Morgan to do. I anticipate the invoice is
24 going to be less than a thousand dollars, and so once he pays that, he can have the external
25 drive. I'm going to go pick that up right now at A Cab.

1 DISCOVERY COMMISSIONER: All right.

2 MS. RODRIGUEZ: And I think Your Honor ordered that, that he would -- he offered
3 to pay the 500 bucks for the --

4 DISCOVERY COMMISSIONER: We took care of that --

5 MS. RODRIGUEZ: Yes.

6 DISCOVERY COMMISSIONER: -- the last time. I don't want to reinvent or
7 reargue --

8 MS. RODRIGUEZ: But that's going to have 500,000 PDFs of each trip sheet during
9 that time period where he can see, if he has any question about the hours.

10 DISCOVERY COMMISSIONER: Why don't you look at the information you're
11 going to get. Let's see what it is.

12 I don't understand the J Roll issue, I really don't, and I'm not being -- and I'm
13 sorry if you think I'm being obtuse about it, but here's the problem. To me, the issue is
14 when did the insurance kick in? Did they always have it, or did they have to work every
15 month to ensure that they made enough to -- I mean, forgive me for my ignorance, but it
16 seems to me that once you're offered insurance, you're offered it for the year. Are you
17 telling me it didn't work that way?

18 MS. RODRIGUEZ: I see what you're getting at, Your Honor, but I think that's
19 always been the case. I'll confirm that as well. I don't think anybody --

20 DISCOVERY COMMISSIONER: So --

21 MS. RODRIGUEZ: -- ever fell off.

22 DISCOVERY COMMISSIONER: -- the fact that they worked ten hours in two
23 weeks versus a hundred hours maybe in another two weeks, that shouldn't affect their ability
24 to have insurance. It might affect their gross taxable income.

25 MS. RODRIGUEZ: Right.

1 DISCOVERY COMMISSIONER: But that's what you're looking at, and I think
2 you're looking at annual, the employees' taxable gross income.

3 MR. GREENBERG: Your Honor, the hours the class members worked has nothing
4 to do with the insurance issue.

5 MS. RODRIGUEZ: Yeah, I didn't --

6 DISCOVERY COMMISSIONER: Then why do we need --

7 MS. RODRIGUEZ: I never understood though.

8 DISCOVERY COMMISSIONER: Then why do we need the J --

9 MR. GREENBERG: Because, Your Honor, fundamentally the question presented by
10 this case is how many hours did these people work; how much were they paid; did it equal
11 the minimum wage per hour or not? It's a very simple arithmetic equation, divide the hours
12 into the gross pay. Did it equal --

13 DISCOVERY COMMISSIONER: All right.

14 MR. GREENBERG: Did it equal the minimum or not?

15 MS. RODRIGUEZ: And he can see that on the PDFs.

16 DISCOVERY COMMISSIONER: Okay.

17 MR. GREENBERG: But, Your Honor, if I don't know the hours, how am I going to
18 prove there's a violation? They compiled the hours every payroll, they put it in this
19 spreadsheet, and they kept it on their computer system. It has not been produced to me, Your
20 Honor, at least not since January 1st, 2013.

21 DISCOVERY COMMISSIONER: You're going to have the trip record. You're
22 going to have the trip sheets that are going to be produced to you. I am hopeful that that will
23 provide you with some useful information.

24 So your concern is really two-fold. It's not just the insurance. It's whether or
25 not they actually even paid the minimum wage rate based on what they work.

1 MR. GREENBERG: Absolutely, Your Honor. They underpaid at the lower tier as
2 well, not just at the upper tier. And I need to know the hours that they worked.

3 Your Honor, the J Roll supposedly was compiled from the trip sheets that we
4 actually have a declaration from a former employee that Mr. Nady instructed that the J Roll
5 be made -- be manipulated in certain ways to undercount the hours, but, you know, that's
6 really a secondary issue. The point is they compiled this. There are hundreds of thousands
7 of trip sheets. To actually go through them and to recreate what was put into these Excel
8 files, Your Honor, is not practical as a matter of litigation. Defendants know this. Again,
9 they have no reason to produce those Excel files that'll show the hours --

10 DISCOVERY COMMISSIONER: So --

11 MR. GREENBERG: -- that the class members worked.

12 DISCOVERY COMMISSIONER: I don't care if we call it the zebra sheets.
13 Whatever the documents were that were created to pay the employees so we can look at
14 those documents and say this is why employee A was paid this amount, those underlying
15 documents, whether they're called the J Roll, payroll, QuickBooks --

16 MS. RODRIGUEZ: QuickBooks.

17 DISCOVERY COMMISSIONER: -- I don't care --

18 MS. RODRIGUEZ: Right.

19 DISCOVERY COMMISSIONER: -- what they're called, that's what needs to be
20 produced.

21 MS. RODRIGUEZ: That's been in his possession, Your Honor, and if I could
22 respond, the only reason I was kind of smiling was because talk about coming full circle.
23 From the very beginning of this case I always represented that the trip sheets were the most
24 accurate document that showed the start times, the break times, the hours, everything he was
25 looking for. And we've gone through all of this effort over, and over, and over to get it in

1 the format that he wanted with the electronic data. Now he has the electronic data, after all
2 of these efforts, and he's saying, well, I -- that's of no use to me. Give me the trip sheets.
3 We're giving him the trip sheets. He has everything.

4 MR. GREENBERG: Your Honor, the J Roll was compiled from the trip sheets; that's
5 Mr. Nady's --

6 DISCOVERY COMMISSIONER: Okay.

7 MR. GREENBERG: -- testimony.

8 DISCOVERY COMMISSIONER: So what I need to make sure of, Ms. Rodriguez, is
9 that whatever that document is, whether it's called a J Roll or something else, whatever that
10 document is that corresponds to the amount that the employee was made, or it calculates the
11 employee's wage, needs to be --

12 MR. GREENBERG: The hours worked, Your Honor.

13 DISCOVERY COMMISSIONER: Hour -- well --

14 MR. GREENBERG: The document --

15 DISCOVERY COMMISSIONER: It's going to be the wage too.

16 MR. GREENBERG: -- we're talking about was used to calculate the wages, but the
17 purpose was to compile the hours worked per pay period.

18 DISCOVERY COMMISSIONER: Per --

19 MS. RODRIGUEZ: And he's basing that on affidavits by --

20 MR. GREENBERG: That was Mr. Nady's testimony.

21 DISCOVERY COMMISSIONER: But wouldn't you have to keep track of the hours
22 worked to be able to determine the amount or to pay somebody?

23 MS. RODRIGUEZ: And it's plugged into the QuickBooks, and that's what he has.

24 MR. GREENBERG: Your Honor --

25 MS. RODRIGUEZ: There is nothing else --

1 MR. GREENBERG: -- it was --

2 MS. RODRIGUEZ: -- Your Honor.

3 MR. GREENBERG: -- put in the QuickBooks as of January 1st, 2013, yes. But prior
4 to that time it was not, Your Honor.

5 DISCOVERY COMMISSIONER: Well, then if they can't show that, then maybe
6 that's their burden in terms of an affirmative defense, but that's something Judge Cory will
7 have to --

8 MR. GREENBERG: Your Honor --

9 DISCOVERY COMMISSIONER: -- to figure out.

10 MR. GREENBERG: -- if they can't produce the Excel, the J Roll, whatever it was
11 called --

12 DISCOVERY COMMISSIONER: From 2010 to 2013.

13 MR. GREENBERG: Right. If they can't produce it, then let 'em give a declaration
14 saying, at a minimum, we searched for it, we don't have it, it was never kept, whatever it is.
15 I have no --

16 MS. RODRIGUEZ: I think that's already --

17 MR. GREENBERG: I --

18 MS. RODRIGUEZ: -- been done, Your Honor.

19 MR. GREENBERG: Your Honor, it has not been done. Mr. Nady testified initially
20 that it existed, it was used for the purposes I described, that it should be in the computer
21 system.

22 DISCOVERY COMMISSIONER: Ms. Rodriguez, have you turned over everything
23 that shows all the hours the employees worked from 2010 through the end of December
24 2015?

25 MS. RODRIGUEZ: Your Honor, I went back. Again, I went back, and I confirmed

1 with my client that everything has been turned over to Mr. Greenberg.

2 DISCOVERY COMMISSIONER: Can you see how many hours each employee
3 worked when you look at the documents you have?

4 MS. RODRIGUEZ: That will be on the trip sheets that are produced to him today or
5 whenever he chooses to --

6 DISCOVERY COMMISSIONER: But did they take those trip sheets and the
7 numbers worked and put it in another document to be able to calculate the wage?

8 MS. RODRIGUEZ: Into the QuickBooks.

9 DISCOVERY COMMISSIONER: Okay.

10 MS. RODRIGUEZ: And that's what he has.

11 MR. GREENBERG: Your Honor, that is not the testimony. It's not the testimony of
12 Mr. Nady. It's not the testimony of the nonparty witness declarations --

13 DISCOVERY COMMISSIONER: Okay. So --

14 MR. GREENBERG: -- you have in front of you.

15 DISCOVERY COMMISSIONER: -- let's just set aside the testimony, which may or
16 may not be accurate. Let's talk factual.

17 MR. GREENBERG: Okay.

18 DISCOVERY COMMISSIONER: Is the information regarding how many hours the
19 employees worked included in the QuickBooks so that they could calculate their rate--

20 MR. GREENBERG: After --

21 DISCOVERY COMMISSIONER: -- of pay?

22 MR. GREENBERG: -- January 1st, 2013.

23 DISCOVERY COMMISSIONER: Okay. So before that it is not.

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

25 DISCOVERY COMMISSIONER: So, Ms. Rodriguez, you need to confirm where

1 that information is. Is it in the trip sheets? Do we at least have the trip sheets that we can
2 look at between 2010 and 2013? Will that correspond with the hours that they were paid?
3 Because we have the payroll, right?

4 MR. GREENBERG: We do, Your Honor, and we know that the trip sheets exist. I
5 have no -- there was no reason to believe that they still exist and can be produced and are
6 being produced. The question, again, Your Honor, is they compiled this for purposes of their
7 payroll. It's in an easy-to-use form in a spreadsheet. They had to do that to do the payroll,
8 Your Honor.

9 DISCOVERY COMMISSIONER: Okay. But --

10 MR. GREENBERG: Where is it?

11 DISCOVERY COMMISSIONER: -- they're telling you it's the QuickBooks. That's
12 what they're telling you.

13 MR. GREENBERG: Your Honor, it is not the QuickBooks, and it's --

14 DISCOVERY COMMISSIONER: All right.

15 MR. GREENBERG: -- established on the record because the information --

16 DISCOVERY COMMISSIONER: It obviously is not established on the record
17 because you have a disagreement on it. How can you tell me it is established on the record?
18 I don't -- really, what the people testified to may or may not be accurate; I will grant you
19 that. The issue is this is not testimonial. This is documents. These are documents we're
20 talking about.

21 MR. GREENBERG: Yes, Your Honor, and the QuickBooks that was produced prior
22 to January 1st, 2013, contains no information of hours worked, so it was not put in the
23 QuickBooks, at least not the QuickBooks --

24 DISCOVERY COMMISSIONER: Okay. So --

25 MR. GREENBERG: -- I was given.

1 DISCOVERY COMMISSIONER: -- what do you have then? What do you have
2 from that time period?

3 MR. GREENBERG: I have --

4 DISCOVERY COMMISSIONER: Do you have --

5 MR. GREENBERG: -- how much they were paid every pay period.

6 DISCOVERY COMMISSIONER: Okay.

7 MR. GREENBERG: But no hours worked.

8 DISCOVERY COMMISSIONER: Can you -- but, okay, so can you divide that by
9 the lower minimum rate wage to try to see how many hours they worked?

10 MR. GREENBERG: That would just be speculation. What is that going to prove at
11 the time of trial, Your Honor? It's going to prove nothing.

12 DISCOVERY COMMISSIONER: I'm asking you --

13 MR. GREENBERG: Yeah, you can --

14 DISCOVERY COMMISSIONER: -- can you divide it?

15 MR. GREENBERG: I can divide it by eight, I can divide it --

16 DISCOVERY COMMISSIONER: Okay. So if --

17 MR. GREENBERG: -- by ten.

18 DISCOVERY COMMISSIONER: -- it turns out to be like an 8.1 hour, that looks a
19 little suspicious to me. Does it not look that way to you?

20 MR. GREENBERG: Your Honor, suspicion is not the way cases are decided.
21 They're --

22 DISCOVERY COMMISSIONER: That's right.

23 MR. GREENBERG: -- decided on facts, Your Honor. Okay? And --

24 DISCOVERY COMMISSIONER: Absolutely.

25 MR. GREENBERG: And the fact of the matter is the testimony is clear that they

1 compiled the spreadsheet, they used it to create those payroll amounts.

2 DISCOVERY COMMISSIONER: Okay. I -- we just --

3 MR. GREENBERG: Where is it? Let them document that it doesn't exist. If they
4 can't produce it, let them get a declaration from --

5 DISCOVERY COMMISSIONER: We're just going in circles at this point.

6 MR. GREENBERG: Well, Your Honor, if Your Honor is not going to direct
7 anything further from the Defendants on this --

8 DISCOVERY COMMISSIONER: I've just directed it. Have you not been listening
9 to me?

10 MR. GREENBERG: Okay. I --

11 DISCOVERY COMMISSIONER: I'm thinking --

12 MR. GREENBERG: -- apologize.

13 DISCOVERY COMMISSIONER: Wait. Let's take a vote of the audience 'cause
14 I've directed a couple of things for them to do, okay? They're going to produce the W4s for
15 you --

16 MR. GREENBERG: Yes, Your Honor.

17 DISCOVERY COMMISSIONER: -- which you do not have for the time period in
18 question, right? That's one thing they're going to do for you. The second thing that they
19 intend to do for you is to double-check on this J Roll and produce what they have or at least
20 point you in the right direction. They're also going to confirm whether or not they had
21 QuickBooks prior to that 2013 date or if they had the information stored in some other
22 format. They're going to fill in for you the rate of the employee and the spousal insurance
23 from 2012 to 2013, and they're going to provide you with the trip sheets --

24 MR. GREENBERG: Yes, Your Honor.

25 DISCOVERY COMMISSIONER: -- on the hard drive.

1 MR. GREENBERG: Your Honor, my only request was that in respect to that prior
2 2013 hours worked information in J Roll, they put a declaration into the record here about
3 their efforts. That's it, Your Honor. So this is not a question of representations of counsel or
4 contradictory --

5 DISCOVERY COMMISSIONER: I'll let the Judge make that determination.

6 MR. GREENBERG: Very well, Your Honor.

7 DISCOVERY COMMISSIONER: All right. So I, again, Ms. Rodriguez, I don't
8 know what this J Roll supposedly encompasses, whether it's a separate type of spreadsheet
9 or document that was used. You need to go back, you need to confirm.

10 MS. RODRIGUEZ: I have, and I will do it again.

11 DISCOVERY COMMISSIONER: And then if you don't have any rate of pay from
12 2010 to 2013, that does give me some concern.

13 MS. RODRIGUEZ: I think I have that, and I'll update it.

14 DISCOVERY COMMISSIONER: Okay.

15 MS. RODRIGUEZ: We're talking about the spousal coverage again; is that what
16 you're --

17 DISCOVERY COMMISSIONER: Well, no.

18 MS. RODRIGUEZ: -- referring to?

19 DISCOVERY COMMISSIONER: I'm talking further. I'm talking that they don't
20 have the hours worked for the employees from 2010 to 2013.

21 MS. RODRIGUEZ: Oh, that's reflected on the trip sheets, but I will double-check
22 whether there's anything else, but I have --

23 DISCOVERY COMMISSIONER: How accurate are the trip sheets?

24 MS. RODRIGUEZ: Very accurate.

25 MR. GREENBERG: Oh --

1 MS. RODRIGUEZ: They're turned over to the State of Nevada. They have to turn
2 them in to the taxi cab authority. The trip sheet is the document, and that's what --

3 DISCOVERY COMMISSIONER: So that should be -- we should be able to calculate
4 the hours worked based on the trip sheets, right?

5 MR. GREENBERG: Your Honor, the issue here though is also what did Defendants
6 say these people worked for their own purposes for payroll. If they determined that this
7 person worked so many hours and they used this compilation, this J Roll, whatever it was,
8 and they acted accordingly, that's important evidence for a jury to consider if it turns out,
9 based on those hours of work that they admitted this guy worked, he was underpaid.

10 DISCOVERY COMMISSIONER: Well, wouldn't we be able to see the discrepancy
11 between what was paid on your payroll and the hours worked on the trip sheets if it
12 doesn't -- shouldn't it, like, match?

13 MR. GREENBERG: Your Honor, assuming we -- assuming that was practical, which
14 it is not, you're correct. But --

15 DISCOVERY COMMISSIONER: Why don't you just --

16 MR. GREENBERG: -- it's a different issue --

17 DISCOVERY COMMISSIONER: -- look at 10 or 15 or 20, do a sampling, and see if
18 it matches.

19 MR. GREENBERG: Your Honor, the different issue here though is what did
20 Defendants admit that these individuals worked? They admitted, through their payroll
21 process, that they had worked a certain number of hours. That may well constitute an
22 underpayment. They weren't paying the appropriate amount for minimum wage based on
23 what they determined these individuals would work. That is powerful evidence the jury
24 should consider if the Defendants want to dispute it. It's an admission. Your Honor, that
25 admission is in their record for payroll purposes.

1 DISCOVERY COMMISSIONER: Mr. Greenberg --

2 MR. GREENBERG: The J Roll we are discussing, Your Honor.

3 DISCOVERY COMMISSIONER: -- I'm not arguing with you.

4 MR. GREENBERG: Okay. Thank you, Your Honor.

5 DISCOVERY COMMISSIONER: I'm not challenging you. I'm not doing any of
6 that. All I'm trying to do is make sure that the discovery is turned over --

7 MR. GREENBERG: Yes, Your Honor.

8 DISCOVERY COMMISSIONER: -- that can be reasonably turned over. If it doesn't
9 exist, I can't force them to produce something --

10 MR. GREENBERG: Absolutely, Your Honor.

11 DISCOVERY COMMISSIONER: -- that doesn't exist.

12 MR. GREENBERG: And exact -- and that's why I just want the record clear that
13 they've made the effort, we have a declaration from a person with knowledge explaining
14 what they did to investigate this.

15 DISCOVERY COMMISSIONER: Apparently, you already have that.

16 MR. GREENBERG: I do not, Your Honor. I have contradictory testimony from Mr.
17 Nady. It's in my moving papers. We can go --

18 DISCOVERY COMMISSIONER: Well --

19 MS. RODRIGUEZ: He --

20 MR. GREENBERG: -- over it right now, if you would like.

21 DISCOVERY COMMISSIONER: I -- we're not going over it right now.

22 MR. GREENBERG: Well --

23 MS. RODRIGUEZ: We have interrogatory responses. We have requests for
24 production of document responses on that issue. We now have two PMK depositions on that
25 issue 'cause he asked the same questions again in the second deposition. I think he's

1 thoroughly covered this in terms of wanting to impeach my client at trial, if he so cares to,
2 but I don't know what purpose another --

3 DISCOVERY COMMISSIONER: You need to --

4 MS. RODRIGUEZ: -- declaration --

5 DISCOVERY COMMISSIONER: -- double-check and make sure that in whatever
6 program you're using, QuickBooks, whatever you're using, that you can have a way -- if you
7 can -- to show the hours each employee worked per paycheck I guess is the best way to say
8 it. That's what you're going to need to show, and how they calculated that, you know.

9 MS. RODRIGUEZ: And what I said very early on in this case is that A Cab is not a
10 sophisticated --

11 DISCOVERY COMMISSIONER: Okay.

12 MS. RODRIGUEZ: -- company.

13 DISCOVERY COMMISSIONER: We're beyond that. It doesn't matter. They're
14 operating in Nevada, and they have to follow Nevada law.

15 MS. RODRIGUEZ: And the Nevada --

16 DISCOVERY COMMISSIONER: I don't care if they're sophisticated --

17 MS. RODRIGUEZ: Right.

18 DISCOVERY COMMISSIONER: -- or they're unsophisticated. It doesn't matter.
19 The law applies to them.

20 MS. RODRIGUEZ: Absolutely, Your Honor, and I'm just trying to say that a lot of
21 this stuff is on paper. The trip sheets are paper, and he just doesn't want to look at the paper.

22 DISCOVERY COMMISSIONER: Well, he's going to look at -- he hasn't looked at
23 them yet because he doesn't have them. As soon as he gets them, I'm assuming he's going
24 to look at them.

25 MS. RODRIGUEZ: They've always been available to him, Your Honor. He wanted

1 'em copied electronically, so that has been a large undertaking.

2 DISCOVERY COMMISSIONER: Okay.

3 MS. RODRIGUEZ: He's always been able to look at these.

4 DISCOVERY COMMISSIONER: All right. Well, I --

5 MS. RODRIGUEZ: We didn't even copy these for the Department of Labor or the
6 Department of Justice. They came and they looked --

7 DISCOVERY COMMISSIONER: Well, they --

8 MS. RODRIGUEZ: -- at the trip sheets.

9 DISCOVERY COMMISSIONER: -- aren't suing you right now in Civil Court.

10 Let me just say this so I make it really clear. I think everybody understands
11 what information they need. If you don't, I can't help you. But the issue is whether we have
12 that information. We have payroll, so we know what each employee was paid for the
13 relevant time frame.

14 MR. GREENBERG: Yes.

15 DISCOVERY COMMISSIONER: You're going to have the trip sheets, so you're
16 going to know the hours each employee worked. I think for the time that we've spent on this
17 you probably have enough time to compare the trip sheets with the payroll. If there is a
18 program that the Defendants had or utilized to do just what I said, it needs to be produced. I
19 don't care whether it's called J Roll or payroll, it doesn't matter to me. It needs to be
20 produced. If you believe you've already produced it, then you need to explain that one more
21 time.

22 We do have a problem between 2010 and 2013 because we are missing
23 information. So will that information -- will we be able to calculate it based on the trip
24 sheets and the payroll that we do have, I don't know the answer to that.

25 MR. GREENBERG: I want to thank Your Honor for being patient with us. I think

1 you --

2 DISCOVERY COMMISSIONER: Well --

3 MR. GREENBERG: -- do understand --

4 DISCOVERY COMMISSIONER: -- I'm afraid --

5 MR. GREENBERG: -- the --

6 DISCOVERY COMMISSIONER: -- I haven't been as patient as I probably should
7 be.

8 MR. GREENBERG: No. Your Honor, I may not agree fully with the way you're
9 approaching things, but I think you do understand the dynamics here very well, okay, and I
10 think we've taken up a lot of your time.

11 Maybe we should move forward. We'll be back on February 8th.

12 DISCOVERY COMMISSIONER: And I'll look forward to seeing you. Here's my
13 only concern though, and I mean this seriously. We have to confirm all the rates of pay on
14 the insurance, and there is one missing, so that needs to be resolved. And then we have to
15 figure out -- I think you all are going to have to figure out how to contact each class member.
16 I mean, I don't know how you're planning on doing that. I'll leave that -- Plaintiffs' counsel,
17 I'll leave that to you. But somehow you're going to have to put together a compilation or
18 something to prove your damages.

19 MR. GREENBERG: Yes, Your Honor.

20 DISCOVERY COMMISSIONER: So I'm --

21 MR. GREENBERG: I appreciate your thoughts.

22 DISCOVERY COMMISSIONER: All right. Is there anything further today that we
23 need to deal with?

24 Motion to compel production of documents is granted within the parameters
25 that we've discussed. I am going to have Plaintiffs' counsel prepare the Report and

1 Recommendation.

2 Ms. Rodriguez, do your best to review it and approve it as to form and content.
3 Last time it took me over an hour-and-a-half because I pulled the transcript, I read it, I added
4 to it, and as much as I appreciate being able to help you all, I want you to work harder
5 together on it, and I believe what I did is I modified your Report and Recommendations, Mr.
6 Greenberg.

7 MR. GREENBERG: Yes, Your Honor.

8 DISCOVERY COMMISSIONER: Okay.

9 THE CLERK: Status check is February 24th at 11.

10 MS. RODRIGUEZ: Your Honor, I will be in a federal trial that week. May I have a
11 status check a week later? I know --

12 DISCOVERY COMMISSIONER: It's only for Mr. Greenberg.

13 MS. RODRIGUEZ: Okay.

14 DISCOVERY COMMISSIONER: So you don't have to be here on the 11th. But I
15 don't -- I'm -- I joked with somebody the other day, and they thought I was serious, so I'm
16 not joking anymore. Try to get it done timely. You have ten days to do it.

17 MS. RODRIGUEZ: Thank you, Judge.

18 DISCOVERY COMMISSIONER: Thank you.

19 MR. GREENBERG: Thank you, Your Honor.

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

21 * * *

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

24 

25 FRANCESCA HAAK
Court Recorder/Transcriber

43

43

Allen D. Levine
CLERK OF THE COURT

MICHAEL MURRAY, ET AL.,

CASE NO. A669926

Plaintiffs,

DEPT. I

VS.

A CAB TAXI SERVICE LLC, ET AL.,

Defendants.

BEFORE THE HONORABLE BONNIE A. BULLA, DISCOVERY COMMISSIONER

WEDNESDAY, FEBRUARY 8, 2017

RECORDER'S TRANSCRIPT OF PROCEEDINGS
PLAINTIFFS' MOTION TO COMPEL COMPLIANCE WITH SUBPOENA

APPEARANCES:

For the Plaintiffs:

LEON GREENBERG, ESQ.

For the Defendants:

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

RECORDED BY: FRANCESCA HAAK, COURT RECORDER

1 Las Vegas, Nevada - Wednesday, February 8, 2017, 9:10 a.m.

2 * * * * *

3 DISCOVERY COMMISSIONER: Murray.

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

5 DISCOVERY COMMISSIONER: Good morning.

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

8 MR. WALL: And Michael Wall, for the Defendants.

9 DISCOVERY COMMISSIONER: Good morning. Do I have anyone here
10 representing the law firm that was subpoenaed, Kamer Zucker and Abbott?

11 MR. GREENBERG: No, Your Honor, and none of the parties requested their
12 appearance. Speaking for Plaintiff, we certainly don't want to burden them unnecessarily, if
13 possible.

14 DISCOVERY COMMISSIONER: All right.

15 MS. RODRIGUEZ: I did not request that Mr. Kamer attend. It appears, after
16 reviewing Mr. Greenberg's reply, that if Your Honor wants an affidavit from Mr. Kamer, I
17 can get that, but I'm further trying to discuss this with Mr. Greenberg as to what we're
18 actually looking for here.

19 DISCOVERY COMMISSIONER: Mr. Greenberg, let me just make sure I understand
20 what you want. You want the documents that the Defendants produced to the Department of
21 Labor, which would provide you with information of all hours and wages paid to the
22 Defendant cab drivers, and I believe it was a four-month period because that's what they
23 compiled from their data.

24 MR. GREENBERG: Your Honor, there were four pay periods. They reviewed the
25 trip sheets for those four pay periods. They created Excel files to analyze the hours shown

1 by the trip sheets for each driver for those four pay periods. We have Mr. Nady's testimony
2 on this, the process that was involved. He stated at his deposition those Excel files were
3 given to the DOL. That's what we're looking for, Your Honor.

4 DISCOVERY COMMISSIONER: Okay. So let's just be very specific. We're
5 looking for the Excel files that were given to the Department of Labor, and I had a four-
6 month period, but you're saying four pay periods. Is it one pay period a month?

7 MR. GREENBERG: Two weeks, Your Honor. Two weeks. Each pay period is two
8 weeks.

9 DISCOVERY COMMISSIONER: Okay. So we have two months of data?

10 MR. GREENBERG: Yes, Your Honor. It's not consecutive. They were four random
11 pay periods from different parts of the year Mr. Nady testified.

12 DISCOVERY COMMISSIONER: I understand. Thank you.

13 Ms. Rodriguez --

14 MS. RODRIGUEZ: Yes, Your Honor.

15 DISCOVERY COMMISSIONER: -- all of the information that Plaintiffs' counsel is
16 seeking in what I'm going to deem an Excel spreadsheet, for lack of a better phrase -- I think
17 that's what it is, correct? Is that right?

18 MS. RODRIGUEZ: No one has seen that document, Your Honor, but that's my
19 understanding, yes.

20 DISCOVERY COMMISSIONER: How can you have not seen something you said
21 you required -- or your position is you instructed your client to compile for DOL?

22 MS. RODRIGUEZ: They're totally separate issues, and basically hearing what he's
23 saying --

24 DISCOVERY COMMISSIONER: Okay. Stop. I'm done with this. I want to know
25 exactly the documents that are being requested from the Plaintiff -- or to the Plaintiff from

1 the Defendant, those documents that were presented to the DOL. What are we looking at?
2 What is the Plaintiff requesting here?

3 MS. RODRIGUEZ: They're none of these, Your Honor.

4 DISCOVERY COMMISSIONER: What do you mean? What is none of these?

5 MS. RODRIGUEZ: There are basically three documents that we are asserting a
6 privilege for. None of those three documents are what he just described.

7 DISCOVERY COMMISSIONER: Are those --

8 MS. RODRIGUEZ: None of these --

9 DISCOVERY COMMISSIONER: -- three documents -- were those three documents
10 given to the DOL?

11 MS. RODRIGUEZ: No, Your Honor, they were not. They were not disclosed to the
12 DOL.

13 DISCOVERY COMMISSIONER: What are they?

14 MS. RODRIGUEZ: They were documents prepared when the DOL was commence --
15 right in the middle of their audit, A Cab did a whole bunch of different analyses to -- for
16 tips, and for credit cards, and there was a big argument with the DOL about the IRS
17 declaration. It has nothing to do with what he's looking for. They were never disclosed to
18 the DOL. They're internal documents that were only between Mr. Nady, Mr. Kamer, and
19 myself, and --

20 DISCOVERY COMMISSIONER: What did those internal documents consist of?
21 Are they compilations of information from data that you already have and that has been
22 produced to the Plaintiff?

23 MS. RODRIGUEZ: Not in total, but yes, portions.

24 DISCOVERY COMMISSIONER: So I feel like every time that you all are in front of
25 me, there is a disconnect between what the Plaintiff is asking for, and what the Defendant

1 thinks the Plaintiff is asking for, and what actually may exist. Now, why is that? Why is it
2 that every single time you're in front of me I just truthfully do not believe you have an idea
3 of what the other side is really asking for. Why is that?

4 MS. RODRIGUEZ: Well --

5 DISCOVERY COMMISSIONER: Are you not communicating with each other?

6 MS. RODRIGUEZ: We are not, Your Honor.

7 DISCOVERY COMMISSIONER: Because when I read through the documents or
8 the pleadings that were presented -- and I did look at the reply specifically -- it seemed to me
9 that the information from Mr. Greenberg's discussions with Mr. Kamer, who, unfortunately,
10 is not here, seems to me that it was information that was provided to the DOL that the
11 Plaintiff was looking for, specifically I guess four pay periods, not four months, but for four
12 pay periods of random selection that would determine the wages and hours that were paid by
13 the Defendant for cab drivers, correct?

14 MS. RODRIGUEZ: I don't have that document, Your Honor. Mr. Kamer doesn't
15 have that document. We've given him a full authorization to get that directly from the DOL
16 if, in fact, it exists, Your Honor.

17 DISCOVERY COMMISSIONER: Why wouldn't you keep a copy of something that
18 was given to the DOL, as their --

19 MS. RODRIGUEZ: Your Honor --

20 DISCOVERY COMMISSIONER: -- lawyer for the Defendant?

21 MS. RODRIGUEZ: -- we have been here on multiple occasions on that issue. I don't
22 believe it exists, Your Honor. I really don't. And I've represented that to the Court. I've
23 never seen it. If the DOL has something that would satisfy him, he has full authorization.
24 We've requested everything from the DOL as well to see what do they have. Here it is. I
25 don't think it exists, Your Honor.

1 DISCOVERY COMMISSIONER: Do you have everything from the DOL?

2 MS. RODRIGUEZ: No, Your Honor, we do not. That was just kind of a double-
3 check because I've given him everything that we gave to the DOL, that A Cab gave to the
4 DOL, but as a double assurance, I requested everything from the DOL to say give me
5 everything you have. Let me turn it over to Mr. Greenberg.

6 DISCOVERY COMMISSIONER: Did you give the DOL Excel files?

7 MS. RODRIGUEZ: No, I don't believe so, no.

8 DISCOVERY COMMISSIONER: Mr. Greenberg, did you talk to Mr. Kamer?

9 MR. GREENBERG: I did speak with Mr. Kamer, and in my discussion with him he
10 told me the materials at issue had been shared with the Department of Labor, okay?
11 Obviously, that's an important issue in terms of --

12 DISCOVERY COMMISSIONER: I'm sorry. What had --

13 MR. GREENBERG: He had told me that the materials at issue -- we're talking about
14 three items, okay? The most important one, which I address in my papers, is the 12/10/11,
15 12/23/11 Excel, with a number 1 on the privilege list.

16 Mr. Kamer told me that these materials had been shared with the Department
17 of Labor, but I want to be clear to Your Honor he did not confirm or identify any of the
18 specific materials to me at all, so is it conceivable he was talking about some and not others?
19 I don't want to preclude that possibility, Your Honor. Okay. I don't want to misrepresent
20 his communication with me, but that was his communication with me, Your Honor.

21 I'm working off of the testimony of Defendants' witness. Defendants' witness
22 was very clear that these four pay periods were compiled; they were given to the Department
23 of Labor; he testified extensively at his deposition about it. You have it in the Exhibit. I can
24 refer you --

25 DISCOVERY COMMISSIONER: Did you -- I understand --

1 MR. GREENBERG: Yeah.

2 DISCOVERY COMMISSIONER: -- what he said. That doesn't mean it exists.

3 MR. GREENBERG: Yes, Your Honor.

4 DISCOVERY COMMISSIONER: Did you talk with Mr. Kamer about this four-pay-
5 period compilation that was apparently or allegedly done and presented to the Department of
6 Labor?

7 MR. GREENBERG: Your Honor, I did not discuss that with Mr. Kamer. In Exhibit
8 A to the reply, there is a one-page sheet which Defendants have asserted is all that remains of
9 these four Excel pay periods. They made the four Excels. Then they made a one-page
10 summary of the four Excels. Exhibit A, the very first page, it lists four pay periods, as you --

11 DISCOVERY COMMISSIONER: Unfortunately, you didn't provide a courtesy copy
12 to us, so I do not have Exhibit A.

13 MR. GREENBERG: Your Honor, if I could approach?

14 DISCOVERY COMMISSIONER: Yes.

15 MR. GREENBERG: I apologize, Your Honor.

16 The column there, Your Honor, it says Pay Periods, first, the first line is the
17 same pay period that's identified in Ms. Rodriguez's privilege log, 2/11 through 2/24/2011
18 or 2010, and she describes this in her privilege log as an internal compilation of drivers' trip
19 sheets.

20 Your Honor, I'm just going on what I have here.

21 DISCOVERY COMMISSIONER: Well --

22 MR. GREENBERG: I mean, it's completely identical. Presumably it is, in fact, the
23 original Excel file or one of the four Excel files that Mr. Nady testified were collected and
24 that is identified further in that one-page document I just showed Your Honor.

25 Defendants, in their opposition, are extremely scant in their description of what

1 this thing is that they call Defendant privilege number 1, and it's sort of a difficult situation.
2 I respect the process here, Your Honor. I respect the integrity of the privilege issue, and so
3 forth, and obviously the Court has to be mindful of that.

4 But, on the other hand, I can't -- you understand what I'm saying, Your
5 Honor -- conclude from what's in the record here that, in fact, this is making any sense. I
6 mean, we don't really know what this is. We certainly don't know on this record whether
7 this was given to the Department of Labor or not. I mean, Mr. Kamer presumably could, you
8 know, corroborate whether that Defendant privilege 1 actually went to the DOL or not,
9 which I think would be determinative of -- I mean, if it went, then that's the end of it. They
10 should produce it to me, Your Honor. There clearly can be no privilege if they disclosed it in
11 that fashion, so --

12 DISCOVERY COMMISSIONER: Well, and the work product privilege is not
13 absolute, and so the issue is can the Plaintiff obtain the information in some other fashion,
14 and, presumably, if you have all the Excel spreadsheets, you can. But the issue is what did
15 the Department of Labor actually review in terms of this internal analysis, and we don't have
16 the answer to that question. Mr. Kamer apparently is not here today. I would have thought
17 the Defendants would have provided me with an answer to that question.

18 With respect to the internal analysis of driver time from 12/10/11 to 12/23/11
19 I'm assuming, Ms. Rodriguez, that this information was compiled off of the Excel
20 spreadsheets.

21 MS. RODRIGUEZ: It was not, Your Honor, and I --

22 DISCOVERY COMMISSIONER: Well, how did you derive it, since this is the
23 information you've been trying to get from day one?

24 MS. RODRIGUEZ: It's right off the trip sheets, Your Honor. It's right off the trip
25 sheets.

1 DISCOVERY COMMISSIONER: Off the trip sheets. So there's no attorney opinion
2 in there. There's no attorney evaluation. It's simply pulling the information off of the trip
3 sheets and putting in this internal analysis of driver time.

4 MS. RODRIGUEZ: Your Honor, I would offer, if this is a solution, because the
5 document that we're asserting the privilege for again is not in the least what he thinks it is. It
6 does not -- it just happens to overlap to that December -- that first pay period that he wants.
7 It does not show all of the items in his Exhibit A. It doesn't show any of those items. It
8 doesn't show wages. It doesn't show minimum wage. It doesn't show shifts. It doesn't
9 correlate in the least. And I would be happy to --

10 DISCOVERY COMMISSIONER: Well, what does it show, and why --

11 MS. RODRIGUEZ: Well, Your Honor --

12 DISCOVERY COMMISSIONER: -- is it so important that you can't turn it over if
13 it's just numbers?

14 MS. RODRIGUEZ: Well, it's an analysis, Your Honor.

15 DISCOVERY COMMISSIONER: An analysis of what?

16 MS. RODRIGUEZ: I cannot disclose that, Your Honor, before Mr. Greenberg.

17 DISCOVERY COMMISSIONER: Why don't you provide me with the document.

18 MS. RODRIGUEZ: Well, I only have page 1. It's a long document, but I can show
19 you -- I can approach, Your Honor, and show you that it does not have those items, but the
20 remainder of the pages would have the remainder of the analysis.

21 [Ms. Rodriguez hands document to the Marshal]

22 MS. RODRIGUEZ: And, Your Honor, as far as Mr. Kamer, this is the first -- I'm
23 shocked to hear what Mr. Greenberg is representing to the Court, that Mr. Kamer said that he
24 disclosed these things to the DOL because that's absolutely --

25 DISCOVERY COMMISSIONER: I'm not sure that's what Mr. Greenberg said.

1 MS. RODRIGUEZ: Well, he indicated in his discussions that Mr. Kamer had
2 indicated these documents were disclosed to the DOL. Mr. Kamer has never made that
3 indication in front of me, or I would be very doubtful that that was the communication to Mr.
4 Greenberg. I'd be happy to get an affidavit or have Mr. Kamer appear because these
5 absolutely were not disclosed to the DOL.

6 DISCOVERY COMMISSIONER: So this information that I'm looking at appears to
7 be shift times, right? I mean, that's what it looks like to me.

8 MS. RODRIGUEZ: It's, yeah --

9 DISCOVERY COMMISSIONER: Drivers --

10 MS. RODRIGUEZ: -- it's trip.

11 DISCOVERY COMMISSIONER: -- trip.

12 MS. RODRIGUEZ: It's each trip.

13 DISCOVERY COMMISSIONER: Right.

14 MS. RODRIGUEZ: Right.

15 DISCOVERY COMMISSIONER: And this --

16 MS. RODRIGUEZ: For that --

17 DISCOVERY COMMISSIONER: -- information was compiled?

18 MS. RODRIGUEZ: By hand.

19 DISCOVERY COMMISSIONER: By hand off of the trip sheets.

20 MS. RODRIGUEZ: Correct.

21 DISCOVERY COMMISSIONER: All right. Now, this is just page 1.

22 MS. RODRIGUEZ: Right.

23 DISCOVERY COMMISSIONER: How many pages are there of this type of
24 information?

25 MS. RODRIGUEZ: I honestly don't know, Your Honor. It's -- I didn't print 'em all

1 out. I'm sorry. Because I was trying to determine which ones we were actually arguing
2 about, but --

3 DISCOVERY COMMISSIONER: I think we're arguing about all of them.

4 MS. RODRIGUEZ: Well, Your Honor, my understanding, if I may be heard on this,
5 because there is a complete disconnect, and you're asking why there's a disconnect, and
6 that's because there's never an EDCR conference on these issues. I don't find out until we
7 get here what he wants, and I think that's why the rules of --

8 DISCOVERY COMMISSIONER: I don't think --

9 MS. RODRIGUEZ: -- discovery are important.

10 DISCOVERY COMMISSIONER: -- that's my problem. I think that's your problem
11 and Mr. Greenberg's problem for not communicating better.

12 I don't know why this suddenly turned into something so personal between the
13 two of you, but it is at a level that I do not appreciate, and the personal attacks need to stop.
14 The --

15 MS. RODRIGUEZ: Your Honor --

16 DISCOVERY COMMISSIONER: You all --

17 MS. RODRIGUEZ: -- I'm defending --

18 DISCOVERY COMMISSIONER: -- have made this --

19 MS. RODRIGUEZ: -- myself.

20 DISCOVERY COMMISSIONER: -- into something --

21 MS. RODRIGUEZ: I'm defending myself, and I want to be heard on that because I
22 have never personally attacked Mr. Greenberg, but he has consistently personally attacked
23 me. At this point I am defending myself, and I intend to put it in all the pleadings because I
24 also feel that that's very unprofessional. We're both doing our job. I'm representing my
25 client, and yet every pleading turns into a personal attack upon me.

1 DISCOVERY COMMISSIONER: I don't disagree with you, which is why I just said
2 what I said. But it doesn't change the fact that the two of you are not communicating, and if
3 it's because Mr. Greenberg has made this personal, and you are offended by it, which I
4 understand, based on the history, that just simply means you're not communicating, and it's
5 a problem for both of you and your clients, so you need to change this course, you need to
6 change it because I understand both of you are defending your clients, so defend your clients.

7 And stop making this personal, Mr. Greenberg.

8 MR. GREENBERG: My apologies, Your Honor. That is inappropriate conduct on
9 my part.

10 DISCOVERY COMMISSIONER: Well --

11 MR. GREENBERG: I don't mean to do that.

12 DISCOVERY COMMISSIONER: -- I think it might have started with Ms.
13 Rodriguez's application for one of the District Court judge positions.

14 MR. GREENBERG: I understand, Your Honor, but, as a member of the Bar, I think I
15 have an obligation to provide my view on these issues, and I did, Your Honor, and --

16 DISCOVERY COMMISSIONER: All right. Well --

17 MR. GREENBERG: -- and that is --

18 DISCOVERY COMMISSIONER: -- then you cannot be surprised why you are here
19 with the lack of communication that has been going on because of that. You can't be
20 surprised why we have problems in this case communicating, and I'm not here to say who is
21 right and who is wrong in this. I am just saying that when you start making it very personal,
22 and you take it to a level that -- whether you believe you're right or wrong -- when you take
23 it to that level, it becomes very difficult to manage a case from a judicial perspective because
24 I don't know if you -- you know, I just don't know what's going on with both of you, but
25 you need to figure out a way to communicate more effectively with each other.

1 Ms. Rodriguez, the page that you showed me does not appear to me to be
2 privileged material, period. It's a compilation of data from trip sheets. It does not involve
3 attorney-client information, opinion. It is very basic information, and it is information that is
4 relevant in this case, and I'm going to make you turn it over, not your opinions, not the
5 letters that went with it, but just the data that's in that document, including the name of the
6 drivers because we are now class certified. And I will be happy to give you 2.34E relief on
7 it, and you can talk to the Judge about it. But even if one could argue that it -- that this data
8 was prepared -- I don't know if the DOL is really litigation or just a government
9 investigation, I'm not sure, but let's just say it's --

10 MS. RODRIGUEZ: There is -- there is a federal --

11 DISCOVERY COMMISSIONER: So let's --

12 MS. RODRIGUEZ: -- pleading.

13 DISCOVERY COMMISSIONER: -- say it's in anticipation of having to litigate these
14 issues in front of the DOL. Even if that's the case, it is a qualified privilege, and the
15 information that compiles this data is essentially numbers. It is not attorney opinion,
16 analysis, other than taking numbers from trip sheets that have been disclosed -- so the
17 underlying information is not privileged or confidential -- and putting it together in a format
18 that was apparently in preparation for the DOL hearing.

19 Now, I don't know if it actually was presented to the DOL. Mr. Kamer is not
20 here. I'm not -- I agree that if it goes to a third party, then technically if there was a privilege
21 attached to it, it is waived. But that's -- you're not claiming attorney-client privilege.
22 You're claiming work product privilege, which is a different privilege, right?

23 MS. RODRIGUEZ: M-hmm.

24 DISCOVERY COMMISSIONER: Different privilege. And I just don't find, based
25 on the information that you showed me, that it constitutes the type of work product privilege

1 that we're concerned about. It's numbers derived from other information that has already
2 been disclosed and, frankly, should probably be produced too.

3 So I don't know how many pages we're dealing with. I'm not suggesting you
4 turn over any letters or if there are opinions within that document, then you would need to
5 redact them.

6 MS. RODRIGUEZ: Okay.

7 DISCOVERY COMMISSIONER: But for all the drivers' names and the shift
8 information that's there, that needs to be produced.

9 And if you want 2.34E relief, I will give it to you, but you need to ask me for
10 it.

11 MS. RODRIGUEZ: I'm sorry. I don't even know what that is, Your Honor. I don't
12 know the rule --

13 DISCOVERY COMMISSIONER: Oh, do you --

14 MS. RODRIGUEZ: -- that you're reviewing.

15 DISCOVERY COMMISSIONER: That would just be I would let you --

16 MS. RODRIGUEZ: Appeal to the District Court Judge on that issue.

17 DISCOVERY COMMISSIONER: Well, I won't have you produce it until after the
18 District Court Judge signs off on the Report and Recommendations.

19 MS. RODRIGUEZ: That's probably a good idea, Your Honor, because I really need
20 to go through the data. I'm hopeful that I'll be able to redact the items that you mentioned --

21 DISCOVERY COMMISSIONER: Okay.

22 MS. RODRIGUEZ: -- and just produce the data itself.

23 DISCOVERY COMMISSIONER: Well, I'm hoping the data is just in a sequential --

24 MS. RODRIGUEZ: Right.

25 DISCOVERY COMMISSIONER: -- sheet of documents, like -- I don't know -- 15

1 pages. I don't know how many.

2 MS. RODRIGUEZ: Right.

3 DISCOVERY COMMISSIONER: I'm making this up. But I'm --

4 MS. RODRIGUEZ: I think that's about right.

5 DISCOVERY COMMISSIONER: -- I'm hoping that it's just a very limited number
6 of pages within whatever other document it may be contained in, and I'm not having you
7 produce anything else, just those records within that timeframe, those four periods of time
8 that we've discussed that would just deal with, you know.

9 MS. RODRIGUEZ: There is no -- just to be clear, we don't have --

10 DISCOVERY COMMISSIONER: You have dates --

11 MS. RODRIGUEZ: There are no --

12 DISCOVERY COMMISSIONER: -- on there.

13 MS. RODRIGUEZ: Right, right. There's only one reference, and, again, I just want
14 Mr. Greenberg not to be surprised that first there's only, yeah, the dates that we talked about,
15 December 10th, 2011, through December 23rd, 2011, not the other three pay periods, and it is
16 not going to reflect, again, doesn't have any money, it doesn't have any wages in there.

17 DISCOVERY COMMISSIONER: Right. I know that.

18 MS. RODRIGUEZ: Okay.

19 DISCOVERY COMMISSIONER: I understand. It has the shift information.

20 Mr. Greenberg.

21 MR. GREENBERG: Your Honor, my only further request is that it's produced to me
22 be in the Excel file form, that's all. They have to redact it as Your Honor instructed.

23 MS. RODRIGUEZ: It's not --

24 DISCOVERY COMMISSIONER: You know what?

25 MS. RODRIGUEZ: -- in Excel.

1 DISCOVERY COMMISSIONER: You're going to have to figure that out. I think 15
2 pages you can deal with because I suspect that's about what it is. You can scan it and put it
3 into whatever program you see fit, but I'll have 'em produce the hard copies.

4 MR. GREENBERG: Your Honor, if it exists in Excel, that's what was created, and
5 I'm entitled to it in its original form.

6 DISCOVERY COMMISSIONER: Well, you're entitled to it if I recommend you're
7 entitled to it, but I can have them produce it in however they keep it in their records, and they
8 keep it as hard copies. Read Rule 34.

9 MR. GREENBERG: Your Honor, if they keep it in an Excel format -- Mr. Kamer
10 indicated it exists in an Excel format.

11 DISCOVERY COMMISSIONER: Well, unfortunately --

12 MR. GREENBERG: That was --

13 DISCOVERY COMMISSIONER: -- Mr. Kamer's not here, so I can't confirm that.

14 MR. GREENBERG: Well, Your Honor, if Your Honor's making a ruling they don't
15 have to give it to me in Excel if it exists in an Excel, that's your ruling.

16 DISCOVERY COMMISSIONER: Why don't --

17 MR. GREENBERG: I don't want to argue --

18 DISCOVERY COMMISSIONER: -- we do this. Why don't we do this. Why
19 doesn't -- why don't I have Ms. Rodriguez just double-check whether they kept it in an
20 Excel format or not. If they did --

21 MS. RODRIGUEZ: I will.

22 DISCOVERY COMMISSIONER: -- she'll let you know, and then you can decide if
23 you want it. And I don't know how difficult it is, but you can pay the cost of whatever it is
24 to put it on a thumb drive -- I just don't know -- or whatever mechanism you deem fit.

25 MR. GREENBERG: I appreciate Your Honor keeping that issue open, as you've just

1 indicated.

2 DISCOVERY COMMISSIONER: Okay. Well, it's only open to the extent that Ms.
3 Rodriguez is going to confirm whether or not they have it in an Excel format.

4 MR. GREENBERG: Your Honor --

5 DISCOVERY COMMISSIONER: Okay?

6 MR. GREENBERG: -- I'm not asking them to put it in any format that they don't
7 already have it in.

8 DISCOVERY COMMISSIONER: Okay. And -- but otherwise I am going to require
9 them to provide you with the hard copies within five days after the District Court Judge signs
10 the Report and Recommendations, and that will be the 2.34E relief so that you do not have to
11 provide it.

12 Now, if you decide to provide it, that's fine. You can certainly do that. I don't
13 think that there is any information contained in the type of documents that I am requiring you
14 to produce that would be the type of work product information that we are concerned about
15 protecting.

16 MR. GREENBERG: Yes, Your Honor.

17 DISCOVERY COMMISSIONER: And that will give you the information.

18 Is there anything else that I have missed?

19 MR. GREENBERG: In respect to this motion, Your Honor, I don't think there's
20 anything further to address. There could be other issues to address in this case, but we've
21 taken up a bit of your --

22 DISCOVERY COMMISSIONER: I --

23 MR. GREENBERG: -- time already today, Your Honor.

24 DISCOVERY COMMISSIONER: -- fully expect that there will be, and I'm happy to
25 hear them. I just -- and I say this with all due respect to both of you, all of you out there --

1 Sorry, Mr. Wall, didn't mean to leave you out. I say this with all due respect to everyone, to
2 all of you, please make an effort to communicate more effectively with each other.

3 MR. GREENBERG: Yes, Your Honor.

4 DISCOVERY COMMISSIONER: Just try. All right.

5 Plaintiffs' motion to compel is granted within the parameters discussed; no
6 fees or costs. I do need my Report and Recommendations in ten days; Plaintiffs' counsel,
7 I'm going to have you prepare it; run it by defense counsel to approve as to form and
8 content.

9 I will -- assuming that we're talking about 15 pages, the Defendant will
10 produce them at their cost. I just don't think that's going to be a significant factor.

11 If there is an indication that the information exists on an Excel, Ms. Rodriguez,
12 I expect you to pick up the phone and talk to Plaintiffs' counsel and let him know that, and
13 then he can decide how he wants it produced, if there's a way to do it where it's not overly
14 burdensome to the Defendant.

15 MS. RODRIGUEZ: Right.

16 DISCOVERY COMMISSIONER: Okay?

17 MS. RODRIGUEZ: Thank you, Your Honor.

18 DISCOVERY COMMISSIONER: All right.

19 MR. GREENBERG: Thank you, Your Honor. It's been clear. Thank you for your
20 assistance.

21 DISCOVERY COMMISSIONER: Oh, status check. Hang on.

22 THE CLERK: Status check is March 17th at 11.

23 DISCOVERY COMMISSIONER: But I think Mr. Greenberg has this down to a fine
24 art, so I don't expect to see you.

25 MR. GREENBERG: Hope not to burden the Court further on this, yes, Your Honor,

1 thank you.

2 MS. RODRIGUEZ: Thank you.

3 [Proceeding concluded at 9:36 a.m.]

4 * * *

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

7 

8 FRANCESCA HAAK

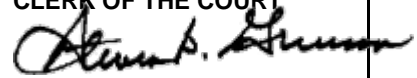
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**EIGHTH JUDICIAL DISTRICT COURT
CIVIL/CRIMINAL DIVISION
CLARK COUNTY, NEVADA**

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
TUESDAY, FEBRUARY 14, 2017

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

APPEARANCES:

For the Plaintiffs:	LEON GREENBERG, ESQ.
For the Defendants:	MICHAEL K. WALL, ESQ.

RECORDED BY: Lisa Lizotte, Court Recorder

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1 LAS VEGAS, NEVADA, TUESDAY, FEBRUARY 14, 2017, 9:06 A.M.

2 * * * * *

3 THE CLERK: Page 12, Michael Murray versus A Cab Taxi. Case Number
4 A669926.

5 MR. GREENBERG: Good morning, Your Honor.

6 THE COURT: Good morning.

7 MR. GREENBERG: Leon Greenberg for plaintiffs.

8 MR. WALL: Good morning, Your Honor. Michael Wall for defendants.
9 Esther Rodriguez, who is primary counsel for defendants, is before Judge Delaney
10 right now, because these matters are scheduled over each other.

11 THE COURT: Okay. Well, do you want to argue the whole thing? Do you
12 want the lay of the land? Or how do you guys want to proceed?

13 MR. WALL: I'm prepared to go forward, Your Honor.

14 THE COURT: I'm sorry?

15 MR. WALL: I am prepared to go forward, Your Honor.

16 THE COURT: All right.

17 MR. WALL: Although it would seem to make sense, since counsel for Dubric
18 and counsel for -- and Esther are before Judge Delaney at the moment, it would
19 make sense to find out what she's going to do first.

20 THE COURT: Okay. Mr. Greenberg, it's your motion.

21 MR. GREENBERG: Your Honor, I take it the Court has reviewed the situation
22 and why this was brought before the Court on an expedited basis. I actually hoped
23 to have this before Your Honor last week, but Your Honor of course has been busy
24 with other matters.

1 THE COURT: Uh-huh.

2 MR. GREENBERG: What's going on here, Your Honor, as I'm sure the Court
3 can appreciate, is something in complete derogation of what the Court has ordered
4 in this case. These class claims are before this Court. Your Honor, in June of last
5 year, signed an order certifying these class claims. And the defendants, unhappy
6 with Your Honor's order and the result of facing the prosecution of these class
7 claims in this case, are now going to Judge Delaney in a case that was filed two
8 and a half years later, entering into a collusive agreement with the single plaintiff
9 there, and convincing Judge Delaney that she should also certify the class claims
10 for purposes of settlement.

11 And, Your Honor, there's no reason for this. I mean, I filed a reply
12 on Friday. They do not present to the Court a scintilla, not even the slightest thread
13 of reasoning to justify their conduct in doing that, Your Honor. They say, well, you
14 know, this is in the interest of the class, etcetera. Well, Your Honor, if they want
15 to settle this case, they can come to Your Honor. They don't need my permission.
16 I'm not the gatekeeper here of what they're trying to do before Judge Delaney.

17 There is no reason for them to be proceeding in this fashion, except,
18 quite honestly, Your Honor, to make the prosecution of this case and the vindication
19 of the class members' interest properly in a fair procedure in the light of day where
20 the Court can scrutinize any resolution of those interests as difficult for me as
21 possible. I have consumed now 50 hours of my time running before Judge Delaney,
22 who, for whatever reason, has not ascertained her lack of subject matter jurisdiction,
23 or if she has, she hasn't stated it in the record in the Dubric proceedings so far.
24 She clearly doesn't have subject matter jurisdiction over these claims.

1 THE COURT: Because?

2 MR. GREENBERG: Because Your Honor certified the class in this case.

3 It's as if the plaintiffs said, well, I don't like Your Honor -- I don't like the case I have
4 with Your Honor, so I'm going to go file another case with another judge two and
5 a half years later and see if I can get a better result in that case. Your Honor,
6 when you certified these claims, specified and enjoined the class members from
7 any settlement of the class claims until another order was issued in this case.
8 They can come here, Your Honor, and ask for that order to be issued.

9 They speak of the interest of Ms. Dubric, who was excluded from
10 the class claims here because she had filed her own litigation individually while
11 certification was pending before Your Honor. That motion was pending for a long
12 time, Your Honor, and they opposed it. And Your Honor eventually reached a
13 decision on the merits and certified the class. But if for some reason they feel they
14 have an interest, they can intervene here. They can come before Your Honor. They
15 can say, hey, Mr. Greenberg, Ms. Sniegocki are not representing the class interests
16 properly. Your Honor can certainly entertain that. They can entertain this proposal
17 for settlement. This is going to cause chaos, Your Honor. If Judge Delaney --

18 THE COURT: In the other case --

19 MR. GREENBERG: Yes?

20 THE COURT: Let me ask you a question. In the other case is the class
21 described the same as the class in our case?

22 MR. GREENBERG: Yes, it is, Your Honor. They are seeking to certify for
23 disposition a damages class under Rule 23(b)(3) for disposition of all claims from
24 2009 through date of judgment. Your Honor has certified in this case a damages

1 class through December 31st, 2015. I have a pending motion, Your Honor, to
2 extend the class certification --

3 THE COURT: Right.

4 MR. GREENBERG: -- on damages to the present date. This was all delayed
5 because of the transfer of this case last month inadvertently. We were supposed to
6 be here on January 3rd to argue all of this, Your Honor, and what happened is --

7 THE COURT: Let me just ask Mr. Wall something.

8 MR. GREENBERG: Yes.

9 THE COURT: Do you agree that the class to be certified or the class as it
10 may be certified is the same in both cases?

11 MR. WALL: No, I do not, Your Honor. We don't even know what class will
12 be certified there because there isn't a class certified there.

13 THE COURT: Is there a motion to certify?

14 MR. WALL: At this point there's a motion that is pending. I'm not involved
15 in the Dubric case at all.

16 THE COURT: Okay.

17 MR. WALL: My understanding is that there are proceedings on-going there
18 to certify a class there. That hasn't happened yet. I don't --

19 THE COURT: Well, let me put the onus on you then, Mr. Wall, who I have
20 known many years and respect a lot. Why would we have two cases, two class
21 action cases running at the same time if the classes are identical?

22 MR. WALL: Competing class action cases are common in class action
23 litigation, Your Honor. And before there's a judgment there's no res judicata effect
24 of one Court's order over another's. And so the arguments -- all of the arguments

1 of Mr. Greenberg say this is axiomatic, this is axiomatic, what he says is it's
2 axiomatic that I own the clients and that I own the law and that I own the courthouse.
3 But there's not one single case or citation of any kind of legal authority whatsoever
4 in his motion and the reason is because he's just wrong.

5 The reason he's wrong is because Judge Delaney most certainly
6 does have subject matter jurisdiction over the matter. Subject matter jurisdiction is
7 conferred by statute and the commencement of an action. Anybody can commence
8 an action. You can even have two competing actions at the same time. That may
9 be a basis for a judge in a later action to hold an action in abeyance or to do some
10 other act, but it's not -- it doesn't take away the subject matter jurisdiction of that
11 court to proceed.

12 THE COURT: Okay. And I'm less concerned about that than I am having
13 two lawsuits at the same time in court with identical classes. I mean, all of the
14 advantages of judicial economy, etcetera, etcetera that stem from the use of a
15 class action go right out the window if you've got more than one class, doesn't it?

16 MR. WALL: Those are good arguments to make in an argument to Judge
17 Delaney to hold her action in abeyance while this one proceeds. But this Court
18 has no jurisdiction over Judge Delaney. It has no jurisdiction over Dubric. It has
19 no jurisdiction over --

20 THE COURT: I'm not saying I do.

21 MR. WALL: -- the action that's going there.

22 THE COURT: I'm not saying I do. I'm asking you why would -- what sense
23 does it make to --

24 MR. WALL: It makes perfect sense because the classes are not the same

1 and because Mr. Greenberg doesn't own the class.

2 THE COURT: Ahh. Okay.

3 MR. WALL: He doesn't own the people in the class. And even if his is an
4 opt out class and nobody has opted out, that doesn't mean he owns those clients
5 and they can't bring their own actions and do whatever they want. What it means
6 is if they don't opt out that they will be bound by a decision of this Court, if and when
7 that decision is ever entered, but at the present time they certainly are not. And it
8 makes all the sense in the world --

9 THE COURT: You just said something that intrigues me.

10 MR. WALL: So, Mr. Dubric can bring his own action. What Mr. Greenberg
11 doesn't have in this action --

12 THE COURT: Okay. Keep going.

13 MR. WALL: -- is a class representative. Both of his class representatives
14 have claims that pre-date the statute of limitations. So he can't even proceed with
15 this action. He doesn't have a class representative. He certainly doesn't represent
16 Dubric. He certainly doesn't represent anybody or bring a class representative to
17 extend the date. He just throws that in as a paragraph --

18 THE COURT: Can I ask you --

19 MR. WALL: -- oh, the time has passed, we should extend the date.

20 THE COURT: Mr. Wall, can I ask you a question?

21 MR. WALL: Yes, sir.

22 THE COURT: Now I've forgotten what it was. Hang on a second. You say
23 that the classes are not the same?

24 MR. WALL: I don't know that they will be the same because they haven't

1 been certified yet. And --

2 THE COURT: Well, let's assume that the motion which is to be argued this
3 morning, I gather, is a motion to certify in front of Judge Delaney. Okay, so how
4 would the putative class differ from the class in this lawsuit?

5 MR. WALL: They might be exactly the same. And if they are exactly the
6 same, that would be a basis for asking Judge Delaney to delay her action because
7 -- in preference to this action which existed first --

8 THE COURT: Yeah.

9 MR. WALL: -- but she would not be compelled to do so.

10 THE COURT: Okay.

11 MR. WALL: But there are differences in the two. I don't understand exactly
12 what they are because I haven't been involved in that one. The times are different.
13 There might be some different parties. But even assuming they were the same,
14 even if they were the same there would be no basis for an injunction.

15 THE COURT: Maybe I missed it. Do you -- did you cite authority that says
16 that you can have identical classes split up into two different courts?

17 MR. WALL: I didn't do the papers, Your Honor. And there's no authority
18 cited because the authority or the discussion there is about this being premature
19 and in the wrong court. But I recall a case from the time when -- from years back
20 where a party filed an action and then had problems with service issues, and so
21 filed an identical action. It had nothing to do with class action but filed an identical
22 action. I was counsel in that. And there was a motion brought to dismiss the
23 identical action because it was an identical action.

24 THE COURT: Uh-huh.

1 MR. WALL: And the court dismissed that identical action. And the supreme
2 court issued a writ against that court, saying there wasn't a basis for dismissal and
3 they had every right to pursue the exact same action twice. They could sanitize
4 their record because there was no statute of limitations problem. And the court
5 could refuse to go forward on it, but there wasn't a basis to dismiss it because there
6 was no jurisdictional issue.

7 And that's exactly what we have here. Judge Delaney most definitely
8 has personal jurisdiction over Mr. Dubric. She has subject matter jurisdiction over
9 the matter that is brought before her. And the argument that she should not go
10 forward because of judicial economy and all of those other things should be being
11 made to Judge Delaney and that should be her choice and then it's based on she
12 can consider what's been going on, whether it makes sense to do that as a matter
13 of equity. She can consider a lot of circumstances. She can consider which one
14 was filed first. But it's not just a race to the courthouse that carries the day on that
15 kind of an argument. She can consider whether the classes are the same or not
16 the same; whether there has been any shecanery, a collusive action.

17 All of the pejorative phrases that get thrown at us, there's no basis
18 for them because there's no law supporting the argument that this Court should
19 be enjoining Judge Delaney or enjoining the defendants in this matter from taking
20 action in a different matter. They're defendants in there, but you can't enjoin Dubric
21 from going forward.

22 THE COURT: Well, I'm not really speaking -- analyzing this in terms of
23 injunctive relief. I am just -- I'm clear back before you get to the injunctive relief.
24 I'm back to if the classes are identical, what kind of judicial economy does that

1 make to have two different departments doing the same lawsuit?

2 MR. WALL: Well, it doesn't, Your Honor. And judicial economy there would
3 be served by arguing to the court, which is the second court, that it should not go
4 forward because that would not be -- it would not be judicially economic. However,
5 the point is then that court could consider -- because judicial economy is an
6 important issue but it's not the only issue. If you have an action which is being
7 mishandled, and that's what we've argued in our papers, and where the price is --
8 where the cost is being driven up, where it's attorney driven and they don't even
9 have a class representative, where it is being handled in the abusive way that this
10 class is being handled by Mr. Greenberg, you can go to a different court and you
11 can argue all of those equities to that other court.

12 THE COURT: So now we have -- now we have you asking for Judge Delaney
13 to do something to my case that you say is improper for me to order for the other
14 case.

15 MR. WALL: I'm not asking Judge Delaney to do anything to your case,
16 but what I am saying is that if --

17 THE COURT: What did you just say, then?

18 MR. WALL: -- if Judge --

19 THE COURT: You talked about making arguments of the improper --
20 impropriety of what's going on in this case.

21 MR. WALL: I talked about making arguments to Judge Delaney, telling
22 her what she should do in her own case, not in this case, because of improprieties
23 that are going on in this case. He's not asking you to do something in this case.
24 He's asking you to do something in that case, and that's where you don't have

1 jurisdiction, Your Honor, to do it --

2 THE COURT: Uh-huh.

3 MR. WALL: -- with all due respect. That's what I'm talking about.

4 THE COURT: What is he asking me to do in that case?

5 MR. WALL: And Judge Delaney may be completely convinced by his
6 arguments that this matter should go forward. But if -- once there's a judgment, that
7 judgment may or may not have some effect on another action in that way. And then
8 the remedy, if there is a remedy to be sought, is from a court that has jurisdiction
9 over Judge Delaney, and that's the Nevada Supreme Court. And whatever she
10 does, if it's wrong as a matter of law, the axiomatic law that hasn't been cited to us
11 in any of the papers, if that's wrong he's got his remedy and that remedy is at the
12 Nevada Supreme Court. But what he doesn't have is the remedy that he's seeking
13 here, the remedy to have this Court attempt to intervene in an action that's pending
14 in a sister court of the same court.

15 THE COURT: Okay. Let's hear from Mr. Greenberg again.

16 MR. GREENBERG: Your Honor --

17 THE COURT: Mr. Greenberg, let me tell you that the lay of the land is I'm
18 not leaning towards granting an injunction in this case. But that does not mean that
19 I disagree with all of your reasoning and arguments about the difficulty and waste
20 that's involved in running two separate class actions that appear to have identical
21 classes.

22 MR. GREENBERG: Your Honor, Your Honor has jurisdiction over the parties
23 to this case --

24 THE COURT: Yeah.

1 MR. GREENBERG: -- which include the defendants. It is perfectly within
2 Your Honor's power to restrain the defendants from proceeding in any other forum,
3 before any other judge in any other case to settle the claims of the class members.
4 The class members' claims are also before Your Honor. Your Honor has asserted
5 jurisdiction over them. You have a guardianship role here, Your Honor, to protect
6 the interests of the class, okay.

7 Your Honor, these proceedings are causing incredible harm to the
8 class members' interests. If they proceed with their proposed preliminary settlement
9 approval and Judge Delaney, who hasn't said she's going to, sends notice to the
10 class members, what kind of chaos is this going to cause? The class members
11 have already received notice of the pendency of this litigation. None of them agreed
12 to exclude themselves. I am their counsel. I have been appointed to represent
13 them by you, Your Honor, okay. You cannot allow the defendants to subvert Your
14 Honor's order. If you issue the injunction as I am requesting -- you've already
15 enjoined the class members from any settlement.

16 THE COURT: Uh-huh.

17 MR. GREENBERG: So the class members can't actually settle their claims
18 with the defendants without a further order from Your Honor because they've
19 elected to join this case. None of them have excluded themselves from this case.
20 So they can't actually participate in another class action before Judge Delaney as
21 defendants are proposing.

22 If Your Honor allows this to proceed and Judge Delaney elects to
23 proceed as she is being asked to by defendants, I'm going to -- yeah, I'm going
24 to have to go to the supreme court and seek a writ of prohibition, perhaps on an

1 emergency basis. And again, this is going to distract me off from the purposes of
2 devoting my time and energy to the prosecution of this case, which, Your Honor,
3 is exactly what the defendants want. Your Honor may be aware, I'm now being
4 subject to two different motions to implead me personally as a third party defendant
5 in these litigations. The defendants are saying that I have to indemnify them for
6 the class damages that they're going to have to pay under various theories. We're
7 going to be in front of Your Honor on the 28th on those claims, okay.

8 THE COURT: Okay.

9 MR. GREENBERG: This is a pattern of conduct by the defendants to
10 obstruct the progress of this case. Your Honor, to preserve the class members'
11 interests, needs to put an end to this. Issue the injunction not to restrain Judge
12 Delaney but to restrain the defendants. If the defendants feel Your Honor doesn't
13 have the power to issue such an injunction, let them go and file the writ with the
14 supreme court, Your Honor, instead of giving them what they want, which is to
15 consume my time and divert my efforts from the prosecution of the class claims.
16 We have a motion for partial summary judgment on these class claims before
17 Your Honor on March 7th. That partial summary judgment motion is for a minority
18 of the claims in an amount that exceeds the entirety of the proposed settlement
19 that they are bringing before Judge Delaney for the class claims.

20 I understand Your Honor is reluctant to get involved in a conflicting
21 situation. And quite honestly and candidly, Your Honor, I have no idea why Judge
22 Delaney has not referred the matter brought to her to Your Honor and made clear to
23 the parties, the Dubric counsel and to the defendants that they need to come before
24 this Court in this case to propose the class settlement. They're free to do that, Your

1 Honor. I don't know why and it's not my role to criticize her, but I'm asking --

2 THE COURT: I understand when you're saying that you're not saying that
3 Ms. Dubric has to participate in this case.

4 MR. GREENBERG: She's been excluded from this case by your order
5 from June because she had already filed her own individual case while the class
6 certification motion was pending. It took about eight or nine months for that motion
7 to be decided. In the interim, she filed her own individual case. I spoke with her
8 counsel at that time. I invited them to cooperate in the prosecution of this case.
9 They declined to communicate with me. They declined to let me speak with their
10 client. And so they were excluded.

11 So she can proceed individually. I'm not asking that they be restrained
12 in respect to their rights, Ms. Dubric's rights before the court. Of course her rights
13 are preserved. And it's not about restraining what Judge Delaney is going to do. It's
14 about, again, Your Honor, preserving the integrity of the judicial process and Your
15 Honor's own order on class certification in this case. Your Honor has jurisdiction
16 over the parties. You have jurisdiction over the defendants.

17 I gave Your Honor a proposed order with my motion. I have that order.
18 I also have a much shorter form of order that I would ask Your Honor to sign. It
19 simply enjoins the defendants from proceeding with any settlement of any of the
20 class members' claims that have been certified in this case under the Nevada
21 Constitution until further order from Your Honor. They could bring their settlement
22 proposal to Your Honor. If they want to proceed in the fashion they're asking Judge
23 Delaney to authorize, they can bring that to Your Honor. There's never been an
24 impairment for them to do that.

1 I think Your Honor understands my point, and I understand Your
2 Honor's reluctance to get involved in this situation and to issue an injunction. And
3 your caution, of course, is coming from a wise place, Your Honor. I don't disagree
4 with that. But this is a very unusual situation. We have a party here to this litigation
5 that is determined to do everything it can to obstruct the progress of this litigation.
6 This case is very old. They're looking to get a 5-year rule dismissal later this year.
7 And again, they're trying to delay and to consume my time with these collateral
8 matters, Your Honor.

9 This is not serving the class members' interests. And that's what I
10 would really ask Your Honor to contemplate here in terms of issuing the injunction.
11 How would it possibly hurt the class members' interests to grant the injunction I am
12 asking? It will not. But it will definitely harm the class members' interests to allow
13 the defendants to keep carrying on this way. It won't harm the class members'
14 interests because everything defendants are alleging about my incompetence,
15 my misconduct, the inadequacy of the class representatives in this case, the value
16 and virtue of the settlement they're proposing to Judge Delaney, all of those things
17 can be brought before Your Honor for a determination on the merits and the class
18 members' interests adequately reviewed in respect to all of those allegations. But
19 if Your Honor fails to issue an injunction and cause that all to be brought here and
20 Judge Delaney does proceed without jurisdiction and notice goes out to the class
21 members, I have to go burden the supreme court with a writ of prohibition.

22 Your Honor, this is not going to serve the class members' interests.
23 There is no way that is going to advance them. Even if I'm wrong, Your Honor,
24 let's say defendants are completely right and I should not be representing the class

1 interests, I'm not doing it in an appropriate manner, the settlement they propose
2 is in the interest of the class members, if that's all true then bring all of that before
3 Your Honor, which they can do, and Your Honor can chart the right course to
4 protect the class members' interests.

5 So what I'm saying is Your Honor has a difficult role here and I implore
6 you to be assertive as a guardian of the class members' interest. This isn't about
7 me or the defendants per se, it's about the interests of all of the individuals who are
8 relying on the Court to look out for what's in their interest. And there is no reason to
9 deny the injunction and to allow this sort of chaos to proceed, because that clearly
10 is not going to be in the interest of the class members.

11 THE COURT: All right.

12 MR. WALL: Your Honor, may I respond to a few things?

13 THE COURT: No, because we're already -- we've got a whole courtroom
14 of people and we've done both sides. Here's the ruling. I'm going to take it under
15 advisement. I'm not going to make a ruling today. You may tell Judge Delaney that
16 I agree with your -- with the gist of your motion, not as to the injunction itself, but
17 as to the question of whether or not there should be two competing classes in two
18 different courtrooms; that I am of the view that judicial economy and a host of other
19 reasons would seem to dictate that the case either be in her court or mine. And
20 as you've already said, mine is, what, two and a half years further ahead?

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

22 THE COURT: Okay.

23 MR. GREENBERG: We have a motion for partial summary judgment pending.
24 We're working towards a trial. Your Honor is familiar with the issues intimately here.

1 I've been appointed counsel for the class. I represent these individuals, Your Honor.

2 THE COURT: Understood.

3 MR. GREENBERG: You haven't relieved me as class counsel, Your Honor.

4 THE COURT: Understood.

5 MR. WALL: But, Your Honor, those things are not true, and I didn't get to
6 respond to them because his argument was interrupted in the middle.

7 THE COURT: Do you want me to make a ruling today, then?

8 MR. WALL: No, I do not, Your Honor.

9 THE COURT: All right.

10 MR. WALL: I just wanted to say --

11 THE COURT: Then let's move on.

12 MR. WALL: Thank you, Your Honor.

13 MR. GREENBERG: Your Honor --

14 THE COURT: Because I have read this through and thought it through
15 as much as a judge needs to in order to make a ruling. I've stated what I believe is
16 the appropriate course. But I'm not going to be engaged in a road race with Judge
17 Delaney to see who gets to have the case. I think that in all likelihood or what I
18 would suggest is that Judge Delaney also simply take the matter under advisement.
19 But at any rate, I don't -- I'm not going to issue an injunction this morning. There is
20 an answer to your argument about the problem with having two classes, but I don't
21 believe the answer lies in a race to the courthouse. And for that reason, I tell you
22 that I agree with most of the reasoning that's in your motion. The only thing that
23 I'm not agreeing is that it's up to this Court to tell another court that they can't go
24 forward.

1 MR. GREENBERG: Your Honor, I'm not asking you to issue an injunction
2 against Judge Delaney, it's against the defendants' actions.

3 THE COURT: Well, I understand that you're not, but as Mr. Wall has argued
4 and as is in their motion work -- I'm sorry, the opposition work, it sure kind of comes
5 down to that because you're telling another judge that, no, you can't certify a class
6 if it's the same as this class. And I don't think that's the appropriate way for a court
7 to do. So what you can do is give her the lay of the land. I'm taking it under
8 advisement because I refuse to be caught up in a -- sort of a -- I don't know what
9 you'd call it, a kingdom race between two judges.

10 MR. GREENBERG: I understand, Your Honor, and I appreciate Your
11 Honor's caution. Again, though, this is not a race. These parties are before Your
12 Honor. I mean, this Court has jurisdiction in this case. It is the defendants who are
13 engaging in a race here. And if I have to file a writ of prohibition with the supreme
14 court, Your Honor understands I will have to proceed in that fashion. I was hoping
15 to avoid that. This is very badly impacting the interests of the class members,
16 regardless.

17 THE COURT: Uh-huh.

18 MR. GREENBERG: And that's --

19 THE COURT: I believe that it is.

20 MR. GREENBERG: And as I said, Your Honor, on the merits there is no
21 reason for Judge Delaney to proceed in the fashion that is contemplated.

22 THE COURT: Well, that's an argument you need to raise down to her
23 courtroom and make it there.

24 MR. GREENBERG: I understand, Your Honor. Your Honor, I also drafted

1 a very short form of injunction order, along with the longer form I submitted.

2 THE COURT: Okay. If you want to submit that, because I am going to take
3 this under advisement.

4 MR. GREENBERG: This is the short form, Your Honor. This is the long form
5 that was previously given to Your Honor.

6 THE COURT: All right.

7 MR. GREENBERG: Your Honor might prefer the short form. I would urge
8 Your Honor to act on the request as quickly as possible, and perhaps you and
9 Judge Delaney could confer and reach a consensus between the two of you. But
10 let me not take up more of your time.

11 MR. WALL: Now he's been able to make that argument three times without
12 response, and I just want to be on the record to say that argument is legally incorrect
13 as a matter of law --

14 THE COURT: Which argument?

15 MR. WALL: -- because he doesn't own the class members.

16 THE COURT: Which argument?

17 MR. WALL: The argument that the class members can't do anything because
18 they didn't opt out of his class and that they are enjoined from settling.

19 THE COURT: Okay.

20 MR. WALL: They're enjoined from settling this action.

21 THE COURT: Okay.

22 MR. WALL: This Court couldn't enjoin them from settling any other action.

23 THE COURT: Okay. I'm putting it under advisement for -- when's the next
24 hearing in front of me on this?

1 MR. GREENBERG: On the 28th we are scheduled for a hearing, Your Honor.
2 That's two weeks from today.

3 THE COURT: All right.

4 MR. GREENBERG: I would certainly be eager to appear before Your Honor
5 on this further at the earliest available time.

6 THE COURT: I will put this on next Monday's chambers calendar.

7 MR. WALL: Thank you, Your Honor.

8 MR. GREENBERG: And if Your Honor issues an order, as soon as it gets
9 dispatched to counsel we would appreciate it.

10 THE COURT: All right. Thank you.

11 MR. GREENBERG: Thank you, Your Honor.

12 THE CLERK: It will be Tuesday, February 21st.

13 MR. WALL: Thank you, Your Honor.

14 THE COURT: All right.

15 (PROCEEDINGS CONCLUDED AT 9:35 A.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.

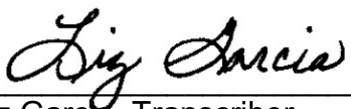
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Liz Garcia, Transcriber
LGM Transcription Service

45

45


CLERK OF THE COURT

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Attorneys for Plaintiffs

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

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

12 Plaintiffs,

13 vs.

14 A CAB TAXI SERVICE LLC, and A)
15 CAB, LLC,)

16 Defendants.

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 February
18 16, 2017.

19 Dated: February 16, 2017

20 LEON GREENBERG PROFESSIONAL CORP.

21 /s/ Leon Greenberg

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

000827

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CERTIFICATE OF MAILING

The undersigned certifies that on February 16, 2017, she served the within:

Notice of Entry of Order

by court electronic service to:

TO:

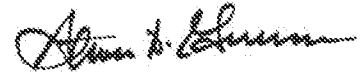
Esther C. Rodriguez, Esq.
RODRIGUEZ LAW OFFICES, P.C.
10161 Park Run Drive, Suite 150
Las Vegas, NV 89145

/s/ Dana Sniegocki

Dana Sniegocki

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CLERK OF THE COURT

1 ORDR

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13 DISTRICT COURT
14 CLARK COUNTY, NEVADA

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

18 Plaintiffs,

19 vs.

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

22 Defendants.

Case No.: A-12-669926-C

Dept.: I

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

23 Plaintiffs filed their Motion to Enjoin Defendants from Seeking Settlement of
24 Any Unpaid Wage Claims Involving Any Class Members Except as Part of this
25 Lawsuit and for Other Relief on October 14, 2016; defendants filed a response in
26 opposition on November 4, 2016 with plaintiffs filing a Reply on November 10, 2016;
27 the Court also considering the plaintiffs' Plaintiffs' Motion on OST to Expedite
28 Issuance of Order Granting Motion Filed on 10/14/2016 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, filed with the
Court on February 1, 2017, with the Court holding a hearing on February 14, 2017
and at that time considering the arguments of counsel. After due and proper

deliberation, the Court hereby grants certain relief on the motion as follows:

IT IS ORDERED that the defendants are, upon entry of this Order, prohibited and enjoined from entering into any settlement on a class action basis through the use of NRCP Rule 23 with any of their current or former taxi driver employees for claims under Article 15, Section 16, of the Nevada Constitution, the Nevada Minimum Wage Amendment, whether styled as a claim for breach of contract, conversion, or under any other theory of recovery. The foregoing settlement prohibition can only be amended or removed by a further order issued in this case. The foregoing settlement prohibition bars the defendants from seeking approval for a settlement under NRCP Rule 23 of any such persons' claims on a class action basis in any other proceeding now pending before or in the future filed in the Courts of the State of Nevada, including, but not limited to, their joint motion filed on January 24, 2017 requesting preliminary class settlement approval and class certification in the case of *Dubric v. A Cab LLC et al.* A-15-721063-C currently pending in Department 25 of this Court. Defendants are commanded to within one judicial day of the service of this Order with Notice of Entry to file with this Court in the *Dubric* case a request for withdrawal of that joint motion and make all available efforts to have that motion withdrawn and proceed no further with the same. This Order does not limit the defendants' ability to settle the claims of the named plaintiff Jasminka Dubric, only, in *Dubric v. A Cab LLC et al.* A-15-721063-C.

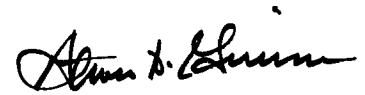
The foregoing is without prejudice to the grant of further relief by the Court on the motion and the Court intends to issue a subsequent Order addressing the same.

IT IS SO ORDERED this 16th day of Feb, 2017


HONORABLE JUDGE KENNETH CORY
DISTRICT COURT, CLARK COUNTY

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CLERK OF THE COURT

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Attorneys for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

A CAB TAXI SERVICE LLC, 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 on February
21, 2017.

Dated: February 21, 2017

LEON GREENBERG PROFESSIONAL CORP.

/s/ Leon Greenberg

Leon Greenberg, Esq.
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2965 S. Jones Boulevard - Ste. E-3
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Tel (702) 383-6085
Attorney for the Plaintiffs

000831

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CERTIFICATE OF SERVICE

The undersigned certifies that on February 21, 2017, she served the within:

Notice of Entry of Order

by court electronic service to:

TO:

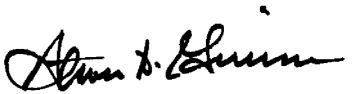
Esther C. Rodriguez, Esq.
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/s/ Sydney Saucier

Sydney Saucier

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CLERK OF THE COURT

1 LEON GREENBERG, ESQ.
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7
8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

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

13 Plaintiffs,

14 vs.

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

16 Defendants.
17
18

Case No.: A-12-669926-C

DEPT.: XVIII

Hearing Date: January 24, 2017
Hearing Time: 11:00 a.m.

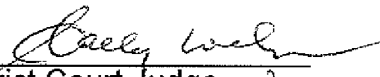
19 **Order Granting in Part and Denying in Part Plaintiffs' Motion to Have Case**
20 **Reassigned to Department I per EDCR Rule 1.60 and Designated as Complex**
21 **Litigation per NRCP Rule 16.1(f)**

22 Plaintiffs filed the above-entitled motion on January 18, 2017 on an Order
23 Shortening Time. Defendants filed their Response in Opposition on January 23, 2017.
24 Plaintiffs thereafter filed a limited Reply in support of their motion also on January 23, 2017.
25 This matter, having come before the Court for hearing on January 24, 2017, and after due
26 consideration of the parties' respective briefs, and all pleadings and papers on file herein,
27 and good cause appearing, therefore,
28

1 **IT IS HEREBY ORDERED:**

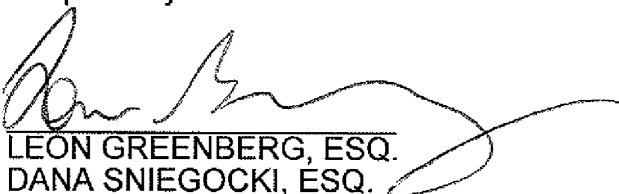
2 For the reasons specified in plaintiffs' brief, plaintiffs' motion is **GRANTED in part**
3 **and DENIED in part.** The Motion is GRANTED to the extent that the Court believes it is
4 in the interest of judicial economy to reassign this case to Department 1 which has
5 overseen the proceedings in this matter for more than four years. The motion is DENIED
6 to the extent that designating the case as complex litigation pursuant to Nev. R. Civ. P.
7 16.1(f) is a matter that should be considered by Department 1 and not this department.
8

9 **IT IS SO ORDERED.**

10
11 
12 District Court Judge *pu*

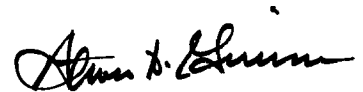
1-26-17
 Date

13
14 Respectfully submitted:

15 
16 LEON GREENBERG, ESQ.
17 DANA SNIEGOCKI, ESQ.
18 LEON GREENBERG
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24 dana@overtimelaw.com
25 Attorney for Plaintiffs
26
27
28

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CLERK OF THE COURT

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10 dana@overtimelaw.com
11 Attorneys for Plaintiffs

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

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

17 Plaintiffs,

18 vs.

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

21 Defendants.

Case No.: A-12-669926-C

Dept.: I

NOTICE OF ENTRY OF
STIPULATION AND ORDER

22 PLEASE TAKE NOTICE that the Court entered the attached Stipulation and
23 Order Staying All Proceedings For A Maximum Period of Sixty (60) Days and
24 Continuing Motion Hearing Dates on March 7, 2017

25 Dated: March 9, 2017

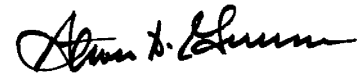
26 LEON GREENBERG PROFESSIONAL CORP.

27 /s/ Leon Greenberg

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Attorney for the Plaintiffs

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CLERK OF THE COURT

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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
STAYING ALL PROCEEDINGS
FOR A MAXIMUM PERIOD OF
SIXTY (60) DAYS AND
CONTINUING MOTION
HEARING DATES**

17
18 The parties, by and through their counsel of record, hereby stipulate and agree to
19 stay all proceedings in this case for a period of no greater than sixty (60) days while
20 the parties undertake to explore mediation and a global settlement of this matter. This
21 Stipulation and Order is based upon the following:

22 1. This matter was filed on October 8, 2012 as a class action lawsuit for
23 unpaid minimum wages alleged to be owed to defendants' taxicab driver employees
24 pursuant to Article 15, Section 16 of the Nevada Constitution.

25 2. By order of this Court dated June 7, 2016, this case was certified as a
26 class action lawsuit and plaintiffs, Michael Murray, Michael Reno, and Michael
27 Sargeant, were appointed representatives of the class for claims of unpaid minimum
28

wages under the Nevada Constitution.

1 3. The parties have litigated this matter over the course of several years and
2 have reached a point in the litigation in which they believe exploring mediation and
3 settlement of the claims asserted by the plaintiffs would be sensible.

4 4. Therefore, the parties hereby stipulate and agree to stay all proceedings in
5 this matter for a period not to exceed sixty (60) days from February 28, 2017. The
6 parties agree that such time period, whatever it may be, shall be excluded from the
7 time that would otherwise accrue for the trial of this case to be deemed timely
8 commenced for purposes of Nev. R. Civ. P. 41(e).

9 5. The parties further stipulate and agree that the stay of all proceedings
10 agreed to herein will terminate on the date that either party files a status report with the
11 Court or on May 1, 2017, which ever occurs first.

12 ///

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6. The stay requested herein is made in good faith and to conserve the resources of the parties and the Court. The parties believe the requested stay will aid the parties in their exploration of mediation and a possible successful settlement of this litigation. Thus, this request is not made for the purpose of delay.

Submitted this 2nd day of March, 2017.

Leon Greenberg Professional Corp.


Leon Greenberg, Esq.

Dana Sniegocki, Esq.

2965 S. Jones Blvd.


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Las Vegas, NV 89146

Tel (702) 383-6085

Attorneys for Plaintiffs

Rodriguez Law Offices


Esther C. Rodriguez, Esq.

Nevada Bar No. 6473


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Tel (702) 320-8400

Attorney for the Defendants

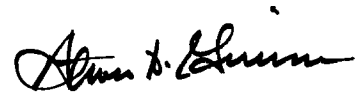
IT IS SO ORDERED:


HONORABLE JUDGE KENNETH CORY
DISTRICT COURT, CLARK COUNTY //

March 3, 2017
DATE

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CLERK OF THE COURT

NOEO
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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 on March 9,
2017.

Dated: March 13, 2017

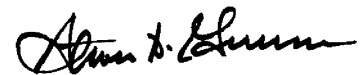
LEON GREENBERG PROFESSIONAL CORP.

/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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CLERK OF THE COURT

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Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

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

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.

DISCOVERY COMMISSIONER'S REPORT AND RECOMMENDATIONS

Hearing Date: December 9, 2016
Hearing Time: 9:00 a.m.

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

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

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

I.
FINDINGS

1
2
3 1. This matter came before the Discovery Commissioner as a Status Check
4 for continued compliance and production, and "Plaintiffs' Motion to Compel
5 Interrogatory Responses" filed November 8, 2016.

6 2. Pertaining to Plaintiffs' Motion to Compel Interrogatories, the Discovery
7 Commissioner addressed Interrogatories 8, 9, 10, 15, and 19 with the parties.

8 3. Plaintiffs' Interrogatories No. 8 and No. 9 sought a "date of hire" and
9 "date of termination" for each member of the class. Defendants previously provided
10 a list to Plaintiffs of those dates of hire and dates of termination. Plaintiffs compared
11 that list to the payroll records produced by defendants and found numerous instances
12 of class members receiving paychecks outside the periods indicated by defendants in
13 that list. The parties agree such circumstance implies that certain class members have
14 multiple "dates of hire" and "dates of termination" as they had more than one period
15 of "employment" with A-Cab. Plaintiffs agreed they will provide Defendants a list of
16 class members with a 60 day gap or more between paychecks as reflected in the
17 Quickbooks records produced by defendants. Defendants will provide a further list
18 that will include a hire date, and termination date, for each "period" of employment
19 for each class member that had more than one period of employment with A-Cab as a
20 class member *unless upon review the employee was employed in another*
capacity and therefore not part of the class.

21 4. Plaintiffs' Interrogatory No. 15 sought information on health benefits
22 available to class members. Defendants had provided health benefits summaries to
23 Plaintiffs for three years, covering the periods 6/1/2013-5/31/2014 and 6/1/15-
24 5/31/17, which Plaintiffs agree provide the information sought for those three years.
25 Plaintiffs indicated they are seeking information on the insurance premium amounts
26 class members had to pay for medical insurance and waiting periods for class
27 members to become eligible to enroll in medical insurance. The Discovery
28 Commissioner finds that Interrogatory Response No. 15 will be supplemented with

1 this information (insurance premium cost to the class members and waiting periods)
 2 ~~for the periods of time outside of the foregoing specified three year period.~~ *relevant to other than what has been produced. BB*

3 5. Plaintiffs' Interrogatory No. 19 sought the identification of the "others"
 4 alleged in Defendants' Third Affirmative Defense. Defendants had provided a
 5 response identifying certain individuals. *Entities in* The Discovery Commissioner finds that
 6 Defendants shall supplement this response with all other such claimed persons, *including*
 7 *entities.*

8 6. Defendants advised that the deposition of Creighton J. Nady as
 9 defendant had been tentatively scheduled by the parties for December 1, 2016.
 10 Plaintiffs advised they were seeking, prior to the deposition, compliance with the
 11 Discovery Commissioner's Report and Recommendation signed on November 3,
 12 2016 prior to that deposition, *including the profits of A-Cab via a profit and loss*
 13 ~~compliance that they assert requires the production of~~ *Statement and financial distributions to Defendant Nady and his immediate family members,*
 14 ~~Schedules C and E or Defendant Nady's 1040 tax form. Defendants do not believe~~ *and the supporting financial documentation whether it be by W-2, 1099-K-1, etc.*
 15 ~~and the supporting financial documentation whether it be by W-2, 1099-K-1, etc.~~ *those materials need to be produced under the November 3, 2016 DCCR and have*
 16 ~~declined to provide them. The Discovery Commissioner finds this issue has already~~ *the individual distribution amounts to Mr. Nady's family members do NOT need*
 17 ~~to be disclosed, but the overall amount to the Nady family must be (see transcript~~ *been addressed and is declining to revisit the issue. If Plaintiffs do not believe from*
 18 *10-12-16 hearing*

19 Commissioner's recommendation is appropriate, then Plaintiffs should object. If the
 20 District Court has signed the prior Order, Plaintiffs may also do a Motion to
 21 Reconsider to the District Court.

22 7. Plaintiffs in their Second Supplement to Motion to Compel filed and
 23 served on December 7, 2016, requested production of "J-roll" Excel files from
 24 defendants; production of information indicating which class members claimed they
 25 had a spouse and/or other dependents; production of all tripsheets for all class
 26 members in PDF format; and that Defendant Nady execute an authorization for the
 27 release of materials from the Department of Labor. The Discovery Commissioner
 28 finds that the request for disclosure of information on the class members who claimed
 they had a spouse and or dependents must be raised by a separate motion. The
 Discovery Commissioner takes no action on the tripsheets as defendants have stated
 they are working on production of the same. As pertains to Plaintiffs' request for an

1 authorization from Defendant Nady, counsel will need to have a conference as per
2 E.D.C.R. 2.34, and bring a separate motion if that is not resolved by the parties.

3 II.

4 RECOMMENDATIONS

5 IT IS HEREBY RECOMMENDED that pertaining to Plaintiffs' Interrogatories
6 No. 8 and No. 9 seeking a "date of hire" and "date of termination" for each member
7 of the class, Plaintiffs will provide Defendants a list demonstrating those employees
8 with a 60 day gap or more between payroll periods as reflected in the Quickbooks
9 records produced by defendants in this litigation. Defendants within 30 days
10 thereafter will provide a further list of hire dates for the class members that will
11 include a hire date, and termination date, for each "period" of employment for each
12 class member that had more than one period of employment with A-Cab as a class
13 member.

14 IT IS HEREBY RECOMMENDED that pertaining to Plaintiffs' Interrogatory
15 No. 15 seeking a summary of health benefits available to the class members,
16 Defendants will supplement this Interrogatory with a listing of costs to the employee
17 (class member) for the various levels of coverage (employee only, employee and
18 spouse, employee and children, employee and family) and waiting periods for the
19 relevant years ^{in addition to} besides 6/1/2013-5/31/2014 and 6/1/15-5/31/17, ^{which have been} ~~besides~~ ^{produced. Mr}

20 IT IS HEREBY RECOMMENDED that pertaining to Plaintiff's Interrogatory
21 No. 19 seeking the identification of the "others" alleged in Defendants' Third
22 Affirmative Defense, Defendants shall supplement this response and identify all such
23 individuals ^{and entities as is appropriate. Mr}

24 IT IS HEREBY RECOMMENDED that pertaining to issues raised in
25 Plaintiffs' Second Supplement to Motion to Compel filed December 7, 2016 the
26 request for ^{detailed} information on class members claiming they are married or have
27 dependents is denied without prejudice to being considered upon a further motion. ¹ As
28 pertains to Plaintiffs' request for an authorization from Defendant Nady for the

1 release of Department of Labor records, and the production of J-roll materials,
2 Plaintiffs' counsel will need to initiate a conference in compliance with E.D.C.R. 2.34
3 ~~in respect to the former and bring a separate motion in respect to the latter.~~ *separate motions if necessary on*

4 DATED this 13 day of January, 2017.

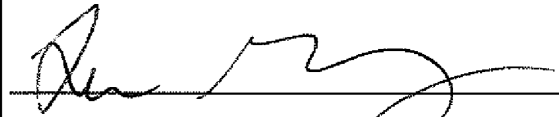
5
6 
7 _____
8 DISCOVERY COMMISSIONER
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Case Name: Murray v. A Cab, LLC, et al.
Case No.: A-12-669926-C

The Discovery Commissioner, met with counsel for the parties, having discussed the issues noted above and having reviewed any materials proposed in support thereof: hereby submits the above recommendations.

Submitted by:

**LEON GREENBERG
PROFESSIONAL
CORPORATION**



LEON GREENBERG, ESQ.
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Nevada Bar No.: 11715
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Attorneys for Plaintiffs

Approved as to form and content:

RODRIGUEZ LAW OFFICES, P.C.



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info@rodriguezlaw.com
Attorneys for Defendants

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

NOTICE

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

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

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

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

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

✓ _____ Electronically served counsel on January 17, 2017,
Pursuant to N.E.F.C.R. Rule 9.

By *Notikie Fekanson*
Commissioner Designee

al.

Case Name: Murray v. A Cab, LLC, et

Case No.: A-12-669926-C

ORDER

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

_____ The parties having waived the right to object thereto,

☒ ^{NF} No timely objections having been received in the office of the Discovery Commissioner pursuant to E.D.C.R. 2.34(f),

_____ Having received the objections thereto and the written arguments in support of said objections, and good cause appearing,

* * *

AND

☒ IT IS HEREBY ORDERED the Discovery Commissioner's Report and Recommendations are affirmed and adopted.

_____ IT IS HEREBY ORDERED the Discovery Commissioner's Report and Recommendations are affirmed and adopted as modified in the following manner attached hereto.

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

Dated this 7 day of March, 2017.


DISTRICT COURT JUDGE

49

49


CLERK OF THE COURT

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

DISTRICT COURT
CLARK COUNTY, NEVADA

MICHAEL MURRAY, and MICHAEL
RENO, Individually and on behalf of
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 on March 9,
2017.

Dated: March 13, 2017

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

000848

000848


CLERK OF THE COURT

1 **DCRR**
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4 DANA SNIEGOCKI, ESQ.
5 Nevada Bar No.: 11715
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10 leongreenberg@overtimelaw.com
11 dana@overtimelaw.com
12 *Attorneys for Plaintiffs*

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

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

13 Plaintiffs,

14 vs.

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

17 Defendants.

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

18
19 **DISCOVERY COMMISSIONER'S REPORT AND RECOMMENDATIONS**

20
21 Hearing Date: January 25, 2017
22 Hearing Time: 9:00 a.m.

23 Attorney for Plaintiffs: Leon Greenberg, Esq., and Dana Sniegocki, Esq.,
24 Leon Greenberg Professional Corporation.

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

27 Mark K. Wall, Esq.
28 Hutchinson & Steffen, LLC

I.

FINDINGS

1. This matter came before the Discovery Commissioner on "Plaintiffs' Motion to Compel the Production of Documents" filed December 23, 2016.

2. The items of discovery sought to be compelled by plaintiffs' motion consisted of: (A) a series Excel spreadsheets compiled by defendants known as "J Roll" which allegedly contain the total hours worked by each class member for each pay period; and (B) information demonstrating the marital and dependent status of each of the class members which is alleged to exist in defendants' Quickbooks records.

3. During the hearing, the Court also noted that defendants' disclosures pertaining to health insurance benefits offered by the defendants to the class members during the applicable statute of limitations period lacks information detailing the cost to the employee (premiums) to secure health insurance benefits for himself and his spouse. This information is missing for the time period specified as "2012-2013" on the document proffered by defendants during such hearing and labeled as A CAB 01917. Such information is necessary to make a determination as to whether defendants offered health insurance benefits to their employees that complies with the Minimum Wage Amendment to the Nevada Constitution, as explained in *MDC Restaurants et al. v. Diaz et al.*, 132 Nev. Adv. Op. 76 (NV Sup. Ct. 2016), to allow defendants to pay the "lower tier" Nevada minimum wage.

4. After reviewing the briefs and hearing the representations of both parties, the Court finds the plaintiffs' motion to compel should be granted within the parameters discussed below.

II.

RECOMMENDATIONS

IT IS HEREBY RECOMMENDED that pertaining to Plaintiffs' Motion to Compel information demonstrating the marital and dependent status of each of the

1 members of the certified class, defendants are instructed to produce W4s for all class
2 members for the statute of limitations period. Such W4s will be maintained
3 confidentially under a protective order to be used in this litigation only and shall be
4 maintained confidentially until such time as otherwise ordered by the District Court
5 Judge. The production of these materials subject to a protective order will not
6 impact the parties' abilities to share such information with any experts.
7 Additionally, defendants are instructed to review and investigate their ability to
8 retrieve this information that shows the marital and dependent status of each of the
9 class members as reported to defendants by such class members from their
10 Quickbooks files. Such information must be gathered by defendants for the entirety
11 of the statute of limitations period through and including the present time, though
12 defendants are only required to produce such information to plaintiffs' counsel up to
13 and including December 31, 2015. In the event the District Judge expands the time
14 frame of the certified class period, defendants shall provide all such post-December
15 31, 2015 information to plaintiffs' counsel. In so recommending this, the Discovery
16 Commissioner does not impose upon the defendants any obligation to verify whether
17 such information as reported to defendants by the class members is factually correct.

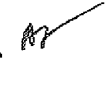
18 IT IS FURTHER RECOMMENDED that pertaining to the portion of
19 plaintiffs' motion that sought an order compelling production of the "J Roll" Excel
20 spreadsheets, defendants are directed to investigate whether such "J Roll" materials
21 or other computerized records utilized by defendants to compile and total up the
22 hours worked by each class member per each pay period for the statute of limitations
23 period preceding January 1, 2013 exists. If such Excel "J Roll" or other program or
24 material was used by defendants to create and keep track of the foregoing-mentioned
25 total hours worked per pay period by the class members, defendants must produce
26 the same. Plaintiffs' counsel requested the Commissioner order defendants to
27 produce a sworn statement in the event defendants claim such files and/or programs
28 did not exist, but the Discovery Commissioner declines to order the same and

1 believes that such a determination should be made by the District Judge. If
 2 defendants insist they have already produced the "total hours worked per pay period"
 3 amounts, for the time period prior to January 1, 2013, defendants must demonstrate
 4 ~~Confirm that it has been provided and confirm the format~~
~~how such information, the amount of "total hours worked per pay period" for each~~
~~in which it has been produced. My 1~~
 5 class member, has already been provided.

6 IT IS FURTHER RECOMMENDED that defendants are to supplement their
 7 disclosures to indicate the total cost to the employee per pay check for an employee
 8 to secure health insurance for himself and his spouse for the time period "2012-
 9 2013" as specified on the document proffered by defendants during such hearing and
 10 labeled as A CAB 01917.

11
 12 DATED this 15 day of February, 2017.

13
 14 
 15 _____
 16 DISCOVERY COMMISSIONER
 17

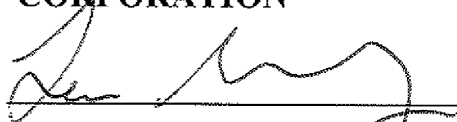
18 A specific concern was raised as to the existence of
 19 payroll records (or J-Roll) between 2010 and 2013;
 20 Defense Counsel is to confirm whether or not these
 21 records exist and confirm whether the hours worked
 22 by each member of the class during this
 23 time frame can be calculated based on
 24 the trip sheets and payroll records which have
 25 been produced as discussed at the hearing. 
 26
 27
 28

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

The Discovery Commissioner, met with counsel for the parties, having discussed the issues noted above and having reviewed any materials proposed in support thereof: hereby submits the above recommendations.

Submitted by:

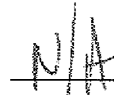
**LEON GREENBERG
PROFESSIONAL
CORPORATION**



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leongreenberg@overtimelaw.com
dana@overtimelaw.com
Attorneys for Plaintiffs

Approved as to form and content:

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info@rodriguezlaw.com
Attorneys for Defendants

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

NOTICE

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

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

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

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

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

✓ _____ Electronically served counsel on Feb. 16, 2017, Pursuant to N.E.F.C.R. Rule 9.

By 
Commissioner Designee

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

ORDER

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

- The parties having waived the right to object thereto,
☒ ^{NF} No timely objections having been received in the office of the Discovery Commissioner pursuant to E.D.C.R. 2.34(f),
 — Having received the objections thereto and the written arguments in support of said objections, and good cause appearing,

* * *

AND

- ☒ IT IS HEREBY ORDERED the Discovery Commissioner's Report and Recommendations are affirmed and adopted.
 — IT IS HEREBY ORDERED the Discovery Commissioner's Report and Recommendations are affirmed and adopted as modified in the following manner attached hereto.
 — IT IS HEREBY ORDERED that a hearing on the Discovery Commissioner's Report and Recommendations is set for _____, 2017, at ____:____ a.m.

Dated this 7 day of March, 2017.


DISTRICT COURT JUDGE

50

50


CLERK OF THE COURT

1 NOAS
Michael K. Wall (2098)
2 HUTCHISON & STEFFEN, LLC
10080 West Alta Drive, Suite 200
3 Las Vegas, NV 89145
Tel: (702) 385-2500
4 Fax: (702) 385-2086
mwall@hutchlegal.com

5
6 Esther C. Rodriguez, Esq.
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7 Las Vegas, NV 89145
(702) 320-8400
8 info@rodriguezlaw.com

9 *Attorney for defendants A Cab Taxi Service, LLC,
A Cab, LLC and Creighton J. Nady*

10
11 **DISTRICT COURT
CLARK COUNTY, NEVADA**

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

14 Plaintiffs,

15 v.

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

18 Defendants.

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

NOTICE OF APPEAL

19 Notice is given that A Cab Taxi Service, LLC, A Cab, LLC, and Creighton J. Nady,
20 defendants in the above-captioned matter, appeal to the Supreme Court of Nevada from the
21 Orders of the district court imposing an injunction against them which were entered by the
22 district court on February 16 and February 17, 2017.

23 DATED this 20 day of March, 2017.

24 HUTCHISON & STEFFEN, LLC

25 

26 Michael K. Wall
10080 West Alta Drive, Suite 200
27 Las Vegas, NV 89145
Tel: (702) 385-2500

28 *Attorney for defendants A Cab Taxi Service, LLC,*

998000
HUTCHISON & STEFFEN
A PROFESSIONAL LLC
PECCOLE PROFESSIONAL PARK
10080 WEST ALTA DRIVE, SUITE 200
LAS VEGAS, NV 89145

000856

CERTIFICATE OF SERVICE *Creighton J. Nady*

Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN, and that on this 20th day of March, 2017, I caused the above and foregoing **NOTICE OF APPEAL** to be served as follows:

- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or
- ☐ pursuant to EDCR 7.26, to be sent **via facsimile**; and/or
- ☒ pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial District Court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail; and/or
- ☐ to be hand-delivered;

to the attorney(s) listed below at the address and/or facsimile number indicated below:

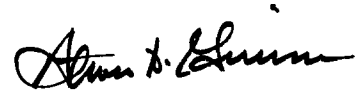
Leon Greenberg, Esq.
 Dana Sniegocki, Esq.
 Leon Greenberg Professional Corporation
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 Telephone: (702) 383-6085
 Facsimile: (702) 385-1827
leongreenberg@overtimelaw.com
Dana@overtimelaw.com

Attorneys for plaintiffs


 An employee of HUTCHISON & STEFFEN, LLC

51

51



CLERK OF THE COURT

1 ASTA
Michael K. Wall (2098)
2 HUTCHISON & STEFFEN, LLC
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3 Las Vegas, NV 89145
Tel: (702) 385-2500
4 Fax: (702) 385-2086
mwall@hutchlegal.com

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6 Esther C. Rodriguez, Esq.
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7 Las Vegas, NV 89145
(702) 320-8400
8 info@rodriguezlaw.com

9 *Attorney for defendants A Cab Taxi Service, LLC,*
10 *A Cab, LLC and Creighton J. Nady*

11
12 DISTRICT COURT
13 CLARK COUNTY, NEVADA

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

17 Plaintiffs,

18 v.

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

20 Defendants.

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

21
22 DEFENDANTS' CASE APPEAL STATEMENT

23 1. Party filing this Case Appeal Statement.

24 This appeal and case appeal statement is filed on behalf of defendants A Cab Taxi
25 Services, LLC, A Cab, LLC and Creighton J. Nady in the action above.

26 2. Judge issuing the decision, judgment or order appealed from.

27 The Honorable District Judge Kenneth C. Cory, Eighth Judicial District Court, Clark
28 County, Department I, District Court Case No. A669926.

898000
HUTCHISON & STEFFEN
A PROFESSIONAL LLC
PECCOLE PROFESSIONAL PARK
10080 WEST ALTA DRIVE, SUITE 200
LAS VEGAS, NV 89145

000858

1 **3. Parties to the proceedings in the district court.**

2 Michael Murray and Michael Reno Plaintiffs

3 A Cab Taxi Service, LLC, A Cab, LLC, and
 4 Creighton J. Nady Defendants

5 **4. Parties involved in this appeal.**

6 A Cab Taxi Service, LLC, A Cab, LLC and
 7 Creighton J. Nady Appellants

8 Michael Murray and Michael Reno Respondents

9 **5. The name, law firms, addresses and telephone numbers of all counsel on appeal,
 and the party or parties they represent.**

10 Michael K. Wall (2098)
 11 Hutchison & Steffen, LLC
 Nevada Bar No: 2098
 12 Peccole Professional Park
 10080 W. Alta Dr., Suite 200
 Las Vegas, Nevada 89145
 13 Telephone (702) 385-2500
 Facsimile (702) 385-2086
 14 mwall@hutchlegal.com

15 and

16 Esther C. Rodriguez (6473)
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 17 10161 Park Run Drive, Ste. 150
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 18 Telephone: (702) 320-8400
 Facsimile: (702) 320-8401
 19 info@rodriguezlaw.com

20 *Attorneys for Appellants*

21 Leon Greenberg (8094)
 Dana Sniegocki (11715)
 Leon Greenberg Professional Corporation
 23 2965 S. Jones Blvd., Ste. E3
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 24 Telephone: (702) 383-6085
 Facsimile: (702) 385-1827
 25 leongreenberg@overtimelaw.com
 26 Dana@overtimelaw.com

27 *Attorneys for Respondents*

- 1 **6. Whether respondents were represented by appointed or retained counsel in the**
 2 **district court.**

3 Respondents were represented by retained counsel in the district court.

- 4 **7. Whether appellant was represented by appointed or retained counsel in the**
 5 **district court.**

6 Appellants were represented by retained counsel in the district court.

- 7 **8. Whether appellant was granted leave to proceed in forma pauperis in the district**
 8 **court.**

9 Appellant was not granted leave to proceed in district court in forma pauperis.

- 10 **9. The date the proceedings commenced in district court.**

11 This action commenced with the filing of Plaintiff's Complaint on October 8, 2012.

- 12 **10. Brief description of the nature of the action and result in district court.**

13 The underlying action is a class action suit against A-Cab for A-Cab's alleged
 14 failure to pay its employees a sufficient wage to satisfy the Minimum Wage Act
 15 of the Nevada Constitution. A competing MWA action against A-Cab is
 16 pending in a different department of the district court before Judge Delaney. A
 17 settlement was reached in the competing action, and Judge Delaney was
 18 considering a joint motion to approve settlement and whether or not to certify a
 19 class that may or may not overlap with the class certified in this case. Judge
 20 Cory issued an injunction against A-Cab enjoining it from defending itself in the
 21 competing action, enjoining it from settling in the competing action, and
 22 requiring it to withdraw its motion to approve settlement in the competing
 23 action. The order essentially enjoins Judge Delaney from proceeding with the
 24 action pending before her.

- 25 **11. Whether the case has been the subject of a previous appeal.**

26 This case is not the subject of a previous appeal.

- 27 **12. Whether the appeal involves child custody or visitation.**

28 There are no child custody or visitation issues in this case.

29 ///

30 ///

13. Whether the appeal involves the possibility of settlement.

It is counsel's belief there is no possibility of settlement.

DATED this 20 day of March, 2017.

HUTCHISON & STEFFEN, LLC



Michael K. Wall
Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
Tel: (702) 385-2500
Fax: (702) 385-2086

*Attorney for defendants A Cab Taxi Service, LLC,
A Cab, LLC and Creighton J. Nady*

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000861
HUTCHISON & STEFFEN
A PROFESSIONAL LLC
PECCOLE PROFESSIONAL PARK
10080 WEST ALTA DRIVE, SUITE 200
LAS VEGAS, NV 89145

000861

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN,
3 and that on this 20th day of March, 2017, I caused the above and foregoing

4 **DEFENDANTS' CASE APPEAL STATEMENT** to be served as follows:

5 ☐ by placing same to be deposited for mailing in the United States Mail, in a
6 sealed envelope upon which first class postage was prepaid in Las Vegas,
Nevada; and/or

7 ☐ pursuant to EDCR 7.26, to be sent **via facsimile**; and/or

8 ☒ pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the
9 Eighth Judicial District Court's electronic filing system, with the date and time
of the electronic service substituted for the date and place of deposit in the mail;
and/or

10 ☐ to be hand-delivered;

11 to the attorney(s) listed below at the address and/or facsimile number indicated below:

12
13 Leon Greenberg, Esq.
14 Dana Sniegocki, Esq.
15 Leon Greenberg Professional Corporation
2965 S. Jones Blvd., Ste. E3
16 Las Vegas, NV 89146
Telephone: (702) 383-6085
Facsimile: (702) 385-1827
17 leongreenberg@overtimelaw.com
Dana@overtimelaw.com

18 *Attorneys for Respondents*

19
20
21 
22 An employee of HUTCHISON & STEFFEN, LLC
23
24
25
26
27
28

52

52


CLERK OF THE COURT

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

DISTRICT COURT
CLARK COUNTY, NEVADA

MICHAEL MURRAY, and MICHAEL
RENO, Individually and on behalf of
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 on March
29, 2017.

Dated: March 31, 2017

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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CERTIFICATE OF SERVICE

The undersigned certifies that on March 31, 2017, she served the within:

Discovery Commissioner's Report and Recommendations

by court electronic service to:

TO:

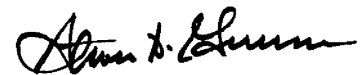
Esther C. Rodriguez, Esq.
RODRIGUEZ LAW OFFICES, P.C.
10161 Park Run Drive, Suite 150
Las Vegas, NV 89145

/s/ Sydney Saucier

Sydney Saucier

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CLERK OF THE COURT

1 **DCRR**
2 **LEON GREENBERG, ESQ.**
3 Nevada Bar No.: 8094
4 **DANA SNIEGOCKI, ESQ.**
5 Nevada Bar No.: 11715
6 2965 South Jones Boulevard, Suite E3
7 Las Vegas, Nevada 89146
8 Tel: (702) 383-6085
9 Fax: (702) 385-1827
10 leongreenberg@overtimelaw.com
11 dana@overtimelaw.com
12 *Attorneys for Plaintiffs*

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

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

13 **Plaintiffs,**

14 **vs.**

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

17 **Defendants.**

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

18 **DISCOVERY COMMISSIONER'S REPORT AND RECOMMENDATIONS**
19

20 **Hearing Date:** February 8, 2017
21 **Hearing Time:** 9:00 a.m.

22 **Attorney for Plaintiffs:** Leon Greenberg, Esq.,
23 Leon Greenberg Professional Corporation.

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

26 Mark K. Wall, Esq.
27 Hutchinson & Steffen, LLC
28

I.
FINDINGS

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4 1. This matter came before the Discovery Commissioner on "Plaintiffs'
5 Motion to Compel Compliance with Subpoena" filed January 6, 2017.

6 2. The items of discovery sought to be compelled by plaintiffs' motion
7 consisted of materials in the possession of Kamer Zucker Abbott (the "KZA" firm).
8 The KZA firm had represented defendants in a prior United States Department of
9 Labor investigation involving defendants' compliance with the federal minimum
10 wage, this case concerning defendants' compliance with the Nevada state minimum
11 wage during an overlapping time period.

12 3. The KZA firm was duly served with a subpoena and identified, as set
13 forth in defendants' opposition at Exhibit "C," three items, Def Priv 1 through 3.
14 Plaintiffs only addressed at the hearing the production of Def Priv 1 which is
15 described by defendants as an "Internal analysis of driver time 12/01/11-12/23/11."

16 4. Defendants presented to the Discovery Commissioner a one page
17 sample of Def Priv 1 which contained lines of information listing what appeared to
18 be the times certain class members started and stopped working each shift.

19 5. Upon considering the argument of counsel, and the sample presented by
20 defendants of Def Priv 1, the Discovery Commissioner finds that Def Priv 1 is not
21 properly withheld from discovery as attorney work product materials. Based upon
22 the one sample page, there is no evidence that the materials contain any notations,
23 thoughts or impressions of defendants' attorneys. Such materials are not claimed by
24 defendants to be attorney client communications and the Discovery Commissioner
25 finds defendants have not established such materials are attorney work product or
26 otherwise protected from discovery. Based upon the record before the Court, the
27 Discovery Commissioner concludes such materials are compilations of defendants'
28 records of the shifts worked by class members and are properly subject to disclosure.

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1 findings and recommendations of this Report is suspended until five (5) days after
2 the District Judge adopts this Report and Recommendation.

3
4 DATED this 8 day of March, 2017.

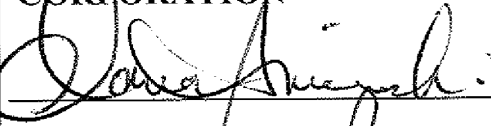
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7 **DISCOVERY COMMISSIONER**
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Case Name: Murray v. A Cab, LLC, et al.
Case No.: A-12-669926-C

The Discovery Commissioner, met with counsel for the parties, having discussed the issues noted above and having reviewed any materials proposed in support thereof: hereby submits the above recommendations.

Submitted by:

**LEON GREENBERG
PROFESSIONAL
CORPORATION**



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Approved as to form and content:

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Attorneys for Defendants

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

NOTICE

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

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

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

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

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

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

By Natili D
Commissioner Designee

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

ORDER

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

_____ The parties having waived the right to object thereto,

☒ No timely objections having been received in the office of the Discovery Commissioner pursuant to E.D.C.R. 2.34(f),

_____ Having received the objections thereto and the written arguments in support of said objections, and good cause appearing,

* * *

AND

☒ IT IS HEREBY ORDERED the Discovery Commissioner's Report and Recommendations are affirmed and adopted.

_____ IT IS HEREBY ORDERED the Discovery Commissioner's Report and Recommendations are affirmed and adopted as modified in the following manner attached hereto.

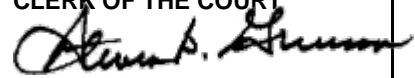
_____ IT IS HEREBY ORDERED that a hearing on the Discovery Commissioner's Report and Recommendations is set for _____, 2017, at ____:____ a.m.

Dated this 24 day of March, 2017.


DISTRICT COURT JUDGE

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NEOJ
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Attorneys for Defendants

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

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

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

PLEASE TAKE NOTICE that the Discovery Commissioner's Report & Recommendations
was entered by the Court on May 17, 2017. A copy is attached hereto.

DATED this 18th day of May, 2017.

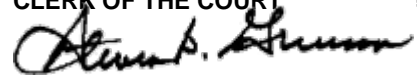
RODRIGUEZ LAW OFFICES, P. C.

/s/ Esther C. Rodriguez, Esq.
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Attorneys for Defendants

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

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DCRR

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Attorneys for Defendants

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendants.

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

DISCOVERY COMMISSIONER'S REPORT AND RECOMMENDATIONS

Hearing Date: 11/18/16
Hearing Time: 9:00 a.m.

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

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

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

I.

FINDINGS

1. This matter came before the Discovery Commissioner as a Status Check for continued compliance and production following “*Defendants’ Motion for Protective Order or, in the Alternative, Motion to Terminate Deposition of a Cab, LLC 30(b)(6) Witness; Motion to Limit the Deposition of Creighton J. Nady; and Motion for Protective Order from Plaintiffs’ Written Discovery on Order Shortening Time*,” heard on October 12, 2016; as well as “*Plaintiffs’ Motion to Compel the Production of Documents and Interrogatory Responses*” heard on June 13, 2016.

2. Following the most recent discovery hearing and status check of October 12, 2016, addressing the above referenced motions, the Nevada Supreme Court issued several decisions directly affecting the issues and discovery ordered in this matter, and thus necessitating a further discussion on compliance, production, and scope of discovery.

3. Firstly, following the Nevada Supreme Court decision of *Perry v. Terrible Herbst, Inc.*, 132 Nev. Adv. Op. No. 75 (Oct. 27, 2016), the Discovery Commissioner finds that the applicable statute of limitations and discovery period has been further defined and delineated by the Court. Accordingly, in this matter, such period is limited to a two-year time period prior to the filing of Plaintiffs’ Complaint as held by the Nevada Supreme Court: “When a right of action does not have an express limitations period, we apply the most closely analogous limitations period. The MWA does not expressly indicate which limitations period applies and the most closely analogous statute to the MWA is NRS 608.260, as both permit an employee to sue his employer for failure to pay the minimum wage. Moreover, applying the NRS 608.260 limitations period is consistent with Nevada minimum wage law.” *Id.* at pp. 10-11.

4. The Discovery Commissioner finds that Plaintiffs’ Complaint was filed October 8, 2012, and thus the applicable period for discovery commences October 8, 2010. Plaintiffs disagreed with this finding, arguing for an equitable tolling period. The Discovery Commissioner finds that any argument by Plaintiffs for deviating from the Supreme Court decision will have to be further briefed, and brought by motion.

5. The Discovery Commissioner also finds that further guidance has been provided by the

1 Nevada Supreme Court pertaining to health care benefits and the discovery disputes surrounding
 2 this issue. Following the decision of *MDC Rests. v. Eighth Jud. Dist. Ct.*, 132 Nev Adv. Op. No. 76
 3 (October 27, 2016), the Supreme Court has indicated "with regard to whether employers must
 4 'offer' or 'enroll' employees in health benefit plans to pay the lower-tier wage, our holding is
 5 consistent with the Labor Commissioner's promulgations, see NAC 608.102 (2007) (providing that
 6 an employer must 'offer' health benefits), and the language of the MWA is plain: employers need
 7 only offer health benefits to pay the lower-tier wage." *Id.* at p. 12.

8 6. The Discovery Commissioner finds that the following discovery pertaining to health
 9 insurance is appropriate: costs of health insurance for the five years at issue (2010-2015) for all
 10 ~~employees at all the~~ ^{paid for the employees or} levels (individual plan and family plan); the criteria to access or to participate in the plan; and the
 11 waiting period for access to the plan.

12 7. In accordance with the parameters outlined by the Discovery Commissioner's order on
 13 *Defendants' Motion for Protective Order*, the continued deposition of Defendant's NRCP 30(b)
 14 witness was scheduled on November 22, 2016. The Discovery Commissioner further addressed the
 15 difficulties presented at the prior deposition by both parties, and indicates that she will be available
 16 to the parties should problems arise. In the event that the deposition is discontinued pursuant to
 17 Rule 30(d), and the Commissioner hears the Motion for Protective Order, the losing party will pay
 18 fees and costs.

19 8. In further discussion pertaining to Defendants' tax information (including that of non-
 20 parties) to be produced to Plaintiffs, the Discovery Commissioner finds that such records should
 21 remain confidential pursuant to NRCP 26(c) within the confines of litigation until otherwise ordered
 22 by the District Court Judge.

23 9. In further discussion regarding the prior extended discovery dates arising from the hearing of
 24 October 12, 2016, Defendants lodged an objection with the District Court asserting they would be
 25 prejudiced with the new initial expert deadline falling on December 23, 2016, and rebuttal expert
 26 deadline of January 23, 2017, and thus requested through February 3, 2017 to account for the
 27 holidays. The Discovery Commissioner finds the following new dates are appropriate, and finds
 28 that any *Objection to the DCR&R* will be withdrawn:

1 Close of Discovery: April 28, 2017;
 2 Deadline to file motions to amend pleadings/add parties: January 27, 2017;
 3 Final dates for initial expert disclosures: January 27, 2017;
 4 Final date for rebuttal expert disclosures: February 28, 2017;
 5 Final date to file dispositive motions: May 31, 2017;
 6 Case Ready for Trial: July 10, 2017.

7 II.

8 RECOMMENDATIONS

9 IT IS HEREBY RECOMMENDED that following the decisions recently issued by the
 10 Nevada Supreme Court, the following revisions be made to the prior Discovery Commissioner
 11 Report and Recommendation of October 12, 2016 pertaining to "*Defendants' Motion for Protective*
 12 *Order or, in the Alternative, Motion to Terminate Deposition of a Cab, LLC 30(b)(6) Witness;*
 13 *Motion to Limit the Deposition of Creighton J. Nady; and Motion for Protective Order from*
 14 *Plaintiffs' Written Discovery on Order Shortening Time*";

15 WHEREAS IT WAS PREVIOUSLY RECOMMENDED that alternative relief be provided
 16 to Plaintiffs in that Defendant will provide supporting documentation and identification of
 17 distributions, salary, payment to Mr. Nady and family for 2007-2015, this RECOMMENDATION is
 18 modified to encompass the years 2010-2015.

19 WHEREAS IT WAS PREVIOUSLY RECOMMENDED that A Cab Taxi Service will
 20 provide its profit and loss statements for 2007-2015, this RECOMMENDATION is modified to
 21 encompass the years 2010-2015. *Further, the discovery regarding health*
 22 *insurance information will be produced in accordance with*
 23 IT IS FURTHER RECOMMENDED that Defendants' tax information (including that of
 24 non-parties) produced to Plaintiffs should remain confidential pursuant to NRCP 26(c) within the
 25 confines of litigation until otherwise ordered by the District Court Judge. *Findings*
Section 9

26 THE DISCOVERY COMMISSIONER FURTHER RECOMMENDS that the Objection to
 27 the Discovery Commissioner Report and Recommendation of October 12, 2016 be WITHDRAWN
 28 and the following dates be implemented:

1. The Discovery Cutoff is extended to April 28, 2017;

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

2. Deadline to file motions to amend pleadings/add parties is extended to January 27, 2017;
3. Initial Expert Disclosures are extended to January 27, 2017;
4. Rebuttal Expert Disclosures are extended to February 28, 2017;
5. The deadline for filing of dispositive motions is May 31, 2017;
6. The case will be ready for trial July 10, 2017.

The Discovery Commissioner, met with counsel for the parties, having discussed the issues noted above and having reviewed any materials proposed in support thereof, hereby submits the above recommendations.

DATED this 9 day of December, 2016.




DISCOVERY COMMISSIONER

Submitted by:

RODRIGUEZ LAW OFFICES, P.C.

Approved as to form and content:

LEON GREENBERG PROFESSIONAL CORPORATION


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not approved
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dana@overtimelaw.com
Attorneys for Plaintiffs

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

NOTICE

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

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

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

_____ Mailed to Plaintiff/Defendant at the following
address on the ____ day of _____, 201__:

_____ Placed in the folder of counsel in the Clerk's
office on the ____ day of _____, 201__:

✓ _____ Electronically served counsel on Dec. 16, 2016,
Pursuant to N.E.F.C.R. Rule 9.

By Natilie Lehman
Commissioner Designee

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

ORDER

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

_____ The parties having waived the right to object thereto,

☒ ^{ME} No timely objections having been received in the office of the Discovery
Commissioner pursuant to E.D.C.R. 2.34(f),

_____ Having received the objections thereto and the written arguments in support of said
objections, and good cause appearing,

* * *

AND

☒ ^{ME} IT IS HEREBY ORDERED the Discovery Commissioner's Report and
Recommendations are affirmed and adopted.

_____ IT IS HEREBY ORDERED the Discovery Commissioner's Report and
Recommendations are affirmed and adopted as modified in the following manner
attached hereto.

_____ IT IS HEREBY ORDERED that a hearing on the Discovery Commissioner's Report
and Recommendations is set for _____, 201__, at ____:____ a.m.

Dated this 7 day of March, 2017.

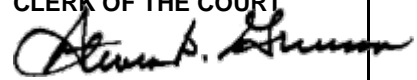


DISTRICT COURT JUDGE



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TRAN

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, MAY 18, 2017

TRANSCRIPT RE:
ALL PENDING MOTIONS

APPEARANCES:

For the Plaintiffs:

LEON GREENBERG, ESQ.
DANA SNIEGOCKI, ESQ.

For the Defendants:

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

ALSO PRESENT:

CREIGHTON J. NADY

RECORDED BY: Lisa Lizotte, Court Recorder

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000881

1 LAS VEGAS, NEVADA, THURSDAY, MAY 18, 2017, 9:07 A.M.

2 * * * * *

3 (Court was called to order)

4 THE COURT: Good morning. Please be seated.

5 So, we lost the case, we -- (interruption in court recording). That being
6 the case, let's see, what else has happened? Oh, you had mediation. It didn't work.
7 And these motions were filed, when, January or so, February, somewhere around
8 then, the first of the year?

9 MR. GREENBERG: Some predate January, Your Honor.

10 THE COURT: Predate?

11 MR. GREENBERG: Yes.

12 THE COURT: Okay. So what is our trial date and how is our 5-year rule
13 doing? February 5th of 2018 is what I show. Anybody done a calculation of what
14 our 5-year clock is doing? This was stayed while it was on mediation, was it?

15 MR. GREENBERG: It was stayed while on mediation. It was also stayed
16 extensively for decisions from the Nevada Supreme Court --

17 THE COURT: Okay.

18 MR. GREENBERG: -- that were rendered on the issues. I can advise the
19 Court on that precisely because I do have the calculation.

20 THE COURT: Okay.

21 MR. GREENBERG: It is sometime in the latter part of 2018. This case
22 would still be ripe for trial --

23 THE COURT: All right.

24 MR. GREENBERG: -- in September or October of 2018, Your Honor.

1 THE COURT: And safe to say nobody sees any reason why we would need
2 to continue this trial date another time?

3 MR. GREENBERG: Your Honor, I hope not, but we're going to deal with
4 a number of issues today. There is outstanding discovery. We were advised by
5 defendants that they are going to be serving a supplement in respect to some
6 discovery that was ordered back in March.

7 THE COURT: Uh-huh.

8 MR. GREENBERG: And what needs to be done in respect to discovery is
9 implicated by what they produce, if we get compliance from them. It's also implicated
10 by the Court's decision on the motion to bifurcate which is before the Court today.
11 If the motion to bifurcate is granted, that will remove certain issues; a deposition of
12 Mr. Nady, for example, and other things that still need to be conducted. Beyond
13 that, upon providing the rest of that discovery that has been ordered, I need to fully
14 supplement the plaintiff's damages claims based upon the defendant's records.
15 I did serve a Rule 16.1 statement two days ago, providing what I could regarding
16 an allocation of damages for each of the over 500 plaintiffs.

17 THE COURT: Okay. Okay. I just was trying to get a handle on whether we
18 are -- I was trying to get a handle on whether we were starting to approach. Generally
19 speaking when we're in the last year or the fourth year, in other words, of a case
20 we set the trial and I don't continue trials once we're into that point. That's my typical
21 stance, anyway. I have seen a few cases where cases got dismissed, never went
22 to the merits, and it's just a sad state of affairs that I don't propose to see happen.

23 So, all right, we have on today a whole slew of motions. I tried to
24 figure out what might be the best order of business. The closest that I have come

1 is it seems to me we ought to deal with defendants' motion for judgment on the
2 pleadings probably at the front or near the front and then take the others after that.
3 Now, I'm open to suggestion if anybody thinks there's a good order of business
4 here. Anybody think that we shouldn't take the defendants' motion for judgment
5 on the pleadings first?

6 MR. GREENBERG: No, Your Honor, that makes sense to me.

7 THE COURT: Ms. Rodriguez, how does that sound?

8 MS. RODRIGUEZ: No problem, Your Honor. It seems like that motion is
9 very straightforward.

10 THE COURT: Okay. All right, let's do that.

11 MS. RODRIGUEZ: And, Your Honor, these motions were filed awhile ago.
12 It looks like this one was actually filed -- I think you were asking earlier.

13 THE COURT: Yeah.

14 MS. RODRIGUEZ: If I'm looking at the right one, this --

15 THE COURT: November, it looks like.

16 MS. RODRIGUEZ: Right. November.

17 THE COURT: Yeah.

18 MS. RODRIGUEZ: And I believe this was just our motion for a ruling based
19 on the 2-year statute of limitation based on the Perry v. Terrible Herbst case --

20 THE COURT: Yeah.

21 MS. RODRIGUEZ: -- that came out on October 27th, 2016.

22 THE COURT: Uh-huh.

23 MS. RODRIGUEZ: The cite is 132 Nevada Advance Opinion No. 75. So
24 based on Rule NRCP 12(c), we move to dismiss the claims that are outside of the

1 2-year statute of limitation. And I think Your Honor gathers the gist of that. There's
2 not a whole lot more to say on that issue.

3 THE COURT: Okay. It gets a little murkier for me when we get into the
4 plaintiff's response and actually part of your argument. I don't recall if it was in your
5 -- I think it was in your reply, but I'm not sure that deals with the order that's -- the
6 issue that's raised is whether there was an order submitted to the Court that was
7 different than what the minute order reflected as far as the beginning date for the
8 claims at issue. You had argued somewhere in there that the minute order said
9 something about 2008. The actual order signed goes back to -- I forget what month.

10 MS. RODRIGUEZ: July of 2007.

11 THE COURT: July of 2007. At any rate, that's one nuance that somewhere
12 in here we've got to deal with. The plaintiff makes argument that by virtue of equity
13 tolling that the statute of limitations should be tolled, which would take it back
14 presumably to -- am I correct that you -- do you cling to the 2007 date?

15 MR. GREENBERG: Your Honor, the July 1st, 2007 date that I reference in
16 the cross motion arises because that was the first date upon which there was a
17 change in the minimum wage rate, which defendants were constitutionally required
18 to provide written notice to each employee of.

19 THE COURT: Right.

20 MR. GREENBERG: And it is our position they did not, and therefore the
21 appropriate remedy for that violation would be a toll.

22 THE COURT: And so you argue for the July 1st, 2007?

23 MR. GREENBERG: That's correct, Your Honor. And really to sum up the
24 issue here, there's no dispute it's a 2-year statute of limitations and we don't dispute

1 that the employer here in some capacity had some sort of standard notice posted
2 on the premises of the business, which presumably if the cab drivers came in the
3 office or went by that location they would have had an opportunity to see. We're
4 not disputing that factual background here.

5 THE COURT: All right.

6 MR. GREENBERG: The issue is really I think a question of law, Your Honor,
7 in terms of what the employer was required to do to comply with the terms of the
8 Constitution's requirement, which, you know the language is discussed --

9 THE COURT: You argue that by virtue of the language of the statute and
10 the federal cases you rely on that actual separate written notice must be given to
11 each employee?

12 MR. GREENBERG: Well, the literal language, as recited at page 2 of my
13 paper, says an employer shall provide written notification of the rate adjustments
14 to each of its employees. So we're talking about a written notification to each of
15 its employees, not collectively, not orally, not in some group manner. I mean, each
16 means each. That would be the way I would postulate it. In respect to the federal
17 cases that are cited, Your Honor, I only cite them to give the Court some point of
18 reference in terms of somewhat analogous circumstances arising under some
19 federal laws.

20 THE COURT: Yeah.

21 MR. GREENBERG: But obviously this is state law. This is the language of
22 the Nevada State Constitution. So --

23 THE COURT: Persuasive authority only. Yeah.

24 MR. GREENBERG: For what the Court finds it to be of value.

1 THE COURT: Okay. Let's talk about that because that kind of gets us down
2 to the heart of the issue on your motion as well. So, what would you say is the --
3 I mean, I think I know what you would say is the notice required. Part of what I need
4 to get down to is whether or not this Court needs to do a hearing, and I don't recall
5 the name, a case that starts with a "C," Cromwell, Conroy, something. What is it?

6 THE LAW CLERK: Copeland.

7 THE COURT: Copeland.

8 MR. GREENBERG: The Copeland case, Your Honor, from the Nevada
9 Supreme Court.

10 THE COURT: An evidentiary hearing to determine what notice was given.
11 The plaintiff would rely on the deposition of Mr. Nady. And so the question would
12 be, do we need such a hearing and if so, does the defendant then have some other
13 evidence on the issue of what notice was actually given here?

14 MS. RODRIGUEZ: Well, Your Honor, I attached the notice as not only the
15 deposition of Mr. Nady but the actual photos from the site of A Cab, the premises,
16 showing all of the notices that are in fact posted that advise the drivers of all the
17 labor laws and they are in compliance. And the deposition does in addition support
18 that, Mr. Nady's testimony indicating that as soon as they received any kind of
19 notifications from the Labor Commissioner, whether they be the state or the federal,
20 they immediately post them, advise the drivers, each driver of the change.

21 And one of the things I mentioned in my reply was that the cases
22 that Mr. Greenberg is relying upon go to the fact that there was a complete non-
23 advisement to the employees. And that's what we're talking about here is whether
24 the employees were made aware of the change in minimum wage or not. And

1 clearly by the evidence that we've produced, not only in this case but attached to
2 our reply, there was an advisement to the drivers.

3 And one thing I would just mention real quickly, Your Honor, you know,
4 I don't know the Court's preferences on this, but one of the problems that's been
5 in this litigation is the fact that we file motions and for every motion we file we get
6 a countermotion.

7 THE COURT: Yeah.

8 MS. RODRIGUEZ: So I would argue that this motion, Mr. Greenberg's motion
9 is not properly filed nor served or set in the proper course by just being in the terms
10 of a countermotion. Rather than filing oppositions to our motion, he usually files
11 these countermotions, which kind of complicate things --

12 THE COURT: Uh-huh.

13 MS. RODRIGUEZ: -- because then, you know, we don't get a chance to
14 really properly brief it and make a separate -- his argument is completely separate
15 about an equitable tolling issue. Ours is strictly based on whether the Court is
16 going to follow the supreme court mandate from the Perry v. Terrible Herbst matter.
17 So if he wants an evidentiary hearing, that's, you know --

18 THE COURT: Well, okay, but is not -- I mean, these issues are intertwined,
19 are they not?

20 MS. RODRIGUEZ: Correct.

21 THE COURT: So part of my -- the things I'm trying to get down to is before
22 we really make an argument on the law that should apply to this case, do we have
23 a need to have an evidentiary hearing? Do we need to have more evidence as to
24 the actual notice that was given?

1 MS. RODRIGUEZ: Well, obviously, Your Honor, I would argue it's not
2 necessary based on the evidence that we've already produced. I mean, if Your
3 Honor wants testimony to say, yes, from the general managers or the drivers that
4 they actually see these things in the workplace and they're required to walk in to
5 clock in and out every day or to fill out their paperwork, that they're in the common
6 workplace, we obviously can bring witnesses to support that. But I think Mr. --

7 THE COURT: I'm not so much requesting you to do that. I'm just trying to
8 figure out, okay, do we have the facts assembled --

9 MS. RODRIGUEZ: Right.

10 THE COURT: -- so that I can apply the law to it.

11 MS. RODRIGUEZ: I think we do because Mr. Greenberg, I don't think he's
12 disputing that. I think he said he's not disputing --

13 THE COURT: No, I don't either. I think he thinks that the deposition of your
14 client is sufficient. So then that raised the issue in my mind, well, before we even
15 proceed, because I do tend to think, and you know, I'm open to argument on it,
16 but I tend to think that the -- what is the name of the hearing again, the name of
17 the case?

18 MR. GREENBERG: Well, an evidentiary hearing under the Copeland
19 decision --

20 THE COURT: Copeland. Yeah.

21 MR. GREENBERG: -- regarding a statute of limitations toll.

22 THE COURT: So the question -- the first question would be do we need a
23 Copeland hearing? Does anybody feel the need for more evidence to come before
24 the Court on the issue of the actual notice given before we then look to the law and

1 the interpretation of the law, whether that was adequate? And I think what I'm
2 hearing is no, neither side feels --

3 MS. RODRIGUEZ: Not unless the Court is inclined to hear from the State
4 Labor Commissioner in terms of what he supplies to A Cab and what A Cab then
5 proceeds to do in compliance with instruction from the State.

6 THE COURT: We have what he actually supplies, is that right?

7 MS. RODRIGUEZ: Correct.

8 THE COURT: And that is the form that was posted?

9 MS. RODRIGUEZ: Correct. It's attached to the reply at Exhibit 2.

10 THE COURT: What does he say as far as how it's to be disseminated?
11 Does he give any -- I can't really read those very well, frankly. I can see where they
12 were posted, but what does he say? Does he give any instruction to an employer
13 as to how they're supposed to make drivers aware?

14 MS. RODRIGUEZ: These are actually just a notification. They just indicate
15 Office of the Labor Commissioner, State of Nevada. And it's a posting saying the
16 minimum wage and what it is for that particular time period, whether health insurance
17 is offered or not; the two tiers. But there is no further instruction from the Labor
18 Commissioner with that particular posting. Again, so --

19 THE COURT: Yeah. Well, one of the questions in my mind is what do we
20 make of that? And I guess I would ask Mr. Greenberg, if the Labor Commissioner
21 doesn't say that written notice of this event has to be handed to each driver, then
22 should I not take from that that posting the notice the way it's done here would be
23 adequate under the statute? What do I make of the -- does that not weaken your
24 argument somewhat?

1 MR. GREENBERG: Your Honor, I don't see that the Labor Commissioner's
2 opinion on any of these issues regarding how the employer's obligations are fulfilled
3 under the Nevada Constitution are really of any weight for the Court's consideration
4 one way or the other, quite honestly. I mean, in the MDC case, which was a
5 companion to the Perry case which was decided last year by the Nevada Supreme
6 Court, they specifically overruled the Labor Commissioner regulation that said tips
7 could be included in calculating the ten percent of gross wages --

8 THE COURT: Uh-huh.

9 MR. GREENBERG: -- requirement for the insurance qualification term of the
10 Constitution. So clearly the Nevada Supreme Court is not giving any deference to the
11 Labor Commissioner's regulatory interpretations of what an employer must do under
12 the act, the constitutional act. It's really a question of what Your Honor believes the
13 constitutional command is here. The language is the language. I mean, my position
14 is that you -- written notification of a rate adjustment to each of its employees requires
15 an actual placement in the hand in writing to each of the employees by the employer
16 of the change and its effective date and the rate that is imposed. I mean, this is not
17 an overwhelming obligation on the employer to then be able to invoke the statute of
18 limitations shield.

19 THE COURT: Yeah. Well, I grant you that it seems that whatever mandate
20 there is that appears in our Constitution probably achieves sort of a distinction even
21 over a legislative act in terms of the impetus that it places upon a court to carefully
22 and fully apply such a mandate. But when it comes down to it, your argument then
23 rests on the language of the Constitution itself, a plain reading of the language of
24 the Constitution?

1 MR. GREENBERG: It is, Your Honor. I mean, we have "shall provide," which
2 is an affirmative duty, it's not a discretionary duty.

3 THE COURT: Uh-huh.

4 MR. GREENBERG: "Written notification to each of the employees." So,
5 I mean, when you combine that language together, I would submit the clear import
6 of the language is the obligation on the employer is to if not place in the hand of
7 each employee at least have delivered to each employee through an appropriate
8 means in their paycheck or their -- you know, in a mailing to each employee or
9 something. If the employee fails to actually make themselves aware of it at that
10 point, then --

11 THE COURT: Uh-huh.

12 MR. GREENBERG: -- well, you know, it doesn't say that the employee has
13 to acknowledge that they've been informed, it just says that the employer has to
14 provide written notification to each employee.

15 THE COURT: This language became operative, as you point out, November
16 28th of 2006. That's when the constitutional amendment became effective. Is that
17 right?

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

19 THE COURT: And there's no -- there's been no Nevada case law since then
20 that has interpreted that in the context of the issue that we have now?

21 MR. GREENBERG: That is correct, Your Honor. I'm unaware of any jurist
22 in the state considering this issue.

23 THE COURT: Okay. All right, now I have to ask Ms. Rodriguez a question.
24 Given that this is language in our Constitution and it is a constitutional mandate,

1 does that not provide some increased force or impetus or whatever you want to call
2 it, imperative to the Court to read that -- if anything, to read it broadly in terms of the
3 requirement?

4 MS. RODRIGUEZ: Well, Your Honor, in answer to your question, I would
5 look to all laws pertaining to employment law, whether they be federal or state.
6 The practice -- and I think this goes back to your question of what does the Labor
7 Commissioner advise the employer to do -- the practice is never to hand each
8 employee an advisement of these are your rights under the ADA, these are your
9 rights under the FMLA, you know, these are your rights for health; anything. It's
10 always that the notice must be posted in a common area --

11 THE COURT: Right.

12 MS. RODRIGUEZ: -- for all of the employees and that's what they inspect for.

13 THE COURT: And was that not because that is specifically what is called for?

14 MS. RODRIGUEZ: That it must be -- yes, that is correct --

15 THE COURT: Okay.

16 MS. RODRIGUEZ: -- that it must be -- the employees must be advised of
17 this right, similarly to what the Constitution says. You know, Mr. Greenberg's
18 interpretation, as Your Honor pointed out, is his interpretation of what the
19 Constitution has said. The Court has not indicated that a written notification must
20 go be handed or mailed or put in their paycheck to each one.

21 THE COURT: Yeah. Well, and I take your point to be that why would we
22 make this be -- I mean, to some extent your point is why would we make this be the
23 exception to the rule --

24 MS. RODRIGUEZ: Correct.

1 THE COURT: -- if the rule is both under state and federal legislation that
2 it be posted, that they simply be advised in some fashion or other?

3 MS. RODRIGUEZ: Correct. That it is a written notification as opposed to
4 an oral advisement of these are your rights, so that an employee can at his or her
5 leisure go and inspect the posting and understand their rights, what they're entitled
6 to. The same thing with the minimum wage.

7 THE COURT: Uh-huh.

8 MS. RODRIGUEZ: They need to know what their minimum wage is, what
9 they're entitled to, and that is what is posted. And I would just add, Your Honor,
10 that even if the Court would somehow determine that A Cab was not in compliance
11 with this written advisement, I think what we're looking at more is an administrative
12 penalty that would be enforced, as opposed to -- that still isn't grounds for what
13 Mr. Greenberg is arguing, an equitable tolling to take it back to July of 2007. Again,
14 this goes back to what is he arguing for, because the two don't necessarily go hand
15 in hand in support of his equitable tolling, that if he finds or the Court finds that there
16 must be an actual notification, written notification to each driver, that that somehow
17 supports that the statute of limitations should be extended --

18 THE COURT: Yeah.

19 MS. RODRIGUEZ: -- retroactively back to July of 2007.

20 THE COURT: And why is that?

21 MS. RODRIGUEZ: Well, I don't know, actually. I mean, that doesn't make
22 sense to me as to -- there's nothing to support that as to why would an interpretation
23 of the Constitution in this manner to say that this is the requirement, why would that
24 toll -- retroactively extend the statute of limitations to July of 2007?

1 THE COURT: Uh-huh. All right. Well, let's ask Mr. Greenberg that. Why
2 would we -- assuming that I agree with you that -- and I must tell you both that the
3 lay of the land is I have frankly tried to talk myself out of a very literal application
4 of this because it seems to me generally speaking the law, you know, is more
5 concerned with effective notices where you're talking about notices, as opposed to
6 some precise, exact way to do it. However, I am leaning towards finding that the
7 interpretation that Mr. Greenberg is arguing for probably is correct, that to satisfy the
8 Constitution it is necessary to give the written notification to each of the employees.

9 But now let's take the next step of the argument, which I think Ms.
10 Rodriguez is raising and has raised in her pleadings, is why would you then jump
11 from that finding, that conclusion of the law that that automatically gives you an
12 equitable tolling, when the only penalty for such a thing that exists in the law is an
13 administrative regulation? Is that correct, Ms. Rodriguez --

14 MR. GREENBERG: Well, no.

15 THE COURT: -- that it's a -- there's some provision that says that if you don't
16 abide by it that it would be at most some sort of administrative regulatory matter?

17 MS. RODRIGUEZ: Well, there's nothing on point, Your Honor. It hasn't been
18 interpreted.

19 THE COURT: Okay.

20 MS. RODRIGUEZ: So there isn't one way or another that it would either be
21 an administrative penalty or that --

22 THE COURT: Yeah.

23 MS. RODRIGUEZ: I mean, no one has thought up that this should somehow
24 be an equitable tolling issue.

1 THE COURT: Yeah. Okay.

2 So, Mr. Greenberg, why -- assuming that I agreed with your
3 interpretation, even, why do you jump from that to the notion that there must be
4 some equitable tolling?

5 MR. GREENBERG: Well, Your Honor, this is where the authorities I cited
6 to you from the analogous federal decisions dealing with notifications under age
7 discrimination law or federal minimum wage law come into play. And those statutes
8 actually -- it's actually regulatory, I believe. I don't believe it's statutory. But they
9 refer to a posting in the workplace. It is not the same command that we see here --

10 THE COURT: Okay.

11 MR. GREENBERG: -- in the Constitution. But in that line of cases where
12 courts have found that those notifications were not properly granted, they have
13 estopped the employer from invoking the statute of limitations defense against the
14 employees' claim. And I'm essentially asking for the same remedy here, and this
15 is again discussed at page 3 of my submission, because the remedial provision
16 of the Constitution here is extremely broad, which it says, you know, if there's a
17 violation -- I mean, we're assuming there's a violation, that the notice requirement
18 wasn't complied with. Well, if there's a violation the injured employee is entitled to
19 all remedies as, you know, broadly possible, as discussed at page 3 of my --

20 THE COURT: Excuse me. I may be missing something. You said page 3.

21 MR. GREENBERG: Page 3 of my opposition and cross motion -- counter-
22 motion, Your Honor.

23 THE COURT: Okay, which is the --

24 MR. GREENBERG: At line 22.

1 THE COURT: -- the deposition testimony?

2 MR. GREENBERG: No. Page 3 of the opposition to defendants' motion for --
3 Oh, it's below the deposition testimony. I'm sorry. It's at line 22, Your Honor.

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

5 MR. GREENBERG: And as I was saying, if the purpose of the Constitution
6 is to require the employer to provide the notice, as we've been discussing, if the
7 employer doesn't provide the notice why should they be allowed to invoke the statute
8 of limitations that is applicable to these claims? I mean, that is the remedy that we're
9 asking for here. Otherwise, the employer essentially has no incentive to provide the
10 notice. I mean, if he doesn't provide the notice, maybe the employee will remain
11 ignorant of his rights and therefore won't exercise them. I mean, the purpose of the
12 notice requirement presumably is to be sure the employee knows what his rights are.
13 I mean, there can't really be any other purpose to the notice requirement.

14 THE COURT: Do I take from that you're meaning -- that you're saying that --
15 well, I'm just doing circular logic back to the language that you quoted from Article
16 15, Section 16 says that an employee claiming the violation gets to enforce the
17 provisions of this section, shall be entitled to all remedies available under the law
18 or in equity appropriate to remedy any violation. You're saying that the violation --
19 that this is a violation, no matter how you cut it?

20 MR. GREENBERG: Well, Your Honor, if there's no violation, I'm not entitled
21 to a remedy.

22 THE COURT: Okay.

23 MR. GREENBERG: Your Honor was positing before, well, assuming Your
24 Honor agrees there was a violation or a non-compliance with the mandate of the

1 Constitution by the employer, what is the remedy?

2 THE COURT: Yeah.

3 MR. GREENBERG: You were asking, well, why is the remedy a toll of the
4 statute of limitations? The reason why the remedy is a toll of the statute of
5 limitations, Your Honor, is otherwise the protection becomes meaningless because
6 the employer has no incentive to comply with their obligation under the Constitution.
7 Essentially they get rewarded by keeping the employee ignorant because the statute
8 of limitations continues to run. This is the analogy from --

9 THE COURT: Well, isn't it true you could hardly argue that in this case they
10 simply covered everything up and kept the employees ignorant? They posted a
11 notice.

12 MR. GREENBERG: Well, Your Honor, we've been litigating this case since
13 2012 against this company and the industry, which has taken the position, as Your
14 Honor recalls, that none of the industry was subject to the Nevada minimum wage
15 amendment. So it's not as though they actually advised the employees in any direct
16 sense -- not the employees. Let me make that more clear. The taxi drivers. Their
17 other employees they concede are covered by the minimum wage law and so forth.
18 But they never actually advised the taxi drivers themselves that they were covered
19 because it's always been their contention they were not subject --

20 THE COURT: Yeah.

21 MR. GREENBERG: -- to the Nevada minimum wage.

22 THE COURT: Well, then what do we make of the fact that they posted this
23 thing?

24 MR. GREENBERG: They posted it simply because they had to post it

1 because they are required to in respect to their business for the other employees.
2 At least that was their position. They were not undertaking to post this notice
3 because of --

4 THE COURT: For the drivers.

5 MR. GREENBERG: -- because of the drivers. They weren't telling the
6 drivers anything about the Nevada minimum wage because their position was the
7 drivers weren't entitled to anything under the Nevada minimum wage. And in fact,
8 they had an incentive not to tell the drivers because they might well have been
9 subjected to this litigation years earlier if they had done so. I mean, that's the
10 reason why the remedy I am proposing to the Court is really the only appropriate
11 remedy if the Court agrees as to the obligation of the employer here as I have
12 presented to the Court. I don't know what other remedy could possibly be imposed
13 that would be equitable or would repair the damage done here and fulfill the obvious
14 purpose of the notice requirement.

15 Now, I do just want to make clear to the Court on the record here one
16 thing that the Court should be aware of and that I think I need to concede, which is
17 that the obligation is an obligation to provide notice --

18 THE COURT: Uh-huh.

19 MR. GREENBERG: -- as to the change.

20 THE COURT: Uh-huh.

21 MR. GREENBERG: That change comes about July 1st of every year if
22 there is in fact a change. So the statute of limitations toll presumably applies to
23 employees who were there when the change occurred. Do you understand, Your
24 Honor? And therefore were not provided with that notice. Look, this is the limited

1 structure of the obligation under the Constitution. It doesn't say when you hire the
2 employee you have to notify him or every month you have to notify him. You must
3 notify him in this fashion when there's a change. So when we talk about a statute
4 of limitations toll back to July 1st of 2007, it would not in fact encompass everyone
5 who worked from July 1st, 2007 through 2010, which is the period we're talking
6 about, because, for example, we could have had somebody who worked from
7 August of 2007 to December of 2007.

8 THE COURT: Yeah.

9 MR. GREENBERG: There would have been no change. There would have
10 been no obligation on the employer to advise this employee of any change during
11 that period, so he would not have a claim before this Court. We would have to weed
12 that out, Your Honor --

13 THE COURT: Yeah.

14 MR. GREENBERG: -- but I just want to be clear with the Court as to what
15 the scope of the toll would be if it was granted, Your Honor. This is somewhat of
16 a technical issue, but the Court should understand this.

17 THE COURT: Yeah. Okay. All right, anything more on this issue?

18 MS. RODRIGUEZ: Your Honor, I think you could probably see through some
19 of that argument, but just so that the record is clear, most of what Mr. Greenberg
20 just talked about, I'm not sure where he's getting any of that about the notice and
21 that -- implying that A Cab was deliberately withholding notice from the drivers and
22 only posting it for certain employees. There's nowhere in the facts, the depositions
23 or anything. I think we started this morning's hearing with him stipulating and
24 agreeing that these notices were posted in the common work area. So, I don't think

1 there's any question that notice was given to the drivers and to the employees.
2 We're just talking about a technicality as to whether the Constitution requires an
3 actual handing of every time there's a change in the minimum wage to each driver
4 in their paycheck or by mail or in person. I think it's a procedural technicality that
5 Mr. Greenberg is arguing for because there's no question that notice was given to
6 the drivers. But again, our position would be that even if that wasn't -- if the Court
7 finds that for some reason there isn't a notice to the drivers, because those are the
8 cases that he's relying upon where there was absolutely no notice, no advisement,
9 that an equitable tolling was appropriate because the driver wasn't aware or the
10 employee wasn't aware at all that they had these rights. That's not the case here.

11 So I think then we are looking more at an administrative penalty rather
12 than this equitable tolling argument back to July of 2007 that he's seeking. That's
13 completely improper. I don't think he meets either standard for the Court to allow
14 what he's asking for; one, that we have given the proper notice. A Cab did give
15 the proper notice. And two, that it doesn't support a reason to toll the statute of
16 limitations back to July of 2007. We're asking for the 2-year, in compliance with
17 what the supreme court has ordered as of last fall.

18 THE COURT: Okay. It is definitely, as everyone has conceded, not a 4-year
19 statute, it's a 2-year statute. I feel compelled to interpret the Constitution in the way
20 that the plaintiff has argued for here and I do so reluctantly because it requires so
21 much more than posting of such a thing. It wouldn't matter how big a print, how --
22 it wouldn't matter if they broadcast it over a P.A. system, if it didn't do what this
23 language in the Constitution says then it would not comply. And that's essentially
24 what I feel compelled to hold. I generally speaking am much more in favor of more

1 practical approaches to say that, you know, something adequate, sufficient notice,
2 something of that sort. But I think that Mr. Greenberg's argument that the literal
3 language of the Constitution and I guess the fact that it is in the Constitution I feel
4 it's entitled to more respect, if you will, judicial respect and careful and assiduous
5 application, even a broader application than perhaps statutory language. I have
6 a great regard for constitutions, both the Constitution of the United States and the
7 Constitution of the State of Nevada. It's not a question of how I think it should be
8 done, it's a question of does this language mean that literally written notice must
9 be given to each driver, and my holding is that that is what the language says.

10 The next question is whether that then provides an equitable tolling,
11 and I must -- again, I feel compelled to hold that it does; once again because of
12 the broad statement in another part of the Constitution which says an employee
13 claiming the violation of this section may bring an action against his or her employer
14 in the courts of this state to enforce the provisions of this section and shall be
15 entitled to all remedies available under the law or in equity appropriate to remedy
16 any violation of this section, including but not limited to back pay, damages,
17 reinstatement, injunctive relief. The best I can do is to say I think that principles of
18 constitutional application and interpretation require this result.

19 That being the case, then it necessarily follows that the defendants'
20 motion for judgment on the pleadings must be denied. And so that we are clear,
21 it does seem to me that that means that it does extend back to July 1st of 2007.
22 That's the best I can do with that one.

23 Let's touch upon this notion of every time the defense files a motion,
24 the plaintiff not only responds but files a counter-motion. Mr. Greenberg, do you care

1 to speak to that? Is there a reason why? In other words, if your motion is important
2 enough that the Court really needs to look at it, is there a reason that it should be
3 mixed up in the back and forth and the back and forth of a countermotion, as
4 opposed to a separate motion?

5 MR. GREENBERG: Well, Your Honor, I don't appreciate the characterization
6 of my conduct by defense counsel. But putting that aside, Your Honor, this
7 particular issue before the Court really is intertwined. I mean, we don't -- and the
8 direction Your Honor was going in with your order, I would point out the ultimate
9 order that needs to be entered needs to make clear that the statute of limitations
10 toll is limited to those individuals who were employed from this period of July 1st --

11 THE COURT: Yes.

12 MR. GREENBERG: -- 2007, who --

13 THE COURT: Yes. By operation of the definition of the class.

14 MR. GREENBERG: As we -- well, as we were discussing before, though,
15 who were actually employed during the period of time when there was a change
16 that they should have been advised of, because there are individuals who were
17 employed during that period --

18 THE COURT: Understood.

19 MR. GREENBERG: -- who are not going to fall into that group. So it's not
20 going to be everyone who was employed from July 1st, 2007 to October 8th, 2010,
21 which is the period we're talking about. It's going to be a more limited group, which
22 we will have to ascertain.

23 THE COURT: The notice itself was required or the change in the rate
24 occurred what dates?

1 MR. GREENBERG: Your Honor, the notice that was dispatched was to
2 everyone who was identified going back to 2007, okay. We sent the notice --

3 THE COURT: Okay. And so there aren't any other years that we have to
4 be concerned about?

5 MR. GREENBERG: No. The notice would not need to change because
6 when I came to the Court and asked the notice be sent, I anticipated we would deal
7 with this issue in the future. We also were not sure at that time as to the statute
8 of limitations, which was settled subsequently to the notice being dispatched.

9 THE COURT: Yeah.

10 MR. GREENBERG: So there's no need for a further notice, but there is going
11 to be a need to ascertain whose claims are going to come in and be before the
12 Court for this 2007 through 2010 period.

13 THE COURT: Well, let's talk about that. If this Court's application or
14 interpretation and application of this constitutional mandate withstands the rigors of
15 appeal, would not this employer and every employer be well advised to immediately
16 then, if they haven't done so before, do what you're arguing for, that they hand out
17 written notices of the change? Otherwise they're going to be facing a future
18 litigation.

19 MR. GREENBERG: Your Honor --

20 THE COURT: Probably from you.

21 MR. GREENBERG: They give their employees paystubs with their paychecks.
22 It's very easy for them to print on the paystub the Nevada minimum wage rate is this
23 much and this much; whether you get health insurance. That's it. It's one sentence.
24 They put it on the paystub.

1 THE COURT: Okay.

2 MR. GREENBERG: It goes to the employee. They've complied with the law.
3 This is not an incredibly difficult thing for employers to comply with.

4 THE COURT: Well, I'm not talking about how difficult it is, I'm just saying
5 that if the argument that I have now accepted turns out to be accurate, then they do
6 need to get that word out. Otherwise there's just going to be another class action.

7 MR. GREENBERG: Well, they need to make that notification every time
8 there's a change, okay.

9 THE COURT: Yeah.

10 MR. GREENBERG: And the scope of this problem is really probably limited
11 to his industry or maybe a few other industries where they have simply neglected
12 their obligation under the Nevada minimum wage amendment. In other industries
13 they've recognized their obligation and they've paid the minimum wage, largely,
14 so we don't have a flurry of litigation involving complete non-compliance with the
15 minimum wage standard in the state because employers generally comply --

16 THE COURT: Okay.

17 MR. GREENBERG: -- because they're not in this industry.

18 MS. RODRIGUEZ: I'm just going to comment on that, Your Honor.

19 THE COURT: Yes.

20 MS. RODRIGUEZ: Excuse me. But, you know, the Court's ruling I think
21 really has broader ramifications than what Mr. Greenberg is representing because
22 I'm not sure there's any employer that sends out a written letter to every employee.
23 This is not the taxicab industry. This is now every employer in the state of Nevada
24 every time there's a rate change --

1 THE COURT: I agree.

2 MS. RODRIGUEZ: -- and this is not how it's been done, will have to send
3 a letter or some --

4 THE COURT: Or do what he's talking about.

5 MS. RODRIGUEZ: Do something like that --

6 THE COURT: Something. Yeah.

7 MS. RODRIGUEZ: -- which is kind of -- you know, again, we're getting back
8 to a technical thing where he's saying all they should have done is just print it on
9 the top of a paycheck and that would have been sufficient, as opposed to the big
10 posters that are available to everybody to see.

11 THE COURT: Yeah.

12 MS. RODRIGUEZ: And because of that, then now the employer is on the
13 hook now for an additional almost four years of liability based on that --

14 THE COURT: Yeah.

15 MS. RODRIGUEZ: -- which, you know, again, I just wanted to make that
16 comment that I think this is a lot broader ruling --

17 THE COURT: I agree.

18 MS. RODRIGUEZ: -- than what he's saying in terms of it just being limited
19 to the taxicab industry, A Cab or the taxicab industry. It's all employers.

20 THE COURT: Yeah. And I think part of the reason why I feel compelled to
21 interpret the Constitution as I believe it's intended to be interpreted is because there
22 needs to be -- obviously everybody needs to know, is that really true, do we really
23 have to give some written notice to each and every employee in order to comply with
24 the Constitution. And the only way to know that is for somebody to rule it and I'm

1 just sorry it's me, because as I said, I'm not saying I'm sorry that they have to have
2 notice, I'm saying that I tend to where possible think what's pragmatic is what
3 works, is what passes muster under the law. I'm afraid I don't think so in this case.
4 To do so I would be modifying, I would be -- I don't know, just not doing what the
5 Constitution appears to me to specifically require.

6 Be that as it may, so the defendants' motion for judgment on the
7 pleadings is denied and technically the defendant's -- I'm sorry, the plaintiffs'
8 countermotion for --

9 MR. GREENBERG: Your Honor, I would actually propose that their motion
10 needs to be granted in part, because to the extent that Your Honor has certified
11 a class of individuals going back to 2007 --

12 THE COURT: Okay.

13 MR. GREENBERG: -- who are not subject to a toll for the reasons I explained
14 to you and they do not have claims after October 10th, 2008, they need to be
15 dismissed.

16 THE COURT: Okay.

17 MR. GREENBERG: And we need to ascertain who those individuals are.

18 THE COURT: All right.

19 MR. GREENBERG: We're going to have to engage in a process to do that,
20 Your Honor.

21 THE COURT: That's correct. All right, so big win. The defendants' motion
22 is granted to the extent -- You're going to have to define that again, Mr. Greenberg.

23 MR. GREENBERG: I will draft an order and get it to defendants.

24 THE COURT: Yeah.

1 MR. GREENBERG: I think the parties are going to have to coordinate a
2 stipulation, an exhibit of some sort indicating who these individuals are who are
3 subject to the toll within the definition that -- the ruling Your Honor has made. And
4 if we can't do that, then we'll have to -- that will have to be subject to some further
5 ruling by the Court.

6 THE COURT: Yeah.

7 MR. GREENBERG: We'll have to submit the information to Your Honor and
8 Your Honor will have to rule whatever our dispute is --

9 THE COURT: Yeah.

10 MR. GREENBERG: -- in terms of weeding out who these individuals are.

11 MS. RODRIGUEZ: I would like it repeated, Your Honor, because I really
12 don't -- I'm looking at my co-counsel, too --

13 THE COURT: Okay.

14 MS. RODRIGUEZ: -- and I'm kind of confused as to what he's wanting.

15 THE COURT: So let's talk about who doesn't it apply to, then.

16 MR. GREENBERG: If an individual was employed between July 1st, 2007
17 and October 8th, 2010 --

18 THE COURT: Yeah.

19 MR. GREENBERG: -- but was not employed when there was a change in
20 the minimum wage rate.

21 THE COURT: Okay.

22 MR. GREENBERG: Changes in the minimum wage rate occur on July 1st
23 of every year if there is a change. There were changes -- I believe it was in 2008,
24 2009. Well, my associate is advising me that it was 2010. I believe there were

1 changes on July 1st, 2008, 2009, as well as 2010. The last change was in 2010,
2 Your Honor. We know that.

3 THE COURT: Okay.

4 MR. GREENBERG: If they were not employed on one of those dates --

5 THE COURT: Uh-huh.

6 MR. GREENBERG: -- then the statute of limitations is not tolled. So
7 essentially we would have subgroups of people whose claims would be tolled
8 potentially as of July 1st, 2007, as of July 1st, 2008, as of July 1st, 2009, because
9 that's the date that the violation -- the notice violation occurred and they were
10 employed with the employer.

11 THE COURT: Okay.

12 MR. GREENBERG: Individuals who were not employed during that date
13 change, that July 1st date of those years --

14 THE COURT: Uh-huh.

15 MR. GREENBERG: -- the statute of limitations is not going to be tolled for
16 them because the employer --

17 THE COURT: Well, who would -- for an example, what kind of dates for an
18 employee would disqualify them from being able to -- (inaudible).

19 MR. GREENBERG: If an employee began work August 1st, 2007 and left
20 June 1st, 2008 --

21 THE COURT: Okay. They're out.

22 MR. GREENBERG: -- they weren't there during a time when the employer
23 had an obligation to notify them, so they're not going to benefit from a toll.

24 THE COURT: Okay.

1 MR. GREENBERG: That is how we would discern the members of the
2 already certified class who are going to remain and not have their claims dismissed.
3 Some of these people did not work, you know, for a long period of time. They
4 didn't work during that trigger date where the obligation of the employer existed.
5 Therefore, they're not going to get a toll. I want to be sure that the Court's order
6 is implemented in a fashion consistent with the law and the obligations we've been
7 discussing, Your Honor.

8 THE COURT: Okay. And is there no one else who could claim some
9 equitable tolling? For example, if there was some sort of notice, you said in 2008
10 or 9? Was there any?

11 MR. GREENBERG: Well, if someone was employed from June 1st of 2008
12 through let's say September of 2008 and they didn't get the notice that was required
13 on July 1st, 2008 --

14 THE COURT: Right.

15 MR. GREENBERG: -- their claim would be tolled back to July 1st, 2008 --

16 THE COURT: Okay.

17 MR. GREENBERG: -- because that was the act, the violation. So part of
18 their claim would be tolled. They would have actually had some employment prior
19 to July 1st of 2008 in that example.

20 THE COURT: Right.

21 MR. GREENBERG: But that part wouldn't be tolled --

22 THE COURT: Wouldn't be tolled.

23 MR. GREENBERG: -- because the employer didn't violate any obligation
24 until July 1st of 2008. So the toll that's going to be applied is going to be to a limited

1 group of individuals and it's not actually going to run from the same date for each
2 individual. We need to review the records and see who was employed during that
3 trigger date, Your Honor.

4 THE COURT: Does this not operate as yet another reason why a more
5 pragmatic interpretation of the constitutional mandate should be used?

6 MR. GREENBERG: Well, Your Honor --

7 THE COURT: I mean, because now we've got, you know, I don't know if it
8 amounts to subgroups or subclasses, but you've got bunches of individuals. It's
9 going to be a monumental work to figure out who was employed during -- on the
10 operative date, July 1st of 2007.

11 MR. GREENBERG: Your Honor, we have the benefit of computerized payroll
12 records. We know who was employed when based on the data that was produced
13 in this case. It's actually not a very great task. And in fact, Your Honor, it's really no
14 different than looking at the start date that each person started working. They don't
15 have a claim before they starting working for the employer, in any event. So we're
16 just saying for certain of these individuals their start date for purposes of this case
17 is going to be July 1st of one of those years, 2007, 2008, 2009, 2010. For other
18 individuals they're going to be dismissed entirely because the employer never had
19 an obligation to notify them in accordance with the constitutional language.

20 I'm not telling you, Your Honor, that this is an extremely effective,
21 pragmatic, easy sort of structure of the law here, but it is the structure of the law,
22 as Your Honor has acknowledged. And the Court's obligation is to --

23 THE COURT: Well, the implementation of constitutional protections is seldom
24 an easy task. It's messy.

1 MR. GREENBERG: I understand, Your Honor, but --

2 THE COURT: You were going to say something, Ms. Rodriguez.

3 MS. RODRIGUEZ: Well, I just -- I don't know if I should leave this alone
4 or not. It's just getting more and more kind of fuzzy in my mind because I wasn't
5 clear that the Court -- I think what the Court is saying is that in accordance with the
6 Constitution only written notification of the adjustment or the change has to be given
7 to the employee, but if the employee comes in July 2nd after that written notification
8 has already gone out, then they don't get to find out about it until the next time
9 there's a rate adjustment. There's no requirement -- the Court is not saying there's
10 a requirement to let them even know what the minimum wage is.

11 THE COURT: There's no equitable tolling of the 2-year statute as to them.

12 MS. RODRIGUEZ: Uh-huh. Okay.

13 THE COURT: So I don't know how that's going to shake out exactly, but that
14 would be the only -- you know, the furthest that I can logically think you would do
15 in applying this precept.

16 MS. RODRIGUEZ: So unlike his suggestion that it has to be on all the
17 paychecks every time they get a paycheck, it really has to only be on the July 1st
18 paycheck when there's a rate adjustment, and if you come in --

19 THE COURT: I thought that's all he was saying. I thought that's --

20 MS. RODRIGUEZ: -- if you come in afterwards --

21 THE COURT: That was the only thing I thought he was saying.

22 MR. GREENBERG: I would concur with defense counsel on that point,
23 Your Honor.

24 THE COURT: You think it has to be every week?

1 MR. GREENBERG: No, that it would only have to be advised as to the
2 notification.

3 THE COURT: Oh. That it would only have to be the one paycheck.

4 MR. GREENBERG: Say the Nevada minimum wage rate has now increased
5 to whatever it has.

6 THE COURT: Okay.

7 MR. GREENBERG: And that's it. The employer has complied.

8 THE COURT: All right. Well, I think we've flayed that one pretty well. Why
9 don't we move on to another one. Anyone want to nominate one for the next
10 consideration?

11 MR. GREENBERG: Your Honor, I am eager to see the motion for partial
12 summary judgment determined by the Court.

13 THE COURT: I'll bet you are.

14 MR. GREENBERG: But Your Honor may feel it's more appropriate to deal
15 with some of the other ones first.

16 THE COURT: I do, as a matter of fact. I would tend to leave that one for
17 probably last. Let's look at defendants' motion for leave to amend the answer to
18 assert a third party complaint. The plaintiffs' response includes a couple of things,
19 a couple of points. One is that there is no action, court action for champerty. And
20 secondly -- let's see, I have to be reminded of what your second one was. What is
21 your second one in a nutshell, Mr. Greenberg?

22 MR. GREENBERG: Your Honor, there were in fact two motions filed for this.
23 The first one was withdrawn.

24 THE COURT: Right.

1 MR. GREENBERG: We only objected to the withdrawal to the extent we
2 wanted our cross motion for sanctions heard. The second motion which does
3 remain before the Court claims that there was an interference with contract because
4 we persuaded Your Honor --

5 THE COURT: Interference with contract.

6 MR. GREENBERG: -- to issue an injunction in the Dubric case.

7 THE COURT: And what was your -- the essence of your response to that?

8 MR. GREENBERG: Well, Your Honor, there's no contract that was interfered
9 with because they allege that we've obstructed their agreement to resolve and settle
10 the Dubric litigation on a class-wide basis and they had no legal right to do that.
11 I mean, any right to do that obviously was subject to approval by the Court. We
12 in fact represent the class members so we have a right to object, in any event, and
13 to come to Your Honor or to Judge Delaney, who we did see on that as well, and
14 persuade the Court to take action otherwise. So there's no basis for --

15 THE COURT: Well, let me ask you a question.

16 MR. GREENBERG: Yeah.

17 THE COURT: Why would -- I mean, you're arguing to me the facts, but why
18 would I not determine whether such a third party action could be filed based simply
19 on a basic construction of the law or interpretation of the law? If, for example,
20 you're correct that there is no cause of action for champerty, okay, then why would
21 I let them file such a complaint? But if the resolution of whether or not they could
22 have a cause of action based upon the second, the whole argument that you just
23 laid out, if that is fact-driven, then why would I not let them file the complaint at least
24 so that, for one thing, it would protect the statute of limitations on it? That's not to

1 say that it has to be resolved at the same time as the rest of this lawsuit. I would
2 see no reason why it couldn't be severed or -- yeah, severed and dealt with
3 separately. But as to the question of why they couldn't file such an action, how far
4 am I supposed to go in trying to make a determination now of whether they might
5 ever, based on these facts, be successful?

6 MR. GREENBERG: Well, Your Honor, there's a big difference between
7 them naming me as a third party defendant in this case --

8 THE COURT: Uh-huh.

9 MR. GREENBERG: -- and bringing some independent claim against me
10 because I did some tortious conduct or some other improper act and injured the
11 defendant. Obviously they have a right to their legal remedies if I have violated the
12 law and the Court should deal with that. But their allegation on that point, as I think
13 Your Honor is pointing out, has no relationship to this case whatsoever. Proof of
14 those -- assuming those allegations were sustainable in the first place, proof of
15 those allegations has nothing to do with proof of any issue that's being litigated
16 before Your Honor in this case. There's no reason for that case to be brought as
17 a third party, as an impleader action to implead me in this case. The only reason
18 they're doing this, Your Honor, is to make it impossible for me to represent the class
19 and to create a conflict of interest because obviously if I -- I mean, it would be a very
20 strange trial to say the least, Your Honor, if we were going to simultaneously present
21 evidence to the jury to the defendants' liability and then the defendants were going
22 to turn around and say, well, you know, men and women of the jury, if we're liable
23 then plaintiffs' counsel is liable to us.

24 THE COURT: Yeah.

1 MR. GREENBERG: I mean, it's completely untenable. It doesn't work,
2 Your Honor. This is just done in an abusive fashion and harassing fashion. They
3 actually modeled this on the Western Cab litigation before Judge Bell where they're
4 attempting -- where they actually filed a third party complaint against me, claiming
5 that I tortiously interfered with their contracts with their cab drivers to be paid less
6 than the minimum wage, which was an allegation -- and that I engaged in champerty
7 again, okay. So this is a model that certain members of this industry have adopted
8 in terms of fighting these litigations and taking them against me.

9 Now, I understand Your Honor isn't here to take sides. Your Honor
10 is here to apply the law and I respect that and you're trying very hard to do that with
11 a clear mind and a clear sight. If Your Honor simply wants to take the position that,
12 look, whatever issues you have that you are raising here, they don't belong in this
13 case and simply leave it at that, then that's Your Honor's decision. I would suggest
14 that Your Honor should make a determinative ruling as to the inadequacy of these
15 claims because there is no legal basis for them. There's no claim that can be made
16 for champerty. Champerty isn't a cause of action.

17 And in addition, their claim that I tortiously interfered with a third party
18 contract refers to a nonexistent contract. I mean, the allegation that I interfered with
19 their contract to settle the Dubric litigation, they didn't have an enforceable contract.
20 I can't interfere with something that they don't have a legal right to do. Their legal
21 right is limited by leave of this Court. So to the extent -- I mean, obviously to the
22 extent that I was acting on behalf of the class, I would also submit if we were to go
23 beyond that analysis, Your Honor, the fact that this Court previously appointed me
24 class counsel, okay --

1 THE COURT: Yeah.

2 MR. GREENBERG: -- so that as a result my clients who I represent, a
3 thousand drivers of the company, they have a privilege, they have a vested right
4 to speak to the Court about their interest in any resolution of their claims, which is
5 what they were proposing.

6 So even if the Court were to not go with the first level of the analysis
7 here, which I say there is no enforceable right, okay, as a matter of law the conduct
8 they allege I engaged in was privileged. It has to be privileged because of my role
9 as class counsel, as appointed by this Court.

10 THE COURT: So, what I hear you saying is it does not really take some
11 sort of sorting out and determination of the correctness or incorrectness of factual
12 allegations.

13 MR. GREENBERG: That is --

14 THE COURT: So much as you're saying that you can't -- that as a matter
15 of law an attorney who does even what they claim they did is not -- has not violated
16 any right, and I'm sure you would add and on top of that the Court must be looking
17 carefully to be sure that this is not used as a trial tactic in any case to knock out the
18 attorney for one side or the other.

19 MR. GREENBERG: Well, yes, Your Honor. I think the Court needs to be
20 concerned about the proper administration of justice here.

21 THE COURT: All right. Ms. Rodriguez, what --

22 MS. RODRIGUEZ: Well, I think the Court --

23 THE COURT: That sounds reasonable, doesn't it?

24 MS. RODRIGUEZ: Well, first of all, I don't know about the allegation that

1 there's this industry conspiracy against him. I do know -- I am aware that other
2 defendants have brought in third party complaints or direct counter-complaints
3 against Mr. Greenberg. Western Cab is one of them. He has moved to dismiss
4 that and Judge Bell has not dismissed that as of today. So I know that there are
5 other pending cases against Mr. Greenberg and his firm. They're appropriate in this
6 circumstance and I think the Court is correct, is that he is arguing -- at this point he's
7 arguing factual allegations to support the Court denying our right to even allege the
8 complaint.

9 Champerty is an appropriate cause of action and I cited to the cases
10 in my briefing on that. And as well as the second cause of action, which is the
11 tortious interference claim, Mr. Greenberg is only mentioning to the Court half of
12 that basis for that claim. The other basis for that claim is interference with a contract
13 with a former employee, Wendy Gagliano. There is an agreement in place that
14 we believe Mr. Greenberg has induced Ms. Gagliano to break that agreement with
15 A Cab. And in preparing for this case I did note that there is another important
16 California case that I would like to bring to the Court's attention. It's called
17 Zimmerman v. Bank of America National T&S Association. The cite is 191 Cal. App.
18 2d 55, or 12 Cal. Rptr. 319. It's a 1961 case which says, "The actionable wrong lies
19 in the inducement to break the contract or to sever the relationship, not in the kind
20 of contract or relationship so disrupted, whether it is written or oral, enforceable or
21 not enforceable."

22 So that is really contrary to what Mr. Greenberg is arguing in terms of
23 the Dubric matter. He's arguing that we would have no cause of action against him
24 because the Dubric contract was not enforceable. That remains to be seen. That

1 has not -- I mean, there still is an agreement in place with the Barrasso Law Firm
2 and their clients and that is up before the supreme court right now.

3 THE COURT: Good.

4 MS. RODRIGUEZ: So we did have a contract there. But there's also the
5 second part of that contract, which is the Gagliano/A Cab agreement that Mr.
6 Greenberg has also interfered with. So they are legitimate causes of action and
7 we're still within the discovery period to complete any discovery that needed to
8 be done on those particular third party complaint causes of action. And if the
9 Court determines that it needs to be bifurcated at trial at that point, you know, the
10 discovery will at least be completed and the Court can make a decision then. But
11 right now he's arguing basically for summary judgment, when we haven't had an
12 opportunity to work up the remainder of those claims.

13 THE COURT: And do I have your proposed --

14 MS. RODRIGUEZ: Yes, Your Honor. It's attached to the motion, I believe
15 at exhibit -- it's probably the first exhibit. Let me check. Yes, it's Exhibit 1. It's
16 defendants A Cab and Creighton J. Nady's amended answer to second amended
17 complaint and third party complaint and it alleges first cause of action champerty
18 and second cause of action intentional interference with contractual relations.
19 And again, I know Mr. Greenberg said earlier in his argument he was criticizing
20 my characterization of his pleadings tactic, and it's not my characterization, he's
21 filed a counter motion to this. You know, every time we file a motion there's a
22 counter motion.

23 THE COURT: Uh-huh. Well, generally speaking when I'm told, you know,
24 you shouldn't be able to file a counter motion, I have to look at it one at a time and

1 there are times when I simply advise the other side that that's the kind of matter
2 that should be raised in its own motion, most notably the attempts to get Rule 11
3 sanctions on counsel that are not raised in a separate pleading, as opposed to
4 throwing it in, you know, as a response to a motion.

5 So we have four --

6 MR. GREENBERG: Your Honor --

7 THE COURT: I'm not on the right page. All right. So, jeopardy, intentional
8 interference with contractual relations. And those are the only two causes of action,
9 right?

10 MS. RODRIGUEZ: Correct.

11 THE COURT: Okay. Mr. Greenberg.

12 MR. GREENBERG: Your Honor, if I might just address the issue of Ms.
13 Gagliano, which I did not discuss with the Court. To the extent that defendants'
14 allegations are true, that they have this contract with her, that she was not supposed
15 to, you know, provide information or discuss things and that contract was violated,
16 as discussed at page 5 of my opposition, the NRS, NRS 41.071 specifically provides
17 that a contract to prevent another from being a witness or disclosing any matter or
18 information is not enforceable, okay. It states -- this is Rule 11 -- no person has a
19 privilege to prevent someone else --

20 THE COURT: Okay. So you're --

21 MR. GREENBERG: -- from truthfully providing information. So their contract,
22 to the extent that they had one with Ms. Gagliano, did not bar her from -- it's not
23 enforceable to the extent that it would bar her from providing evidence in this
24 proceeding, which is what they allege she did by giving me a statement.

1 THE COURT: So you're suggesting that is a cause of action that the Court
2 could look at and deal with without waiting because as a matter --

3 MR. GREENBERG: Well, Your Honor, as a matter of law there's no
4 enforceable -- there's no enforceable legal right there, is what I'm saying. As
5 alleged in their complaint, their complaint doesn't -- assuming all the facts are true,
6 which the Court I understand is going to do, there's no legal right that they are
7 articulating here that the Court has the power to recognize for these reasons, Your
8 Honor.

9 THE COURT: And you assert the same or similar argument as to champerty,
10 that you can't have a cause of action for champerty?

11 MR. GREENBERG: There's never been a cause of action for champerty.
12 Champerty is a defense as to enforcement of a contract. It's never been recognized
13 under the common law as an affirmative claim.

14 THE COURT: Okay. So, at any rate, it appears that perhaps both sides
15 agree that the two causes of action the Court can look at that and at least rule as
16 a matter of law -- be able to rule whether or not as a matter of law you could not file
17 such a third party complaint. Let's move beyond that. Let's say the Court looks at
18 the -- at that proposed third party complaint and determines that one or both survive
19 such an analysis so that the Court could not say that legally as a matter of law you
20 could not have such a cause of action. Then the question becomes how do we
21 treat that? Does the Court allow the filing as a third party complaint and then do
22 something with it, other than make it a part of the lawsuit? I think if I was hearing
23 right that both sides are in agreement that it would have to be walled off from the
24 main complaint at trial, that we would not be trying to visit -- not trying to litigate

1 the complaint and the third party complaint at the same time.

2 Do you agree with that, Ms. Rodriguez?

3 MS. RODRIGUEZ: I think we would have to see what came out in discovery
4 and how intertwined the testimony of Ms. Gagliano would be.

5 THE COURT: Uh-huh.

6 MS. RODRIGUEZ: That's what comes to mind because, you know, I think
7 Mr. Greenberg and I are arguing two different things. You know, he's arguing that
8 her contract is not enforceable, and I gave Your Honor the case that says that's
9 not really a reason for defeating intentional interference with business contracts.
10 And I note -- I forgot to mention that that case is already -- is also mentioned in
11 the Nevada Supreme Court. It's relied upon in the Stalk v. Mushkin case, which is
12 125 Nevada Advance Opinion --

13 THE COURT: Hold on one second with that.

14 MS. RODRIGUEZ: Sure.

15 THE COURT: I lost my law clerk.

16 MS. RODRIGUEZ: Yes. I'm sorry.

17 THE COURT: Okay. She's citing another case, a Nevada case.

18 MS. RODRIGUEZ: Stalk v. Mushkin. Michael Mushkin, I believe. It's 125
19 Nevada --

20 THE COURT: No doubt.

21 MS. RODRIGUEZ: I'm sorry?

22 THE COURT: No doubt.

23 MS. RODRIGUEZ: Oh. 125 Nevada Advance Opinion No. 3, or 199 P. 3d
24 838. It's a January 29th, 2009 case that also cites and relies upon the Zimmerman

1 case, indicating that it doesn't matter whether the contract is enforceable or not in
2 addressing intentional interference with prospective business contractual relations.

3 So I guess in answer to the Court's question, I think we would be
4 interested in taking Ms. Gagliano's deposition before the close of discovery. And
5 perhaps some of that's where I see maybe these two matters overlapping, but if --

6 THE COURT: Well, my intention would no doubt be, if I allow either or both
7 of these to be filed, is that I would -- the default position would be that I would sever
8 them, subject to any motion at some point, at a later point to revisit that question.
9 I do tend to agree with Mr. Greenberg that it would become almost impossible to
10 litigate a case if you at the same time are trying to litigate a third party complaint
11 against one of the attorneys in the case. So I don't see how that would work, but
12 I'd, you know, listen to argument.

13 MS. RODRIGUEZ: It also will become, depending on how the Court is going
14 to handle it, but I think the Court would probably handle any motions on attorney's
15 fees should they prevail at the underlying minimum wage case because that's really
16 where the champerty argument is coming in. You know, as the Court is now aware,
17 there's the same cause of action, the same class that's over in Judge Delaney's
18 courtroom and we're looking at attorney's fees in the \$50,000 range. Here we're
19 looking at attorney's fees in the \$500,000 range. So perhaps -- I'm not sure how
20 the Court would lay out the sequence of events, but if this is going to be a matter --
21 attorney's fees are going to be a matter for the Court to hear the evidentiary hearing
22 as opposed to the jury, that may be where the champerty evidence would come in
23 for the Court's consideration.

24 THE COURT: I'm not going to determine at this point whether or not that

1 motion could be granted. I'm going to have to look at the authorities a little more.
2 Before we leave that, though, let's -- I mean, we've kind of attenuated the whole
3 thing because of my inquiry to Mr. Greenberg that he's already responded to. But
4 let's not just leave it at this. For example, Mr. Greenberg contends that not only
5 should I not allow the third party complaint to be filed, but that I should sanction
6 the other side for even proposing it or filing it. Is there any more that needs to be
7 argued as to that proposition?

8 MR. GREENBERG: Your Honor, I think that the briefings as submitted to the
9 Court are clear. I just want to emphasize one thing because defendants' counsel is
10 citing to this Zimmerman case in California and is making this assertion that whether
11 the contract that they supposedly had with Ms. Gagliano was enforceable or not is
12 not the issue in respect to making out a claim for interference. That is not the law.
13 As discussed at page 5 in my brief --

14 THE COURT: Uh-huh.

15 MR. GREENBERG: -- the Nevada Supreme Court has been very clear in
16 the Sutherland case --

17 THE COURT: Uh-huh.

18 MR. GREENBERG: -- which was from 1989: "To establish intentional
19 interference with contractual relations the plaintiff must show, one, a valid and
20 existing contract."

21 THE COURT: Uh-huh.

22 MR. GREENBERG: "The defendant's knowledge, intentional acts, actual
23 disruption of the contract, and five, resulting damage." Your Honor, it is impossible
24 for them to meet these requirements, given the protection of NRS 41.071, which is

1 that they have no privilege to prevent from Ms. Gagliano from giving testimony in
2 this case. So they cannot claim that they have resulting damage from a violation
3 of a contractual obligation that she obtained that I somehow induced. Forget about
4 whether they established that I induced it or not --

5 THE COURT: Uh-huh.

6 MR. GREENBERG: -- I'm just saying on the allegations that are made, given
7 the structure of the law here, there is no claim stated, Your Honor. And this again
8 is precisely the reason why I have asked for the sanctions in this case, because they
9 know better, okay. But let me not belabor the point. Your Honor wants to reflect
10 on this further.

11 THE COURT: Yeah.

12 MR. GREENBERG: We have other issues to deal with.

13 THE COURT: What about on your countermotion, though, for sanctions?
14 What is -- tell me -- remind me, what is the sanctions you're asking for? Ten
15 thousand dollars, I see.

16 MR. GREENBERG: Your Honor, whatever the Court deems appropriate.
17 I mean, dealing with this particular motion, you know, has consumed -- I had
18 requested \$4,815 in fees because I responded to the first motion, which they
19 then withdrew twenty days after I served them with a Rule 11 notice. And then
20 I requested another \$1,500 -- \$6,345 in terms of responding to both motions. It is
21 up to Your Honor to decide an appropriate quantum of attorney's fees. I mean,
22 a sanction could be in the form of a payment to the Law Library here in Clark
23 County or something else. This is discussed in my papers. Your Honor has broad
24 parameters to work with here. I don't want to take up the Court's time on it, unless

1 the Court has questions.

2 THE COURT: Okay.

3 MS. RODRIGUEZ: Your Honor, I would like to be heard on the sanctions
4 issue --

5 THE COURT: Sure.

6 MS. RODRIGUEZ: -- because I brought this issue up before the Discovery
7 Commissioner and unfortunately it was never addressed. It bothers me and it is
8 a real problem in this lawsuit, as well as my understanding is in the lawsuits -- the
9 other lawsuits that Mr. Greenberg has brought in the Eighth Judicial District Court,
10 in that every pleading he files with the court, particularly with the Discovery
11 Commissioner, every single one he asks for sanctions against me personally,
12 against Mr. Wall, against my client.

13 THE COURT: Uh-huh.

14 MS. RODRIGUEZ: And to me, being a member of the Bar for 20 years,
15 sanctions are an extreme measure when there has been some very bad behavior.
16 I've never been sanctioned in 20 years. I can tell Your Honor that I get calls quite
17 frequently from my colleagues that he has terrified because he threatens these
18 sanctions over and over and over. And I think his motive is if you ask for them
19 enough times, eventually you're going to get them. I think they're improper.
20 He's been using them as a bully tactic. I think Your Honor is aware that he's
21 misrepresented to the Nevada Selection on the Judicial Commission where I've
22 applied for a judge position twice. He submitted correspondence indicating already
23 that I have been sanctioned, when I have not been sanctioned.

24 THE COURT: I was not aware of that.

1 MS. RODRIGUEZ: And the Discovery Commissioner many moons ago
2 sanctioned A Cab for a deposition that they felt -- that she felt was unnecessary.
3 It remains to be seen whether that deposition was unnecessary or not because
4 it's come -- we've both relied on it quite frequently, so I think it was a necessary
5 deposition. That was of James Morgan. But Mr. Greenberg continues to reiterate
6 to everyone from the Judicial Commission to Governor Sandoval that that sanction
7 was a sanction against me. And, you know, he's got everybody shaking in their
8 shoes about these sanctions and it puts me in a very difficult position of either
9 wanting to protect myself and not file motions which I believe are with good basis
10 and I've argued as to why they're a good basis, they're not frivolous motions, or
11 protecting my client, doing my job, advocating for my client, because every time
12 I advocate for my client he threatens me with sanctions.

13 I think they're not proper in this instance and I would ask the Court
14 to address those with Mr. Greenberg, that you can't be asking for sanctions every
15 single time you're filing a motion, to be used in this fashion as a bully. It's really
16 a bullying tactic, is why he's threatening these sanctions constantly.

17 THE COURT: Well, I would not propose to discuss this with Mr. Greenberg,
18 other than to say I suppose what's sauce for the goose is sauce for the gander. It is
19 conceivable, at least, that if someone was doing that sort of thing that they might get
20 sanctioned. I am not -- I'm not at all saying that I feel inclined to tell Mr. Greenberg
21 that he should not ask for sanctions if he thinks they're warranted. I'm here to
22 litigate the issues, whatever they may be. It is obviously more costly and prolongs
23 the litigation if you have bad blood between the attorneys and then you wind up
24 dealing with the case inside the case and it probably is something that is better left

1 to some other avenue. But that's as far as I would make comment.

2 MR. GREENBERG: I understand, Your Honor. If I might respond, counsel
3 has stated twice to Your Honor now that I advised the Commission on Judicial
4 Selection that she was sanctioned. That is absolutely untrue. I have the written
5 correspondence. It should be on my computer here. I expressly advised the
6 Commission that Ms. Rodriguez could not be held responsible personally for a
7 sanction issued against her client. I never told them that she was sanctioned.
8 I explained I had other issues with her conduct in this litigation.

9 And, Your Honor, I also have an issue that she then went to the
10 Discovery Commissioner and asked the Discovery Commissioner to issue an order
11 to refrain -- that I should refrain from making further comments to the Judicial
12 Commission about her, Your Honor. My participation in that process as a member
13 of the State Bar is of course a duty that I have to advise the Commission and it's
14 also privileged. The court doesn't have any basis to restrain me from making that
15 sort of, you know, complaint, inquiry, comment on the appointment of someone to
16 the bench, Your Honor.

17 My point, Your Honor, is we shouldn't -- this should not be before Your
18 Honor is my point, and it is absolutely untrue. I can provide my correspondence to
19 the Commission if Your Honor would like to see it. But we should move on. Your
20 Honor needs to deal with the issues in this litigation, not collateral matters that
21 should not be brought before Your Honor.

22 MS. RODRIGUEZ: Well, it's not collateral, Your Honor, because he's asked
23 for them again.

24 THE COURT: Yeah.

1 MS. RODRIGUEZ: He's asked for them again. And that's not what I asked
2 the Discovery Commissioner. I didn't ask her to restrain Mr. Greenberg from making
3 a public comment. I asked her for him to clarify because he was implying in so
4 many words that I was sanctioned, and that was very clear in the discussions with
5 the Judicial Commission. It was public record. It was publicly broadcast to the
6 public as to Mr. Greenberg's letter. And like I said, it went up to Governor Sandoval,
7 who said he read the entire deposition of Mr. Nady. He reviewed the pleadings and
8 everything that Mr. Greenberg had submitted and said I didn't get anything out of
9 these pleadings and this deposition in accordance with what Mr. Greenberg was
10 representing. So I felt at least a lot better that the Governor, a former federal judge,
11 had read this, but this shows how far it's been going. And it's not necessarily
12 bad blood, Your Honor. I haven't asked for -- I don't go after him personally and
13 sanctions like that. So this is -- you know, this is coming from him, Your Honor.

14 THE COURT: Well, my experience so far is that generally speaking when
15 we get this kind of to some extent bad blood between the attorneys, nobody can say
16 it's all the other side, it's not me at all. I mean, it is almost part of the nature of the
17 beast that when you're litigating and you're in the heat of battle it's pretty tough
18 not to land some blows that might be technically outside the safe zone.

19 So I'm not inclined to hold either side at fault over -- particularly over
20 any conduct outside of this litigation. But I have to deal with -- both sides have
21 generally complained that the other side is doing something for purely tactical
22 reasons, as opposed to resolving genuine issues within the litigation. This is
23 certainly not the only case that I get those kinds of arguments, and we'll just deal
24 with them as we have to as we move along.

1 All right. So I'm going to take the motion itself under submission, as
2 well as the countermotion for sanctions and I will put those down for a chambers
3 calendar.

4 THE CLERK: June 5th, chambers calendar.

5 THE COURT: Okay. June 5th, chambers calendar.

6 All right. Okay, how about bifurcate?

7 MR. GREENBERG: Your Honor, that's plaintiff's motion. This is really
8 directed to the Court's discretion. I mean, I don't see that there's any controlling
9 direction that the Court needs to follow in this. I think the Court really needs to
10 evaluate the circumstances and proceed in the fashion that they think is most
11 efficient and effective from a judicial economy point of view. And on that note,
12 Your Honor, I think that the economy is going to be served by bifurcating the
13 question of liability against Mr. Nady because his liability is completely derivative
14 here. If whatever is found against A Cab is satisfied by A Cab, there's no need --

15 THE COURT: Uh-huh.

16 MR. GREENBERG: -- for there to be findings regarding these alter ego
17 allegations or misconduct allegations --

18 THE COURT: Uh-huh.

19 MR. GREENBERG: -- or his other potential conduct that would have to be
20 evaluated and the facts bearing on that and decisions made on that. So on that
21 basis alone I would submit that the bifurcation makes sense, Your Honor. If the
22 Court is not inclined to agree to the bifurcation, I need to address this issue of how
23 Mr. Nady may or may not be able to shield his personal liability based upon this
24 exploration -- not exploration, Your Honor, but established facts as to what his

1 financial gain was from the operations of the business. And we can address that
2 separately if Your Honor wants to just deal with --

3 THE COURT: Well, does the -- does his involvement emanate purely from
4 the piercing the corporate veil aspect?

5 MR. GREENBERG: Well, Your Honor, it does in the sense that the major
6 allegation against him in this case in terms of his personal liability I believe really
7 corresponds to the time period after February of 2013. At that time Your Honor
8 made a ruling that the minimum wage act applied to the class.

9 THE COURT: Uh-huh.

10 MR. GREENBERG: And clearly the defendants were on notice that they
11 had to comply with the act.

12 THE COURT: Uh-huh.

13 MR. GREENBERG: They did not. They did not actually start complying with
14 the act, by their own admission, and this is, you know, part of the partial summary
15 judgment motion, until about 18 months later, sometime in 2014. Mr. Nady is
16 the principal and the sole beneficiary of the business operations. It essentially
17 enhanced his financial returns, his reward from the operations of the business
18 through that violation of the law for that approximate 15 month, 18 month period.
19 The company clearly knew that they had to comply with the law. Your Honor had
20 ordered it. They didn't.

21 Now, there are other allegations against him regarding his misuse
22 of the corporate form and his use of the corporation as an agent to otherwise not
23 keep proper records or otherwise manipulate the record keeping or instruct the
24 corporation intentionally not to pay the drivers minimum wages for other periods of

1 times and involving other circumstances. I'm separating out those other allegations,
2 Your Honor --

3 THE COURT: Uh-huh.

4 MR. GREENBERG: -- because I'm sure Your Honor can understand those
5 involve somewhat different issues factually. When we talk about this time period
6 from February 2013 through August of 2014, approximately, it's established record,
7 you know, what happened in terms of the business, in terms of Your Honor's rulings
8 and in terms of the conduct of the company because we have the payroll records,
9 we have Your Honor's ruling from February 2013. So --

10 THE COURT: So are you saying as to those charges or allegations or
11 causes of action, theory of action that no discovery -- well, I mean, is there really
12 any reason to bifurcate as to those?

13 MR. GREENBERG: Well, Your Honor --

14 THE COURT: Isn't really the discovery done as to those and --

15 MR. GREENBERG: I still -- I need to take Mr. Nady's deposition. He's
16 going to have to go on the record in terms of how he was informed as to the
17 circumstances of the Court's January 17th, 2013 order; what steps he did or did
18 not take. He obviously has not admitted that he has any responsibility for anything
19 owed to the drivers for that time period. After we establish that record, will there
20 in fact be some disputed issue of fact that will require a trial as to his conduct and
21 liability for that time period? I don't know, okay. We would establish that record.

22 As I said, sort of the sort of highest reason that I have proposed to
23 the Court to bifurcate the liability issue of Mr. Nady is simply because if we proceed
24 to conclusion in this case and the claims are in fact fully paid to the class from the

1 corporate entity by A Cab, there is no need to make any findings --

2 THE COURT: Uh-huh.

3 MR. GREENBERG: -- as to Mr. Nady's liability because his liability is
4 completely derivative. We're dealing with one set of damages here. Plaintiffs
5 aren't going to collect twice. So on that basis I would propose that bifurcation
6 makes sense.

7 THE COURT: Uh-huh.

8 MR. GREENBERG: But again, this is within Your Honor's discretion and
9 I understand that and Your Honor may view it differently. I am certainly prepared
10 to proceed with the claims against Mr. Nady in tandem with the claims against the
11 corporate entity. My problem with the current posture of the case is that I believe
12 Mr. Nady has a colorable defense to raise here that his personal liability should be
13 limited by his personal gain from the misconduct that he has alleged to engage in;
14 his unjust enrichment, so to speak. And if he's going to present that argument to the
15 Court, then I need to be able to document to the Court in these proceedings what
16 in fact his unjust enrichment was, what was his personal gain from the operation of
17 the business.

18 And again, this goes to this question of disclosure of what he actually
19 profited from from the business. And there is in fact -- this is discussed in my
20 moving papers, it was discussed before the Discovery Commissioner -- there is
21 in fact no entity level transfer record of distributions from A Cab to Mr. Nady
22 because A Cab is an LLC, he is the sole shareholder. All earnings of the company
23 are reported to him personally on his 1040 tax return, which is allowable if it's a sole
24 member LLC entity. So it would be on Schedule C or Schedule E or both of his

1 personal tax return. Those documents have not been disclosed to me. They need
2 to be disclosed. If Mr. Nady is not going to interpose a defense based upon limiting
3 his liability based on his financial gain, then we don't need this discovery, Your
4 Honor. But if he's going to be able to interpose that defense, a potential limit on his
5 liability, how am I going to address that without actual documentation as to what his
6 financial gain was during the period in question?

7 THE COURT: Well, if we bifurcate -- are you saying bifurcate -- I forget now.
8 Did you say bifurcate for trial or bifurcate for discovery purposes as well?

9 MR. GREENBERG: I would bifurcate in its entirety, Your Honor. I mean,
10 if we're talking about judicial economy here, we would simply bifurcate and hold the
11 claim against Mr. Nady in separation in its entirety in terms of the development of a
12 further record as necessary and obviously for trial as well if necessary. Let us deal
13 with the liability of A Cab, ascertaining that liability. We know Mr. Nady's liability is
14 not going to exceed the liability of A Cab. If A Cab satisfies that liability, other -- he
15 has no liability to pay and there's no need to make any findings. There's no need
16 to conduct further discovery.

17 THE COURT: If we were to do that, would we put ourselves in danger of
18 eventually running into a 5-year rule as far as the Nady part of the litigation?

19 MR. GREENBERG: That's an interesting question, Your Honor. I did want
20 to address to the Court because you had raised this initially and I did check my
21 computer, this case has been stayed for 300 days in total, according to my notes.

22 THE COURT: Okay.

23 MR. GREENBERG: That would mean a trial would need to be commenced,
24 unless there was a further stay or extension of the 5-year rule, by the end of July of

1 next year. So we have about 13 months or so to bring the case to disposition in total.

2 THE COURT: Okay.

3 MR. GREENBERG: I don't think that would be a problem, Your Honor. But
4 again, it is for Your Honor's judgment to decide these things.

5 THE COURT: When are we trying this case? I saw that a moment ago.
6 When is the trial on this case?

7 MS. RODRIGUEZ: February.

8 THE COURT: February. That seems to be putting us pretty -- perhaps
9 untenably close to the July cut-off date. I mean, I don't know, if we do this in
10 February --

11 MR. GREENBERG: We could complete the discovery, Your Honor, and then
12 we don't necessarily need to bifurcate the --

13 THE COURT: If I were going to bifurcate at all, I would think it would simply
14 be for trial. And I don't know that it logistically or that it really makes sense to only
15 bifurcate for trial. What's your view on that, Ms. Rodriguez?

16 MS. RODRIGUEZ: Well, we agree, Your Honor. If we were just talking about
17 bifurcating for trial, we don't have a problem with that. But I think what this really is
18 is a motion to reopen discovery because our discovery is due to close probably in
19 about 45 days or so and Mr. Greenberg simply hasn't worked up these causes of
20 action against Mr. Nady. His third cause of action is for civil conspiracy, aiding and
21 abetting, concert of action and as the alter ego of the corporate defendants, and we
22 were intending to move for summary judgment on that issue because there's a lot
23 of serious allegations raised against Mr. Nady personally that have not been proven
24 or are not going to come to fruition. So we're intending to move at the close of

1 discovery and in time with the dispositive motion deadline on those causes of action.

2 And what Mr. Greenberg's motion to bifurcate says is that the Court
3 can direct the parties to engage in discovery, dispositive motions necessary, briefing
4 if necessary on a trial against Mr. Nady. So I think what this is is he just wants to
5 then work up the discovery that he has failed to do in the last nearly five years. And
6 what he is also arguing is -- on these financial issue we've been before the Discovery
7 Commissioner probably three times, if not more, on everything that he's arguing to
8 Your Honor this morning about the 1040s and Mr. Nady's tax forms. And I think
9 Your Honor has seen the Report and Recommendations from the Discovery
10 Commissioner and she has limited what Mr. Nady is supposed to turn over to the
11 plaintiffs and he has in fact turned over everything that she has ordered. Mr.
12 Greenberg didn't object to any of those Report and Recommendations, hasn't
13 asked for a reconsideration, but he's just kind of snuck in those things in a motion
14 to bifurcate. So it's improper for him to now be arguing those things that were
15 properly before the Discovery Commissioner and he failed to address at that point.

16 So, again, in answer to the Court's question, if we're just talking about
17 bifurcating the trial, the defendant doesn't have an opposition to that. But in terms of
18 reopening discovery, when we're within 45 days of the close of discovery, on these
19 additional causes of action that he hasn't worked up, we would definitely oppose that.

20 THE COURT: Would the bifurcated part of the trial, that part against Mr. Nady
21 himself, would that also be a jury trial? I assume so.

22 MR. GREENBERG: Yes, Your Honor.

23 THE COURT: Don't we just sort of add a lot of cost to this litigation by doing
24 that?

1 MR. GREENBERG: As I said, Your Honor, there are no firm guideposts
2 here --

3 THE COURT: Okay.

4 MR. GREENBERG: -- that the Court needs to follow. It is within your
5 discretion. I presented my thoughts to Your Honor.

6 THE COURT: Well, my discretion to this point would be to deny this motion.
7 I would do so without prejudice to re-raising it at least as to the trial situation. If it
8 seems that there is a need ultimately to bifurcate the trial, then I would reconsider it.
9 But at this point, at least, I would deny this motion without --

10 MR. GREENBERG: Your Honor.

11 THE COURT: Yeah?

12 MR. GREENBERG: I understand Your Honor is not inclined to proceed in
13 a bifurcated fashion at this time, but the issue still remains as to the disclosure of
14 the financial gain that Mr. Nady received from the business. In respect to Ms.
15 Rodriguez' representations to the Court that this was ruled on by the Discovery
16 Commissioner, she is correct, there were rulings made. However, we did file an
17 objection to her second ruling on this -- I believe it was her second ruling -- because
18 it was not in compliance with -- the initial ruling was give information on distributions
19 from the company to Mr. Nady. There are no -- there is no record of distributions
20 because there's no K-1 issue because it's an LLC. It doesn't file an entity-level
21 K-1. I explained this to Commissioner Bulla. For whatever reason, she did not
22 understand it in respect to the need to get that information from the Schedule C
23 and the Schedule E, as I've explained to Your Honor.

24 Your Honor entered -- did sign with a note that there was no opposition

1 the Discovery Commissioner's subsequent Report and Recommendation which
2 was filed on March 9th, with a note that there was no objections, but in fact we did
3 file objections to this.

4 THE COURT: You did? All right.

5 MR. GREENBERG: On -- I have it right here on my computer, on January
6 30th. So for some reason that bypassed Your Honor --

7 THE COURT: Well, then I would --

8 MR. GREENBERG: -- and presumably Your Honor didn't -- I mean, if there's
9 no objections Your Honor would sign it.

10 THE COURT: It's very possible -- it's very possible we made a mistake,
11 in which event that would be a good subject for a motion for reconsideration.

12 MR. GREENBERG: Well, if Your Honor thinks it's more sensible for me
13 to bring this back before the Court on a motion for reconsideration, I will do so.

14 THE COURT: Well, the thing is, you know, I don't know that I'm prepared
15 to even respond to this at this point, unless you've got something that shows --

16 (Speaking to the clerk) Do you show an objection having been filed?

17 On what date did you say?

18 MR. GREENBERG: I can -- I have this right here. It was electronically filed
19 on January 27.

20 THE COURT: January 27.

21 MR. GREENBERG: I mean, I have it. This is on my screen here.

22 THE COURT: Objection to the Commissioner's ruling.

23 THE CLERK: Plaintiffs' partial objections?

24 THE COURT: Partial objection? Was that what it was labeled?

1 MR. GREENBERG: Yes, it was, Your Honor.

2 THE COURT: All right. And we never issued a ruling on that objection?

3 MR. GREENBERG: Your confirmation of the Report and Recommendation,
4 which I have a copy here on paper --

5 THE COURT: Oh, because it says there was no objection filed.

6 MR. GREENBERG: Right. That box is checked. But in fact there was an
7 objection filed, Your Honor.

8 THE COURT: All right. Well, then that's our error and I will have to take
9 another look at that then and deal with the objection that was filed.

10 MR. GREENBERG: Thank you, Your Honor.

11 MS. RODRIGUEZ: And can I ask which Report and Recommendation are
12 we talking about? Because she issued several on this issue.

13 MS. SNIEGOCKI: It's the Report and Recommendation signed by the
14 Discovery Commissioner on January 13th.

15 MS. RODRIGUEZ: Okay.

16 MS. SNIEGOCKI: Objections were filed January 27th and the Court entered
17 the order on the 9th of March.

18 MS. RODRIGUEZ: Thank you.

19 THE COURT: So apparently the Discovery Commissioner checked the box
20 that says there had been no objection filed, so that's how that happened. So, if
21 there was one filed we will -- we'll deal with it, we'll look at it.

22 MS. RODRIGUEZ: Oh. I think -- Mr. Wall has just reminded me, I think that
23 was, if I'm not wrong, we did go back to the Discovery Commissioner following this
24 and Mr. Greenberg withdrew that objection, because that's the one that she kind of

1 reprimanded both of us for filing objections and not raising the issue to her, and
2 he withdrew it.

3 THE COURT: Imagine that. Imagine that, saying that --

4 MS. RODRIGUEZ: She said bring it up to me rather than wasting the Court's
5 time.

6 THE COURT: Well, so what's the upshot? You're saying that any objection
7 was waived?

8 MS. RODRIGUEZ: I wasn't aware of an objection. That's why I made the
9 representation. I --

10 THE COURT: Well, maybe what needs to happen then, since we're really
11 talking about whether something happened in front of the Discovery Commissioner,
12 is that resort to the Discovery Commissioner should be made.

13 MR. GREENBERG: Well, Your Honor, when I filed the objections on January
14 27th, I noted that this issue was raised to Your Honor in the motion to bifurcate that
15 was filed on January 11th.

16 THE COURT: Okay.

17 MR. GREENBERG: I raised this issue in both contexts. So I understand the
18 Court wants to proceed in an orderly fashion here --

19 THE COURT: Yeah.

20 MR. GREENBERG: -- with proper procedure, but what I'm trying to impress
21 upon the Court is that we raised this issue in a timely fashion after it was before the
22 Discovery Commissioner --

23 THE COURT: Uh-huh.

24 MR. GREENBERG: -- to bring it to Your Honor's attention. We did not

1 withdraw these objections. In fact, we sort of added them in tandem with the motion
2 to bifurcate. They were filed two weeks later because of the course of events here.

3 THE COURT: Okay. Well, I have two different factual contentions, one
4 that they were withdrawn and one that they were not. If what you're saying is
5 notwithstanding, even if they were withdrawn that it's appropriate for the Court to
6 deal with the bifurcation because it was raised in a motion filed -- January 11th,
7 you said?

8 MR. GREENBERG: That's correct. Well, it's not the -- it's the question of
9 this disclosure, Your Honor, we're talking about, the financial information disclosure.
10 It was raised as part of the motion to bifurcate. And this was explained in the
11 objections filed on January 27th. We did not withdraw these objections, Your
12 Honor. There's just some confusion on this point, okay.

13 THE COURT: Uh-huh.

14 MR. GREENBERG: It is unfortunate that there's been confusion here, Your
15 Honor.

16 THE COURT: Yeah.

17 MR. GREENBERG: But I would impress upon Your Honor we have acted
18 diligently. We have tried to --

19 THE COURT: Yeah.

20 MR. GREENBERG: I mean, obviously a party needs to invoke their rights.
21 They have to follow the procedures and time frames given by the Court. We
22 understand that. We have done so in this case, is what I'm trying to impress upon
23 the Court.

24 THE COURT: Yeah.

1 MR. GREENBERG: And to deny this disclosure and allow Mr. Nady to come
2 before the Court at trial and raise these defenses without a disclosure as to his
3 financial gain is inequitable, to say the least, Your Honor.

4 THE COURT: Okay. Well, to the extent that that is raised that the question
5 of what shall be the discovery on this issue, to the extent that that has been raised in
6 a motion filed January 11th to bifurcate, then I think it's fair for the Court to consider
7 it, regardless of whatever happened in front of the Discovery Commissioner.

8 MR. GREENBERG: Yes, Your Honor.

9 THE COURT: So I will consider whatever is in the motion. Whether that
10 reaches the extent of what you want to do discovery-wise, I don't know. But I guess
11 what we're saying is the Court needs to rule in the ruling on your motion to bifurcate.

12 MR. GREENBERG: That is --

13 THE COURT: The Court would have to consider the question of whether
14 further discovery would be allowed. Is that a fair statement?

15 MR. GREENBERG: That is correct, Your Honor. It's not -- well, again, it's
16 just this question, this narrow issue of the financial --

17 THE COURT: Understood.

18 MR. GREENBERG: I actually have the financial disclosures that were given
19 and we could discuss them in detail. They are confidential. I don't know if the Court
20 wants to get into any of that at this hearing.

21 THE COURT: No, I don't.

22 MR. GREENBERG: Thank you.

23 MS. RODRIGUEZ: Well, I would request the Court's permission then,
24 because to me they're two separate issues entirely and I oppose orally and in my

1 briefing the issue on the bifurcation. I think that's what we are here to talk about.

2 THE COURT: Yeah.

3 MS. RODRIGUEZ: If we're going to go back and talk about the financial
4 disclosures, I would like an opportunity to get -- I have the transcript, I believe,
5 back in my office, to see if this is the one that the objections were withdrawn and
6 it was a done issue, because I think we already went back before the Discovery
7 Commissioner, but I would just like an opportunity to look at that and supplement
8 if there is something, because I think it's improper the way that he kind of put that
9 in the middle of this motion to bifurcate.

10 THE COURT: So you want to make further response to the motion to
11 bifurcate, is that what you're saying?

12 MS. RODRIGUEZ: I do, Your Honor. I do, if necessary.

13 THE COURT: All right. How long do you need to file what you want to file?

14 MS. RODRIGUEZ: If I could have a week, that would be great.

15 THE COURT: All right, a week. And then you'll probably want to reply.

16 MR. GREENBERG: If I had an opportunity, Your Honor.

17 THE COURT: This is all done in the context of the motion to bifurcate.
18 Obviously I will vacate the oral ruling I made a few minutes ago that it was denied
19 without prejudice. I will review this, even with the context of the discovery. I'm not --
20 folks, let's get this clear. There is a great need to have rules of discovery and not
21 to have matters left until the end if they can be done expeditiously throughout.
22 Notwithstanding that, it's my view that the issues of the case, if you are correct that
23 it was squarely drawn or brought up, if that turns out to be the case, and we're just
24 now dealing with the motion to bifurcate, then, you know, and that can't be attributed

1 to either side. It was -- the case went to a different department, it came back. It
2 was stayed for mediation. I'm not going to have the so-called merits of the case
3 resolved by issues of whether or not somebody gets to do one certain thing in
4 discovery if we've got this long until the trial. I would not be inclined to close the
5 door on that unless I find that it really wasn't, it simply wasn't even brought up, in
6 which event I would probably fall back to the interpretation of the rules of discovery
7 and see whether or not it was objected to or not or what happened there.

8 So I'm going to look at it, but I will receive in a week more from the
9 defense. And then -- how long did you say, a week after?

10 MR. GREENBERG: One week would be fine, Your Honor --

11 THE COURT: Okay.

12 MR. GREENBERG: -- if that's allowable.

13 THE COURT: So let's get our dates. One week for the defense.

14 THE CLERK: May 24th.

15 THE COURT: And then a week for the plaintiff.

16 THE CLERK: May 31st.

17 THE COURT: And then I don't propose we'll argue this again. We'll simply
18 submit it. It will stand submitted and the Court will put it on the next available
19 chambers calendar. Is that that same one we just said?

20 THE CLERK: Uh-huh.

21 THE COURT: All right, let's do that at the same time.

22 THE CLERK: June 5th.

23 THE COURT: June 5th.

24 MS. RODRIGUEZ: Thank you.

1 THE COURT: Okay, that takes care of that one. So it appears we may have
2 to actually get down to the motion for partial summary judgment. Have we dealt with
3 everything else now? Yeah, I think we've dealt with all the other motions on file.
4 Do you agree?

5 MS. RODRIGUEZ: I think so, Your Honor.

6 THE COURT: We've already dealt with everything. All right.

7 MR. GREENBERG: Well, Your Honor, there is an issue that does remain
8 from my motion that was actually filed in October for the injunction regarding the
9 Dubric case. As part of that motion, Your Honor, I had requested that Your Honor
10 extend the class certification in this case, the damages class certification through
11 the present date. Your Honor's prior certification only certified the damages class
12 through the end of 2015. Now, Your Honor on my OST did issue the injunction, but
13 reserved that issue for further consideration, along with my request for attorney's
14 fees in relation to that application.

15 THE COURT: Which of these motions that are on today was that touched on?

16 MR. GREENBERG: This is not on today, formally noticed, Your Honor.

17 THE COURT: I know it's not, but wasn't it touched on in one of these motions,
18 in the oppositions that I read for today?

19 MR. GREENBERG: Well, Your Honor, the Court may not wish to address this
20 now. I'm just bringing up the point that this was reserved for a decision by the Court,
21 this issue of extending the class certification.

22 THE COURT: Uh-huh.

23 MR. GREENBERG: We're before the Court today on the partial summary
24 judgment, okay, so it does have some relationship to that because the partial

1 summary judgment actually has information relating through May of 2016 which has
2 been presented to the Court, but we've also presented information that's congruent
3 with the end of 2015, if the partial summary judgment at this time is going to be
4 limited to that period, which is fine, Your Honor. But the issue still remains as to
5 whether there's going to be an extension of the damages class through the current
6 date that will require supplementing the disclosures of the defendant's payroll
7 records and so forth past what they've produced in the litigation. Discovery
8 Commissioner Bulla has actually allowed for this contingency by already ordering
9 that if Your Honor extends the class certification, defendants are going to have to
10 provide the same information. I'm just raising it with Your Honor now --

11 THE COURT: Well, then that certainly -- that certainly needs to be resolved
12 immediately if it's going to necessitate additional discovery.

13 MR. GREENBERG: Right, Your Honor. And again, this was raised on
14 October 14th, which is when I originally filed that motion, Your Honor. And
15 remember we had the transfer of the case.

16 THE COURT: Uh-huh.

17 MR. GREENBERG: The case came back. There was the OST regarding
18 the Dubric --

19 THE COURT: I'm trying to recall what I thought when I reserved it for future
20 determination. I'm trying to remember if I thought there was some event that would
21 trigger the further resolution of it. Maybe this is it; we're at it.

22 MR. GREENBERG: Well, to be quite honest and candid with Your Honor,
23 this is a copy of the order that Your Honor issued. If you'd like, I can approach.

24 THE COURT: Yeah, sure.

1 MR. GREENBERG: At that time we brought this in front of Your Honor on
2 an OST because of the immediacy of the action of the Dubric -- developments in the
3 Dubric action. So the focus of myself as class counsel was simply to deal with that
4 issue. So I did not want to burden Your Honor, who is quite busy, of course, with
5 other things, with reaching that issue at that time. And you'll see at the very end
6 of that order in the last sentence it just generally refers that the foregoing is without
7 prejudice to the grant of further relief on the motion and the Court intends to issue
8 a subsequent order on the same. We never actually got a subsequent order
9 addressing these other requests in the original motion from October, which was,
10 again, the request to extend the class certification.

11 THE COURT: Yeah, the last paragraph says, "The foregoing is without
12 prejudice to the grant of further relief by the Court on the motion and the Court
13 intends to issue a subsequent order addressing the same." You're saying that --
14 that is the preservation --

15 MR. GREENBERG: That's the totality of where we left this, Your Honor, okay.

16 THE COURT: Okay.

17 MR. GREENBERG: And it was my drafting on this order. Your Honor did sign
18 this order sort of like the day before or the morning of the proceedings in the Dubric
19 case.

20 THE COURT: Yeah.

21 MR. GREENBERG: So it was sort of a hurried situation, Your Honor. It
22 wasn't really desirable from any perspective. But I am bringing it back to Your
23 Honor's attention because no subsequent order has been issued. We do have to
24 manage this case for trial, as Your Honor understands.

1 THE COURT: Uh-huh.

2 MR. GREENBERG: And I don't see why the class period would not be
3 extended.

4 THE COURT: Well, I don't propose to resolve that at this point today.

5 MS. RODRIGUEZ: Thank you, Your Honor.

6 THE COURT: What's your take on it?

7 MS. RODRIGUEZ: Well, I'm at a loss. I don't know what order he handed
8 you, but I think that's the order where you did subsequently issue -- the Court wrote
9 out the order as to why you enjoined --

10 THE COURT: The amended -- or not amended, but a supplement to this.

11 MS. RODRIGUEZ: Right. It had nothing to do with what he's mentioning
12 right now, if I'm recalling that right. The Court went into an explanation as to why
13 you felt compelled to --

14 THE COURT: Well, yeah, that was simply my intention to at least let it be
15 known why I would take what I considered --

16 MS. RODRIGUEZ: Right.

17 THE COURT: -- to be a very bold action, to say the least.

18 MS. RODRIGUEZ: Right. It had nothing to do with extending the 2015 date.
19 I think the reason he's bringing that up is because that's part of our opposition to the
20 motion for partial summary judgment, is that the class order as it stands right now
21 and what he's moving for is not even within the time period within the class order.
22 So that's why -- but I didn't bring all of the pleadings having to do with the motion
23 to enjoin or the items. It's not on calendar today.

24 THE COURT: Well, let's do this. I'm not sure that there's any order that

1 I should make today that has to do with this issue of whether -- first of all, whether
2 or not there is still to be addressed an issue of extending the class certification
3 time-wise. And second of all, I'm not prepared to address -- you know, if there is
4 a preservation of such an issue, I'm certainly not prepared to address what the
5 implications of that would be.

6 MR. GREENBERG: Your Honor, I wasn't necessarily proposing Your Honor
7 address this today. I just think it does relate to what we're trying to deal with here
8 and to get guidance from the Court. If the Court simply says we're going to review
9 this and issue a subsequent order one way or the other, then I know the Court is
10 going to do that. I'm bringing it to the Court's attention. If the Court thinks we
11 should re-notice a motion specifically addressed to this issue --

12 THE COURT: I do.

13 MR. GREENBERG: -- I will do that most promptly.

14 THE COURT: I clearly would have to say that because I don't -- I'm not --

15 MR. GREENBERG: Then that's how we will proceed in respect to that issue,
16 Your Honor. Thank you.

17 THE COURT: All right. So, you will file a motion as to that. Today we may
18 touch on it as part of the determination of this last one.

19 MR. GREENBERG: Yes, Your Honor.

20 THE COURT: We're going to take a short break before we get into this.
21 We're going to take a five minute recess and then we'll come back to that final
22 motion.

23 MR. GREENBERG: Thank you, Your Honor.

24 (Court recessed from 11:05 a.m. until 11:19 a.m.)

1 THE COURT: Okay, we are back. Okay, this one I probably -- it would be
2 helpful to me if plaintiff would summarize your argument and particularly point out
3 an easy way to figure out the difference between a low tier and a high tier, and then
4 somewhere along the way deal with the defendants' contention that you claim to be
5 relying upon established facts when those really are issues of material fact.

6 MR. GREENBERG: Yes, Your Honor. In respect to the high tier versus the
7 low tier issue, okay, I would urge the Court at a minimum to focus on the \$174,000
8 of cumulative underpayments at the \$7.25 an hour rate. There is no issue in respect
9 to that rate being applicable, okay. No one argues that rate is not applicable. In
10 respect to the \$8.25 an hour rate, there is a whole issue that I addressed to the
11 Court previously which Your Honor declined to reach, as to whether it should even
12 be plaintiffs' burden to establish entitlement to the \$8.25 an hour rate or whether it
13 should be defendants' burden to establish that they're entitled to pay only the \$7.25
14 an hour rate.

15 THE COURT: As I recall, there's no authority that says that it falls to the
16 defendant.

17 MR. GREENBERG: There is no authority one way or the other, Your Honor,
18 and Your Honor declined to make a finding on that issue -- this was last year -- and
19 directed further discovery be conducted and we would perhaps revisit that further.
20 We are still waiting to develop the record in respect to the relevant information on
21 that issue. I'm advised that defendants have a supplement for me today which is
22 going to be sent, which is going to provide me with --

23 THE COURT: On the issue of the \$7.25?

24 MR. GREENBERG: Well, on the facts that bear on the \$8.25 --

1 THE COURT: Okay.

2 MR. GREENBERG: -- because there's two sets of facts that bear on the
3 \$8.25. One set of facts is was the employee even eligible to enroll in the insurance.
4 That issue is analyzed in part in the submission on this partial summary judgment
5 motion because there was a waiting period. There was a 60-day or 90-day waiting
6 period. So when we see someone is hired, they first appear in the payroll record on
7 March 1st, 2013 in the review we did of the records and that's the first indication we
8 have of them ever working for the company, they're going to be entitled to that \$8.25
9 rate either for 60 or 90 days after March 1st, 2013 because they don't have enough
10 waiting time in to participate in the program, okay.

11 The other issue in terms of qualification deals with this question of ten
12 percent cost, which is that the cost to the employee can't be more than ten percent
13 of the wages for them to participate in the insurance for both themselves and their
14 family members. The participation cost is much less for single employees. It is
15 prohibitive for people with spouses or children in terms of that ten percent issue.
16 So, single employees --

17 THE COURT: Two hundred and seventy-three dollars every two weeks or
18 some such thing?

19 MR. GREENBERG: Well, it's a lot, okay. It clearly wouldn't reach -- it clearly
20 wouldn't meet the ten percent threshold. In this partial summary judgment motion
21 we have not analyzed that issue, in part because we don't have enough information.
22 We are getting information on that which we think is important. It was ordered by
23 the Discovery Commissioner. It will identify the marital status of many of the class
24 members. So we will revisit that later.

1 But in terms of just differentiating between the \$8.25 and the \$7.25
2 tier for purposes of this motion, the only issue we have looked at is this question of
3 waiting period. Did the employee -- were they a new hire? What we've assumed is
4 that anyone who was hired after March 1st, 2013, because we're looking at January
5 1st, 2013 through the end of 2015, this 2-year period, anyone hired after that date
6 is a new hire if they're just appearing in the payroll records. Anyone who first
7 comes into the payroll records prior to that date, we're giving the defendants the
8 benefit of the doubt and saying that they qualified at that point; their waiting period
9 had expired. We don't actually know that to be true, but we're making the most
10 conservative assumption in favor of the defendants on that issue.

11 So if the Court is declining to put the burden on the defendants in
12 terms of establishing the \$7.25 rate, because we have provided the calculations at
13 \$8.25 for everyone -- Your Honor may not want to go in that direction and make the
14 differentiation based upon the information we've provided, the only differentiation
15 we're asking the Court to make here is based on the waiting period, which is again
16 when the employee is first hired or first paid after March 1st, 2013, to apply the
17 60 or 90-day period.

18 THE COURT: When you say differentiation, you mean that some members
19 of a class might get a certain amount and others might get a different amount?

20 MR. GREENBERG: By differentiation, I mean between the \$7.25 and the
21 \$8.25 rate.

22 THE COURT: Okay.

23 MR. GREENBERG: Someone who appears in the payroll in January of 2015,
24 if the Court is going to apply only the waiting period analysis, is only going to get a

1 judgment at \$7.25 an hour. They're not going to be entitled to any judgment at all
2 on an \$8.25 analysis because for our purposes we are assuming they were eligible
3 to participate in the insurance at all times, that they were not under a waiting period.
4 We don't know that fact to be true, but we're giving defendants the benefit of the
5 doubt. It's only when the employee is in fact first appearing in the payroll records
6 after that March 1st of 2013 date that we're imposing the 60-day or 90-day waiting
7 period time where we're calculating an \$8.25 rate for that person.

8 Now, if Your Honor rejects making any differentiation, as I've just
9 explained, then Your Honor can just grant summary judgment under the \$7.25
10 an hour rate in its entirety, ignore the higher tier rate for the moment and this issue
11 will be addressed at some point in the future, if Your Honor feels that is more
12 appropriate. As I was explaining when I started speaking, there is \$174,000
13 collectively that is owed under the \$7.25 an hour rate that we have documented
14 from the payroll records. So hopefully I have given the Court some insight in terms
15 of this issue of the rates, the two rates as they apply to this motion that's before
16 the Court right now.

17 Your Honor's other inquiry to me was to address the defendants'
18 contention that somehow we are basing this motion on facts that are not really
19 established --

20 THE COURT: Uh-huh.

21 MR. GREENBERG: -- and that there are material issues. Your Honor, this
22 is based -- this motion is based in its entirety on defendants' own payroll records
23 and on defendants' corroborating testimony about what the information in those
24 payroll records contains, okay. They produced to me in October of last year Excel

1 files. This is discussed in my declaration, Exhibit A, paragraph 2. They gave me
2 these two Excel files with the information, the payroll information in it. It was turned
3 over to Mr. Bass, who went through it and assembled a line-by-line computation of
4 14,000 separate pay periods. And in fact, we could even do this on paper paystub
5 by paystub, and I actually have an example in the moving papers of a paystub from
6 Mr. Sergeant which confirms the same minimum wage deficiency for that pay period
7 as in -- at page 489 of the summary that Mr. Bass prepared, which is 689 pages
8 because we're dealing with 14,000 lines and 14,000 separate paychecks that were
9 issued. Some of those paychecks do not show any deficiency for minimum wage
10 purposes, some of them do. Defendants --

11 THE COURT: How would it be that they show no deficiency?

12 MR. GREENBERG: The employee got paid more than the \$7.25 an hour
13 rate. And in fact, Your Honor, the only reason we're seeing a deficiency at a
14 \$7.25 an hour rate in this 2-year period is because defendants until August of 2014
15 were applying a tip credit, okay. After August of 2014, that \$7.25 an hour rate
16 deficiency essentially disappears or it's just -- maybe there's a few nominal errors
17 or something, because they were complying with the federal minimum wage
18 requirement which let them count the tips towards that \$7.25, but not the state
19 minimum wage requirement which doesn't allow the tip credit.

20 So this is a damage of \$174,000 to the class members that resulted
21 expressly from defendants' process in terms of how they were running their payroll at
22 the time. And defendants have not disputed any of what I've just explained to Your
23 Honor. There is no declaration in opposition saying that there are any errors in the
24 calculations; that the information they gave to us was not correct; that we have not

1 taken the correct information out of those records in terms of, you know, what
2 information. There's this Quantity, QTY minimum wage adjustment number and this
3 is discussed I believe at page 4 -- yeah, page 4 of my moving papers, that Mr. Nady
4 testified under oath was the hours worked per pay period that was recorded. And we
5 actually have that on a physical paystub that was issued to Mr. Sergeant. It's in the
6 record. Subsequently when he gave a deposition last year, he was examined about
7 this issue again, and this is discussed in my reply. He testified under oath that the
8 records of the hours worked that are in those payroll records from 2013 to 2015 are
9 the most accurate records of the work hours of the cab drivers.

10 THE COURT: Uh-huh.

11 MR. GREENBERG: They in fact are more accurate than the trip sheets that
12 the drivers were using.

13 THE COURT: And your argument is that leaves this outside the defendants'
14 argument that there's still issues of material fact as to the accuracy of these
15 records?

16 MR. GREENBERG: Your Honor, they haven't raised any, okay. I mean, all
17 they say is that, well, plaintiff is manipulating the records or may be manipulating
18 the records. They point to no specific discrepancies, no manipulation. There is no
19 declaration from Mr. Nady, from any other witness with personal knowledge raising
20 any material factual issues to say that if we went through these 14,000 paychecks
21 that were issued for this 2-year period, which we did, you would come up with a
22 different number or a different result as to whether we had compliance at the \$7.25
23 an hour rate that I've just been discussing with you, okay. So there are no material
24 issues.

1 I do apologize, there were some errors in some of the exhibits that
2 were presented, so there's two erratas. Defendants did raise an issue to correct
3 some of the exhibits, Your Honor. Defendants did raise an issue which I concede
4 is material but not material in respect to denying the motion, that the motion as
5 postured relied upon payroll records through May of 2016 and that was what was in
6 the Bass compilation. However, that doesn't actually change the analysis in respect
7 to the \$7.25 rate amounts that are owed. And in our reply -- we filed a supplement
8 to our reply -- Mr. Bass created a limited per plaintiff, per class member table. We
9 have a total of 570 class members. This was filed on February 23rd.

10 THE COURT: I must tell you, I'm not sure I read that.

11 MR. GREENBERG: Well, Your Honor, I'm trying to address the objection
12 that defendants made --

13 THE COURT: Yeah.

14 MR. GREENBERG: -- that is germane to the posture of the case. The
15 objection was that the summary of the six hundred -- it's something like a 689 page,
16 you know, 14,000 paycheck summary that was presented by Mr. Bass, included this
17 5-month period that was beyond the class certification.

18 THE COURT: Uh-huh.

19 MR. GREENBERG: What I'm trying to explain is the amount owed per class
20 member. Some class members are owed nothing. We've identified approximately
21 300 class members who are owed something at the \$7.25 an hour deficiency
22 analysis. There is in fact no difference -- there's only a \$23.00 difference between the
23 total amount owed at \$7.25 when we include those extra five months and when we
24 cut it off at December 31st, 2015, and that \$23.00 is due to some rounding errors

1 or some nominal issues, because as I was explaining to Your Honor, they were in
2 compliance internally on their payroll record-keeping system after about August of
3 2014.

4 So there isn't a material issue there that prevents the Court from
5 issuing summary judgment and my request is that the summary judgment, partial
6 summary judgment be issued in compliance with the chart that was annexed to the
7 February 23rd, 2017 filing, which cuts off the per plaintiff analysis on December
8 31st, 2015. And Mr. Bass also indicates 65 additional persons who were hired after
9 January 1st, 2016. They are outside the class period, so they wouldn't be subject
10 to any award, not that they're owed anything under a \$7.25 analysis.

11 THE COURT: Do you have a copy of that?

12 MR. GREENBERG: I can give you a copy of this, Your Honor, to reference.

13 THE COURT: Thank you.

14 MR. GREENBERG: I hope that I have explained reasonably well what the
15 plaintiffs' position is and assisted the Court.

16 THE COURT: Uh-huh. I think I understand that part at least. What about
17 when you go for the big number?

18 MR. GREENBERG: Well, by the big number you mean the \$8.25 an hour
19 deficiency amount?

20 THE COURT: I do.

21 MR. GREENBERG: Well, Your Honor, I don't see why the Court should
22 refrain from awarding the additional -- it's about another sixty or eighty thousand
23 dollars that's itemized and owed to the class members. Some of these class
24 members are only owed money under an \$8.25 an hour analysis. I don't see why

1 the Court should refrain from doing that for the waiting period time. Again,
2 defendants have not countered the assertion that any of those individuals were
3 in fact eligible to enroll in the insurance program. They were not under the waiting
4 period that they had access to the health insurance program during that 60 or 90
5 day period. We based -- it's not always 60 or 90 days because the waiting period
6 was something like 60 days in 2013 and then it went to 90 days and then it went
7 back to 60 days or something.

8 So we took that change in the waiting period status into account when
9 we prepared the table that I just gave you. Defendants have not controverted any
10 of that. They haven't pointed to any errors in terms of our application of the
11 arithmetic here, so to speak, nor have they proffered any evidence that any of these
12 individuals that we claim were ineligible to participate in the insurance program in
13 fact were eligible to participate in the insurance program during the time period at
14 issue.

15 So, yes, I would submit that Your Honor should enter the award, not
16 at the uniform \$7.25 an hour rate, but include that waiting period of qualification for
17 those class members who were under a waiting period for the reasons that I've
18 explained to the Court.

19 THE COURT: All right. Let's see what Ms. Rodriguez says. She'll probably
20 agree with all of that, won't you?

21 MS. RODRIGUEZ: Oh, sure. Sure, Your Honor. I'm not that hungry for
22 lunch yet.

23 Your Honor, this motion was filed by Mr. Greenberg on January 11th
24 of this year and there were a number of documents attached to his motion with

1 purported calculations from this Charles Bass, coming up with some number of what
2 they believe the damages are owed. Two days later, January 13, we get an errata,
3 saying, oh, we got the numbers wrong, here's really what the numbers are when
4 Mr. Bass recalculated.

5 THE COURT: Uh-huh.

6 MS. RODRIGUEZ: February 21st we get a second errata saying, well, no,
7 those numbers were wrong, these are really the numbers that we recalculated and
8 this is the number that Mr. Bass believes is the appropriate number for damages.
9 The reply we get a month later, February 23rd, a supplement to plaintiff's reply,
10 actually, that has yet new numbers and new calculations from Mr. Bass. What we
11 don't have is a timely expert report, a timely designation of an expert. But that's
12 what these are. This is Mr. Bass doing his interpretation of the documents and
13 basically Mr. Greenberg is just submitting an expert piecemeal to report to the Court
14 and asking for summary judgment and arguing that there is no discrepancy as to
15 material fact.

16 THE COURT: Is there anything in his declaration that amounts to opinion
17 evidence as opposed to some sort of affirmative -- I mean, administrative ministerial
18 thing?

19 MS. RODRIGUEZ: Well, all of it, Your Honor.

20 THE COURT: Okay.

21 MS. RODRIGUEZ: We don't know what his methodology was for the
22 calculations of all of these. They have not actually attached the actual documents,
23 the trip sheets. They weren't even in possession of the trip sheets when they came
24 up with the original motion and the calculations. And that was my first argument

1 in my opposition, is how can they say that these are the actual hours worked when
2 they haven't even bothered to look at the trip sheets --

3 THE COURT: Yeah.

4 MS. RODRIGUEZ: -- which we have alleged from the very beginning are
5 the hours that the drivers themselves document as the hours that they are working.
6 When you're talking about minimum wage, you're talking about actual hours, actual
7 paid time for that, and they've not --

8 THE COURT: Why should they not be able to rely upon the information on
9 the -- well, they're not hard drives, but whatever you call those PDF things?

10 MS. RODRIGUEZ: All the items that they have been arguing for that we
11 always said were not accurate representations of the actual hours worked, the
12 actual pay. We said if you want to know the actual hours, look at the trip sheets.
13 If you want to look at the actual pay, look at the paystubs. Mr. Greenberg insisted
14 on these --

15 THE COURT: Then what were those items that were given in discovery to
16 the plaintiff?

17 MS. RODRIGUEZ: There's been a number of items, Your Honor. And I can't
18 tell from all of these erratas which ones Mr. Bass chose to use in coming up with
19 his calculations. I can tell --

20 THE COURT: Mr. Greenberg, what were the -- what was contained on the --
21 please help me out. You said it was two something -- memory sticks?

22 MR. GREENBERG: I was given, Your Honor, two Excel files.

23 THE COURT: Excel files. Thank you.

24 MR. GREENBERG: The defendants -- and I had to assist them, actually,

1 in getting an expert in and getting a narrative process for them to follow to produce
2 that information, which they did follow and they produced it to me. Mr. Bass'
3 declaration contains no opinion whatsoever. It is 12 pages. It is extremely detailed.
4 It explains each item of information that was in the Excel file, how he sorted it, how
5 he arranged it, and how he then after arranging it in the fashion that we could have
6 the gross wages that were paid on one line.

7 THE COURT: It sounds like an explanation of methodology.

8 MR. GREENBERG: It is an explanation of methodology.

9 THE COURT: That an expert would do.

10 MR. GREENBERG: Well, Your Honor, he has been designated as an expert.
11 That's not true when defendants say there is no expert designation.

12 THE COURT: Okay.

13 MR. GREENBERG: He has been designated as an expert. We need to
14 provide further documentation as to our calculations of damages. For the reasons
15 I was explaining to Your Honor, I'm still awaiting information to address fully this
16 \$8.25 an hour issue. It is supposed to be gotten to me. I don't believe that his work
17 is an expert opinion or report work because it is a compilation or a summarization
18 of voluminous records under the rules of evidence. Your Honor, as I documented in
19 the moving papers with Mr. Sergeant's actual printed paystub, one can go and look
20 at each printed paystub and sit down and do the same calculation in long hand or
21 with the assistance of an electronic calculator.

22 All he's done is taken 14,000 of these paychecks, taken the information
23 from defendants' Excel system. It's the Excel system. It was originally QuickBooks.
24 They exported it into Excel and then the Excel information, you know, puts it on one

1 line for us. And then, you know, the hours that are in for the pay period are divided
2 into the wages for the pay period. It tells us what the hourly rate was. If it's under
3 \$7.25, well, then we know there was a deficiency.

4 I mean, Your Honor, this is basic arithmetic. Again, it is a summarization.
5 But in the event that the Court would view it differently in terms of the context of this
6 litigation, Mr. Bass will be available for deposition and he could be treated as an
7 expert for that purpose, in which case we should presumably do that process when
8 we have a full record of all of the information available for all time periods, for all
9 conditions. Defendants --

10 THE COURT: Is he -- are you saying that to this point he is not intended to
11 be a designated expert?

12 MR. GREENBERG: Your Honor, I have -- it is my position that he doesn't
13 need to be designated as an expert, but I have designated him as an expert and
14 they were given his C.V. In fact, his C.V. is attached to his declaration.

15 THE COURT: And when is his expert report due?

16 MR. GREENBERG: Your Honor, it was due -- expert reports were due some
17 time ago in this case. The problem is that I'm still waiting to get the discovery that
18 was ordered by the Discovery Commissioner relating to all of these issues in the
19 case. And when that's provided, I will provide a further declaration from Mr. Bass,
20 a further study from him as to his compilation and summarization of the data under
21 all of the relevant conditions, and defendants will be free to take his deposition.

22 THE COURT: Are we not, though, sort of short-circuiting all that process,
23 including the deposition by saying, well, he's been designated but there's no report
24 yet because we can't because there's this -- but here's a report. I mean, here is

1 a declaration with 600 or 700 pages attached to it and here's the methodology that
2 he used. It sounds an awful lot like we're saying this is a report produced by your
3 expert.

4 MR. GREENBERG: Your Honor, if the Court takes that view of it, okay,
5 I don't believe that's material to the issue right now.

6 THE COURT: Okay.

7 MR. GREENBERG: I mean, my position is that's not the issue because,
8 again, this is a summarization.

9 THE COURT: Your position is that they can't contest the accuracy of the
10 Excel sheets?

11 MR. GREENBERG: They can't and they don't in terms of this piece of the
12 damages that are claimed in the case because it is based upon what is shown on
13 the face of their own payroll records --

14 THE COURT: Okay.

15 MR. GREENBERG: -- and their testimony about what's in those records.
16 And, Your Honor, these are minimum wages. They're owed to about 300 people
17 at \$7.25 an hour or maybe 400 if we include the \$8.25 amount. They're not large
18 amounts. They should get a judgment for this amount now. There's no reason to
19 defer this for the future, Your Honor.

20 THE COURT: Is it your contention that the Excel records that were given
21 were taken from the appropriate trip sheets, or were they taken from a different
22 source?

23 MR. GREENBERG: The defendants' testimony is that they took -- they
24 reviewed the trip sheets and they recorded in the Excel file the hours on the trip

1 sheets. And in fact, as Mr. Nady testified -- this is in my reply -- that they even
2 added certain amounts of time to those records which went -- that information which
3 went into the QuickBooks payroll system to include periods of time that were not
4 captured by the trip sheets. And he testifies under oath that in fact that record is
5 more accurate than the trip sheets in terms of establishing the hours of work for
6 these individuals.

7 THE COURT: Okay.

8 MR. GREENBERG: So there is no material issue of fact that these are the
9 hours that these individuals worked, and there's no material issue of fact in respect
10 to this is what they paid them, as reflected on each line of the summary that Mr.
11 Bass prepared. So there's no issue raised here. All they raise are just suppositions,
12 Your Honor, that somehow plaintiffs have manipulated this. Ms. Rodriguez is
13 saying, well, we don't know which errata applies or what table Mr. Bass was
14 referring to. This is not true, Your Honor. The errata that was provided was
15 because there were misplaced exhibits that were not actually properly attached.
16 They didn't have to do with Mr. Bass' calculations or with his table.

17 The six hundred and so page long form 14,000 line chart that I gave
18 the defendants, which is in the moving papers, Your Honor, includes information
19 beyond the December 31st period, so that information is not germane. That's why,
20 because that extra five months of information was included, I gave Your Honor
21 the supplement to the reply which simply trimmed down the information set to
22 the December 31st, 2015 date and summed it up by the five hundred or so class
23 members in summary. But all the information is laid out to defendants. Every
24 single paycheck for those individuals has appeared on a line of that summary.

1 And it relates -- it's an exact reproduction of the information in their payroll system.
2 And they don't dispute any of it, Your Honor. So I don't understand how summary
3 judgment can be denied under these circumstances.

4 THE COURT: Okay. All right. Ms. Rodriguez, we kind of cut in on your
5 response.

6 MS. RODRIGUEZ: Thank you. Well, I don't know why he continues to say
7 we don't dispute it because we certainly dispute it. In his argument I think he's
8 mixing apples and oranges with what is in the database versus what is on the trip
9 sheets. Those don't have anything to do with each other. The trip sheets are the
10 hours. What he was referring to was the pay that the -- would correlate with the
11 paystubs. But this goes back to methodology.

12 THE COURT: Well, why could you not -- why do you really need the trip
13 sheets if these six hundred some odd pages that were prepared and produced by
14 the defense --

15 MS. RODRIGUEZ: I can tell you why, Your Honor.

16 THE COURT: -- or at least the Excel files that generated this --

17 MS. RODRIGUEZ: Your Honor, this really does come down to methodology --

18 THE COURT: Okay.

19 MS. RODRIGUEZ: -- because the Department of Labor, the Federal
20 Department of Justice came in, reviewed the trip sheets for four years. They came
21 up with a completely different figure than Mr. Greenberg's expert has come up with.
22 They came up with \$139,000 or thereabouts. We had an independent CPA for the
23 Dubric matter come in and use her own methodology.

24 THE COURT: Uh-huh.

1 MS. RODRIGUEZ: She came up with a figure of about \$225,000.

2 THE COURT: Uh-huh.

3 MS. RODRIGUEZ: Different from the DOL, different from Mr. Greenberg's
4 expert. Mr. Greenberg's expert comes in, uses his own methodology. He comes
5 up with \$700,000 for the same 2-year period; one of the numbers that's contained
6 in there. So, basically what they're arguing is damages. We haven't gotten into
7 liability or anything further and they're wanting summary --

8 THE COURT: It sounds like, since you're saying the figure from the
9 Department of Labor is more accurate, that you would not oppose a partial summary
10 judgment for the \$135,000.

11 MS. RODRIGUEZ: I'm not saying it's more accurate. I'm saying that it's
12 different, that everybody uses a different methodology, everybody comes up with
13 a different number, and we have a right to present to a jury whether their expert's
14 numbers and his interpretation of the documentation and how he chose to add and
15 subtract and work out his formulas on the spreadsheet --

16 THE COURT: Well, frankly, what I'm more concerned with at this moment
17 is not whether you have a right to present it to the jury, but do you have a right to
18 be enabled to more accurately or completely take issue with the assertion by the
19 plaintiff that there is no issue of material fact as to these numbers? If these
20 numbers wind up reflecting the information taken from the Excel sheets that were
21 provided by your client, I'm not so sure that I buy into the argument that the trip
22 sheets is the only way to go. But I don't know -- I am concerned about whether
23 or not -- whether or not you really are able to fairly contest the accuracy of these
24 numbers if you don't have -- whether it be some more time to have your own expert

1 weigh in on it, in which event there's no reason not to go ahead and step up to the --
2 you know, what would normally in a normal case, which this case doesn't bear a lot
3 of resemblance to, we would have waited until we had experts not only designated
4 but completely conflicting expert reports as to --

5 MS. RODRIGUEZ: Right.

6 THE COURT: -- the time of day and everything else. And then the Court
7 could determine whether or not there was at least a non-issue -- you know, a no
8 issue of material fact as to certain facts and then whether that provided a basis to
9 issue a partial summary judgment. I am concerned about whether we're really
10 squarely to that point. Have you designated an expert?

11 MS. RODRIGUEZ: No. No, we have not, Your Honor. And your point is
12 well taken because that's exactly what has occurred here is that there was no
13 expert report from the plaintiff.

14 THE COURT: But they did designate an expert?

15 MS. RODRIGUEZ: Well, not really.

16 THE COURT: No?

17 MS. RODRIGUEZ: This is the first time that I hear this because we've got
18 kind of a fuzzy designation saying we don't believe that we need to designate an
19 expert, but should the Court interpret that we do, then we kind of named Charles
20 Bass. We didn't get any report, we didn't get any C.V., we didn't get anything. Later
21 on in a subsequent supplement, past the expert deadline, we did get a C.V. that
22 was attached for Mr. Bass. Still no expert report. Still nothing else in compliance
23 with what the expert disclosures mandate. We see then all these little erratas and
24 piecemeals. We still haven't seen a final report, any report from Mr. Bass --

1 THE COURT: Uh-huh.

2 MS. RODRIGUEZ: -- other than what's been attached to --

3 THE COURT: Well, I want to back up to the point of whether the plaintiff
4 has designated an expert. Do you have that handy?

5 MR. GREENBERG: Your Honor --

6 THE COURT: Do you have whatever was your designation of an expert?

7 MR. GREENBERG: I do. It is on my computer here. This was designated.
8 And the designation was clear, Your Honor, that while we did not believe Mr. Bass'
9 work was in fact subject to an expert report disclosure --

10 THE COURT: Yeah.

11 MR. GREENBERG: -- that we were designating him as an expert. They
12 were provided with his C.V. when this motion was served.

13 THE COURT: Okay, but let's back up to what constituted your designation
14 of him as an expert.

15 MR. GREENBERG: It was a 7th supplemental -- it was a 7th supplemental
16 discovery, Rule 16 discovery response. I was looking at it the other day. It was --
17 yeah, here we have it here. It was served on January 27th of this year, Your Honor.

18 THE COURT: All right.

19 MS. RODRIGUEZ: It's actually attached to my opposition as Exhibit A to
20 show that they did a reservation, but there was nothing -- no expert report attached.

21 THE COURT: Well --

22 MS. RODRIGUEZ: That's exactly what I represented to the Court. In the
23 event that materials presented by --

24 THE COURT: Hang on.

1 MS. RODRIGUEZ: Sure.

2 THE COURT: Before you start arguing, let me get to where you are with it,
3 then. It's attached as Exhibit --

4 MS. RODRIGUEZ: A.

5 THE COURT: -- No. 8?

6 MS. RODRIGUEZ: A. A as in Apple.

7 THE COURT: A. Okay. Reservation of expert witness. Okay.

8 At that juncture, give me just a minute. I apparently have some
9 emergency matter that needs to be dealt with. This won't take more than two
10 minutes at most.

11 MR. GREENBERG: Yes, Your Honor.

12 (Court recessed from 11:54 a.m. until 12:00 p.m.)

13 THE COURT: All right. I'm sorry for the delay there. Would you believe
14 it was some lawyers being unreasonable? It's just hard to fathom.

15 All right. Where were we with this? The question -- I think I had
16 a question put to you, Ms. Rodriguez; did I? Or did you answer that one?

17 MS. RODRIGUEZ: Well, I think, Your Honor, what I was basically --

18 THE COURT: Oh, the question was whether this operated as a true --

19 MS. RODRIGUEZ: Right. And my argument was that, no, because other
20 people have come to different final numbers. And I think we were looking -- oh,
21 you were looking at the designation of the expert.

22 THE COURT: Designation. Yeah.

23 MS. RODRIGUEZ: Right. And my argument has been that Mr. Bass is
24 offering expert testimony. The plaintiffs were not in compliance with the designation.

1 They didn't produce a report, which the deadline I think was January 27th or so.

2 And so if that's -- if they're going to rely completely on an expert report --

3 THE COURT: Well, here's what I'm going to hear from them, and maybe with
4 some legitimacy. I'm not sure. But I'm going to hear from them that how could we
5 do it, how could we even know if we haven't been given the discovery, the rest of the
6 discovery that we need from the defense.

7 MS. RODRIGUEZ: That's been their argument for probably four years, Your
8 Honor, and the last time we were before the Discovery Commissioner she really tried
9 to pin down Mr. Greenberg and said what do you need? What else do you need
10 so that, you know, she doesn't have to continue to hear this argument over and over
11 and over? And we're at the close of discovery. This is the first time that I hear this
12 argument now from him saying, oh, an expert report is forthcoming if and when we
13 ever get whatever we're still looking for.

14 MR. GREENBERG: Your Honor, as I was explaining earlier, the marital
15 status, dependent status of the class members is a critical consideration in respect
16 to the \$8.25 an hour issue. Defendants were ordered to provide information on that
17 from their payroll system from the W-4s of the class members, which will indicate
18 whether they're married or unmarried. That will tell us a great deal about that issue.
19 I'm told that --

20 THE COURT: When were they ordered to do that?

21 MR. GREENBERG: In March of this year. I'm advised that they're going
22 to be providing that information today in a supplement. Upon being provided with
23 that information, we will be prepared to provide a summarization, a statement of
24 damages in respect to all the various conditions as thoroughly as we can --

1 THE COURT: Does that mean that --

2 MR. GREENBERG: -- based upon the relevant information.

3 THE COURT: Does that mean that if you had the opportunity to your expert,
4 assuming we call him an expert, could prepare his report?

5 MR. GREENBERG: Your Honor, his report will consist of charts and tables.
6 That will be his report, if you want to term it that. Again, my position is this is just
7 a repetitive calculation and summary saying, well, this is what the payroll shows the
8 person was paid, this is what the payroll shows the hours they worked.

9 THE COURT: Okay. Then what I'm hearing is that the Court has to resolve,
10 first of all, whether or not it is opinion testimony.

11 MR. GREENBERG: Your Honor, it's defendants' payroll records.

12 THE COURT: Uh-huh.

13 MR. GREENBERG: And they've affirmed that these are the accurate payroll
14 records that show how much the person worked during a pay period and how much
15 they were paid for the period. There's no opinion in that, Your Honor. And whether
16 that gross amount paid -- if the man worked 54 hours and we divide the 54 into the
17 \$300 he was paid, it's going to give us a number that we all agree on. That doesn't
18 change. And that number is either more --

19 THE COURT: And am I understanding correctly that the sole remaining
20 piece of discovery you need from the defendants in order to do that is forthcoming
21 today?

22 MR. GREENBERG: Your Honor, I'm hopeful it will be forthcoming.

23 THE COURT: Well, let's ask.

24 MS. RODRIGUEZ: No, it's not. I'm not sure -- No. No.

1 THE COURT: Okay. Let's --

2 MS. RODRIGUEZ: They asked for two pieces of information. First of all,
3 this was last discussed before the Discovery Commissioner and the Discovery
4 Commissioner indicated she thought it was a waste --

5 THE COURT: Well, I hate to keep cutting in, but guys, we've got to get down
6 to the rock bottom here. Is there some piece of information or discovery that's going
7 to be provided?

8 MS. RODRIGUEZ: They want all of the W-4s, right? Is that what you want?

9 MR. GREENBERG: Your Honor, it was compelled. And the marital status
10 of all of the class --

11 THE COURT: What is it that you said a few minutes ago you were advised
12 that it's about to be turned over today?

13 MR. GREENBERG: My understanding was that they were going to be
14 providing a supplement today --

15 MS. RODRIGUEZ: Yeah.

16 MR. GREENBERG: -- that would comply with these orders --

17 MS. RODRIGUEZ: No.

18 MR. GREENBERG: -- that were entered in March, I believe. No. Okay,
19 I am misinformed.

20 MS. RODRIGUEZ: No. They asked for two pieces of information that were
21 compelled from the Discovery Commissioner. But we've been in a stay, so those
22 have not been turned over during our stay for the last 60 days. Our stay was --

23 THE COURT: Is there a reason for that?

24 MS. RODRIGUEZ: Pardon me?

1 THE COURT: Is there a reason for that?

2 MS. RODRIGUEZ: To not do anything during a stay?

3 THE COURT: Yeah, not to at least turn over discovery that was previously
4 ordered.

5 MS. RODRIGUEZ: No, it was ordered during -- I mean, all -- the notice of
6 entry of order, everything was filed during the stay, which I was very confused about,
7 but we finally got that on March 31st.

8 THE COURT: Okay.

9 MS. RODRIGUEZ: But our stay wasn't lifted until May 1st.

10 THE COURT: Okay. All right.

11 MS. RODRIGUEZ: So my understanding is when there's a court order
12 staying the proceeding --

13 THE COURT: Uh-huh.

14 MS. RODRIGUEZ: -- we stay the proceeding. So once the stay has --

15 THE COURT: Well, you can rest on that. That certainly does not move this
16 case along, but you could conceivably rest on that.

17 MS. RODRIGUEZ: So, the Discovery Commissioner ordered two outstanding
18 items. One was a defendants' privilege log, documentation for a very small time
19 period. And I indicated to Mr. Greenberg's co-counsel that I would give her a
20 supplement today.

21 THE COURT: Good.

22 MS. RODRIGUEZ: So, yes, as soon as I get back to my office they're getting
23 a supplement.

24 THE COURT: Okay.

1 MS. RODRIGUEZ: The W-2s or W-4s, the Discovery Commissioner ordered
2 that A Cab go back and pull the W-4s for each employee and provide those to
3 Mr. Greenberg. That is a large task. I have not continued to meet with the payroll
4 people at A Cab to find out how far along they are pulling every single individual
5 employee file.

6 THE COURT: All right.

7 MS. RODRIGUEZ: But what I was going to mention to the Court was that
8 the Discovery Commissioner -- we talked about this over and over -- felt that that
9 was not an important part or a necessary part of Mr. Greenberg's calculations, but
10 nevertheless she was going to order it.

11 THE COURT: Then let's find out right now. In order for your expert to issue
12 an expert report, if he's going to issue one, and I presume he is or else why is he
13 even being designated or reserved as an expert, will that information -- do you have
14 to have this piece of information, the W-2s, W-4s that have just been described?

15 MR. GREENBERG: Your Honor, I believe it's essential for fully analyzing
16 the \$8.25 an hour damages in this case, for the reason I explained.

17 THE COURT: Okay. All right.

18 MR. GREENBERG: And, Your Honor, that information is actually in
19 defendants' payroll system because when they do the tax withholding they have to
20 classify someone as married or unmarried. That was never given to me. It's in the
21 QuickBooks data. They don't actually have to go and pull W-4 forms. Everybody
22 who they've issued a paycheck to, it's resident in their computer system. But they
23 don't want to produce it to me. They haven't produced it to me so far. Hopefully
24 I will get that shortly and we will have our damages position analysis finalized.

1 I would hope within 30 days of when I get that piece of information. And Mr. Bass
2 is our expert. He was designated as an expert, if he's to be treated as an expert.
3 It is not our --

4 THE COURT: When you say he was designated, you mean this reservation?

5 MR. GREENBERG: Well, it says at the end of that document, "In the event
6 the materials prepared by Charles Bass for plaintiffs are deemed by the Court to
7 constitute the work product of an expert witness, plaintiffs so designate him as an
8 expert witness."

9 THE COURT: All right. Okay.

10 MR. GREENBERG: This is unequivocal, Your Honor. He is our expert.

11 THE COURT: Well, it seems to me that, you know, to the extent that he is
12 also describing any kind of a methodology, it sounds to me like we're going to --
13 that's what experts do when they're going to render opinion evidence.

14 MR. GREENBERG: Your Honor, it's not an opinion that two plus two is four,
15 okay.

16 THE COURT: I'm sorry?

17 MR. GREENBERG: It's not an opinion that two plus two is four or that when
18 we divide ten into a hundred we get ten.

19 THE COURT: Okay.

20 MR. GREENBERG: He is not rendering any opinion as to any analysis.

21 THE COURT: That is a mere calculation.

22 MR. GREENBERG: All he is doing is performing calculations on the
23 defendants' records and summarizing those records within the meaning of NRS
24 52.275, which he's presenting it as a chart. Again, we have 14,000 individual

1 paychecks. We could look at each individual paycheck stub and write up on the
2 margin the hours --

3 THE COURT: Uh-huh.

4 MR. GREENBERG: -- divide the hours into the gross wages and show the
5 hourly rate. If under \$7.25 we could show what the deficiency was. That could
6 be done 14,000 times on 14,000 pieces of paper. That is what he is doing, Your
7 Honor, okay. He's not offering an opinion as to anything. But nonetheless, Your
8 Honor, I don't want to belabor the point. If he is to be deemed to be presenting as
9 an expert in respect to the charts that he's preparing, it would be my position he
10 would simply corroborate the origin of the materials, which are defendants' records
11 which have tens of thousands of payroll entries in them. He would simply
12 corroborate the origin of the materials, corroborate the summary that he prepared,
13 and that would be presented to the Court and provided to the defendants, of course.

14 And if defendants have issues with those summaries, they think
15 there's errors, they think they didn't actually summarize the original source material
16 properly, they would be able to counter that and raise an issue of fact in respect to
17 that. And that's the problem in terms of where we're at right now is defendants have
18 done none of that, Your Honor. We hear from Ms. Rodriguez how the Department
19 of Labor found this and that some CPA found that. Your Honor, where is it? They
20 need to put it in the record. They don't come in here with counsel and make these
21 ad hoc allegations --

22 MS. RODRIGUEZ: It's attached, Your Honor.

23 MR. GREENBERG: -- in response to this without putting it in the record.
24 They need to document that there is in fact a material factual issue in dispute --

1 THE COURT: Okay.

2 MR. GREENBERG: -- for this limited time period, which is based again
3 exclusively on defendants' records.

4 THE COURT: If I'm correct, you do agree that regardless of whether the
5 Court counts it as requiring -- you know, rules that if need be that as a matter of
6 evidence it amounts to opinion testimony or the Court does not do so, that if you're
7 supplied the things that the Discovery Commissioner has ordered, that you'll be
8 ready to go with calculation --

9 MR. GREENBERG: That is --

10 THE COURT: -- with a calculation of damages, with a calculation -- well,
11 presumably the same calculation by this individual, be it expert or not, of what the
12 amount of damages are that the plaintiff is seeking?

13 MR. GREENBERG: Just so Your Honor understands, in this motion we're
14 dealing with this very limited issue of where the hours are in the payroll. Defendants
15 have essentially admitted the hours of work.

16 THE COURT: Uh-huh.

17 MR. GREENBERG: Everybody agrees what the payroll was. We all know
18 what the class members were paid in every pay period, okay.

19 THE COURT: Okay. Okay.

20 MR. GREENBERG: Nobody says otherwise. It's in the payroll records.
21 The other issue in this case is how many hours they worked where we don't have
22 information in the payroll records. From 2013 to 2015 we have that information in
23 the payroll records. The defendants have admitted under oath, confirmed that that
24 information is completely accurate. That is the basis for this motion.

1 THE COURT: Okay.

2 MR. GREENBERG: Outside of that period there's questions as to how long
3 the drivers worked each pay period. That's going to be an issue of fact that's going
4 to have to be tried. And we will provide --

5 THE COURT: Well, all right. One question that I have is if we can't even get
6 the 2013 to 2015 issue resolved, how in the world are we going to by -- even by the
7 time that the trial is presently set, be able to resolve the rest of it?

8 MR. GREENBERG: Well, Your Honor, my analysis -- my expert, Mr. Bass,
9 will provide a projection as to how much the damages are going to be based upon
10 a finding as to what the shift length was for each driver in each pay period, because
11 we know how many shifts --

12 THE COURT: So am I hearing that -- am I hearing that while an expert is not
13 needed for purposes of this motion, that an expert will be presumably produced at
14 trial and render an opinion based on whatever his methodology and what he does?

15 MR. GREENBERG: Well, just so Your Honor understands the information
16 we're working with, we know what the payroll was.

17 THE COURT: Yeah.

18 MR. GREENBERG: We also have a separate set of information that indicates
19 how many shifts someone worked in a pay period.

20 THE COURT: Right.

21 MR. GREENBERG: So if we say every shift was 10 hours or every shift was
22 11 hours, again, it's just a question of multiplying the shifts by that 10 or 11 or 9
23 hours per shift assumption. You get an hours per payroll period, you divide it into
24 the wages. It's a simple arithmetic formula.

1 THE COURT: What I hear you saying is you're not convinced that you need
2 an expert for your trial testimony.

3 MR. GREENBERG: I'm not convinced that this is within the scope of expert
4 testimony. I don't believe it is, Your Honor. I believe it's simply a compilation, a
5 calculation based upon defendants' records, a summarization as provided, to be
6 presented under the NRS based upon the source material, which is all defendants'
7 source material. And we provide the summary, which is going to be the chart, like
8 we did in this motion. And if defendants take issue with the summary or the chart,
9 they can examine it. The person who prepared the chart or the summary has to, you
10 know, corroborate it, confirm its existence. It could have been done by someone by
11 hand using old-fashioned ledger page, as we did many years ago when I was starting
12 out before they had Excel. But it's no different Your Honor, it's the exact same thing.
13 But we can set that aside. I am perfectly comfortable designating Mr. Bass as an
14 expert, as I have done, having him provide his final tabulation, calculation summary
15 to defendants in full scope, based upon the full disclosures of the information.

16 THE COURT: Well, here's an initial problem. It isn't so much with your overall
17 statement, but you keep saying that he has been designated, but if he's -- you know,
18 it's only if the Court determines that expert testimony is needed. But then that raises
19 the whole question of is there going to be an expert report, which there would be,
20 presumably, if he's designated as an expert. So, you know, that's not for the
21 defendant to guess about.

22 MR. GREENBERG: Right, Your Honor.

23 THE COURT: They've got to know whether you're designating an expert or
24 not.

1 MR. GREENBERG: And I have designated him. To the extent that we're
2 talking about a report, he gave a 12-page declaration in support of this motion.
3 It explains --

4 THE COURT: Well, he gave a declaration, but I'm talking about a designation
5 of an expert.

6 MR. GREENBERG: Well, Your Honor --

7 THE COURT: It's in this document, right? No, that's not it.

8 MR. GREENBERG: It's at Exhibit A of defendants' opposition to the motion
9 for summary judgment, Your Honor. And again, he is designated as an expert.

10 THE COURT: I'm sorry, I thought you said it was in the plaintiff's supplement.

11 MR. GREENBERG: No, it's in the opposition, Your Honor. The plaintiff's
12 supplement that I was referring to earlier is simply the summary of the damages,
13 Your Honor.

14 THE COURT: You're right. Sorry, you're right, I was wrong. So this then
15 amounts to your designation. Okay.

16 MR. GREENBERG: That's correct, Your Honor.

17 THE COURT: Okay.

18 MR. GREENBERG: I'm designating him as our expert.

19 THE COURT: Well, you understand the difficulty that puts the Court in and
20 the defendants in. A somewhat tenuous designation is not exactly the kind of
21 designation of an expert that causes these other events in our discovery scheme
22 to go forward.

23 MR. GREENBERG: Your Honor, again, it's my position that he's not offering
24 opinion testimony.

1 THE COURT: Okay.

2 MR. GREENBERG: And it's not testimony that's beyond the normal purview
3 of an average individual. There's no --

4 THE COURT: Okay. But it would be safe to say that as far as you're
5 concerned if the Court decides that it requires an expert opinion in order to put in
6 either at trial or for purposes of this partial summary judgment motion the calculations
7 which he's done, that he is designated.

8 MR. GREENBERG: He is designated as the expert.

9 THE COURT: All right. Then we need to get down to that very question,
10 and frankly, in all of the things that I have before me I'm not sure that it's squarely
11 raised. I think that maybe in order to resolve this motion I need to first at least
12 allow opportunity to both sides to give me whatever authorities they want to on the
13 question of whether the Court cannot accept the calculations in these 600 some
14 odd pages as uncontested fact.

15 MR. GREENBERG: Your Honor, they are uncontested facts. Defendants
16 have had an opportunity to contest them. They were provided with the summary,
17 the 600-page summary you're referring to. Every single pay period, based upon
18 the records they gave us.

19 THE COURT: Yeah.

20 MR. GREENBERG: They've affirmed --

21 THE COURT: Okay. So as far as you're concerned, the issue of whether
22 there is an issue of material fact that prevents the granting of your present motion
23 rests upon whether the Court agrees with the defense that it is an issue of material
24 fact whether even the Excel -- what do you call it, Excel sheets, the --

1 MR. GREENBERG: Excel files.

2 THE COURT: Excel files. Thank you. That were given to the plaintiff are the
3 appropriate basis for a calculation of damages, you know, even for the purposes of
4 this limited motion.

5 MR. GREENBERG: Well, there's two elements to the damages calculation.
6 There's the wages that were paid. Defendants don't dispute that the wages that
7 were paid are in the Excel files. And there's the hours that the class members
8 worked. Defendant --

9 THE COURT: Okay. But what I'm trying to deal with is this issue that keeps
10 getting raised that, oh, wait a minute, we have to go to the trip sheets.

11 MR. GREENBERG: Your Honor --

12 THE COURT: So I'm -- if you'll just let me --

13 MR. GREENBERG: Yes. I'm sorry.

14 THE COURT: I am about to probably agree with you that if they believe that
15 there is an issue of material fact, it would be up to them to show the Court that the
16 trip sheets -- some study of the trip sheets that presumably has not yet been done
17 would have to be done in order to -- in order for the plaintiff to either prevail at trial or
18 prevail on this motion as to the calculation of the -- to prevail on the issue of whether
19 the materials provided by them do in fact present an issue of uncontested fact.

20 MR. GREENBERG: Your Honor.

21 THE COURT: Yeah?

22 MR. GREENBERG: Again, just to turn to page 5 of the reply on the motion
23 for partial summary judgment --

24 THE COURT: Let me just get to that.

1 MR. GREENBERG: Yes.

2 THE COURT: Let me get to plaintiffs' reply, page 5.

3 MR. GREENBERG: Your Honor is correct. If there's a dispute as to the
4 accuracy of the information, then there's a dispute as to the accuracy of the
5 information. But there is no dispute in respect to the accuracy of the information
6 in the fashion Your Honor was talking. From line 17 onward on page 5 you have
7 the reproduction of Mr. Nady's testimony. He was specifically asked what records
8 existed of the working time and he said the trips sheets, and then he goes on to
9 explain that the trip sheets actually aren't wholly accurate, that the accurate
10 information is put in the QuickBooks system.

11 THE COURT: Okay.

12 MR. GREENBERG: So they have gone on the record as confirming the
13 accuracy of the time records that this is based upon. Nobody disputes that the
14 wages were paid through the payroll system as well. So there is no disputed issue
15 of material fact. They've had an opportunity, Your Honor, to examine the
16 calculations that I presented, the 600 pages, the 14,000, you know, pay period
17 paystub analysis. They have responded in no fashion. They do not actually submit
18 anything now attacking the accuracy of the information that I was working off of,
19 which was the Excel files, Your Honor.

20 THE COURT: Okay. I understand your point.

21 MR. GREENBERG: Okay. Thank you, Your Honor.

22 THE COURT: Ms. Rodriguez, what about that?

23 MS. RODRIGUEZ: Well, Your Honor --

24 THE COURT: Am I correct that you're saying that without the trip sheets

1 there is presented an issue of material fact?

2 MS. RODRIGUEZ: Absolutely. That's definitely one of the points. And
3 I don't know why he keeps saying we've presented nothing because I have them
4 attached to the opposition. Exhibit C is the Department of Labor's analysis. Again,
5 this is their numbers that they arrived after going through the 14,000 documents that
6 Mr. Greenberg referenced but doesn't want to look at them. They went through the
7 documents and came up with the \$139,000 figure. Exhibit D --

8 THE COURT: Exhibit C. Hang on. I'm still trying to get to Exhibit C.

9 MS. RODRIGUEZ: Okay.

10 THE COURT: We either didn't get -- yeah, the courtesy copy is not tabbed
11 and I'm a little slow at flipping through these and getting to the right page. All right,
12 Exhibit C. Go ahead.

13 MS. RODRIGUEZ: Exhibit C is the consent judgment written by the
14 department -- the Federal Department of Labor, that came up with the figure of --
15 it's on page 3, \$139,988.80 for the time period of October 1st, 2010 through October
16 1st, 2012.

17 Exhibit D is -- and I haven't -- I don't think I've emphasized this enough.
18 This lady is an independent CPA. This is Nicole Omps of Beta Consultants, who was
19 hired primarily by the other plaintiff's counsel, the Barrasso Law Firm, and A Cab as
20 an independent CPA who did her own analysis going through the actual trip sheets
21 and through the actual payroll system and came up with her figures of liability for the
22 relevant years of April 2009 through September 2016. And she broke that out in
23 terms of her findings and her methodology and her opinions as to what the liability
24 would be. And yet none of these numbers match up with what Mr. Greenberg's

1 expert is opining about.

2 THE COURT: Well, it sounds like -- it sounds like you just listed off a time
3 period that's not included in the motion for partial summary judgment.

4 MS. RODRIGUEZ: Well, it is, Your Honor, and that's a point that hasn't even
5 been addressed, because I did address that in my opposition that Mr. Greenberg
6 is asking for --

7 THE COURT: Wait. So am I not correct that this Exhibit D is talking about
8 a time period that goes from 2009 to 2016 --

9 MS. RODRIGUEZ: Correct.

10 THE COURT: -- and the motion itself is concerned with -- am I right, 2013,
11 2014?

12 MS. RODRIGUEZ: Two thousand -- through 12/31/15.

13 THE COURT: Through 12/31/15?

14 MS. RODRIGUEZ: Excuse me. No. He's asking through May 27th of 2016.
15 And that was my argument that he doesn't even have any class representative
16 during this time period. Mr. Murray and Mr. Reno --

17 THE COURT: Okay. Well, I'm not going off on that argument.

18 MS. RODRIGUEZ: Well, Your Honor, that's an important argument.

19 THE COURT: What about whether -- Is that true that the time period you're
20 asking for partial summary judgment includes through that May of 2016?

21 MS. RODRIGUEZ: May 27th, 2016.

22 MR. GREENBERG: Your Honor, as I was explaining before, through
23 December 31st, 2015, because that's congruent with the class period at this time.
24 That's the class certification.

1 THE COURT: Okay.

2 MR. GREENBERG: And that was the supplement I gave Your Honor earlier.

3 THE COURT: 2013 through --

4 MR. GREENBERG: Those three calendar years, '13, '14 and '15.

5 THE COURT: All right. Okay.

6 MR. GREENBERG: The Department of Labor finding involves prior years,
7 2012, 2011. It has no bearing --

8 THE COURT: All right. So, back to -- back to your point about this Exhibit D.
9 If that's a slightly different time frame, I mean, how do I --

10 MS. RODRIGUEZ: It outlines them per the year, Your Honor.

11 THE COURT: It does. All right.

12 MS. RODRIGUEZ: But I think that's an important point that Mr. Greenberg
13 just conceded, because he just said that was in his supplement. And he's alleged
14 a number of dates, but the original motion asked for partial summary judgment
15 through May of 2016.

16 THE COURT: The motion as it stood when you filed an opposition?

17 MS. RODRIGUEZ: Correct.

18 THE COURT: Okay.

19 MS. RODRIGUEZ: But following my opposition is when all the erratas came
20 in with the different dates. So I guess what I'm hearing is that he's only asking
21 through 12/31/2015 and the remainder of 2016 has been dropped.

22 THE COURT: No, I think for purposes of his partial summary judgment
23 motion. Is that --

24 MR. GREENBERG: Your Honor, as the case is currently postured before

1 the Court, you can't award damages to the class past 12/31/15 because you haven't
2 certified the class past that date. We were discussing this earlier today.

3 THE COURT: Okay.

4 MR. GREENBERG: We will address that --

5 THE COURT: And you don't intend -- you don't intend to certify it past then?

6 MR. GREENBERG: Well, we do. We're going to address that by another
7 motion, Your Honor. Your Honor directed that that be brought by separate motion.

8 THE COURT: Is there any issue in this entire litigation which can be resolved
9 once and for all?

10 MR. GREENBERG: Your Honor, this partial summary judgment motion
11 should be resolved.

12 THE COURT: Okay.

13 MR. GREENBERG: As I have explained to the Court, what I want to explain
14 about Exhibit D, which is the only document defendants are referring to that actually
15 deals with this time period --

16 THE COURT: Right.

17 MR. GREENBERG: -- if you look at -- it's the last page of this document.

18 THE COURT: Right.

19 MR. GREENBERG: It's a 3-page document. It says, Assumption. Please
20 read that, Your Honor.

21 THE COURT: (Reading) Based on Department of Labor wage hour
22 investigation, A Cab, 2010, 2012 underpaid drivers at a rate of 2.1 -- blah, blah, blah
23 -- of total gross pay.

24 MR. GREENBERG: Your Honor, this is just an assumption. The Department

1 of Labor settlement, for whatever amount, represented a percentage underpayment
2 of gross wages. Your Honor, counsel was just representing to Your Honor that
3 somehow this constituted some independent evaluation of actual factual material,
4 such as trip sheets which were mentioned by her. This CPA didn't look at any trip
5 sheets. All she did was take a look at this prior settlement and compare it against
6 the payroll, come up with a percentage --

7 MS. RODRIGUEZ: That assertion has --

8 MR. GREENBERG: -- and say based upon that analysis the proposed
9 settlement is proper.

10 THE COURT: And I suppose the real question is does it present an issue of
11 material fact as to your calculations put forward in your motion for partial summary
12 judgment?

13 MR. GREENBERG: Your Honor, how could it? It doesn't address any actual
14 payroll period that we did the calculation on.

15 THE COURT: Okay, that's a fair question. Ms. Rodriguez?

16 MS. RODRIGUEZ: Yes, it does, Your Honor. It's right there through --
17 October 2012 through June 2014; July 2014 through September 2016. This is on
18 Appendix A of that report. And it absolutely does raise a material fact. This expert --

19 THE COURT: Well, it says it's based on an assumption.

20 MS. RODRIGUEZ: Well --

21 THE COURT: That's not --

22 MS. RODRIGUEZ: -- what Mr. Greenberg just represented to the Court, I
23 don't know how he knows that Ms. Omps didn't review a trip sheet; how he can make
24 that representation, unless he's had some discussions with her that I'm not aware of,

1 because she absolutely reviewed trip sheets and reviewed actual data.

2 THE COURT: Well, is this -- I mean, if it says assumptions, then those
3 assumptions do not represent established fact or facts asserted --

4 MS. RODRIGUEZ: Uh-huh.

5 THE COURT: -- how would I use this to say, oh, well, here's an issue of
6 material fact?

7 MS. RODRIGUEZ: Well, it's a different opinion, Your Honor. It's one expert
8 arriving at a different calculation, a different methodology and a different opinion
9 as to what they believe the liability is from A Cab, versus Mr. Greenberg's opinion.

10 THE COURT: What if I agree with Mr. Greenberg that his exhibit of 600 and
11 who knows how much pages --

12 MS. RODRIGUEZ: Uh-huh.

13 THE COURT: -- is merely a calculation based upon -- a simple calculation
14 based upon the --

15 MR. NADY: Trip sheet. Spreadsheet.

16 MR. GREENBERG: The payroll, Your Honor. The Excel file.

17 THE COURT: Spreadsheet. Ahh, spreadsheet. Now, there's a term I can
18 deal with.

19 MR. GREENBERG: Spreadsheet. The Excel file, Your Honor.

20 THE COURT: The spreadsheet contained in those. I mean, where is the
21 need for an expert opinion there?

22 MS. RODRIGUEZ: Well, first of all, as I think we've determined, it sounds
23 like Mr. Bass' report is still a project in action. We haven't even seen his final
24 numbers. And --

1 THE COURT: Well, he's not -- he's not putting them forward as an expert
2 for purposes of this calculation. The question is, do you need an expert to do the
3 calculation?

4 MS. RODRIGUEZ: I think you absolutely need an expert for the calculation.

5 THE COURT: Okay. Why?

6 MS. RODRIGUEZ: Because that's why all of these experts are arriving at
7 different figures. And we have not formally -- Your Honor asked whether --

8 THE COURT: But if he takes your agreed upon numbers, you know,
9 individual numbers, does a spreadsheet and calculates that out, why does that
10 require an expert?

11 MS. RODRIGUEZ: Well, for one, it's not taking into consideration breaks.
12 It's not taking into consideration the appropriate hours worked. You can only derive
13 those from the trip sheets, which is what the other experts have sat down and
14 looked at and come up with, and you come up with it. We can --

15 THE COURT: Okay. Then that in turn depends upon what was represented
16 by the defendant that these spreadsheets were. What was represented that they
17 were?

18 MS. RODRIGUEZ: And that's what I started out saying, Your Honor. I have
19 made this argument repeatedly to the Discovery Commissioner that the data that
20 Mr. Greenberg was requesting was not relevant to his determination of the minimum
21 wage calculation. Mr. Greenberg kept insisting we want this data and this data
22 only, and we want to manipulate it how we want to manipulate it. And that is what
23 has happened is that we turned over this documentation, saying this is not the
24 appropriate documentation for a calculation of minimum wage. And now he's

1 moving for summary judgment, saying --

2 THE COURT: What was it represented to be?

3 MS. RODRIGUEZ: The trip sheets and the actual paystubs.

4 THE COURT: That's what's in the --

5 MS. RODRIGUEZ: No. No. Again, Your Honor, I don't know what Mr. Bass
6 is using because we --

7 THE COURT: No, no, no, no, no. No, no, no no. Before he ever took the --
8 whatever device it was on --

9 MS. RODRIGUEZ: Mr. Greenberg asked, for example, for everything that
10 was in Cab Manager, which is a GPS tracking device for the cabs. That's a program
11 to track the cabs as they make their trips throughout the city.

12 THE COURT: Okay.

13 MS. RODRIGUEZ: He asked for electronic data from Cab Manager. We had
14 to hire Mr. Morgan, who designed the Cab Manager program, to write a program to
15 take out some GPS times and give this data in its raw form to Mr. Greenberg, for
16 example. He has now had Mr. Bass pull that raw data, GPS time, and assumed,
17 okay, well, this is a start and an end time.

18 THE COURT: Okay. All right. So, let me ask Mr. Greenberg, do you have
19 anything that answers the question in writing of what the defendants represented
20 that the spreadsheets were, so that I can determine whether a calculation of those
21 things represents --

22 MR. GREENBERG: Yes, Your Honor.

23 THE COURT: -- an uncontestable -- in other words, it does not present an
24 issue of material fact?

1 MR. GREENBERG: The defendants have just discussed something called
2 Cab Manager.

3 THE COURT: Yeah.

4 MR. GREENBERG: Which data was produced and is being analyzed. It has
5 nothing to do with this motion. This motion is not based on anything from the Cab
6 Manager or the dispatch system.

7 THE COURT: Okay.

8 MR. GREENBERG: This is based solely upon the QuickBooks records. The
9 bi-weekly payroll the defendants printed out. There are paystubs, as counsel was
10 referring to --

11 THE COURT: Okay.

12 MR. GREENBERG: -- that show amount paid --

13 THE COURT: So what it was represented to be by the defendants to you is
14 the QuickBooks?

15 MR. GREENBERG: Correct. That was given --

16 THE COURT: And what are the QuickBooks?

17 MR. GREENBERG: The Quickbooks is every two weeks a paycheck is
18 issued to the employee. It will have an amount for wages and it will have an amount
19 for hours worked.

20 THE COURT: Okay.

21 MR. GREENBERG: So we divide the hours worked into the wages. If it's
22 below \$7.25 or below \$8.25, there's a deficiency.

23 THE COURT: Okay.

24 MR. GREENBERG: And we just do the multiplication, the subtraction and

1 the addition.

2 THE COURT: All right.

3 MR. GREENBERG: It's very simple, Your Honor.

4 THE COURT: Now, back to you, Ms. Rodriguez. Why could he not take
5 what was represented to be the QuickBooks that contain the number of hours and
6 the amount of money paid and say -- and do a calculation of what that comes out to
7 in terms of payment per hour and the hours worked?

8 MS. RODRIGUEZ: Well, first of all, there weren't any representations made by
9 the defendants. We always -- A Cab turned over what the Discovery Commissioner
10 ordered. What Mr. --

11 THE COURT: Okay. What did she order?

12 MS. RODRIGUEZ: Your Honor, there's been so many different --

13 THE COURT: Does that get us further away?

14 MS. RODRIGUEZ: Yeah.

15 THE COURT: Okay.

16 MS. RODRIGUEZ: There's been so many different productions in this.

17 THE COURT: All right.

18 MS. RODRIGUEZ: That's why I'm saying, I don't know what Mr. Bass ended
19 up using from -- we've had to produce so many different sets of electronic data,
20 I don't know which one he used. And I haven't deposed him because there's not
21 been a report.

22 THE COURT: Sure. Understood.

23 MS. RODRIGUEZ: There wasn't a designation. I'm moving to strike him
24 because he's way past the deadline. So why would I waste my client's money

1 deposing this guy if he's never going to testify? And, you know, for him to just
2 piecemeal erratas and then move for summary judgment, it just -- I don't know what
3 else to argue on this because I've never seen anything like this where you're asking
4 for these piecemeal damages and giving the Court like, well, you can pick A, B or C,
5 but pick one of them and just give us money.

6 THE COURT: Well, it doesn't -- for purposes of a partial summary judgment
7 motion, it doesn't have to represent the entire world of damages that they are
8 seeking at trial. It only needs to represent some period of time with a certain
9 number of hours worked, a certain amount of money paid for those hours worked
10 from which presumably even I --

11 MS. RODRIGUEZ: Right.

12 THE COURT: -- could calculate for these certain hours they were or they
13 were not underpaid.

14 MS. RODRIGUEZ: But he's relying upon an expert incomplete report,
15 piecemealed, to convince the Court of that. And what I've done in opposition is
16 shown you that other experts arrive at different opinions entirely. So we have a
17 right to dispute that.

18 THE COURT: Well, sure, for trial purposes. But for purposes of this motion
19 if he is relying on what is represented as certain information from your client, it
20 seems very conceivable to me that if it does represent -- if it's represented to be the
21 hours worked and the monies paid for a certain period of time --

22 MS. RODRIGUEZ: Uh-huh.

23 THE COURT: -- then that is information from which almost anyone, not
24 including me, could calculate what the hours worked -- I mean, what the hourly rate

1 was and how much more would have to be paid in order to meet the minimum wage
2 just for those hours during that pay period.

3 MS. RODRIGUEZ: And Your Honor skipped over -- you didn't want to hear
4 my arguments, but they are important arguments that I don't even think he has a
5 right to ask for these time periods. He doesn't have a class representative during
6 that time period. And I know the Court is brushing that argument aside --

7 THE COURT: No, no, I'm not. I'm not really --

8 MS. RODRIGUEZ: -- but Mr. Reno and Mr. Murray --

9 THE COURT: We haven't gotten to that.

10 MS. RODRIGUEZ: -- they're from 2011 and 2012. Well, that's where we
11 should have started because he's -- first of all, what he originally was asking for was
12 outside the class order. And then everything he's asking for from 2013 and 2015,
13 Murray and Reno are from 2011 and 2012. He's never even shown that he has
14 a proper representative plaintiff for that time period. And without disclosing --

15 THE COURT: Okay. And you objected to that --

16 MS. RODRIGUEZ: I did.

17 THE COURT: -- in front of the Discovery Commissioner?

18 MS. RODRIGUEZ: I did.

19 THE COURT: And what did she rule?

20 MS. RODRIGUEZ: No, I didn't object to -- I objected in this briefing. This
21 is --

22 THE COURT: Well, wouldn't you have objected in front of the Discovery
23 Commissioner that it was irrelevant to --

24 MS. RODRIGUEZ: No, she's going by what you certified, which is through

1 12/31, so -- I mean, 12/31/15, so we've turned over everything through that time
2 period.

3 THE COURT: Okay.

4 MS. RODRIGUEZ: But he's moving for summary judgment now for 2013
5 through 2016, although I think we've cut that off now, that it's 2013 to 2015.

6 THE COURT: Well, yeah, the end of 2015.

7 MS. RODRIGUEZ: Right.

8 THE COURT: Okay.

9 MS. RODRIGUEZ: But that's another reason that summary judgment for
10 that time period is improper because Murray and Reno are from 2011 and 2012.

11 THE COURT: All right, let's deal with that issue. Why would we allow partial
12 summary judgment for a period for which you don't have a class representative?

13 MR. GREENBERG: Your Honor, Michael Sergeant was certified as a class
14 representative in this case. He's not named in the caption, but in your class
15 certification order he was expressly named and designated as a representative.
16 He is a class member --

17 THE COURT: Okay.

18 MR. GREENBERG: -- so he's eligible to be a representative. He was
19 employed in 2014 and does present a claim for damages during this time period.
20 This is all documented in the record before Your Honor.

21 THE COURT: 2014.

22 MR. GREENBERG: That was in 2014. Your Honor, defendants don't actually
23 produce any legal authority for this concept that somehow every class member in a
24 class action case must personally possess damages for every particular time period

1 or interval at issue for the class claims. I mean, there is no such requirements, Your
2 Honor.

3 THE COURT: Yeah.

4 MR. GREENBERG: They don't cite to any.

5 THE COURT: You're saying that the class representative did suffer damages
6 for at least part of the time frame from 2013 to 2015?

7 MR. GREENBERG: That's correct. He was employed, he did suffer
8 damages. We've documented it. I can actually refer you to the exact line in the
9 600-page calculation. His paystub is presented in the record. It is discussed fully
10 before Your Honor. So this is not an issue, okay, in terms of the adequacy of the
11 representation, the representatives or there being a sufficient representative.

12 I think Your Honor understands very clearly where we're at here,
13 okay. If there is no dispute about the information that was provided to plaintiffs and
14 plaintiffs have now provided this summary of the 14,000 or so paychecks to Your
15 Honor, done the calculations Your Honor was just discussing, if defendant is not
16 coming in before the Court and establishing in a sufficiently evidentiary fashion either
17 that the information we're relying on is not accurate -- and by the way, Your Honor,
18 contrary to Ms. Rodriguez' representations, the information relied upon is expressly
19 identified in my declaration as two Excel files, the particular dates, particular sizes
20 that they gave to me in October that were given to Mr. Bass. Mr. Bass prepared the
21 summary. They have not in fact challenged a single line of that summary in terms of
22 those calculations. They have all of the information that I relied upon, Your Honor,
23 and they've agreed that that information is an accurate statement of the hours and
24 the wages for each pay period.

1 THE COURT: In the 600 some odd page attachment that you put on there,
2 is all of the information on there exactly -- I mean, is that on the Excel spreadsheet?

3 MR. GREENBERG: It all comes from the Excel. As Mr. Bass explains in
4 his declaration, the total wages amount that you see on the summary, okay, which
5 appears in Column G, okay --

6 THE COURT: Okay.

7 MR. GREENBERG: -- consists of commission pay and sometimes there's
8 bonus pay. There's different classifications of pay. But it doesn't include any tips
9 which are reported on the payroll system. And defendants had given testimony
10 based upon actual paystubs that were presented to them, Mr. Sergeant's paystubs,
11 about the itemization on the paystubs that were printed out, what each of those items
12 were. They confirmed what the categories of items were that were wages, what was
13 tips. So, Mr. Bass, when he compiled this is only including in total wages paid actual
14 wages, not tips, because tips are excluded for minimum wage purposes under
15 Nevada law.

16 THE COURT: Right. So back to my question. So, column A, B, C, D, E, F,
17 G and H were all --

18 MR. GREENBERG: That is correct, Your Honor. All of that information is
19 resident in defendants' produced Excel files. They have not disputed the accuracy
20 of any line of any of those columns A through H.

21 THE COURT: And the calculation that he's done that you're putting forward
22 and asking the Court to grant partial summary judgment for represents columns I --

23 MR. GREENBERG: Well, I would be if the Court was to use the uniform
24 \$7.25 rate --

1 THE COURT: Right.

2 MR. GREENBERG: -- and K would be if it was going to differentiate, as we
3 were discussing, regarding the waiting period. The J column simply applies \$8.25
4 for all time periods.

5 THE COURT: Okay.

6 MR. GREENBERG: But that is correct. And as Your Honor can see, often
7 in many pay periods nothing is owed. But if Your Honor was to sit down, you could
8 divide, you know, the H amount into the G amount and you would come up with
9 the hourly rate. And then if it was deficient, below \$7.25, you could multiply that
10 deficiency again by the H amount, the hours worked, and you would get the amount
11 in Column I, for example --

12 THE COURT: All right.

13 MR. GREENBERG: -- which is the \$7.25 an hour rate. Very simple.

14 THE COURT: All right. Now -- thank you.

15 Back to Ms. Rodriguez. Do you contest that columns A, B, C, D, E, F,
16 G and H represent the information that was contained within the spreadsheets?

17 MS. RODRIGUEZ: I don't know what Mr. Bass looked at, Your Honor. I don't
18 know how many times -- I'm not being clear in terms of what Mr. Bass looked at.
19 I mean, what strikes me is that this is charts and summaries from Mr. Bass. I think
20 this is a hearsay document.

21 THE COURT: So what we would need to look at is the actual spreadsheets
22 that you provided, your client provided?

23 MS. RODRIGUEZ: We didn't provide spreadsheets, Your Honor. We
24 provided raw data. Mr. Bass put all of these together.

1 THE COURT: Okay. Well, I was going from what somebody on your side,
2 I think it was your client, or I'm not sure --

3 MS. RODRIGUEZ: Yeah.

4 THE COURT: -- called it a spreadsheet.

5 MS. RODRIGUEZ: Right.

6 THE COURT: Okay.

7 MS. RODRIGUEZ: Yeah, I don't know --

8 MR. NADY: I was trying to help you.

9 THE COURT: Well, whatever. So whatever the term --

10 MS. RODRIGUEZ: Right. No, it was raw data that's always been provided
11 to Mr. Greenberg, at his insistence, was raw data.

12 THE COURT: And that raw data included --

13 MS. RODRIGUEZ: I don't know, Your Honor.

14 THE COURT: You don't know?

15 MS. RODRIGUEZ: I mean, I don't know how else to answer that because,
16 like I said, I'm hearing representations for the first time as to Mr. Bass' piecemealed
17 -- little pieces of what he apparently went through to come up with these numbers.
18 But, you know --

19 THE COURT: Do you have a copy of the raw data?

20 MR. GREENBERG: Your Honor, I do. That could be filed with the Court if
21 the Court wanted. I wanted to point out Mr. Bass' declaration is at Exhibit 2 of the
22 moving papers.

23 THE COURT: Right.

24 MR. GREENBERG: It was provided to defendants. At page 2 of that,