APPENDIX 8

APPENDIX 8

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CLERK OF THE COURT

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Western Cab Company

DISTRICT COURT

CLARK COUNTY, NEVADA

LAKSIRI PERERA,

Plaintiff,

v.

WESTERN CAB COMPANY,

Defendant.

Case No.: A-14-707425-C

Dept.: XIV

REPLY TO PLAINTIFF'S RESPONSE AND SUPPLEMENT TO HIS RESPONSE TO DEFENDANT'S MOTION TO DISMISS AND OPPOSITION TO PLAINTIFF'S COUNTER-MOTION TO AMEND COMPLAINT AND CONDUCT DISCOVERY UNDER NRCP RULE 56(f)

Date of Hearing: 02/18/15
Time of Hearing: 9:30 a.m.

MEMORANDUM OF POINTS & AUTHORITIES

I. Introduction

Perera's Response to Western Cab's Motion to Dismiss was due January 26, 2015 and he filed a Response on that date. Then, he filed a Supplement on January 27 at 6:24 p.m. The Supplement should be stricken as untimely.

Moreover, Perera's counsel should be chastised for asserting, "Defendant's counsel has not responded to an email inquiry about whether they will consent to any supplementation of the plaintiff's original response and counter-motion which was filed on January 26, 2015." Plaintiff's

Supplement, p. 2. Western Cab's counsel never received an e-mail asking for consent to any supplementation of the plaintiff's original response and counter-motion and Perera's counsel has not attached such an e-mail to his Supplement. The Court's rules do not authorize a Supplement. Therefore, Perera's Supplement should be stricken.

II. Prospective Application of *Thomas*

Perera's counsel Greenberg specifically argued before the Nevada Supreme Court in *Thomas*, "Despite the speciousness of any claim that the Court's opinion of June 26, 2014 only has prospective application, it seems virtually certain that respondents in this case, and one or more defendants in the other taxi driver minimum wage cases, will insist on litigating that issue." Exhibit 1, p. 2. The Supreme Court refused to change its decision, implying that the case would have only prospective application.

III. Authority of Labor Commissioner

In Exhibit F to Perera's Response, Perera offers an Attorney General Opinion, No. 2005-04. This Opinion states:

> The minimum wage changes proposed by Question No. 6, though materially different in wage outcome, applicability and civil court remedy, essentially create a new method of calculating the wage rate and **do not attempt to alter the underlying current statutory basis for administrative enforcement of the new wage by the Labor Commissioner.** By providing for a higher minimum wage and a more extensive civil court remedy, the people intended to strengthen an employee's ability to assert his right to the minimum wage. The current administrative enforcement jurisdiction of the Labor Commissioner is well-suited to serve this general purpose, and it merely strengthens what the proposed amendment seeks to guarantee [sic].

Exhibit F, AA19 (emphasis added). The Opinion concluded, "On the other hand, the more likely and appropriate conclusion is that the proposed amendment would modify these enforcement statutes to allow for the Labor Commissioner's enforcement of the new minimum wage law." Exhibit F, AA19. Clearly, the Labor Commissioner is "the State agency designated by the Governor" as referenced in the Minimum Wage Amendment.

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Rather than file a permissive civil court action, Perera filed a claim with the Labor Commissioner alleging he had not been paid minimum wage by Western Cab. Initially Perera sought $8.25 an hour and then beginning on March 25, 2011, he sought $7.25 an hour. Exhibit 9-5. On November 13, 2012, the Labor Commissioner said he had been provided copies of payroll records and "with these evidentiary documents, it appears that you have been paid correctly." Exhibit 5-3. The Labor Commissioner told Perera that if he disagreed, to respond in writing not later than November 23, 2012 and provide evidentiary documents to substantiate why he disagreed. Perera failed to respond and his claim was closed. Exhibit 5-3. Western Cab is entitled to rely on the Labor Commissioner's decision because that was the remedy chosen by Perera.

Moreover, until the *Thomas* decision and despite the Attorney General's Opinion, the Nevada Labor Commissioner believed that the Minimum Wage Amendment did not trump the minimum wage exceptions in NRS 608.250(2). In NAC 608.115(2), the Labor Commissioner describes how an employer shall pay for time worked. The regulation specifically states, "This subsection does not apply to an employee who is exempt from the minimum wage requirement pursuant to NRS 608.250." Since Western Cab complied with the Labor Commissioner's interpretation of the law, taxicab companies should not have to pay Nevada's minimum wage to the drivers until *Thomas* was decided.

IV. Statute of Limitations

In Judge Tao's decision in a non-taxidriver case on the statute of limitations to be applied to a minimum wage claim in Nevada (Exhibit 4), he states:

> Thus, the legal standard that the Plaintiffs allege was violated is the wage rate established by the Labor Commissioner, not Article XV section 16 itself. Although that wage rate is established pursuant to the methodology articulated in the Minimum Wage Amendment, the Minimum Wage Amendment does not itself define what that exact rate is at any given moment in time. Therefore, any claim that an employee has been illegally paid less than the effective minimum wage rate actually alleges a violation of wage rates established by

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> state regulation rather than alleging a direct violation of Article XV, Section 16 of the Nevada Constitution. Consequently, although styled as a "Constitutional tort," the Plaintiffs' claim actually appears to be one alleging a violation arising under NRS 608.260."

Exhibit 4, p. 9.

Judge Ellsworth agrees with Judge Tao.[1] On December 5, 2014, Judge Ellsworth, in *Golden v. Sun Cab Inc.*, entered a tentative ruling and held:

> This is a class action lawsuit brought by cab drivers of Deft. for failure to pay the minimum wage. The matter has been stayed for a lengthy period of time pending the Supreme Court's decision on the question of whether the exception for taxicab drivers to the minimum wage requirement, which is contained in NRS 608.250(2), applies to deprive taxicab drivers of the minimum wage in the face of Article 15, Section 16 of the Nevada Constitution which was an amendment to the constitution by way of initiative petition and ratification. The Supreme Court has now decided that matter in Thomas v. Yellow Cab Corp., 130 Nev. Adv. Op. 52 (June 26, 2014) and held that the Constitutional Amendment does indeed supplant the exceptions listed in NRS 608.250(2). This leaves Deft. with two further arguments: (1) that the two year limit on filing an action under NRS 608.260 to recover the difference between the wage paid and the amount of the minimum wage bars the first claim for relief by Deft. Golden (and all others so similarly situated) who was not employed within two years of the filing of the suit; and (2) that Pltfs third claim for waiting-time penalties under NRS 608.040 must be dismissed because Pltfs did not bring a cause of action for Attorney's fees under NRS 608.140, or because this section does not apply where an employee is paid upon separation, but subsequently disputes the amount paid. The Statute of Limitations Argument: Article 15, Section 16(B) provides in relevant part: The provisions of this section may not be waived by agreement between an individual employee and an employer. All of the provisions of this section or any part hereof, may be waived in a bona fide collective bargaining agreement. An employee claiming violation of this section may bring an action against his or her employer in the courts of this State to enforce the provisions of this section and shall be entitled to all remedies available under the law or in equity appropriate to remedy any violation of this section, including but not limited to back pay, damages, reinstatement or injunctive relief. NRS 608.260 provides in pertinent part: If any employer pays any employee a less amount

[1] This lawsuit was originally filed in Department V before Judge Ellsworth. On December 8, 2014, Western Cab filed its Motion to Dismiss First Amended Complaint. On December 10, 2014, Greenberg filed a Peremptory Challenge of Judge Ellsworth.

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> than the minimum wage prescribed by a regulation of the Labor Commissioner pursuant to the provisions of NRS 608.250, the employee may, at any time within 2 years, bring a civil action to recover the difference between the amount paid to the employee and the amount of the minimum wage.

Exhibit 8, pp. 1-2.

Perera's counsel Greenberg made the same arguments in opposition to the two-year statute of limitations which he makes here. Exhibit 8, p. 2. Judge Ellsworth found: "Article 15, Section 16 contemplates a civil action, but does not prescribe a limitation on the action, and so a statutory limitation period must apply. The anti-contractual waiver provision does not amount to an exception to NRS 11.010." Exhibit 8, p. 2. She said, "The Nevada Supreme Court has determined that the term action as used in NRS 11.190 refers to the nature or subject matter of the claim and not to what the pleader says it is, and it is the nature or subject matter of the claim that will determine what limitation period applies." Exhibit 8, p. 3. Judge Ellsworth concluded:

> Here, it is clear that the purpose of the first cause of action is to collect the difference between the wages paid and the minimum wage required, assuming that the former was less than the latter. The Constitutional provision does not set forth a limitation period and the two year period set in NRS 608.250 is not irreconcilable with the Constitutional provision. Thomas v. Nevada Yellow Cab Corp., Supra, did not implicitly repeal the entire statutory framework of NRS Chapter 608 concerning minimum wage (i.e NRS 608.250 through 608.290) [sic]. Since the nature of the action here is the same as the nature of the action described in NRS 608.260, the two year limitation period should apply.

Exhibit 8, p. 3.

In *McDonagh v. Harrah's Las Vegas, Inc.*, 2014 WL 2742874, at *4 (D. Nev., June 17, 2014), Judge Mahan held:

> While article 15, section 16 of the Nevada constitution does create a new two-tiered minimum wage in the state, this section is silent on whether it changes the two-year statute of limitations in the Nevada Revised Statutes. Therefore the court finds that the constitutional provision was not intended to change this two-year statute of limitations.
>
> Accordingly, plaintiffs are only entitled to a two-year statute of limitations for the fourth cause of action, failure to pay minimum

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wage in violation of the Nevada constitution.

This Court should follow these prior decisions and find that if Thomas does not apply prospectively, a two-year statute of limitations applies to Perera's lawsuit.

NRS 608.115 requires an employer to maintain records of wages for a two-year period following the entry of information in the record. If Perera's suggested four-year statute of limitations is applied, it would conflict with NRS 608.115. Nevada employers are not required to maintain records of wages after two years. NRS 608.115 comports with a two-year statute of limitations.

The Minimum Wage Amendment does not contain a statute of limitations which conflicts with the two-year period in NRS 608.260. A two-year statute of limitations should be applied to minimum wage claims.

V. Greenberg's Solicitation and Perera's Gross Taxable Income

Prior to filing the original complaint in this case on September 23, 2014, Perera's attorney Leon Greenberg solicited the drivers of Western Cab. Exhibit 10 is one such written solicitation. It is dated September 16, 2014, and it states:

> I believe many of the taxi drivers for Western Cab were earning, from the fares collected by customers, less than the $7.25 or $8.25 an hour currently required by Nevada's Minimum Wage law. While drivers may have also collected a substantial amount of tips from customers, those tips are **not** counted for purposes of Nevada's Minimum Wage Law. For example, a taxi driver's share of the meter (customer fares collected) for an 11 hour work day must currently equal at least $79.75 or $90.75 under Nevada's Minimum Wage law, depending upon whether proper medical insurance was provided by Western Cab. So if you are working a full 12 hour shift, and earning less than $80 or $90 a day **without** including your tips, you may have a claim for unpaid minimum wages.

Exhibit 10. Perera made $80 or $90 a day without including his tips. *See* Exhibit 5-1. Moreover, he often made more than $80 to $90 a day. *See* Exhibit 5-1 where he made $122.60 on September 23, 2012, $125.35 on September 24, 2012, $121.30 on September 25, 2012,

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$97.35 on October 3, 2012, $98.45 on October 5, 2012, $103.20 on October 6, 2012, $105.60 on October 7, 2012, $99.65 on October 9, 2012, $107.55 on October 10, 2012, and $108.95 on October 14, 2012. If Perera's wages of $1,857.40 are divided by 20 days, Perera made an average of $92.87 a day. According to Greenberg's solicitation letter, Perera has been paid the minimum wage.

While Perera accuses Western Cab of some horrendous perfidy in regard to the higher minimum wage for those who are not provided with qualified health benefits, Western Cab relied on Perera's Labor Commissioner claim to determine which hourly pay rate he was seeking. Up until March 24, 2011, which is outside the statute of limitations, Perera was seeking $8.25 an hour. But from March 25, 2011 until he quit, he was seeking $7.25 an hour. Exhibit 9-5. Western Cab simply relied on Perera's Labor Commissioner claim to determine the minimum wage he was seeking.

Nevada's Minimum Wage Amendment provides as follows:

> Each employer shall pay a wage to each employee of not less than the hourly rates set forth in this section. The rate shall be five dollars and fifteen cents ($5.15) per hour worked, if the employer provides health benefits as described herein, or six dollars and fifteen cents ($6.15) per hour if the employer does not provide such benefits. Offering health benefits within the meaning of this section shall consist of making health insurance available to the employee for the employee and the employee's dependents at a total cost to the employee for premiums of not more than 10 percent of the employee's gross taxable income from the employer.

NAC 608.104 is the Labor Commissioner's regulation on determining whether the employee's share of the premium of the qualified health insurance exceeds 10 percent of his gross taxable income. NAC 608.104(2) specifically states:

> As used in this section, "gross taxable income of the employee attributable to the employer" means the amount specified on the form W-2 issued by the employer to the employee and includes, without limitation, tips, bonuses or other compensation as required for purposes of federal individual income tax.

Thus, Perera's gross taxable income must include his tips, bonuses or "other compensation as

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required for purposes of federal individual income tax." Gross income for federal individual income tax "means all income from whatever source derived, including (but not limited to) the following items: (1) Compensation for services, including fees, commissions, fringe benefits, and similar items. . . ." 26 U.S.C. § 61(a)(1). Thus, all of Perera's declared and undeclared tips must be included in his gross taxable income. *See* Exhibit 9-6. His fringe benefits such as his health insurance premium which Western Cab paid must be included in his gross taxable income. Fees and free tickets paid to taxi drivers for delivering passengers to certain vendors must also be included in Perera's gross taxable income. Exhibit 11. Since Perera's wage claim filed with the Labor Commissioner sought only $7.25 an hour after March 24, 2011, he presumably knew that the premium for dependent health insurance was less than 10% of his gross taxable income.[2]

VI. Perera's Motion To Amend Complaint

In his Supplement, Perera has requested to amend his complaint and add Irshad Ahmed as a class representative. Irshad Ahmed is not similarly situated to Perera and has no minimum wage claim even if the higher rate of $8.25 an hour is used. Exhibit 9. A comparison of Perera's and Ahmed's wages (Exhibits 5 and 9) shows that Ahmed made much more in wages than Perera. Ahmed and Perera worked at different time periods. Ahmed made more in declared tips than Perera. Ahmed did **not** elect to be covered by the health insurance. Neither Perera nor Ahmed can show that they were not paid the minimum wage required by Nevada's Constitution "for many or most of the days that they worked in that their hourly compensation, when calculated pursuant to the requirements of said Nevada Constitutional Provision, did not equal at least the minimum hourly wage provided for therein." Supplement, Exhibit "B", p. 2.

[2] In his statute of limitations argument, Perera claims he is seeking recovery under the Minimum Wage Amendment. Response, pp. 9-10. If the Labor Commissioner's rate-setting is ignored as urged by Perera, he would only be entitled to $6.15 an hour if no health benefits were provided. Perera certainly made over $6.15 an hour. Exhibit 5.

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The only notice requirement in the Minimum Wage Amendment is a requirement to "provide written notification of the rate adjustments to each of its employees." There has been no rate adjustment since 2010 which is outside the statute of limitations. *See* Exhibit 12.

While tips cannot be considered for the determination of the minimum wage in Nevada, tips can be used to pay for fuel. In regard to the payment for the driver's fuel, Western Cab followed the directions of the U.S. Department of Labor. The Department of Labor expressly told Western Cab that the cost of fuel could not be considered in the calculation of minimum wage. Exhibit 9. *See* Exhibit "E", pp. 5-6, to Response. There is no requirement to pay for fuel in the Minimum Wage Amendment.

Neither Ahmed nor Perera were owed unpaid wages by Western Cab when they were separated from employment. Perera and Ahmed have not shown that they were similarly situated or that they have a cause of action and, therefore, Perera's motion to amend the complaint should be denied.

VII. The Class Representative and Class Treatment

Individual determinations of each taxicab driver's hourly wages would have to be made. Such individualized determinations do not qualify under NRCP 23 for class treatment. Both Perera's and Ahmed's failure to have a minimum wage claim against Western Cab means neither can serve as a class representative. Greenberg has been soliciting drivers from Western Cab since September 16, 2014. Exhibit 10. The fact that only two individuals, who do **not** have a minimum wage claim, have responded to Greenberg's solicitation means there is no class that has a minimum wage claim against Western Cab. Suffering a violation of the same provision of law is not suffering the same injury. *Wal-Mart Stores, Inc. v. Dukes*, ____ U.S. ____, 131 S. Ct. 2541 (2011). The U.S. Supreme Court held in *Dukes*, "Quite obviously, the mere claim by employees of the same company that they have suffered a Title VII injury, or even a disparate impact Title VII injury, gives

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no cause to believe that all their claims can productively be litigated at once." *Id.* at 2551.

Perera cannot get over this hurdle. His attempt to add Ahmed as a class representative when his income varied a great deal from Perera's means that they did not suffer the same injury. Dissimilarities within the proposed class would have the potential to impede the generation of common answers. Here, Perera's and Ahmed's claims cannot be resolved with generalized proof as required by the Nevada Supreme Court in *Shuette v. Beazor Homes Holdings Corp.*, 121 Nev. 837, 124 P.3d 530 (2005). Each driver's time and wage records will have to be examined to determine if there is a minimum wage violation. This case should not proceed as a class action because it does not meet the criteria of NRCP 23.

VIII. No Equitable Tolling

Perera urges equitable tolling because he claims Western Cab violated the Minimum Wage Amendment by not notifying him in writing of his right to the minimum wage required by the Minimum Wage Amendment. However, Perera misconstrues the requirement of the Minimum Wage Amendment. The only notice requirement is, "an employer shall provide written notification of the rate adjustments to each of its employees and make the necessary payroll adjustments by July 1 following the publication of the bulletin." The last time there was a rate adjustment was 2010, long outside the statute of limitations. Exhibits 12 and 13.

Moreover, the federal minimum wage rate has been $7.25 since 2009. Western Cab has posted the federal law requirement for 16 years. *See* Exhibits 9 and 9-7.

Federal courts generally deny motions for equitable tolling of federal minimum wage lawsuits if there has been no undue delay by the court. *See Davis v. Westgate Planet Hollywood*, 2009 WL 102735, at *14 (D. Nev., Jan. 12, 2009); *Lewis v. Nevada Property 1, LLC*, 2013 WL 237098 at *14 (D. Nev., Jan. 22, 2013); *Phelps v. MC Communications, Inc.*, 2011 WL 3298414, at *8 (D. Nev. Aug. 1, 2011); *Williams v. Trendwest Resorts, Inc.*, 2006 WL 3690686, at *8 (D. Nev.

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Dec. 7, 2006). Here, Western Cab has done nothing to prevent its drivers from filing claims and there are no extraordinary circumstances beyond Perera's control making it impossible to file his claims on time. Indeed, Perera filed a claim with the Labor Commissioner on time.

Greenberg has been soliciting Western Cab's drivers since September 16, 2014. After Western Cab promptly filed its Motion to Dismiss Perera's First Amended Complaint, Greenberg sought more time within which to file his response. Thus, if there has been any delay, it was caused by Perera's counsel. The statute of limitations should not be tolled.

IX. Motion to Conduct Discovery

Greenberg seeks to conduct discovery of "documents on the health insurance benefits provided to the plaintiff." As part of its Motion to Dismiss, Western Cab furnished Greenberg with the hours worked by Perera detailed in his own handwriting and the wages paid to him. Western Cab has not disputed that Perera had to personally pay for his gasoline in 2012 and has explained the reason why it changed its policy in regard to the gasoline. Exhibit 9.

Perera has documents on his health insurance benefits and Perera is the person who made the wage claim to the Labor Commissioner stating that he was not seeking the higher minimum wage after March 25, 2011. Perera has not shown any entitlement to discovery regarding all of Western Cab's taxi drivers. Greenberg obviously has the names and addresses of the other taxi drivers because he has been sending out solicitation letters. Exhibit 10. He obviously does not need that discovery and if no class is certified, he would not be entitled to such discovery.

In *Picus v. Wal-Mart Stores, Inc.*, 256 F.R.D. 651, 655, 660 (D. Nev. 2009), Judge Pro found that it was a waste of the parties' resources and judicial resources to conduct discovery on class certification where individual issues predominated and the class could not be certified as a matter of law. In *Vinoli v. Countrywide Home Loans, Inc.*, 246 F.R.D. 637, 639 (S.D. Cal. 2007), the district court held that a defense-driven determination of class certification was appropriate

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when waiting for discovery will only cause needless delay and expense. The district court found no common policy that would diminish the need for individual inquiry and denied class certification. *Id.* at 41-42.

In *Ovieda v. Sodexo Operations*, 2012 WL 1627237, at *4 (C.D. Cal. May 7, 2012), the court found that the plaintiff had alleged that her claims were typical of the class because the defendants subjected all of their hourly employees to the identical violations of the California Labor Code and California Business and Professions Code. The court held that the plaintiff had alleged no facts to demonstrate or even suggest that any member of the putative class had similar work experiences. The court found that the plaintiff had failed to allege causes of action such that common questions of fact or law could provide class-wide answers and would be susceptible to class-wide proof. The court concluded, "In sum, Plaintiff's class allegations and PAGA claims must be dismissed because she has alleged absolutely no facts to show that her work experience is similar to that of any member of the putative class." If Perera cannot show that this case should be certified as a class action pursuant to NRCP 23, he is not entitled to discovery regarding class allegations. *Mantolete v. Bolger*, 767 F.2d 1416 (9th Cir. 1985). Perera bears the burden of showing that the class action requirements of NRCP 23 are satisfied before he is entitled to discovery regarding a purported "class."

X. Conclusion

Although Perera and Ahmed allege in paragraph 8 of their proposed Second Amended Complaint that a "single set of facts will establish the right of each member of the class to recover," they do not allege a single set of facts. As Exhibits 5 and 9 show, they each worked for Western Cab during different periods of time, worked different hours and earned different amounts of wages. Perera's and Ahmed's countermotion to amend the complaint and conduct discovery under NRCP Rule 56(f) should be denied.

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Perera and Ahmed are not similarly situated. Perera filed a claim with the Labor Commissioner seeking to recover $8.25 until March 24, 2011, and then seeking to recover $7.25 an hour. Exhibit 9-5. The Labor Commissioner investigated Perera's complaint and concluded that based on his payroll records, "[I]t appears that you have been paid correctly." Exhibit 5-3. Perera has no claim for a minimum wage violation.

Moreover, in determining the amount of Perera's and Ahmed's gross taxable income, both their declared and undeclared tips, fees from vendors and fringe benefits must be included. As Exhibit 11 shows, $50 referral fees to a wedding chapel, a "FULL PAYOUT for all Cabs & Limos" to Showgirls, and a "TAXI FRIENDLY CASH PAID OUT DAILY" to The Range are common. Neither Ahmed nor Perera offer any proof of their gross taxable income and thus neither can show any entitlement to $8.25 an hour.

The Department of Labor told Western Cab that payment for fuel could not be considered in the minimum wage calculation. Only amounts on a paycheck could be considered. Therefore, Western Cab increased the amount it paid its drivers and required them to purchase their own fuel. While tips cannot be considered in determining whether an employer has met the minimum wage requirement of the Minimum Wage Amendment, declared and undeclared tips can certainly be used to pay for gasoline.

Perera and Ahmed offer no evidence that Western Cab knew of the Attorney General Opinion No. 2005-04. Moreover, Opinion No. 2005-04 affirms the Labor Commissioner's enforcement of Nevada's minimum wage law. As part of the Labor Commissioner's enforcement of the minimum wage law, the Labor Commissioner still enforced the exemptions in NRS 608.250, NAC 608.115(2).

Pursuant to the Minimum Wage Amendment, the Nevada Labor Commissioner sets the minimum wage. Exhibit 13. Perera and Ahmed seek to recover the difference between the amount

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paid to them and the amount of the minimum wage. Therefore, a two-year statute of limitations applies to their claims. NRS 608.260.

The last time the Labor Commissioner adjusted the minimum wage was in 2010. Exhibit 12. The duty to notify its employees of this adjustment therefore occurred at that time which is outside the statute of limitations.

The *Thomas* decision did not change the requirements of NRCP 23 regarding class certification. Because neither Perera nor Ahmed is owed any minimum wage, neither can serve as a class representative. Since Perera and Ahmed cannot meet the standards of NRCP 23, class certification should be denied and no discovery should be allowed under NRCP Rule 56(f). All of Western Cab's drivers were employed for different periods of time, worked different hours and earned a different hourly wage. The individual members are not similar to each other. Moreover, they will all have a different gross income. For Perera and Ahmed to claim that they did not receive minimum wage is a travesty of justice. Therefore, Western Cab respectfully requests that this Court grant its motion to dismiss the first amended complaint and deny Perera's and Ahmed's countermotion to amend the complaint and conduct discovery under NRCP Rule 56(f).

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CERTIFICATE OF SERVICE

Pursuant to Administrative Order 14-2, the undersigned hereby certifies that a true and correct copy of **REPLY TO PLAINTIFF'S RESPONSE AND SUPPLEMENT TO HIS RESPONSE TO DEFENDANT'S MOTION TO DISMISS AND OPPOSITION TO PLAINTIFF'S COUNTER-MOTION TO AMEND COMPLAINT AND CONDUCT DISCOVERY UNDER NRCP RULE 56(f)** was electronically served via the Eighth Judicial District Court's ECF System on this 10th day of February, 2015, to the following:

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EXHIBIT 8

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REGISTER OF ACTIONS

CASE NO. A-13-678109-C

Neal Golden, Plaintiff(s) vs. Sun Cab Inc, Defendant(s)

Case Type:	Other Civil Filing
Subtype:	Other Civil Matters
Date Filed:	03/11/2013
Location:	Department 5
Cross-Reference Case Number:	A678109

PARTY INFORMATION

Defendant	Sun Cab Inc *Doing Business As* Nellis Cab Co	Lead Attorneys Rick D. Roskelley *Retained* 7028628800(W)
Plaintiff	Golden, Neal	Leon Greenberg *Retained* 7023836085(W)
Plaintiff	Hassan, Abalkarim	Leon Greenberg *Retained* 7023836085(W)

EVENTS & ORDERS OF THE COURT

12/05/2014 All Pending Motions (9:00 AM) (Judicial Officer Ellsworth, Carolyn)
All Pending Motions: 12/5/14

Minutes
12/05/2014 9:00 AM
- DEFT'S MOTION FOR PARTIAL SUMMARY JUDGMENT & MOTION TO DISMISS... PLTF'S OPPOSITION AND COUNTERMOTION FOR DISCOVERY AS PER NRCP RULE 56(f)... PLTF'S COMPLAINT UNDER NRCP RULE 12 Prior to hearing, counsel provided with tentative ruling as follows: This is a class action lawsuit brought by cabdrivers of Deft. for failure to pay the minimum wage. The matter had been stayed for a lengthy period of time pending the Supreme Court s decision on the question of whether the exception for taxicab drivers to the minimum wage requirement, which is contained in NRS 608.250(2), applies to deprive taxicab drivers of the minimum wage in the face of Article 15, Section 16 of the Nevada Constitution which was an amendment to the constitution by way of initiative petition and ratification. The Supreme Court has now decided that matter in Thomas v. Yellow Cab Corp., 130 Nev. Adv. Op. 52 (June 26, 2014)and held that the Constitutional Amendment does indeed supplant the exceptions listed in NRS 608.250(2). This leaves Deft. with two further arguments: (1) that the two year limit on filing an action under NRS 608.260 to recover the difference between the wage paid and the amount of the minimum wage bars the first claim for relief by Deft. Golden (and all others so similarly situated) who was not employed within two years of the filing of the suit; and (2)that Plff s third claim for waiting-time penalties under NRS 608.040 must be dismissed because Plff s did not bring a cause of action for Attorneys fees under NRS 608.140, or because the section does not apply where an employee is paid upon separation, but subsequently disputes the amount paid. The Statute of Limitations Argument: Article 15, Section 16(B) provides in relevant part: The provisions of this section may not be waived by agreement between an individual employee and an employer. All of the provisions of this section, or any part hereof, may be waived in a bona fide collective bargaining agreement . An employee claiming violation of this section may bring an action against his or her employer in the

courts of this State to enforce the provisions of this section and shall be entitled to all remedies available under the law or in equity appropriate to remedy any violation of this section, including but not limited to back pay, damages, reinstatement or injunctive relief. NRS 608.260 provides in pertinent part: If any employer pays any employee a less amount than the minimum wage prescribed by regulation of the Labor Commissioner pursuant to the provisions of NRS 608.250, the employee may, at any time within 2 years, bring a civil action to recover the difference between the amount paid to the employee and the amount of the minimum wage. A contract between the employer and the employee or any acceptance of a lesser wage by the employee is not a bar to the action. (emphasis added) Thus, the Constitutional Amendment is more expansive than NRS 608.260. While NRS 608.260 provides for a limited remedy of recovery of the difference in the wage paid, the Constitution provides for all remedies available in law or in equity appropriate to remedy any violation, including, but not limited to, recovery of back pay, damages and injunctive relief. Additionally, the minimum wage is no longer prescribed by regulation of the Labor Commissioner, but rather by the very terms of the Nevada Constitution which prescribe how the wage shall be determined. Previously, under NRS 608.250, the Labor Commissioner was presumably free to decline a match of the federal minimum wage if she determined that those increases are contrary to the public interest. In opposition to Deft s statute of limitations argument, Pltf s argue that there is no statute of limitations for an action to enforce the Constitutional Provision because no limitation is set forth in the section and subsection B prohibits a waiver of the minimum wage requirement by an individual employee, so that should be interpreted to be a bar to any limitation. Alternatively, Pltf s argue that applying a statute of limitations would be inequitable; that Deft should be equitably estopped from invoking the statute of limitations because they failed to advise Pltf s of their minimum wage rights as required by the Nevada Constitution , or that the statute should be equitably tolled until the date of the decision in Thomas v. Yellow Cab, Supra. Finally, Pltf s argue that if there is a limitation on the time to bring an action under the Constitutional amendment, it is either a 6, 4 or 3 year limitation period. The Court finds Pltf s first argument (i.e. that there is no period of limitations for an action claiming a violation of Article 15, Section 16) and second argument (i.e. that the provision within subsection B of Section 16 prohibiting a waiver of the minimum wage requirements by agreement between and individual employee and an employer amount to a prohibition against any period of limitation) unpersuasive. NRS 11.010 provides that Civil actions can only be commenced within the periods prescribed in this chapter, after the cause of action shall have accrued, except where a different limitation is prescribed by statute. Article 15, Section 16 contemplates a civil action, but does not prescribe a limitation on the action, and so a statutory limitation period must apply. The anti-contractual waiver provision does not amount to an exception to NRS 11.010. A statute of limitations applies to all civil actions, legal and equitable, and if the cause of action is not particularly specified elsewhere in a statute, it is included in the catchall statute, NRS 11.220 providing for a 4 year period. Deft. argues that a two year period has been prescribed by NRS 608.260 and cites to two federal cases for the proposition that the two year statute of limitations in NRS 608.260 was not implicitly repealed by Nevada s Constitutional amendment. Specifically, Deft. cites to Rivera v. Peri & Sons Farms, Inc., 735 F.3d 892 (9th Cir. 2013) and McDonagh v. Harrah s Las Vegas, Inc. 2014 WL 2742874, 2014 U.S. Dist. LEXIS 82290 (D. Nev. June 17, 2014). Actually, River v. Peri & Sons did not so hold. Instead, the court held that because the appellant farmworkers failed to raise the argument in the lower court it was deemed waived. While the court in McDonagh v. Harrah, Supra, did make a finding that the constitutional provision was not intended to change this two-year statute of limitations, it did so without any analysis beyond noting that the provision was silent on whether it changed the two-year statute. Pltf s have also argued that other limitation periods

should apply NRS 11.190(1)(b) because compensation was paid pursuant to a written agreement; NRS 11.190(2)(c) because if there was not a written agreement, there was an unwritten contract; and NRS 11.220 because there is no other period provided; NRS 11.190(3)(a) because it is an action for a liability created by statute; or NRS 11.190(3)(c) because it is an action for the taking of personal property. The Nevada Supreme Court has determined that the term action as used in NRS 11.190 refers to the nature or subject matter of the claim and not to what the pleader says it is, and it is the nature or subject matter of the claim that will determine what limitation period applies. Hartford Insurance Group v. Statewide Appliances, Inc., 87 Nev. 195, 484 P.2d 569 (1971). In the Hartford Insurance case, the insurance company, as the subrogee of its insured, filed an action for breach of express and implied warranties which were extended by the Deft. upon the sale of a water heater which subsequently exploded causing damage to the insured s home. The insurance carrier argued that NRS 11.190(2)(c) applied [an action upon a contract, obligation or liability not founded upon an instrument in writing]. The court, focusing on the nature of the action found that NRS 11.190(3)(c) [an action for injuring personal property] applied because the Plif. sought recovery for injuries to personal property which NRS 11.190(3)(c) specifically governs. In Blotzke v. Christmas Tree, Inc. 88 Nev. 449, 499 P.2d 647 (1972), Plif. sued his employers for personal injuries alleging that they had not provided a safe place to work. The court s focus was the Plif s attempt to assert a contract claim with a longer statute of limitations. The court, finding that the action sounded in tort rather than contract, applied the shorter limitation period which barred the claim. State Farm v. Wharton, 88 Nev. 183, 495 P.2d 359 (1972) involved an automobile accident and State Farm sued as subrogee of its insured, thereby stepping into the shoes of its insured. The carrier insisted that since it paid the insured under its insurance contract, a 6 year statute of limitations should apply. Again, the nature of the action was for personal injuries presumably caused by the wrongful act or neglect of the adverse, so that the 6 year limitation period would not apply. Thus, the Court is to look to the real purpose of the cause of action in determining the applicable provision of the limitation statute. Here, it is clear that the purpose of the first cause of action is to collect the difference between the wages paid and the minimum wage required, assuming that the former was less than the latter. The Constitutional provision does not set forth a limitation period and the two year period set in NRS 608.250 is not irreconcilable with the Constitutional provision. Thomas v. Nevada Yellow Cab Corp., Supra, did not implicitly repeal the entire statutory framework of NRS Chapter 608 concerning minimum wage (i.e NRS 608.250 through 608.290. Since the nature of the action here is the same as the nature of the action described in NRS 608.260, the two year limitation period should apply. Tolling of the period: Plif s argue that even if the two year limitation period applies, it should be tolled because Deft. failed to advise Plif s of their minimum wage rights. Specifically, Plif s cite to Article 15, Section (16)(A) which requires an employer to provide written notification of rate adjustments to each of its employees. Firstly, this provision does not require an employer to notify employees of their right to a minimum wage. Thus, Plif s may not rest on this argument alone to toll the statute, but it may be a factor when considering whether the doctrine of equitable tolling should be applied to the 2 year limitation period found in Nevada s wage and hour statutes. Equitable tolling is defined as [t]he doctrine that the statute of limitations will not bar a claim if the Plif. , despite diligent efforts, did not discover the injury until after the limitations period had expired City of North Las Vegas v. State Local Government Employee-Management Relations Bd., 127 Nev. Adv. Op. 57, 261 P.3d 1071 (2011) quoting Black s Law Dictionary 618 (9th ed. 2009). The doctrine has been adopted in Nevada in discrimination claims addressed to the Nevada Equal Rights Commission under Chapter 613 because procedural technicalities that would bar claims of discrimination will be looked upon with disfavor. Copeland v. Desert Inn Hotel,

99 Nev. 823, 826, 673 P.2d 490, 492 (1983). Nonetheless, even in the situations where equitable tolling may be considered, certain factors should be analyzed when determining whether the doctrine will apply. Among these are the claimant s diligence, knowledge of the relevant facts, reliance on misleading authoritative agency statements and/or misleading employer conduct, and any prejudice to the employer. Id. Nevada has also applied equitable tolling to time limits for filing claims for the refund of tax overpayments, See State Dept. of Taxation v. Masco Builder Cabinet Group, 127 Nev. Adv. Op. 67, 265 P.3d 666 (2011), but emphasized that Even when the claim s untimeliness is due to a procedural technicality, application of the doctrine is appropriate only when the danger of prejudice to the Deft. is absent and the interests of justice so require. Id. quoting Seino v. Employers Ins. Co of Nevada, 121 Nev. 146, 152, 111 P.3d 1107, 1112 (2005). Masco told the Tax Department s auditor that it was requesting a refund, stated its basis for said request, and this was communicated by the auditor in writing to his supervisors in the Tax Department. The only flaw was that Masco had not sent its own refund request letter to the Tax Department. The court in applying the doctrine of equitable tolling, considered this a mere procedural technicality. Similarly, in Copeland v. Desert Inn Hotel, Supra, the claimant did not file a Charge of Discrimination with NERC although she did go to the Commission offices and tell the relevant facts to a NERC representative who promised to get back to her. The Copeland court found these facts, asserted in a declaration by the Plf. , were sufficient to preclude summary judgment in light of the doctrine. Here, Plf. Golden has submitted a declaration stating that in August of 2010, he filed a written claim with the Labor Commissioner asserting that he had not been paid the minimum wage. It appears that thereafter, he never followed up on his claim, but that is not entirely clear from the declaration. He does admit that the Labor Commissioner never advised him that he did not have a valid claim for violation of the minimum wage provision. Clearly, the Labor Commissioner was aware of the Constitutional Amendment. See NAC 608.100 added to NAC by the Labor Commissioner by R055-07 in 2007. The civil action herein was filed on March 11, 2013-- 32 months later, but there is no explanation as to why it was not filed earlier or how and when Golden apparently became aware of his right to file a civil action. Golden s affidavit does demonstrate that he was aware of his right to a minimum wage that was apparently the basis of his complaint to the Labor Commissioner. Because Golden has acknowledged in his declaration that he knew of the of his minimum wage rights, the Nevada cases involving tolling under the delayed discovery rule are inapposite. Plf s have requested that they be permitted to conduct discovery on issues concerning the factors bearing upon equitable tolling and have submitted a declaration of counsel. The Court would like Plf. s counsel to elaborate further in oral argument as to what he believes may be revealed in discovery that would support an equitable tolling argument. The Equitable Estoppel argument: Plf s argue that Deft s should be equitably estopped from asserting a statute of limitations but provide no clear analysis of why equitable estoppel should apply. Equitable estoppel works to prevent someone from asserting legal rights that in equity and good conscience should not be available due to that person s conduct. The four elements of equitable estoppel are: (1) the party to be estopped must be apprised of the true facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting estoppel has the right to believe it was so intended; (3) the party asserting the estoppel must be ignorant of the true state of facts; (4) he must have relied to his detriment on the conduct of the party to be estopped. In re Harrison Living Trust, 121 Nev. 217, 223, 112 P.3d 1058, 1062 (2005). The Plf s have made no arguments that demonstrate equitable estoppel applies here. Counsel may wish to address this in oral argument. The Third Cause of Action pursuant to NRS 608.040: Plf. s third cause of action claims that they are entitled to the statutory penalty for a late payment of wages owed an employee at the time the employee resigns or quits his employment. NRS

608.040 which provides: If an employer fails to pay: (a) Within 3 days after the wages or compensation of a discharged employee becomes due; or (b) On the day the wages or compensation is due to an employee who resigns or quits, the wages or compensation of the employee continues at the same rate from the day the employee resigned, quit or was discharged until paid or for 30 days, whichever is less. NRS 608.180 charges the Labor Commissioner with enforcement of NRS 608.005 through 608.195. Deft s argue that Plif s have no private right of action to collect the penalty provided for under the statute. Whether a private cause of action can be implied is a question of legislative intent. Baldonado v. Wynn Las Vegas, LLC, 124 Nev. 951, 958, 194 P.3d 96, 100 (2008) Baldonado addressed NRS 608.160 and held that the statute contained no express provision for a private action and that there was no evidence that the legislature intended to create one where there is an adequate administrative process in place via the Labor Commissioner. Like NRS 608.160, NRS 608.040 does not contain an express provision for private action. Plif s argue that NRS 608.140 allows for assessment of attorney fees in a private cause of action so that this is an indication that the legislature intended to a private cause of action for the collection of the penalties provided for in NRS 608.040. While NRS 608.140 does indeed provide for the recovery of attorney s fees in a suit for wages under a contract of employment (i.e. according to the terms of his or her employment) it does so in connection with a common law cause of action for the recovery of wages (i.e. Breach of contract). NRS 608.160 merely creates an exception from the American Rule, and allows for an award of attorney s fees by a court in a common law action for breach of contract involving wages in an employment contract. NRS 608.040 is not similar to 608.140 in this way. There is no indication that the legislature intended to create a private right of action for the collection of the late payment penalties which is all Plif. seek in their third claim from relief. (The Court was unable to read the federal unpublished opinions which were cited but not attached as exhibits, because only LEXIS cites were provided and the Court only has access to Westlaw. Therefore, the arguments regarding the necessity of pleading a cause of action under NRS 608.140 in order to obtain the penalties under 608.040 are unclear to the Court.) Thus, Deft s Motion for Judgment on the pleading as to that claim should be GRANTED. Arguments by counsel. Colloquy between Court and counsel regarding equitably tolling. Further arguments by Mr. Greenberg. COURT advised is will allow Discovery on the issue of statute of limitations should be equitably tolled. Mr. Paek objected as he believes there will be prejudice to his client as they don't have records. Further arguments by counsel. COURT stated findings and ORDERED, Discovery is opened for the limited purpose regarding statute of limitations being equitably tolled. Further arguments by counsel. Court advised counsel used Lexis Nexus while siting their positions, but Court only has access to Westlaw. Court directed counsel to submit courtesy copies of the Federal cases so Court can look at legislative intent, and will take this issue, for 3rd claim of relief under advisement. COURT ORDERED, Motion for Partial Summary Judgment is DENIED WITHOUT PREJUDICE and counsel can renew motion at the close of discovery, and countermotion is GRANTED as to equitable tolling.

Parties Present
Return to Register of Actions

EXHIBIT 9

EXHIBIT 9

AFFIDAVIT OF MARTHA SARVER

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

Martha Sarver, being duly sworn upon her oath, deposes and says that:

1. I am the General Manager for Western Cab Company ("Western Cab") and have held this position since 2006.

2. Attached hereto as Exhibit 9-1 are my computations of the hours Irshad Ahmed worked based on payroll records and some trip sheets from September 23, 2012 through June 28, 2013, when he last worked based on the non-tipped wages he received. I calculated Ahmed's hourly wage based on Section 30b02 of the Field Operations Handbook of the United States Department of Labor. Ahmed's total earnings for the applicable payroll periods divided by his compensable hours equal or exceed the higher of the two state minimum wages of $8.25 an hour.

3. Attached hereto as Exhibit 9-2 is a list of Irshad Ahmed's declared tips.

4. Attached hereto as Exhibit 9-3 are two trip sheets of Irshad Ahmed. Many times Ahmed did not work 12 hours a shift. He often worked between 8 and 10 hours a shift. From December 16, 2012 through December 27, 2012, Ahmed was scheduled for and worked 8 or less hours in a day.

5. Attached hereto as Exhibit 9-4 is the Tipped Employee Participation Agreement of Irshad M. Ahmed in which he said, "I understand that referral fees and similar payments which I may receive from businesses or other entities for referring patrons or facilitating the delivery of patrons to those businesses or entities, were not taken into account in establishing the tip rate approved by the IRS. Such fees and payments which I receive are includable in my income and must be reported on my individual Income Tax Return as required by law whether or

not the source of that income provides me any documentation." Laksiri Perera signed an identical Agreement.

6. Irshad Ahmed became eligible for group health insurance on March 1, 2013 but did not enroll.

7. Attached as Exhibit 9-5 are excerpts from Laksiri Perera's Labor Commissioner claim for wages in which he sought $8.25 an hour to March 24, 2011, and $7.25 an hour from March 25, 2011 to October 11, 2012. The Labor Commissioner said that Perera had "been paid correctly."

8. Attached as Exhibit 9-6 are Laksiri Perera's declared tips for the applicable time periods.

9. On August 29, 2012, I attended a meeting with Ms. Salazar and her supervisor at the U.S. Department of Labor. Western Cab had been audited by the U.S. Department of Labor for minimum wage compliance pursuant to federal law. The Department of Labor said that Western Cab's payment of gasoline for the drivers could not be considered in determining whether the company complied with federal minimum wage requirements. Ms. Salazar said that only the amounts shown on a payroll check could be considered for minimum wage compliance. As a result, Western Cab decided in February 2012 that the drivers would pay for their own gasoline. However, Western Cab then decreased the trip charge and increased the drivers' commissions on their trips to compensate them for their direct purchase of their own gasoline. In doing so, Western Cab was complying with the directions of the U.S. Department of Labor.

10. For the past 16 years, Western Cab has posted the federal minimum wage notice regarding minimum wage and the tip credit allowed by federal law. A true and accurate copy of a portion of that posted notice is attached as Exhibit 9-7.

11. In August 2012 the U.S. Department of Labor again contacted Western Cab. The Department asked to review all the drivers' trip sheets to determine if Western Cab was in compliance with federal minimum wage requirements. Western Cab made available 44 boxes of trip sheets. The U.S. Department of Labor must have determined that Western Cab was in compliance with federal minimum wage requirements because it has not pursued Western Cab any further in regard to federal minimum wage compliance. The last contact Western Cab had with the U.S. Department of Labor was October 17, 2013.

12. Federal law allows an employer to consider tips when determining whether the drivers are paid minimum wage. The minimum wage under federal law is the same as under state law except for the health insurance requirement and is $7.25 an hour. Western Cab's drivers retain all of their tips and no tip pool arrangement applies.

13. Until the *Thomas* decision in the summer of 2014, Western Cab believed it was complying with state law because of the minimum wage exemption for taxicab drivers. As soon as the *Thomas* decision came down, Western Cab has excluded the tips when determining whether it has met the minimum wage requirement in the State of Nevada.

MARTHA SARVER

SUBSCRIBED and SWORN to before me this 11 day of February, 2015 by Martha Sarver.

NOTARY PUBLIC
TAMMY BIGLER
Notary Public-State of Nevada
APPT. NO. 06-104886-1
My App. Expires April 14, 2018

EXHIBIT 9-1

EXHIBIT 9-1

IRSHAD AHMED
2012

Date	Hours	Wages	Sept. 23 - 29, 2012 Hourly Wage
09/23/12	12	160.20	
09/25/12	12	129.45	
09/26/12	12	165.45	
09/27/12	12	157.05	
09/28/12	12	123.95	
09/29/12	12	158.85	
TOTALS:	**72**	**$ 894.95**	$12.43

Date	Hours	Wages	Sept. 30 – Oct. 6, 2012 Hourly Wage
09/30/12	12	158.45	
10/02/12	12	102.05	
10/03/12	12	128.90	
10/04/12	12	142.00	
10/05/12	12	140.15	
10/06/12	12	117.65	
TOTALS:	**72**	**$ 789.20**	$10.96

Date	Hours	Wages	Oct. 7 - 12, 2012 Hourly Wage
10/07/12	12	161.90	
10/09/12	12	123.40	
10/10/12	10	157.90	
10/11/12	12	110.90	
10/12/12	12	141.10	
10/13/12	12	128.40	
TOTALS:	**70**	**$ 823.60**	$11.77

Date	Hours	Wages	Oct. 14 - 20, 2012 Hourly Wage
10/14/12	12	170.15	
10/16/12	12	110.80	
10/17/12	12	128.55	
10/18/12	12	171.25	
10/19/12	12	138.15	
10/20/12	12	160.00	

TOTALS:	**72**	**$ 878.90**	$12.21

Date	Hours	Wages	Oct. 21 - 27, 2012 Hourly Wage
10/21/12	12	181.25	
10/23/12	12	121.95	
10/24/12	12	102.35	
10/25/12	12	148.65	
10/26/12	12	105.25	
10/27/12	12	122.00	
TOTALS:	**72**	**$ 781.45**	$10.85

Date	Hours	Wages	Oct. 28 – Nov. 2, 2012 Hourly Wage
10/28/12	12	147.05	
10/30/12	12	137.50	
10/31/12	3	41.85	
11/01/12	12	211.40	
11/02/12	12	150.50	
TOTALS:	**51**	**$ 688.30**	$13.50

Date	Hours	Wages	Nov. 4 - 10, 2012 Hourly Wage
11/04/12	12	150.95	
11/19/12	12	120.15	
11/10/12	12	131.70	
TOTALS:	**36**	**$ 402.80**	$11.19

Date	Hours	Wages	Nov. 11 - 17, 2012 Hourly Wage
11/11/12	12	188.55	
11/13/12	12	121.60	
11/14/12	12	107.90	
11/15/12	12	135.10	
11/16/12	12	100.75	
11/17/12	12	91.65	
TOTALS:	**72**	**$ 745.55**	$10.35

Date	Hours	Wages	Nov. 18 - 24, 2012 Hourly Wage
11/18/12	12	130.65	
11/20/12	12	125.80	
11/21/12	12	85.60	
11/22/12	12	77.15	
11/23/12	12	100.00	
11/24/12	12	147.85	
TOTALS:	**72**	**$ 667.05**	$9.26

Date	Hours	Wages	Nov. 25 – Dec. 1, 2012 Hourly Wage
11/25/12	8	93.90	
11/27/12	7	80.95	
11/28/12	4	51.40	
11/29/12	8	103.60	
12/01/12	12	118.95	
TOTALS:	**39**	**$ 448.80**	$11.51

Date	Hours	Wages	Dec. 2 - 8, 2012 Hourly Wage
12/02/12	12	140.90	
12/04/12	8	79.80	
12/05/12	8	65.70	
12/06/12	12	114.00	
12/07/12	12	105.35	
12/08/12	12	106.50	
TOTALS:	**64**	**$ 612.25**	$9.57

Date	Hours	Wages	Dec. 9 - 15, 2012 Hourly Wage
12/09/12	12	142.65	
12/12/12	8	115.40	
12/13/12	12	106.00	
12/14/12	9	82.25	
12/15/12	12	108.90	
TOTALS:	**53**	**$ 555.20**	$10.48

Date	Hours	Wages	Dec. 16 - 22, 2012 Hourly Wage
12/16/12	8	134.35	
12/18/12	8	74.15	
12/19/12	8	64.30	
12/20/12	8	56.55	
12/21/12	8	47.30	
12/22/12	8	61.55	
TOTALS:	**48**	**$ 438.20**	$9.13

Date	Hours	Wages	Dec. 23 - 29, 2012 Hourly Wage
12/23/12	8	64.75	
12/25/12	8	73.25	
12/26/12	8	109.30	
12/27/12	8	67.50	
12/28/12	12	110.75	
12/29/12	12	89.75	
TOTALS:	**56**	**$ 515.30**	$9.20

2013

Date	Hours	Wages	Dec. 30, 2012 – Jan. 5, 2013 Hourly Wage
12/30/12	12	100.50	
01/01/13	12	183.35	
01/02/13	12	125.35	
01/03/13	12	50.05	
01/04/13	12	87.40	
01/05/13	12	109.85	
TOTALS:	**72**	**$ 656.50**	$9.12

Date	Hours	Wages	Jan. 6 - 12, 2013 Hourly Wage
01/06/13	12	141.50	
01/08/13	12	160.15	
01/09/13	12	167.95	
01/10/13	12	184.50	
01/11/13	12	177.45	
01/12/13	12	119.55	
TOTALS:	**72**	**$ 951.10**	$13.21

Date	Hours	Wages	Jan. 13 - 19, 2013 Hourly Wage
01/13/13	12	137.75	
01/15/13	12	113.80	
01/16/13	12	123.45	
01/17/13	12	149.85	
01/18/13	12	152.60	
01/19/13	12	162.10	
TOTALS:	**72**	**$ 839.55**	$11.66

Date	Hours	Wages	Jan. 20 - 26, 2013 Hourly Wage
01/20/13	12	150.70	
01/22/13	12	102.40	
01/23/13	12	101.05	
01/24/13	12	114.95	
01/25/13	12	108.55	
01/26/13	12	85.90	
TOTALS:	**72**	**$ 663.55**	$9.22

Date	Hours	Wages	Jan. 27 – Feb. 02, 2013 Hourly Wage
01/27/13	12	161.15	
01/29/13	12	108.45	
01/30/13	12	160.45	
01/31/13	12	111.45	
02/01/13	12	96.90	
02/02/13	12	100.45	
TOTALS:	**72**	**$ 738.85**	$10.26

Date	Hours	Wages	Feb. 3 - 9, 2013 Hourly Wage
02/03/13	8	78.50	
02/05/13	12	103.80	
02/06/13	12	127.95	
02/07/13	12	125.60	
02/08/13	12	148.15	
02/09/13	12	116.65	
TOTALS:	**68**	**$ 700.65**	$10.30

Date	Hours	Wages	Feb. 10 - 16, 2013 Hourly Wage
02/10/13	12	154.50	
02/12/13	12	99.50	
02/13/13	12	93.25	
02/14/13	12	150.80	
02/15/13	12	63.10	
02/16/13	12	109.10	
TOTALS:	**72**	**$ 670.25**	$9.31

Date	Hours	Wages	Feb. 17 - 23, 2013 Hourly Wage
02/17/13	12	153.45	
02/19/13	12	126.15	
02/20/13	12	127.30	
02/21/13	12	164.50	
02/22/13	12	119.70	
02/23/13	12	109.20	
TOTALS:	**72**	**$ 800.30**	$11.12

Date	Hours	Wages	Feb. 24 – March 2, 2013 Hourly Wage
02/24/13	12	138.75	
02/26/13	12	97.00	
02/27/13	12	110.70	
02/28/13	12	130.50	
03/01/13	12	157.40	
03/02/13	12	129.25	
TOTALS:	**72**	**$ 763.60**	$10.61

Date	Hours	Wages	March 3 - 9, 2013 Hourly Wage
03/03/13	12	150.90	
03/05/13	12	108.75	
03/06/13	12	101.55	
03/07/13	12	140.95	
03/08/13	12	112.65	
03/09/13	12	97.00	
TOTALS:	**72**	**$ 711.80**	$9.89

Date	Hours	Wages	March 10 - 16, 2013 Hourly Wage
03/10/13	12	135.80	
03/12/13	12	119.15	
03/13/13	12	105.95	
03/14/13	12	126.10	
03/15/13	12	118.25	
03/16/13	12	136.05	
TOTALS:	**72**	**$ 741.30**	$10.30

Date	Hours	Wages	March 17 - 23, 2013 Hourly Wage
03/17/13	12	180.60	
03/19/13	12	115.45	
03/20/13	12	181.85	
03/21/13	12	240.70	
03/22/13	12	139.60	
03/23/13	12	125.80	
TOTALS:	**72**	**$ 984.00**	$13.67

Date	Hours	Wages	March 24, 2013 Hourly Wage
03/24/13	12	208.26	
TOTALS:	**12**	**$ 208.26**	$17.36

Date	Hours	Wages	April 4 - 6, 2013 Hourly Wage
04/04/13	12	97.00	
04/15/13	12	144.35	
04/06/13	12	174.20	
TOTALS:	**36**	**$ 415.55**	$11.54

Date	Hours	Wages	April 7 - 13, 2013 Hourly Wage
04/07/13	12	201.80	
04/09/13	12	127.65	
04/10/13	12	123.20	
04/11/13	12	160.50	
04/12/13	12	170.50	
04/13/13	12	147.35	
TOTALS:	**72**	**$ 931.00**	$12.93

Date	Hours	Wages	April 14 - 20, 2013 Hourly Wage
04/14/13	12	200.85	
04/16/13	12	125.80	
04/17/13	12	87.35	
04/18/13	12	129.10	
04/19/13	12	102.15	
04/20/13	12	133.36	
TOTALS:	**72**	**$ 778.61**	$10.81

Date	Hours	Wages	April 21 - 27, 2013 Hourly Wage
04/21/13	12	192.55	
04/23/13	12	123.95	
04/24/13	12	127.70	
04/25/13	12	136.60	
04/26/13	12	158.65	
04/27/13	12	156.35	
TOTALS:	**72**	**$ 895.80**	$12.44

Date	Hours	Wages	April 28 – May 4, 2013 Hourly Wage
04/28/13	12	151.95	
04/30/13	12	122.20	
05/01/13	12	109.90	
05/02/13	12	156.85	
05/03/13	12	162.20	
05/04/13	12	129.45	
TOTALS:	**72**	**$ 832.55**	$11.56

Date	Hours	Wages	May 5 - 11, 2013 Hourly Wage
05/05/13	12	199.15	
05/07/13	12	133.50	
05/08/13	12	124.35	
05/09/13	12	119.75	
05/10/13	12	139.15	
05/11/13	12	113.60	
TOTALS:	**72**	**$ 829.50**	$11.52

Date	Hours	Wages	May 12 - 18, 2013 Hourly Wage
05/12/13	12	154.85	
05/14/13	12	120.90	
05/15/13	12	102.05	
05/16/13	12	171.05	
05/17/13	12	144.00	
05/18/13	12	112.50	
TOTALS:	**72**	**$ 805.35**	$11.19

Date	Hours	Wages	May 19 - 25, 2013 Hourly Wage
05/19/13	12	228.10	
05/21/13	12	151.20	
05/22/13	12	154.95	
05/23/13	12	135.85	
05/24/13	12	101.80	
05/25/13	12	155.25	
TOTALS:	**72**	**$ 927.15**	$12.88

Date	Hours	Wages	May 26 – June 1, 2013 Hourly Wage
05/26/13	12	206.85	
05/28/13	12	137.15	
05/29/13	12	118.10	
05/30/13	12	141.90	
05/31/13	12	148.55	
06/01/13	12	119.50	
TOTALS:	**72**	**$ 872.05**	$12.11

Date	Hours	Wages	June 2 - 8, 2013 Hourly Wage
06/02/13	12	165.25	
06/04/13	12	113.40	
06/05/13	12	77.10	
06/06/13	12	114.20	
06/07/13	12	119.60	
06/08/13	12	141.65	
TOTALS:	**72**	**$ 731.20**	$10.16

Date	Hours	Wages	June 9 - 15, 2013 Hourly Wage
06/09/13	12	170.30	
06/12/13	12	136.30	
06/13/13	12	122.85	
06/14/13	12	121.55	
06/15/13	12	103.75	
TOTALS:	**60**	**$ 654.75**	$10.91

Date	Hours	Wages	June 16 - 22, 2013 Hourly Wage
06/16/13	12	137.30	
06/18/13	12	72.90	
06/19/13	12	115.60	
06/22/13	12	143.60	
TOTALS:	**48**	**$ 469.40**	$9.78

Date	Hours	Wages	June 23 - 28, 2013 Hourly Wage
06/23/13	12	194.10	
06/25/13	12	165.90	
06/26/13	12	155.30	
06/27/13	12	132.40	
06/28/13	12	116.65	
TOTALS:	**60**	**$ 764.35**	$12.74

EXHIBIT 9-2

EXHIBIT 9-2

Irshad Ahmed's Declared Tips September 16, 2012 – December 22, 2012	
	261.93
	304.16
	312.14
	205.40
	264.72
	199.53
	186.37
TOTAL:	$1,734.25

Irshad Ahmed's 2012 Declared Tips	
TOTAL:	$6,126.69

Irshad Ahmed's Declared Tips December 23, 2012 – June 28, 2013	
TOTAL:	$3,742.88

EXHIBIT 9-3

EXHIBIT 9-3

VOUCHER # 2603 LAST NAME AHMED FIRST NAME TAP CAB NO. 116 MEDALLION # 57 METER # 31466 MO. DAY YR. 10 10 12 T.A. # 10457

RADIO CALLS 3X1.8 SHIFT GAS $ 25.37 GALS. 6.802

RECORD ALL DIGITS

TRIPS	NO. PSGRS	TIME START	FROM	DESTINATION	TOTAL FARE INCL EXTRAS		DIFF	START	STOP	1. OMIT 10 THS ODOMETER	1. TOTAL MILES	2. PAID MILES	3. TRIPS	4. TOTAL MONEY	5. EXTRA MONEY
1 1.00	4	450	Down Town	Air Port	40	20		1846011	1861133	6111	5593	4900220	99448	9683506.13	144499.39
2 2.00	4	615	Down Town	Air port	42	30									
TAX 3 3.00	3	815	A.P	Flmyo & Decatur	23	30									
4 4.00	4	850	Pan's	UCC	11	20									
TAX 5 5.00	2	925	A.P	& Circus Circus	26	50									
6 6.00	3	950	& Encan	M. Bayld.	17	70									
7 7.00	4	1015	4 Seasons	Bally Hai Golf &	5	90									
8 8.00	4	1028	Bally Hai Golf & Encan		17	30									
9 9.00	4	1102	& Encan	Air port	31	10									
TAX 10 10.00	3	1125	A.P	Wynn	20	10									
11 11.00	2	1140	Wynn	ATM & Downtown	26	30									
12 12.00	2	1210	Downtown	N.Y. N.Y.	27	10									
13 13.00	4	1248	N.Y. N.Y.	A.P	13	30									
14 14.00	3	118	M.G.M.	pre-out let N	26	30									
15 15.00	X	—	X	—	X	1									
16 16.00															
17 17.00															
18 18.00															
19 19.00															
20 20.00															
21 21.00															
22 22.00															
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24 24.00															
25 25.00															
26 26.00															
27 27.00															
28 28.00															
29 29.00															
30 30.00															
31 31.00															
32 32.00															
33 33.00															
34 34.00															

$331.2

ie $331.00

	BOOK	AMOUNT	CHECK-IN	AMOUNT
GROSS BOOK	Total Money	329.80	Gross Book	329.80
CAR WASH	Extra Money	5.40	Cash Turn In	331.20
NOT ON METER	4.00		Less Extra Money	5.40
			Less Trips At 1.00	14.00
NET BOOK		331.80		331.80

TURN IN THIS AMOUNT

TOTAL PSGRS. _____

000275

TRIPS	NO. PSGRS	TIME START	FROM	DESTINATION	TOTAL FARE INCL EXTRAS	
1.00	4	601	Don Town	T1 & T3	40	10
TAX 2.00	4	750	26 AP	M.G.M.	10	90
TAX 3.00	4	859	26 AP	H.G. Vacation	17	70
TAX 4.00	3	956	26 AP	Henderson	24	10
TAX 5.00	4	1058	26 AP	Palme place (LIQR)	26	50
TAX 6.00	2	1156	26 AP	ATM & Wynn	20	10
TAX 7.00	3	1238	26 AP	Wyndham desert	11	90
TAX 8.00	2	126	26 AP	Ph	13	70
9.00						
10.00						
11.00						
12.00						
13.00						
14.00						
15.00						
16.00						
17.00						
18.00						
19.00						
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21.00						
22.00						
23.00						
24.00						
25.00						
26.00						
27.00						
28.00						
29.00						
30.00						
31.00						
32.00						
33.00						
34.00						

$177.6

ie $178.00

VOUCHERS		
LAST NAME	AHMED	
FIRST NAME	IRS HAD TAX	
CAB NO.	116	
MEDALLION #	46	
METER #	31466	
MO. DAY YR.	02 03 13	
T.A. #	104573	

RADIO CALLS

	OMIT 10 THS ODOMETER	1. TOTAL MILES	2. PAID MILES	3. TRIPS	4. TOTAL MONEY	5. EXTRA MONEY
STOP	148941	79119	5136	2557	833.43	92.99
START	148876	79053	5087	2543	51668.43	15680.39
DIFF	65	65	49	8	165	12.6

RECORD ALL DIGITS 7X1.8

SHIFT

BOOK	AMOUNT	CHECK-IN	AMOUNT
Total Money	165.0	Gross Book	177.6
Extra Money	12.6	Cash Turn In	178.0
NOT ON METER	—	Less Extra Money	12.6
GROSS BOOK	177.6	Less Trips At 1.00	8.0
		NET BOOK	157.0

GAS $ 13.36

GALS. 4.163

TURN IN THIS AMOUNT

EXHIBIT 9-4

EXHIBIT 9-4

ATTACHMENT C

TIPPED EMPLOYEE PARTICIPATION AGREEMENT

I am an employee of Western Cab Company and wish to participate in my employer's tip reporting program.

In accordance with a Tip Rate Determination Agreement (TRDA) between my employer and the Internal Revenue Service (IRS), I agree to report my tips to my employer, as required by law, at or above the tip rate established by my employer and approved by the IRS for my Occupational Category.

I also acknowledge that, to continue participation in my employer's tip reporting program, I must file all federal tax returns required by law and pay all federal taxes for which I am liable.

I understand that this Agreement and the Agreement between my employer and the IRS apply only to tips I receive from passengers in the course of my employment with **Western Cab Company** I understand that referral fees and similar payments which I may receive from businesses or other entities for referring patrons or facilitating the delivery of patrons to those businesses or entities, were not taken into account in establishing the tip rate approved by the IRS. Such fees and payments which I receive are includable in my income and must be reported on my individual income Tax Return as required by law whether or not the source of that income provides me any documentation.

EMPLOYEE

Name (printed): IRSHAD M. AHMED

Signature: M. Irshad Ahmed

Home address: 2251, S. FORT APACHE Rd. #1096 LV-NV- 89117

REDACTED

Social Security Number: _____

DATE:

ATTACHMENT B
TIP RATE DETERMINATION AGREEMENT

Employer & Dba:	Western Cab Company, Inc. Dba: Western Cab Company
EIN:	88-0103639

In accordance with the Tip Rate Determination Agreement, the Effective date for these rates listed begins January 1, 2011. I understand that referral fees and similar payments which were received from businesses or other entities for referring patrons or facilitating the delivery of patrons to those businesses or entities, were not taken into account in establishing the tip rate approved by the IRS.

Occupational Category	Outlet	Shift	Participant Tip Rate 1/1/2011 to 12/31/2012	Non-Participant Tip Rate 1/1/2011 to 12/31/2012
Drivers		All	9% of meter	10% of meter

000279

EXHIBIT 9-5

EXHIBIT 9-5

RECEIVED
OCT 19 2012
NEVADA
LABOR COMMISSIONER, NV

OFFICE OF THE LABOR COMMISSIONER

675 FAIRVIEW DRIVE, SUITE 226
CARSON CITY, NV 89701
(775) 687-4850

555 EAST WASHINGTON AVENUE, # 4100
LAS VEGAS, NEVADA 89101
(702) 486-2650

Rcv. by | Inv. Assign

CLAIM FOR WAGES Keith

EMPLOYEE INFORMATION
(Include copy of Photo Identification)

1. Name: Laksiri (First) P. (M.I.) Perera (Last)
2. Address: 6500 (Number) Pearcrest Rd.
Las vegas (City) NV (State) 89108 (Zip)
3. Home Phone: (702) 454-7588
Other Phone: ( )
4. Email address: Ushaniperera@yahoo.com
5. Will you provide a financial statement if requested? ☒ Yes ☐ No
6. Do you agree to be present at any pre-hearing conferences or administrative hearings scheduled, if necessary, to present information related to your wage claim? ☒ Yes ☐ No
7. Were you offered Health Insurance? ☒ Yes ☐ No
8. Does this claim include NSF checks? ☐ Yes ☒ No

EMPLOYER INFORMATION

9. Business name: Western cab company
10. Name of Employer: Helen
11. Business address: 801 South Main St.
Las vegas (City:) NV (State) 89101 (Zip)
12. Mailing address (if different):
(City) (State) (Zip)
13. Telephone: (702) 382-7100
Fax: ( )
14. County where you worked: Clark
15. Type of work performed: Driver
16. Type of Business: Taxi

JOB INFORMATION

17. Base Pay Rate: Comm. Date Hired: 01/2010 Last day worked: 10/15/2012 Reason for leaving: ☒ Discharged/laid off ☐ Quit ☐ Still Employed
18. Employment Agreement ☒ Oral Agreement ☐ Written Agreement: Please attach a copy
Basis of pay: ☐ Piece work ☐ Hourly ☐ Salary ☐ Commissions
Method of payment ☒ Check ☐ Cash If paid in cash, did you sign a receipt for payment? ☐ Yes ☐ No

WAGES CLAIMED

19. Reason(s) for wage claim:
☐ Nonpayment of regular wages
☐ Nonpayment of overtime
☐ Nonpayment of commissions ( )
☐ Nonpayment of prevailing wage
☐ Bad check(s)
☒ Unauthorized deductions different pay period
☐ Other

20. Evidence submitted to support wage claim (attach copies):
☐ Pay stubs
☐ Time records
☐ Agreement/contract
☐ Tax records (i.e. FORM W-2)
☐ Company documents
☐ Witnesses (attach list)
☐ Other

Did you ask for your wages? ☒ Yes ☐ No If so, from whom: Helen Date: January 2012 ☒ Oral ☐ Written demand
Dates unpaid/underpaid From 01/1/10 10/19/10 To 10/15/12 (Show dates worked from Attachment 1(A,B,C or D))

Total amount earned from Attachment 1(A,B,C or D)	55,560.00	$ ~~55,560.00~~ up
Total amount paid	48,534.12	$ ~~20,671.82~~ up
Subtotal (subtract line 24 from line 23)	7,025.88	$ ~~34,888.18~~ up
Total unauthorized deduction(s) (attach copy of paycheck stubs or other evidence of deduction)		$ 0
Total bank/overdraft fees (Attach original check, if available, and bank statement showing fees)		$ 0
Total amount claimed (add lines 25, 26 and 27)		$ 7,025.88

Revised July 2011 OLC

SUMMARY OF TIME WORKED

Work Week: 3/5/11 To: 3/11/11

Day	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Total Hours
Date	3/5	3/6	3/7	3/8	X	3/10	3/11	06
Regular Hours	12.00	12.00	12.00	12.00		12.00	12.00	72
Overtime Hours	—	—	—	—		—	—	—
Total Hours	12.00	12.00	12.00	12.00		12.00	12.00	72

Hourly pay rate $ 8.25 X Total Regular Hours 72 = Earned $ 594

Overtime pay rate $_____ X Total Overtime Hours _____ = Earned $_____

Total $ 594

gross $ 1218.86

Net Pay 1081.07

Work Week From: 3/12/11 To: 3/17/11

Day	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Total Hours
Date	3/12	3/13	3/14	3/15	X	3/17	3/18	06
Regular Hours	12.00	12.00	12.00	12.00		12.00	12.00	72
Overtime Hours	—	—	—	—		—	—	—
Total Hours	12.00	12.00	12.00	12.00		12.00	12.00	72

Hourly pay rate $ 8.25 X Total Regular Hours 72 = Earned $ 594

Overtime pay rate $_____ X Total Overtime Hours _____ = Earned $_____

Total $ 594

Work Week From: 3/18/11 To: 3/24/11

Day	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Total Hours
Date	3/18	3/19	3/20	3/21	X	3/23	3/24	06
Regular Hours	12	12	12	12		12.00	12	72
Overtime Hours	—	—	—	—		—	—	—
Total Hours	12	12	12	12		12	12	72

Hourly pay rate $ 8.25 X Total Regular Hours 72 = Earned $ 594

Overtime pay rate $_____ X Total Overtime Hours _____ = Earned $_____

Total $ 594

Start Benifit

Work Week From: 3/25/11 To: 3/31/11

Day	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Total Hours
Date	3/25	3/26	3/27	3/28	X	3/30	3/31	06
Regular Hours	12.00	12.00	12.00	12.00		12.00	12.00	72
Overtime Hours	—	—	—	—		—	—	—
Total Hours	12.00	12.00	12.00	12.00		12.00	12.00	72

Hourly pay rate $ 7.25 X Total Regular Hours 72 = Earned $ 522

Overtime pay rate $_____ X Total Overtime Hours _____ = Earned $_____

Total $ 522

Employer Name Westren Cab Com Employee Name Laksiri Perera

Revised July 2011 [illegible]

ATTACHMENT 1(A)
SUMMARY OF TIME WORKED

Work Week From: 9/14/12 To: 9/20/12

Day	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Total Hours
Date	9/14	9/15	9/16	9/17	X	9/19	9/20	06
Regular Hours	12	12	12	12		12	12	72
Overtime Hours								
Total Hours	12	12	12	12		12	12	72

Hourly pay rate $ 7.25 X Total Regular Hours 72 = Earned $ 522

Overtime pay rate $_____ X Total Overtime Hours _____ = Earned $_____

Total $ 522

Work Week From: 9/21/12 To: 9/27/12

Day	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Total Hours
Date	9/21	9/22	9/23	9/24	X	9/26	9/27	06
Regular Hours	12	12	12	12		12	12	72
Overtime Hours								
Total Hours	12	12	12	12		12	12	72

Hourly pay rate $ 7.25 X Total Regular Hours 72 = Earned $ 522

Overtime pay rate $_____ X Total Overtime Hours _____ = Earned $_____

Total $ 522

Work Week From: 9/28/12 To: 10/4/12

Day	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Total Hours
Date	9/28	9/29	9/30	10/1	X	10/3	10/4	06
Regular Hours	12	12	12	12		12	12	72
Overtime Hours								
Total Hours	12	12	12	12		12	12	72

Hourly pay rate $ 7.25 X Total Regular Hours 72 = Earned $ 522

Overtime pay rate $_____ X Total Overtime Hours _____ = Earned $_____

Total $ 522

Work Week From: 10/5/12 To: 10/11/12

Day	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Total Hours
Date	10/5	10/6	10/7	10/8	X	10/10	10/11	06
Regular Hours	12	12	12	12		12	12	72
Overtime Hours								
Total Hours	12	12	12	12		12	12	72

Hourly pay rate $ 7.25 X Total Regular Hours 72 = Earned $ 522

Overtime pay rate $_____ X Total Overtime Hours _____ = Earned $_____

Total $ 522

mployer Name Western Cab Com Employee Name Caksiri Perera

Revised July 2011 OLC

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EXHIBIT 9-6

EXHIBIT 9-6

Laksiri Perera's Declared Tips	
09/18/2011 – 10/01/2011	237.66
10/02/2011 – 10/15/2011	212.60
10/30/2011 – 11/12/2011	276.65
11/13/2011 – 11/26/2011	202.09
11/27/2011 – 12/10/2011	184.38
12/11/2011 – 12/24/2011	161.64
12/25/2011 – 01/07/2012	157.63
01/08/2012 – 01/21/2012	278.98
01/22/2012 – 02/04/2012	238.80
02/05/2012 – 02/18/2012	179.31
02/19/2012 – 03/03/2012	230.43
03/04/2012 – 03/17/2012	234.24
03/18/2012 – 03/31/2012	189.71
04/01/2012 – 04/14/2012	200.27
04/15/2012 – 04/28/2012	222.75
04/29/2012 – 05/12/2012	218.68
05/13/2012 – 05/26/2012	230.81
05/27/2012 – 06/09/2012	170.49
06/10/2012 – 06/23/2012	223.33
06/24/2012 – 07/07/2012	194.09
07/08/2012 – 07/21/2012	165.70
07/22/2012 – 08/04/2012	172.52
08/05/2012 – 08/18/2012	164.54
08/19/2012 – 09/01/2012	208.30
09/02/2012 – 09/15/2012	201.27
09/16/2012 – 09/29/2012	206.91
09/30/2012 – 10/13/2012	203.36
10/14/2012 – 10/15/2012	33.70
TOTAL:	**$5,600.84**

2011 - $5,498.54
2012 - $4,325.82

EXHIBIT 9-7

EXHIBIT 9-7

EMPLOYEE RIGHTS
UNDER THE FAIR LABOR STANDARDS ACT

THE UNITED STATES DEPART[illegible]BOR WAGE AND HOUR DIVISION

FEDERAL MINIMUM WAGE

$7.25 [illegible]

[illegible]

[illegible] At least 1½ times your regular rate of pay for all hours worked over 40 in a workweek.

[illegible] An employee must be at least 16 years old to work in most non-farm jobs and at least 18 to work in non-farm jobs declared hazardous by the Secretary of Labor.

Youths 14 and 15 years old may work outside school hours in various non-manufacturing, non-mining, non-hazardous jobs under the following conditions:

No more than
- 3 hours on a school day or 18 hours in a school week;
- 8 hours on a non-school day or 40 hours in a non-school week.

Also, work may not begin before 7 a.m. or end after 7 p.m., except from June 1 through Labor Day, when evening hours are extended to 9 p.m. [illegible] apply in agricultural employment.

TIP CREDIT Employers of "tipped employees" must pay a cash wage of at least $2.13 per hour if they claim a tip credit against their minimum wage obligation. If an employee's tips combined with the employer's cash wage of at least $2.13 per hour do not equal the minimum hourly wage, the employer must make up the difference. Certain other conditions must also be met.

ENFORCEMENT The Department of Labor may recover back wages either administratively or through court action, for the employees that have been underpaid in violation of the law. Violations may result in civil or criminal action. Employers may be assessed civil money penalties of up to $1,100 for each willful or repeated violation of the minimum wage or overtime pay provisions of the law and up to $11,000 for each employee who is the subject of a violation of the Act's child labor provisions. In addition, a civil money penalty of up to $50,000 may be assessed for each child labor violation that causes the death or serious injury of any minor employee, and such assessments may be doubled, up to $100,000, when the violations are determined to be willful or repeated. The law also prohibits discriminating against or discharging workers who file a complaint or participate in any proceeding under the Act.

ADDITIONAL INFORMATION
- *Certain occupations and establishments are exempt from the minimum wage and/or overtime pay provisions.*
- *Special provisions apply to workers in American Samoa and the Commonwealth of the Northern Mariana Islands.*
- *Some state laws provide greater employee protections; employers must comply with both.*
- *The law requires employers to display this poster where employees can readily see it.*
- *Employees under 20 years of age may be paid $4.25 per hour during their first 90 consecutive calendar days of employment with an employer.*
- *Certain full-time students, student learners, apprentices, and workers with disabilities may be paid less than the minimum wage under special certificates issued by the Department of Labor.*

EXHIBIT 10

EXHIBIT 10

LEON GREENBERG
Attorney at Law
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Leon Greenberg
Member Nevada, California
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Admitted to the United States District Court of Colorado

Dana Sniegocki
Member Nevada and California Bars

September 16, 2014

Elias Gil
3106 Harbor Heights Drive
Las Vegas, NV 89117

Re: CLAIM AGAINST WESTERN CAB
FOR UNPAID MINIMUM WAGES

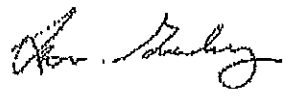
Dear Elias Gil:

I understand that you may have worked as a taxi driver for Western Cab. I believe Western Cab may have violated Nevada's Minimum Wage laws and may owe you and many other taxi drivers unpaid minimum wages. I believe many of the taxi drivers for Western Cab were earning, from the fares collected by customers, less than the $7.25 or $8.25 an hour currently required by Nevada's Minimum Wage law. While drivers may have also collected a substantial amount of tips from customers, those tips are **not** counted for purposes of Nevada's Minimum Wage law. For example, a taxi driver's share of the meter (customer fares collected) for an 11 hour work day must currently equal at least $79.75 or $90.75 under Nevada's Minimum Wage law, depending upon whether proper medical insurance was provided by Western Cab. So if you are working a full 12 hour shift, and earning less than $80 or $90 a day **without** including your tips, you may have a claim for unpaid minimum wages.

I would appreciate a chance to speak with you about any experience you had working as a taxi driver for Western Cab. Please call me confidentially and without obligation or charge.

I can be reached at the above number or toll free at 1-800-257-4841. Please call me anytime. I enclose some business cards.

Very truly yours,



Leon Greenberg

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LAWYER'S BIOGRAPHICAL DATA FORM AS
REQUIRED BY THE NEVADA RULES OF PROFESSIONAL CONDUCT

1. Full Name and Business Address of Leon Greenberg:

Leon Marc Greenberg
2965 South Jones Boulevard
Las Vegas, Nevada 89146

2. Leon Greenberg was initially admitted to practice law in New York on February 3, 1993.

3. Subsequent to his initial admission to practice law Leon Greenberg was admitted to practice law in the following States on the following dates:

New Jersey: April 15, 1993;
Nevada: October 11, 2002;
California: August 11, 2003;
Pennsylvania: September 29, 2003.

4. Leon Greenberg is a *magna cum laude* graduate of New York Law School and graduated from that school with a Juris Doctor degree in 1992.

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EXHIBIT 11

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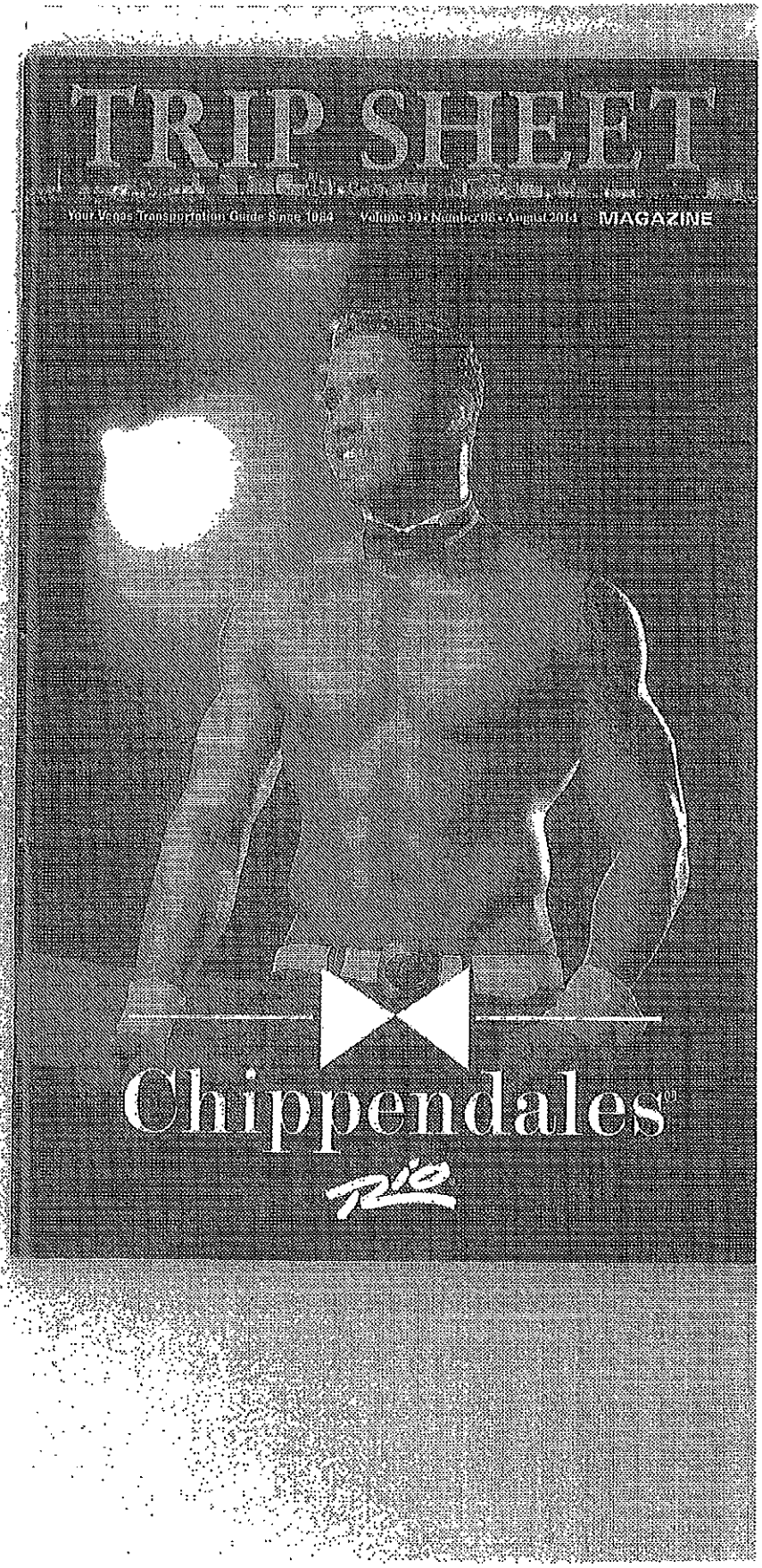
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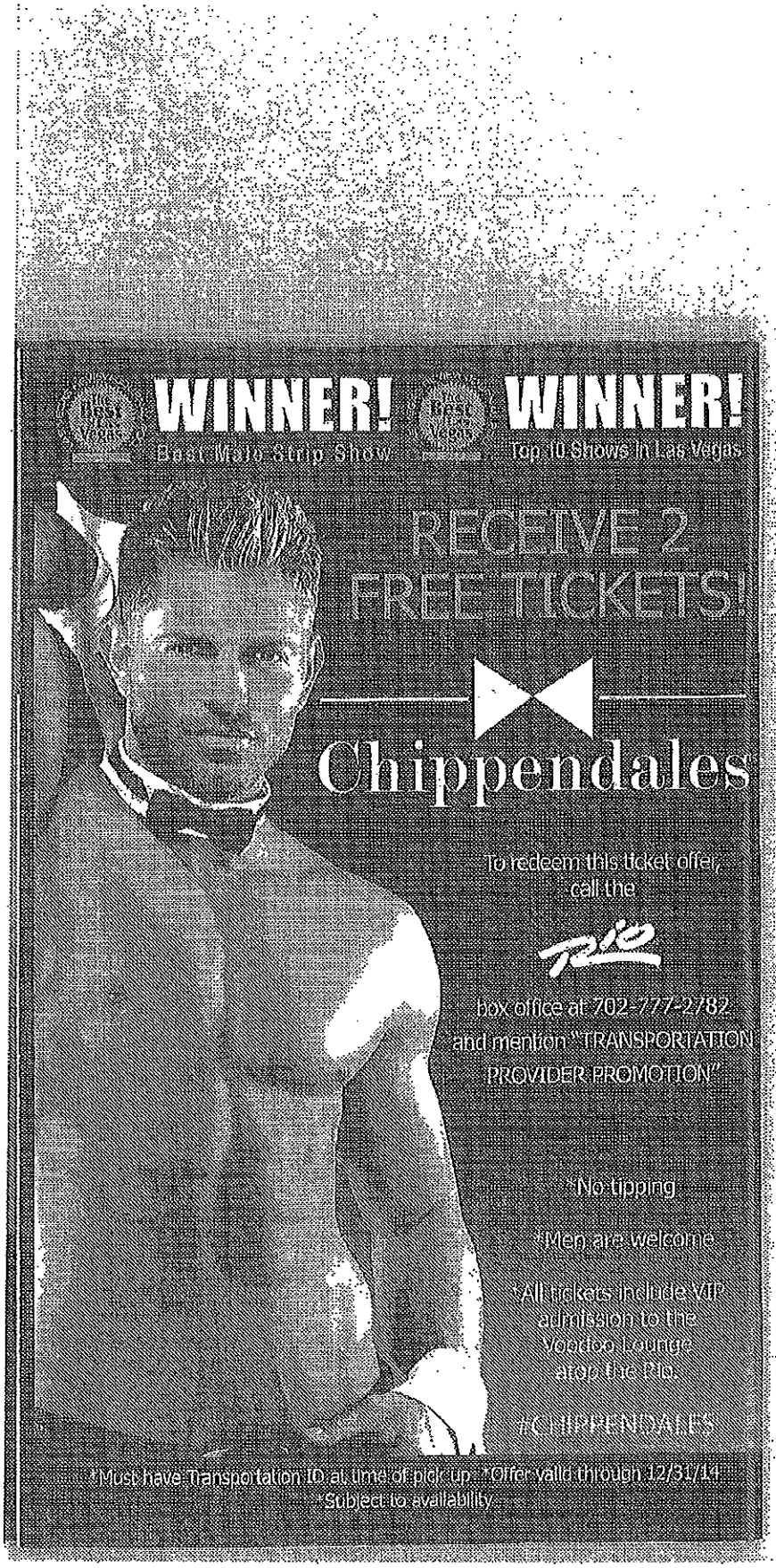
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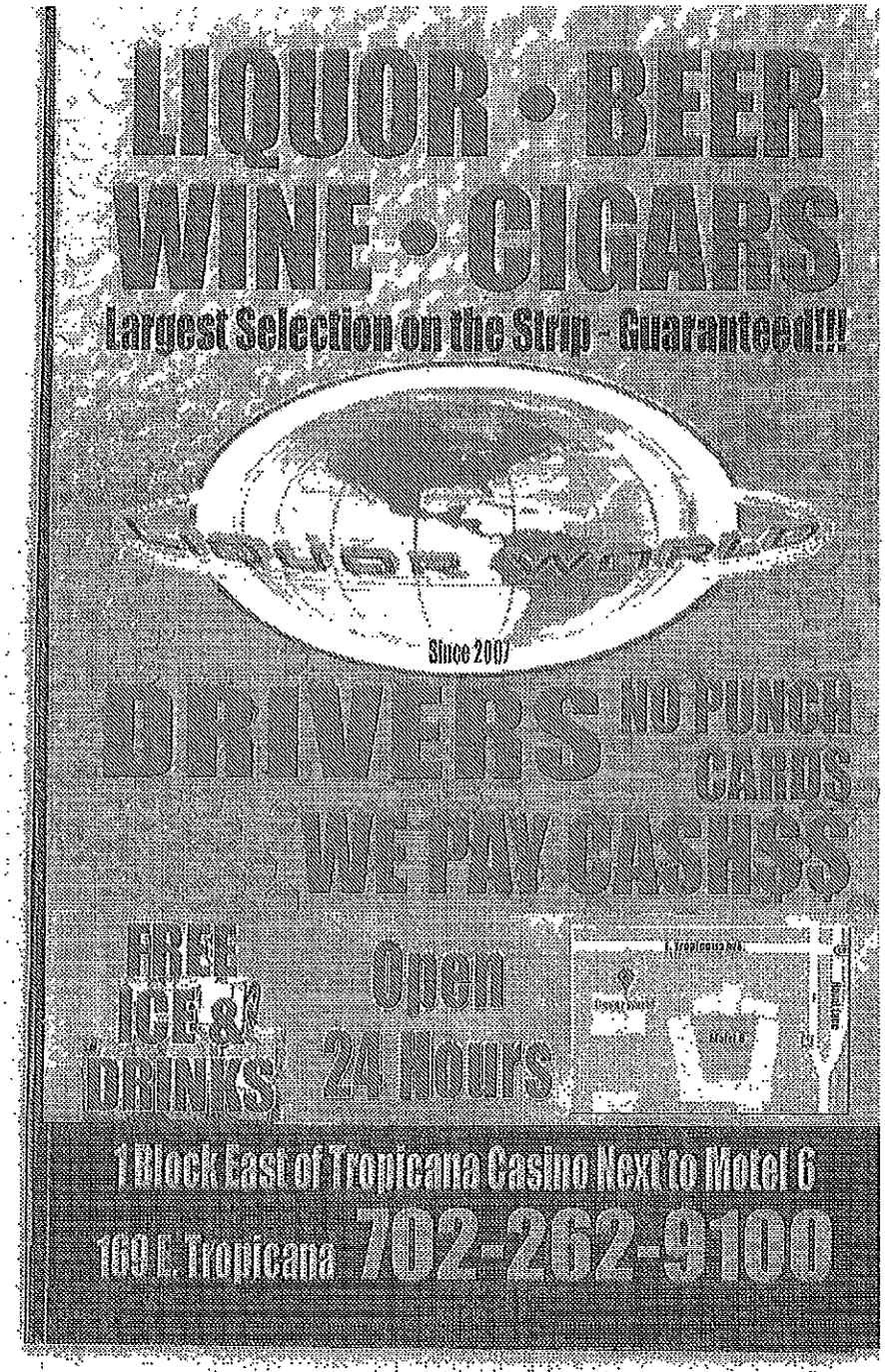
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Letter to the Editor

We've received a few "Letters to the Editor" from drivers. English doesn't appear to be the first language of one writer; we've tried to fix it so we can all better understand the questions & statements. We encourage your response.

Hello Trip Sheet,

Just wanted to publicize that Battlefield Vegas is not paying drivers for delivering customers who pay for packages unless the customer says the driver recommended the place. A Western driver and I brought 7 people, who paid a total of $1400+ for shooting packages. After we waited 15 minutes, the girl at the counter told us that because one of the men had been there before we weren't eligible for anything under store policy.

Battlefield Vegas is NOT cab friendly. Thanks for mentioning this if you can. Love the magazine, keep up the good work.

MK - YCS Driver

PS-I sent an email to Battlefield Vegas, and a manager responded with dramatic stories about racist drivers screaming for money, berating staff, etc. He did, also, affirm the new policy.

(Editor's note: We were recently told they were not paying for cab or limos customers at all.)

HI Trip Sheet,

Green door, Stoney's, and Share nightclub did past promotions for taxi drivers, but no more.

So, drivers don't waste your time and energy with them, move to another place.

After advertisers stop their promotions, post it in Trip Sheet so we know they aren't paying.

Thanks, Name Withheld

(Editor's Note: When an advertiser stops their promotion in Trip Sheet, we don't know if (1) they are not interested in the drivers customers or (2) if they are just financially.

continued on page 17

Prostitution Is Big Business In Las Vegas

Continued from page 23

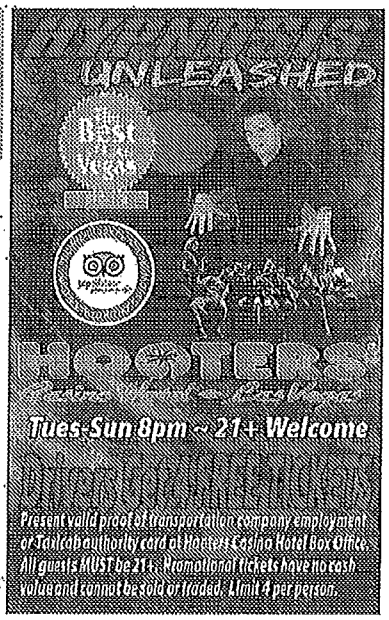
servers, and security officers and at least five non-employees provided drugs and prostitutes and set up an area for sexual activity to take place over a two-month period.

Six employees involved in the complaint have been fired, according to MGM Resorts International, owner of Mandalay Bay. Mandalay Bay has agreed to pay an additional $17,000 to cover the costs of the undercover investigation by gaming agents and Metro Police.

LAS VEGAS-*Las Vegas Review Journal*-July 2013, authorities arrested 41 prostitutes and one pimp in Las Vegas as part of a nationwide crackdown on child prostitution–and only found one child prostitute. According to the article, there were approximately 150, 200 child prostitutes arrested every year in Las Vegas. Authorities have been aware of this problem for a while.

There is always a concern about AIDS and it's growing threat among call girls. In 2003 a prostitute was arrested seven times after it was known she had the virus and was continuing to practice her service.

It's very hard to control the activities of others. A company can go to great lengths to make sure their environment is safe and legal for their patrons, and employees. If someone is determined to engage in illegal activities a business, such as Mandalay Bay, can't be in all places at all times to make sure they are off the hook. However, if the perpetrator is the owner of the business, the law will go after them to the fullest extent of the law when ever possible.



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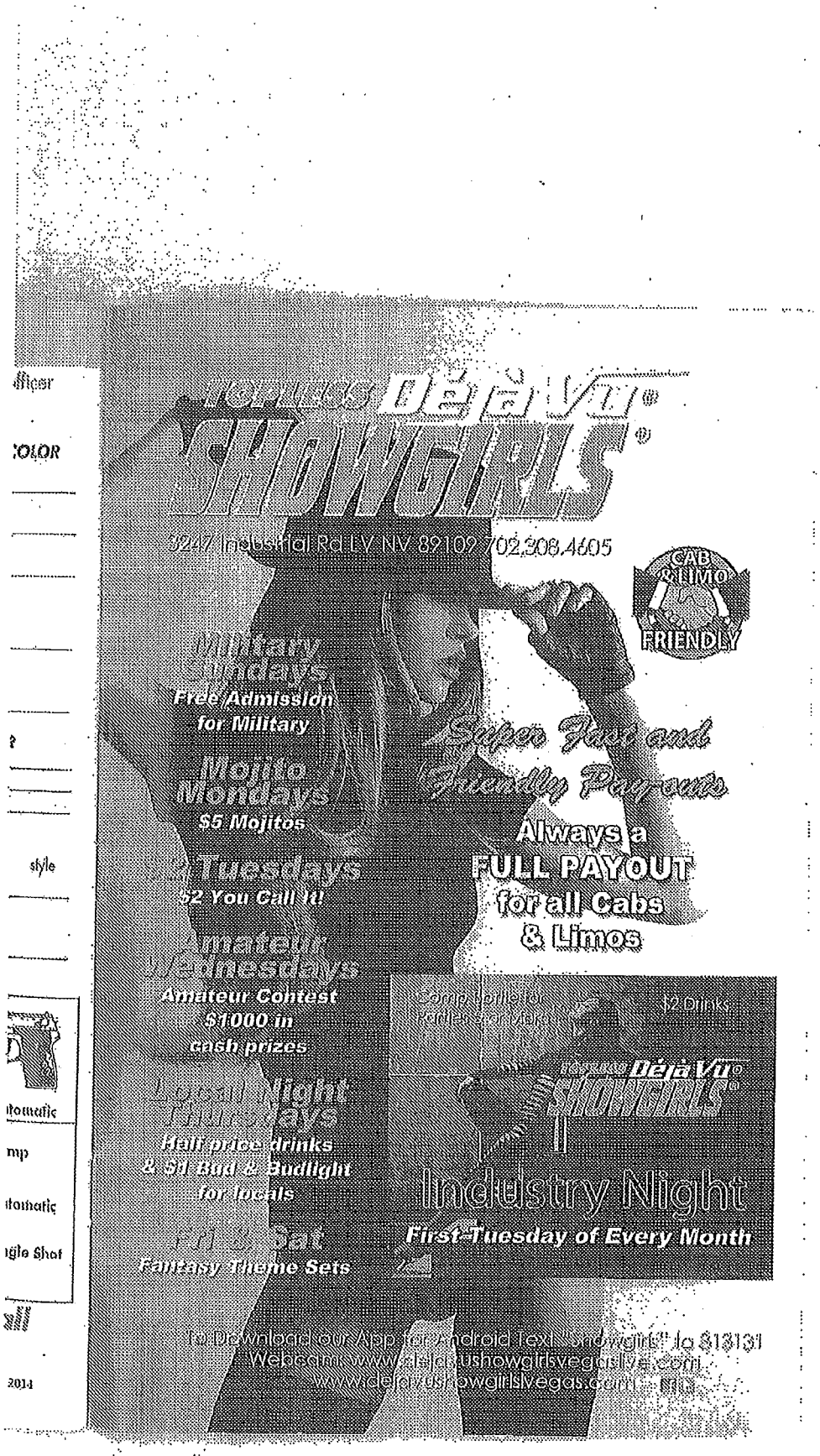

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STATE OF NEVADA
Department of Business & Industry
OFFICE OF THE LABOR COMMISSIONER
675 Fairview Drive Suite 226
Carson City, Nevada 89701
Telephone (775) 687-4850 Fax (775) 687-6409

JIM GIBBONS
Governor

MENDY ELLIOTT
Director

MICHAEL TANCHEK
Labor Commissioner

STATE OF NEVADA
MINIMUM WAGE
2010 ANNUAL BULLETIN

APRIL 1, 2010

PURSUANT TO ARTICLE 15, SECTION 16(A) OF THE CONSTITUTION OF THE STATE OF NEVADA, THE GOVERNOR HEREBY ANNOUNCES THAT THE FOLLOWING MINIMUM WAGE RATES SHALL APPLY TO ALL EMPLOYEES IN THE STATE OF NEVADA UNLESS OTHERWISE EXEMPTED. THESE RATES SHALL BECOME EFFECTIVE ON JULY 1, 2010.

FOR EMPLOYEES TO WHOM QUALIFYING HEALTH BENEFITS HAVE BEEN MADE AVAILABLE BY THE EMPLOYER:

NO LESS THAN $7.25 PER HOUR

FOR ALL OTHER EMPLOYEES:

NO LESS THAN $8.25 PER HOUR

Copies may also be obtained from the Labor Commissioner's Offices at

675 Fairview Drive, Suite 226
Carson City, Nevada 89701
(775) 687-4850

or

555 East Washington, Suite 4100
Las Vegas, Nevada 89101
(702) 486-2650

EXHIBIT 13

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STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
100 North Carson Street
Carson City, Nevada 89701-4717

CATHERINE CORTEZ MASTO
Attorney General

RANDAL R. MUNN
Assistant Attorney General

March 23, 2007

OPINION NO. 2007-01

MINIMUM WAGES; EMPLOYERS; INITIATIVE: Any increase in the federal minimum wage must take effect on the date established in the law. If either tier of the current Nevada minimum wage is less than the increased federal wage, that tier of the Nevada minimum wage must be raised to the federal level on the effective date established by federal law. A review of the two tiers of the Nevada minimum wage must be conducted annually, and communicated to the public with a bulletin published by April 1st of each year. During the review, a comparison must be made between the amount of increases, expressed as percentages, in the federal minimum wage over $5.15 per hour and the cumulative increase in the CPI from December 31, 2004. Any adjustment to the two tier minimum wage becomes effective July 1st of the same year.

Michael Tanchek, Labor Commissioner
Office of the Labor Commissioner
675 Fairview Drive, # 226
Carson City, Nevada 89701

Dear Commissioner Tanchek:

You have requested an Attorney General Opinion on the recent constitutional amendment to Nev. Const. art. 15, § 16 (Amendment) affecting minimum wage, and you have posed six questions.

GENERAL BACKGROUND INFORMATION

The Amendment was first approved by the voters, through the initiative process, in the 2004 general election and was approved by the voters again in the 2006 general election. The Amendment states, in relevant part, as follows:

> Each employer shall pay a wage to each employee of not less than the hourly rates set forth in this section. The rate shall be five dollars and fifteen cents ($5.15) per hour worked, if the employer provides health benefits as described herein, or six dollars and fifteen cents ($6.15) per hour if the employer does not provide such benefits...These rates of wages shall be adjusted by the amount of increases in the federal minimum wage over $5.15 per hour, or, if greater, by the cumulative increase in the cost of living. The cost of living increase shall be measured by the percentage increase as of December 31 in any year over the level as of December 31, 2004 of the Consumer Price Index (All Urban Consumers, U.S. City Average) as published by the Bureau of Labor Statistics, U.S. Department of Labor or the successor index or federal agency. No CPI adjustment for any one-year period may be greater than 3%. The Governor or the State agency designated by the Governor shall publish a bulletin by April 1 of each year announcing the adjusted rates, which shall take effect the following July 1.

The Amendment provides that either the Governor or an agency designated by the Governor "shall publish a bulletin by April 1 of each year announcing the adjusted rates, which shall take effect the following July 1." The Labor Commissioner would likely be the "designated agency" as he is mandated to "enforce all labor laws of the State of Nevada...[t]he enforcement of which is not specifically and exclusively vested in any other officer, board or commission." NRS 607.160.

QUESTION ONE

Because the adjustments in the minimum wage rates are generally applicable to all employers in Nevada, do the rulemaking procedures of NRS chapter 233B, the Nevada Administrative Procedure Act, need to be followed in order to make the adjustments?

ANALYSIS

NRS chapter 233B is Nevada's Administrative Procedure Act (APA) and contains the requirements for the adoption of regulations. More specifically, NRS 233B.038 defines a regulation in pertinent part as follows:

> 1. "Regulation" means:

> (a) An agency rule, standard, directive or statement of general applicability which effectuates or interprets law or policy, or describes the organization, procedure or practice requirements of any agency;

Pursuant to NRS 233B.039, the Governor is exempt from APA rulemaking requirements. If he should take on this annual adjustment responsibility, he would not be constrained by the procedural requirements of the APA.

If the Labor Commissioner or other State agency was delegated the duty to annually review and publish the minimum wage, this review and publication of a potential increase could be accomplished without having to comply with the APA rulemaking procedures. The formula for establishing the minimum wage is contained within the Amendment and all that remains is the review and application of the formula on an annual basis to determine the appropriate minimum wage rate.

In *Morgan v. Committee on Benefits*, 111 Nev. 597, 894 P.2d 378 (1995), the Court reviewed whether the State Committee on Benefits actions in adjusting rates and coverage was "rulemaking" subject to the APA. The Court stated:

> Where there is an express grant of authority there is likewise a clear and express grant of power to do all that is reasonably necessary to execute the power or perform duties specifically conferred by the enabling statute. This authority need not always be exercised through a process of formal rule making.

Id. at 605, 894 P.2d at 384-85.

The issue in *Morgan* was an increase in the premium rates charged state employees for benefit coverage. The Court concluded that setting rates within the statutory confines set out by the legislature does not constitute rulemaking and was not subject to the procedural requirements of the APA.

The Court compared the situation in *Morgan* with that found in *Public Service Comm'n v. Southwest Gas Corp.*, 99 Nev. 268, 662 P.2d 624 (1983). *Public Service Comm'n* involved a change to the utility's "rate design" which had been noticed as a rate change. The Court noted that while a simple rate change did not need to comply with the APA, any changes to the utility's "rate design" (forms of rate structure based on type of customer) by the Public Service Commission should, however, comply with APA rulemaking requirements. *Id.* at 383, 894 P.2d at 383.

Here, the "design" for the annual review and publication is found within the Amendment. The annual calculations to determine the appropriate adjustment are an implementation of that design, the application of a mathematical formula, with no discretion allowed to the office or agency.

CONCLUSION TO QUESTION ONE

Neither the Governor nor an agency charged with the duty to review and publish the adjustments required by the Amendment are required to follow the rulemaking procedures of the APA.

QUESTION TWO

If increases are made in the federal minimum wage, when do those increases become effective?

ANALYSIS

Section 6(a)(1) of the Federal Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) contains the federal minimum wage. The current federal minimum wage is $ 5.15. This minimum wage rate became effective on September 1, 1997. This effective date is contained in the text of 29 U.S.C. 206(a)(1).

Pursuant to 29 § USCA 202(b), Congress may elect to exercise its power to "regulate commerce among the several States . . . to correct and as rapidly as practicable to eliminate the conditions above referred to in such industries without substantially curtailing employment or earning power." Those conditions include "the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers . . . ." 29 § USCA 202(a).

Congress is currently considering a bill (H.R.2) to amend 29 U.S.C. 206(a)(1) and raise the federal minimum wage. The portion of H.R. 2 (2007) relevant to this discussion is set out below:

> Sec.101 – Minimum Wage
> (a) In General – Section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) is amended to read as follows:
>
> (1) except as otherwise provided in this section, not less than –
>
> (A) $ 5.85 an hour, beginning on the 60th day after the date of the enactment of the Fair Minimum Wage Act of 2007;
> (B) $ 6.55 an hour, beginning 12 months after that 60th day; and
> (C) $ 7.25 an hour beginning 24 months after that 60th day.
>
> (b) Effective Date – The amendment made by subsection (a) shall take effect 60 days after the date of enactment of this Act.

Under H.R. 2, the effective date(s) of the federal minimum wage increase(s) are set out in the amendment. If H.R. 2 falls, any bill which amends 29 U.S.C. 206(a)(1) will need to set out the effective date of the federal minimum wage increase.

CONCLUSION TO QUESTION TWO

The bill amending Section 6(a)(1) of the Federal Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)), thereby raising the federal minimum wage, will contain the effective date(s) of the increase(s).

QUESTION THREE

Using the current rates of $5.15 per hour and $6.15 per hour, how would the cost of living adjustment be calculated, what would the rates be, and when would they become effective under the following scenarios:

Scenario 1: The federal minimum wage is not increased before April 1, 2007.

Scenario 2: The federal minimum wage is increased before April 1, 2007.

Scenario 3: The federal minimum wage is increased after April 1, 2007, but prior to July 1, 2007.

Scenario 4: The federal minimum wage is increased after July 1, 2007, but prior to April 1, 2008.

ANALYSIS OF QUESTION THREE

The Amendment provides two methods for adjusting Nevada's minimum wage and requires the use of the method resulting in the greater increase. A discussion of these methods as well as the impact of a federal minimum wage increase is necessary prior to answering the questions posed.

Any increase in the federal minimum wage must take effect on the date established in the law. *See Dall v. Arab*, 391 F.Supp.2d 1142 (M.D.Fla. 2005) (citing *Brooklyn Sav. Bank v. O'Neil*, 324 U.S. 697, 706, 65 S.Ct. 895 (1945)) (Federal Labor Standards Act's provisions are mandatory.) If the current Nevada minimum wage is less than the federal wage, the Nevada wage must be raised to the federal level on the date specified in the federal law.

For example, if on March 29, 2007, the federal minimum wage was raised to $5.85, the lower tier Nevada minimum wage would become $5.85, on that day. The Amendment does not contemplate a review of the minimum wage more than once per year. It specifically calls for a publication on April 1 of each year with an effective date of July 1. Because there is no review before April 1, the upper tier would remain at $6.15 because it is higher than the federal minimum wage. Any potential increase to the upper tier would be accomplished through the annual review conducted the following April 1 with the effective date of any increase being the following July 1.

The Amendment delineates that the minimum wage rate "shall be adjusted by the amount of increases in the federal minimum wage over $5.15 per hour, *or*, if greater, by the cumulative increase in the cost of living." (emphasis added.) While the Nevada Supreme Court has found that the term "or" can mean either "and" or "or," *see Desert Irrigation, Ltd. v. State*, 113 Nev. 1049, 944 P.2d 835 (1997), we conclude in this case that the rules of statutory construction dictate otherwise.

"[I]t is well settled in Nevada that words in a statute should be given their plain meaning unless this violates the spirit of the act." *Del Papa v. Bd. of Regents*, 114 Nev. 388, 956 P.2d 770, 774 (1998) (quoting *McKay v. Bd. of Supervisors*, 102 Nev. 644, 648, 730 P.2d 438, 441 (1986)). Further, it is presumed that definitions of words with well-defined common law meanings are given effect, unless it is clear that another meaning was intended. *Moser v. State*, 91 Nev. 809, 812, 544 P.2d 424, 426 (1975) (citing *Sheriff v. Smith*, 91 Nev. 729, 542 P.2d 440 (1975)). Further, the Court in *Nevadans for Nevada v. Beers*, 142 P.3d 339, 347 (2006), stated that, unless "ambiguous, the language of a constitution provision is applied in accordance with its plain meaning."

The word "or" is commonly defined as an "alternative," meaning "either" or to give a choice between or among different things. *See Webster's II New Riverside University Dictionary*, 826 (1984); *Black's Law Dictionary*, 1095 (5th ed. 1979). Following the rules of statutory construction, the presumption here is that the word "or" is given its ordinary meaning.

The Nevada Supreme Court has held that use of the term "or" between phrases indicates an alternative and suggests that the phrases have different meanings. *See Orr Ditch Co. v. Justice Court*, 64 Nev. 138, 152, 178 P.2d 558, 565 (1947); *Rogers v. State*, 105 Nev. 230, 232, 773 P.2d 1226, 1227 (1989). In fact, in *Anderson v. State*, 109 Nev. 1129, 1134, 865 P.2d 318, 321 (1993), which discusses the use of the word "or" to separate alternative elements of a crime, the court specifically noted that the legislature's use of "the disjunctive 'or,' and not the conjunctive 'and,'" required one occurrence or the other but not necessarily both.

The Amendment offers no indication that "or" is to be read as anything but disjunctive. Accordingly, the "or" at issue in the Amendment reveals an intentional separation of two distinct methods of adjusting the Nevada minimum wage. Further, no increase in the federal minimum wage is necessary to trigger a review or adjustment based on the cost of living. The disjunctive "or" requires one occurrence or the other but not necessarily both. *See Anderson, supra.*

The first method contained in the Amendment is the adjustment of Nevada's rate by the same increase as that imposed by the federal law. For instance, using the same wage rate increase as above, if the federal minimum wage rate is increased to $5.85, a raise of seventy (70) cents over the prior minimum wage of $ 5.15, the potential adjustment to Nevada's minimum wage would likewise be a raise of seventy (70) cents.

The second method sets out an adjustment based on the "cumulative increase in the cost of living." The amendment then defines the calculation of the cost of living increase as "the percentage increase as of December 31 in any year over the level as of December 31, 2004 of the Consumer Price Index (All Urban Consumers, U.S. City Average) as published by the Bureau of Labor Statistics, U.S. Department of Labor or the successor index or federal agency."

The CPI for December 31, 2004, is to be used as the base rate. The "cumulative" increase refers to the requirement that the year 2004 be used as a base with the addition of the increases to the CPI that may occur in subsequent years. *Black's Law Dictionary*, 343 (5th ed. 1979), defines "cumulative" as follows: "Additional; heaping up; increasing; forming an aggregate. The word signifies that two things are to be added together, instead of one being a repetition or in substitution of the other." Thus, the "cumulative increase in the cost of living" would be the adding together of the CPI increases from 2004 forward to form an aggregate increase in the CPI between the current year and 2004. *See Del Papa, supra.*

The Amendment does not contain the word "annual" or other language which mandates an increase on a yearly basis. The Amendment calls for a comparison to be done. In interpreting a constitutional provision, the Nevada Supreme Court has stated that it is "not free to presume that the framers of the [initiative] and those who enacted it meant anything other than exactly what they said." *See Nevada Mining Ass'n v. Erdoes*, 117 Nev. 531, 26 P.3d 753, 759 (2001).

Other states in addressing this same issue have drafted their minimum wage increase provisions differently, clearly delineating that an increase will be on an annual basis tied to the cost of living. For example, Arizona's minimum wage law found at Ariz.Rev.Stat.Ann sec. 36-363 (effective January 1, 2007) states in pertinent part:

> The minimum wage shall be increased on January 1, 2008 and on January 1 of successive years by the increase in the cost of living. The increase in the cost of living shall be measured by the percentage increase as of August of the immediately preceding year over the level as of August of the previous year of the consumer price index (all urban consumers, U.S. city average for all items) or its successor index as published by the U.S. department of labor or its successor agency, with the amount of the minimum wage increase rounded to the nearest multiple of five cents.

Likewise, Missouri has recently implemented a new minimum wage law which calls for an annual increase or decrease. Mo.Ann.Stat. sec. 290.502 (effective January 1, 2007) in pertinent part:

> The minimum wage shall be increased or decreased on January 1, 2008, and on January 1 of successive years, by the increase or decrease in the cost of living. On September 30,

> 2007, and on each September 30 of each successive year, the director shall measure the increase or decrease in the cost of living by the percentage increase or decrease as of the preceding July of the immediately preceding year of the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) or successor index as published by the U.S. Department of Labor or its successor agency, with the amount of the minimum wage increase or decrease rounded to the nearest five cents.

In our case, the plain meaning and utilization of the word "cumulative" is to refer to the requirement that during the annual review, the percentage increase is not calculated on a year by year basis, but rather that the increase in the minimum wage be compared to the cumulative increase in the CPI. Therefore, the annual review would not be reviewing the increase of CPI from year to year but rather the total increase from 2004 forward compared to the total increase in the federal minimum wage.

The Amendment calls for the comparison of the amount of a federal increase to the change in the CPI. As the federal increase is expressed in monetary terms and the change in CPI is expressed in points, a direct comparison cannot be made between monetary amounts and CPI points. Therefore, in order to do a comparison, the amounts must be converted to a similar basis, i.e. percentage change.

Using our earlier example of a seventy cent increase in the federal minimum wage on March 29, 2007, the change from $5.15 to $5.85 would be a 13.6 % increase in the federal minimum wage.

The Consumer Price Index (All Urban Consumers, U.S. City Average), is calculated using 1982 as a base year, with the amount assigned to it of 100. The CPI identifies the increase in the cost of living using that baseline as the starting point. Pursuant to the Bureau of Labor Statistics, as of December 31, 2004, the CPI was 190.3. *See* http://data/bls.gov. The CPI as of December 31, 2006, was 201.8, i.e., an increase of 11.5 points over December 31, 2004. http://data/bls.gov. This 11.5 point increase from 2004 represents a 6% increase.

At the first April 1 review after the implementation of the federal increase – the seventy cents would presumably be added to the Nevada minimum wage because the 13.6% increase in the federal minimum is larger that the 6% increase in the CPI. In subsequent years, unless there was an additional increase in the federal minimum wage, there would not be an increase to the minimum wage until the CPI increase from base year 2004 to that reviewing year was greater than the percentage change in the increase to the federal minimum wage.[1]

[1] This opinion centers on the legal issues surrounding the interpretation of the Amendment. Due to the potential for sequential increases to the Federal Minimum Wage and changes to the percentage calculations, the Attorney General would defer to the specialized knowledge of the Labor Commissioner and/or any economists or accountants he may employ to assist him, for the actual formulas and calculations to be employed in adjusting the Nevada minimum wage.

We now apply these principles to the four scenarios posed.

Scenario 1: The federal minimum wage is not increased before April 1, 2007.

Under Scenario 1, if the federal minimum wage did not increase by April 1, 2007, a comparison of the 0% change to the federal minimum wage would be compared to the 6% change in the CPI to determine any adjustment, up to a maximum 3%, with the adjusted Nevada minimum wage rate effective July 1, 2007.

Scenario 2: The federal minimum wage is increased before April 1, 2007.

If either tier of the current Nevada minimum wage is less than the increased federal wage, that tier of the Nevada minimum wage must be raised to the federal level on the effective date established by federal law. For purposes of the April 1, 2007 review, the percentage of the federal minimum wage increase would be compared to the CPI percentage increase, to determine any adjustment to the two tiers of the Nevada minimum wage that would become effective on July 1, 2007.

Scenario 3: The federal minimum wage is increased after April 1, 2007, but prior to July 1, 2007; and

Scenario 4: The federal minimum wage is increased after July 1, 2007, but prior to April 1, 2008.

If either tier of the current Nevada minimum wage is less than the increased federal wage, that tier of the Nevada minimum wage must be raised to the federal level on the effective date established by federal law. For purposes of the April 1, 2008 review, the percentage of the federal minimum wage increase would be compared to the CPI percentage increase, to determine any adjustment to the two tiers of the Nevada minimum wage that would become effective on July 1, 2008.

CONCLUSION TO QUESTION THREE

Any increase in the federal minimum wage must take effect on the date established in the law. If either tier of the current Nevada minimum wage is less than the increased federal wage, that tier of the Nevada minimum wage must be raised to the federal level on the effective date established by federal law. A review of the two tiers of the Nevada minimum wage must be conducted annually, and communicated to the public with a bulletin published by April 1st of each year. During the review, a comparison must be made between the amount of increases, expressed as percentages, in the federal minimum wage over $5.15 per hour and the cumulative increase in the CPI from December 31, 2004. Any adjustment to the two tier minimum wage becomes effective July 1st of the same year.

QUESTION FOUR

How would the answers in scenarios 2, 3, and 4 posed in Question 3 change if the amount of any raise in the federal minimum wage rate is less than the cost of living increase to be announced on April 1, 2007?

QUESTION FIVE

How would the answers in scenarios 2, 3, and 4 posed in Question 3 change if the amount of any raise in the federal minimum wage rate is greater than the cost of living increase to be announced on April 1, 2007?

CONCLUSION TO QUESTIONS FOUR AND FIVE

The Amendment requires that the annual method resulting in the greater percentage increase in the minimum wage be utilized.

QUESTION SIX

What is the effect of the phrase "cumulative increase in the cost of living" on the minimum wage rate in subsequent years and how does that affect the annual calculation?

CONCLUSION TO QUESTION SIX

Please see our response to question three.

Sincere regards,

CATHERINE CORTEZ MASTO
Attorney General

By: _____
JAMES T. SPENCER
Chief Deputy Attorney General

JTS:efb

APPENDIX 6

APPENDIX 6

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CLERK OF THE COURT

OPPC

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DISTRICT COURT

CLARK COUNTY, NEVADA

LAKSIRI PERERA, Individually and on behalf of others similarly situated,

Plaintiff,

vs.

WESTERN CAB COMPANY,

Defendant.

Case No.: A-14-707425-C

Dept.: XIV

PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION TO DISMISS AND COUNTER-MOTION TO AMEND THE COMPLAINT AND CONDUCT DISCOVERY UNDER NRCP RULE 56(f).

Plaintiff, by and through their attorney, Leon Greenberg Professional Corporation, submits this memorandum of points and authorities in response to defendant's motion to dismiss and in support of plaintiff's counter-motion to amend the complaint and to conduct discovery under NRCP Rule 56(f).

MEMORANDUM OF POINTS AND AUTHORITIES

SUMMARY OF RESPONSE

Defendant's motion must be denied for the following reasons:

- The Supreme Court's decision in *Thomas v. Nevada Yellow Cab* is not limited to "future conduct" taking place after its publication on June 26, 2014. Such a "future conduct only" ruling is contrary to fundamental judicial principles and if the Supreme Court was to take such a revolutionary approach to the law it would expressly state so and not make such a remarkable holding in the *sub silentio* fashion that defendant claims. As discussed, *infra*, defendant's argument on this point,

based upon such Opinion's partial use of the "active" voice and present tense verb form instead of an exclusively "passive" voice and past tense verb form, is contrary to basic principles of law and is not even logically consistent.

- The applicable statute of limitations for a claim arising under Nevada's Constitution is four years, not two years. The decision in *Williams v. Claim Jumper Acquisition* ignores the constitutional nature of a claim under Article 15, Section 16, of the Nevada Constitution and improperly converts such claim into a statutory claim under NRS 608.250. Defendant also fails to advise the Court that the Nevada Supreme Court has directed the defendant in *Williams* to answer a writ petition seeking to overturn such decision. Ex. "A." It should be presumed that the Nevada Supreme Court must have substantial concerns over the correctness of the *Williams* decision to take the extraordinary step of directing an answer to that writ petition.

- Defendant's assertion that the named plaintiff Laksiri Perera does not possess a claim under Article 15, Section 16, of the Nevada Constitution is false. Defendant misleads the Court by claiming that such plaintiff received "qualifying health insurance" and was only entitled to a $7.25 an hour wage. Defendant did not provide qualifying health insurance to the named plaintiff, as such insurance must meet certain family member coverage requirements, the defendant's insurance did not meet those requirements (a fact defendant intentionally ignores in their moving papers). Accordingly, the named plaintiff was entitled to a minimum hourly wage of $8.25 an hour and defendant's own accounting demonstrates he was not paid that wage. In addition, as documented in the declaration of Laksiri Perera, the defendant's payroll records are fraudulent, in that the defendant required him to pay, from his own funds, for the gas consumed by defendant's taxi cab, which significantly reduced the wages defendant paid to him below the amounts shown on those records. Ex. "B."

- No determination of whether to deny, or grant, class certification, whether for injunctive or equitable relief (a NRCP Rule 23(b)(1) or (b)(2) class) or

for damages (a NRCP Rule 23(b)(3) class) can be made without an appropriate record on the circumstances of the class. There is zero information before the Court at this time on whether the class members possess any common circumstances that sufficiently predominate to warrant such certification. As discussed, *infra*, defendant's own payroll records demonstrate that the named plaintiff is owed unpaid minimum wages. If those payroll records show similar minimum wage payment deficiencies for a large number of defendant's other taxi drivers not only would a class certification on such claims be proper, such claims would be subject to summary judgment against defendant.

SUMMARY OF COUNTER-MOTION

Plaintiff's counter-motion seeks:

- To file and serve a Second Amended Complaint incorporating a new paragraph 16 seeking additional relief for the damage cause by the defendant forcing the plaintiff and their other taxi drivers to pay for taxi cab fuel from their own funds. Such requirement resulted in them being paid less than the minimum hourly wage required by Article 15, Section 16, of the Nevada Constitution and an increased, and false, tax liability for such persons based upon defendant's false reporting of their income.

- To conduct discovery under NRCP Rule 56(f) on whether the statute of limitations applicable to the claims made in this case should be equitably tolled, as defendant intends its motion to be for partial summary judgment in respect to the statute of limitations that such applies in this case. Such tolling should be imposed upon defendants because they violated their obligation, under Article 15, Section 16, of the Nevada Constitution, to notify the plaintiff and the class members in writing of their rights to the minimum wages required to be paid to them under that constitutional provision.

- To conduct discovery under NRCP Rule 56(f) on whether class certification under NRCP Rule 23 is appropriate in this case and to corroborate the

plaintiff's individual claim, as defendants are requesting a ruling denying any such class certification prior to the assembly, through appropriate discovery, of any record for the Court's consideration that bears upon those issues.

ARGUMENT

I. SUMMARY JUDGMENT CANNOT BE GRANTED AGAINST THE NAMED PLAINTIFF WHO IS ESTABLISHED, BY DEFENDANT'S OWN ACCOUNTING, TO POSSESS A VALID MINIMUM WAGE CLAIM

Defendants assert that the only possible period for which the named plaintiff can make a minimum wage claim is from September 23, 2012 to October 15, 2012. As discussed, *infra*, that is incorrect. But even if defendant was correct on that point, the defendant's own accounting, which is in their moving papers, actually demonstrates that for such time period the named plaintiff has a minimum wage claim and would be entitled to summary judgment, in part, on that claim. In addition, plaintiff's declaration, Ex. "B," also explains defendant's payroll records are false and overstate his earnings, so he is actually owed an additional amount in unpaid minimum wages beyond what those records, on their face, indicate.

A. Defendant's accounting in their moving papers uses the wrong minimum hourly wage rate as defendants did not provide "qualifying" health insurance to the named plaintiff and he was entitled to an $8.25 an hour, not $7.25 an hour, minimum wage.

Defendant states in its moving papers that the named plaintiff received health insurance since February 1, 2011 and that the cost of that insurance was fully paid for by the defendant. Moving papers p. 8, l. 9-11. It also states that as a result it was allowed to pay the $7.25 per hour minimum wage rate that is due employees who receive "qualifying health benefits." Defendant is well aware that the insurance they provided to the named plaintiff was not "qualifying health benefits" insurance and it is unfortunate they burden the Court with such a misrepresentation.

While defendant in its moving papers can ignore what the Nevada Constitution requires in the form of "qualifying health benefits" insurance this Court

cannot do so. The Nevada Constitution states:

> Offering health benefits within the meaning of this section shall consist of making health insurance available to the employee for the employee ***and the employee's dependents at a total cost to the employee for premiums of not more than 10 percent of the employee's gross taxable income from the employer.*** Nevada Constitution, Article 15, Section 16, Subpart A (emphasis provided).

It is not enough for the defendant to have paid for insurance, or made it available to the named plaintiff for a cost not in excess of 10% of the wages defendant paid him, that insurance **must have also covered his dependents.** Defendant makes no mention of this requirement in its moving papers, and willfully ignore it, because it did not grant such coverage to the named plaintiff's dependents and, as it well knows, was required to compensate him at $8.25, and not $7.25, an hour.

As the plaintiff explains in his declaration, Ex. "B" ¶ 4, he spoke with "Martha" the defendant's general manager about securing health insurance for his wife and children. He was advised that such insurance was only available to him if he personally paid a premium of $460.00 a month, an amount far in excess of 10% of his monthly wages. The plaintiff's assertions on this point are corroborated by the COBRA statement he was provided when his employment terminated, Ex. "C," indicating it would cost the plaintiff approximately $500.00 a month more to continue his insurance coverage on a family, and not individual, basis.

Defendant's representation on this issue is absolutely false. The Court is urged to admonish defendant and its counsel for their duplicity on this issue. The declaration of Martha Sarver, the general manager of defendant who furnishes the Ex. "5" declaration in defendant's moving papers discussing the plaintiff's health insurance, never mentions the dependent coverage limitations of that insurance. Obviously she was aware of the same, as she explained them to the plaintiff. It is also inconceivable that defendant's counsel was not aware of this issue, did not inquire with defendant about it, and did not willfully conceal this highly relevant fact. The Court's job is difficult enough, it should not be burdened with the

intentional and willful concealment and misrepresentations of fact that defendant has placed upon it in their moving papers.

B. Defendant's accounting indicates that the plaintiff has a minimum wage claim for $44.63 for a 21 day work period.

Defendant's accounting of the named plaintiff's hours worked and wages paid indicates that for the 20 day period of September 30, 2012 through October 20, 2012, the plaintiff was paid less than $8.25 an hour and is owed $44.63 in unpaid minium wages for that time period. *See*, Ex. 5-1 of the moving papers.

C. Plaintiff is also owed a significant amount of unpaid minimum wages beyond that demonstrated by defendant's accounting.

As the named plaintiff explains in his declaration, defendant forced him to pay, from his own funds, for all of the gasoline consumed by the taxi he drove for the defendant. Ex. "B" ¶ 7. It is fundamental that an employer cannot comply with Nevada's minimum wage requirements by paying an employee $8.25 an hour and then simultaneously requiring the employee to pay other charges as a condition of their employment, be it 50 cents an hour, a $20.00 per shift gasoline charge, or anything else, that acts to reduce the employee's actual earnings below that $8.25 an hour minimum. *See*, 29 C.F.R. § 531.35 explaining that the minimum wage requirements of the Federal Fair Labor Standards require the payment "free and clear" to the employee of at least the federal hourly minimum wage. The employer violates the minimum wage requirement if he forces an employee to purchase something required for the performance of "the employer's particular work" which purchase reduces the employee's true earnings below the minimum hourly rate. *Id.* By way of example, for the one week period of September 23, 2012 to September 29, 2012, during which defendant claims the named plaintiff was paid $8.89 per hour, he was actually, after accounting for the fuel costs defendant made him pay, paid $7.01 per hour, as per the "gasoline" charges documented on his trip sheets which are at Ex 5-1 of the moving papers. *See* Ex. "H," reconciliation.

II. THE STATUTE OF LIMITATIONS APPLICABLE TO A CLAIM ARISING UNDER NEVADA'S CONSTITUTION IS AT LEAST FOUR YEARS AND ALSO VERY LIKELY SUBJECT TO EQUITABLE TOLLING IN THIS CASE

A. Nevada, as does every other jurisdiction, applies its "catch all" statute of limitations, which is four years, to a constitutional claim that does not fall under a longer limitations period.

In the event no specific statute of limitations is otherwise provided for a particular claim, Nevada provides for a four year statute of limitations. *See*, NRS 11.220. Neither Nevada's Statutes nor its Constitution set forth any expressly specified statute of limitations for civil claims arising under Nevada's Constitution. The Nevada Supreme Court has conclusively determined such time limit for at least one form of constitutionally based civil claim. In *White Pine Lumber Co. v. City of Reno*, 801 P.2d 1370, 1371-72 (Nev. Sup. Ct. 1990) , the Court held that, by default, a claim under the Nevada Constitution against a municipality for inverse condemnation would have, absent other considerations, been subject to the four year "catch all" statute of limitations provided for in NRS 11.220. It found other considerations compelled it to apply the 15 year statute of limitations for inverse condemnation, as constitutional claims against governmental actors should not be subject to a statute of limitations shorter than that applicable to private parties (the adverse possession limitations period of NRS 40.090) who commit the same conduct. 801 P.2d at 1371. In the earlier case of *Alper v. Clark County*, 571 P.2d 810, 813 (1977), the Nevada Supreme Court recited, without dispute, the logic of applying the four year NRS 11.220 statute of limitations to claims generally arising under Nevada's Constitution, although it decided *Alper* on other grounds.

Every analogous case that plaintiffs' counsel has located has adopted a jurisdiction's "catch-all" statute of limitations for constitutional claims when the jurisdiction has not otherwise expressly provided a statute of limitations for such claims. *See, Ho v. University of Texas,* 984 S.W.2d 672, 687 (Tex. Court of App. 1998) (Applying Texas "catch all" statute of limitations to claim originating directly

from state constitution when no other statute of limitations was expressly applicable); *Linder v. Kindig*, 285 Neb. 386, 393 (Neb. Sup. Ct. 2013) (Applying Nebraska "catch all" statute of limitations); *Pauk v. Board of Trustees of City University of New York*, 1983, 119 Misc.2d 663, affirmed as modified on other grounds 111 A.D.2d 17, affirmed 68 N.Y.2d 702 (N.Y. Ct. Appeals 1986) (Applying New York "catch all" statute of limitations) and *Marshall v. Kleppe*, 637 F.2d 1217, 1223-24 (9th Cir. 1980) (Applying California's four year "catch all" statute of limitations to a constitutional claim and not California's general three year "action pursuant to a statute" statute of limitations period)[1].

B. The *Williams* decision ignores the Nevada Constitution's language, the language of NRS 608.260, and contravenes the opinion of the Nevada Supreme Court in *Thomas*

1. The holding in *Williams* is illogical and erroneous.

In *Thomas v. Nevada Yellow Cab*, 327 P.3d 518, 522 (Nev. Sup. Ct. 2014) the Nevada Supreme Court, in rejecting claims that taxi cab drivers were exempt from Nevada's constitutionally proscribed minimum wage by virtue of NRS 608.250(2)(e), held that:

> In this case, the principle of constitutional supremacy prevents the Nevada Legislature from creating exceptions to the rights and privileges protected by Nevada's Constitution.

As *Thomas* held, whatever exception was created by Nevada's Legislature in NRS 608.250 to Nevada's statutorily imposed minimum wage could not limit the "rights and privileges protected by Nevada's Constitution."

Williams ignores *Thomas* by extending the two year statute of limitations of NRS 608.260, which by its express language only applies to claims arising under

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[1] *Marshall* dealt with a federal constitutional claim. Its continuing applicability to federal constitutional claims, at least for cases brought in the federal courts, is questionable in light of *Wilson v. Garcia*, 471 U.S. 261 (1985) and subsequent decisions applying *Wilson*, a 42 U.S.C. § 1983 case, to direct claims under the United States Constitution. Such subsequent precedents are irrelevant to the analysis in *Marshall* in respect to claims arising under a state constitution.

NRS 608.250, to claims arising under Nevada's Constitution. The relevant language from NRS 608.260 states it is applicable only:

> If any employer pays any employee a lesser amount than the minimum wage prescribed by regulation of the Labor Commissioner **pursuant to the provisions of NRS 608.250**...,(emphasis added).

The two year statute of limitations period of NRS 608.260 applies to claims that an employee has been paid (1) Less than the amount of "minimum wage prescribed by regulation of the Labor Commissioner" and (2) which amount has been so prescribed in a regulation issued by "pursuant to the provisions of NRS 608.250."

Williams arrives at this result by holding that a *legislative* structure, NRS 608.260, converts, and limits, a claim under Nevada's Constitution in a claim under NRS 608.250, with all of the attendant limitations the legislature has placed on such claims, in direct contravention of *Thomas*:

> Accordingly, a claim alleging that an employee has been illegally paid less than the effective minimum wage rate is a claim that alleges a violation of the rates established by the Labor Commissioner, not a claim that alleges a violation of the rates set forth in the Minimum Wage Amendment. Thus, the Plaintiffs' claim in this case, although styled as a violation of Article IV, Section 16, actually appears to allege a violation arising under NRS 608.260. Such a claim is governed by the two-year statutory period set forth in NRS 608.260. *Williams*, p. 10., ¶ 15.

This holding rests upon two clearly erroneous findings: (1) That a claim for unpaid minimum wages under Nevada's Constitution "alleges a violation of the rates established by the Labor Commissioner" and (2) That such a claim for a "violation of the rates established by the Labor Commissioner" is within the purview of NRS 608.260.

The two year statute of limitations imposed by NRS 608.260 only applies to wage rates set by the Labor Commissioner **"pursuant to the provisions of NRS 608.250."** The wage rate (the Nevada Constitutional minimum hourly wage amount) that *Williams* found was "established by the Labor Commissioner" was not so

"established" pursuant to NRS 608.250.[2] Indeed, as the *Williams* decision acknowledges, the "wage rates" it finds were "established" by the Nevada Labor Commissioner were so established "pursuant" to the express dictates of Nevada's Constitution and not NRS 608.250.[3]

The deviations from sound logic taken by *Williams* are manifest, as it makes clear in paragraphs ¶ 11-12:

> On its face, the Minimum Wage Amendment does not merely establish a straightforward uniform minimum wage rate to be paid to every employee in Nevada at all times. Rather, the Minimum Wage Amendment sets a specific floor and then expressly requires the Governor (through the state Labor Commissioner) to adjust the rate periodically as follows:
>
> > These rates of wages shall be adjusted by the amount of increases in the federal minimum wage over $5.15 per hour, or, if greater, by the cumulative increase in the cost of living. The cost of living increase shall be measured by the percentage increase as of December 31 in any year over the level as of December 31, 2004 of the Consumer Price Index (All Urban Consumers, U.S. City Average) as published by the Bureau of Labor Statistics, U.S. Department of Labor or the successor index or federal agency. No CPI adjustment for any one-year period may be greater than 3%. The Governor or the State agency designated by the Governor shall publish a bulletin by April 1 of each year announcing the adjusted rates, which shall take effect the following July 1.

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[2] NRS 608.250(1) states: "Except as otherwise provided in this section, the Labor Commissioner shall, in accordance with federal law, establish by regulation the minimum wage which may be paid to employees in private employment within the State. The Labor Commissioner shall prescribe increases in the minimum wage in accordance with those prescribed by federal law, unless the Labor Commissioner determines that those increases are contrary to the public interest." It directs the Labor Commissioner to make minimum wage determinations "in accordance with federal law." It does not authorize the Labor Commissioner to make minium wage determinations on any other basis, much less based upon Nevada's Constitution.

[3] *See*, ¶ 12 of *Williams*, l. 11-15: "In other words, the 'cause-in-fact' of any such claim [for minimum wages imposed by Nevada's Constitution] is not that the employee has not been paid the particular dollar amount set forth in the Minimum Wage Amendment, but that he has not been paid the wage rate set forth in the periodic bulletins issued by the Labor Commissioner **pursuant to the Minimum Wage Amendment.**" (Emphasis provided).

> Thus, the effective minimum wage rate in Nevada is not merely what is stated in Article XV section 16, but rather is expressly defined as a wage rate set by the Labor Commissioner based partially upon data from the U.S. Department of Labor.

The foregoing section of *Williams* contains two remarkable, and completely erroneous, conclusions that have no support in the excerpted text of Nevada's Constitution: (1) That the Nevada's Constitution "requires the Governor (through the state Labor Commissioner)" to "adjust" the minimum wage rate and (2) that the minimum hourly wage required by the Nevada Constitution "is expressly defined as a wage rate set by the Labor Commissioner."

Nowhere does the Nevada Constitution mention the Labor Commissioner. *Williams* offers no explanation of how the minimum wage required by the Nevada Constitution can be "expressly defined" as one "set" by a person (the Labor Commissioner) who is never mentioned in the Constitution. Nor does the Nevada Constitution direct that the Governor or the Labor Commissioner "adjust" the minimum wage rate. It commands the Governor or "the State agency designated by the Governor" to "**publish** a bulletin by April 1 of each year **announcing** the adjusted rates."

The "adjusted rates" that the Governor or their designee must "publish" and "announce" are specified in the Constitution. They are not "defined" or "set" by the Governor, the Labor Commissioner, or any state official. *Williams'* finding that the Nevada Constitution does not "establish a straightforward uniform minimum wage rate" but "sets a specific floor and then expressly requires the Governor (through the state Labor Commissioner) to adjust the rate periodically" is without any basis whatsoever. Such holding ignores the Nevada Constitution's language and reads into the Nevada Constitution non-existent text and completely absent meanings.

The hourly minimum wage rate established by the Nevada Constitution is, contrary to *Williams* finding, completely "straightforward." It is an exact wage rate created by referencing the Consumer Price Index and a maximum yearly increase of

3% and that automatically becomes effective on July 1st of every year as a matter of law without any action by any state official. The Governor (either personally or through his designee) is charged with the non-discretionary duty of "publishing" that rate and has no control over that rate and wholly lacks any ability to "set" or change that rate. If the Governor neglected his Constitutional obligation to publish such rate it would still be the supreme law of Nevada and easily ascertainable by any interested party or Court.

Williams's holding is logically impossible. It determines that the minimum wage "rate" set by the Labor Commissioner is "pursuant to the Minimum Wage Amendment" which means it cannot be a rate set "pursuant to NRS 608.250" and within the scope of NRS 608.260. Yet it inexplicably also holds that such "rate" is, contrary to its own finding about its origins, within the scope of NRS 608.260. *Williams* makes no attempt to reconcile these incompatible findings and such findings are irreconcilable.

2. *Williams* leads to the absurd result of an employee having a longer statute of limitations to prosecute a minimum wage retaliation or discrimination claim than to collect on a claim for unpaid minimum wages.

Nevada's Constitution, Article 15, Section 16 (B) also provides that "[a]n employer shall not discharge, reduce the compensation of or otherwise discriminate against any employee for using any civil remedies to enforce this section or otherwise asserting his or her rights under this section." Such a discrimination claim, under *Williams*, would have nothing to do with a "rate" of wages set by the Labor Commissioner and could not be subject to NRS 608.260 and would flow solely from the Nevada Constitution's anti-discrimination protections. Such a direct constitutional claim would have to be subject to Nevada's "catch all" four year statute of limitations, NRS 11.220. This would mean an employee would have a longer period of time to claim they were discriminated against for seeking to collect minimum wages than to actually collect those minimum wages, an absurd result that

makes no sense.

3. *Williams* erroneously cites to federal cases that do not actually support its conclusion.

Williams, without discussing those decisions, erroneously observes that "[t]wo federal courts have concluded that the two-year limitations period of NRS 608.260 applies to claims alleging a violation of the Minimum Wage Amendment," citing *Rivera v. Peri & Sons*, 735 F3d 892 (9th Cir. 2013) and *McDonough v. Harrah's Las Vegas*, 2014 WL 2742874 (D. Nev. June 17, 2014). *Rivera* made no such holding and refused to reach the issue of whether the two year statute of limitations of 608.260 applied to such claims because plaintiffs had waived such argument.[4] Nor did *McDonagh* consider whether the four year "catch all" statute of limitations of NRS 11.220 applies a Nevada Constitutional minimum wage claim. Rather, without discussion, it rejected the argument that the six year written contract statute of limitations of NRS 11.190(1)(b) applied to such claims and, without considering the relevancy of the constitutional nature of those claims, found the two year statute of limitations of NRS 608.260 to control.[5]

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[4] 735 F.3d 902:

"Peri & Sons clearly argued to the district court that the two-year statute of limitations applies to the farmworkers' state constitutional claims. Instead of arguing in favor of a four-year statute of limitations, the farmworkers merely contended that the issue should not be resolved on a motion to dismiss, a contention we have already rejected. The farmworkers' failure to raise the argument below constitutes a waiver."

[5] "While article 15, section 16 of the Nevada constitution does create a new two-tiered minimum wage in the state, the section is silent on whether it changes the two-year statute of limitations in the Nevada Revised Statutes. Therefore the court finds that the constitutional provision was not intended to change this two-year statute of limitations." *McDonough*, 2014 WL 2742874, p. 4.

4. The Nevada Supreme Court's decision to direct an answer to the *Williams* mandamus petition indicates that *Williams* cannot be be viewed as good law.

The Nevada Supreme Court took the highly unusual step in *Williams* of directing an answer to the plaintiff's writ petition. Ex. "A." Such action by the Supreme Court must, at a minimum, cast doubt on the correctness of the decision in *Williams* and requires this Court to be sure it independently scrutinizes the statute of limitations issue.

C. The statute of limitations in this case should be tolled.

In addition to setting forth a very broad minimum wage requirement, Nevada's Constitution also provides for a yearly adjustment to that minimum wage via a bulletin to be published by April 1st of every year and further states:

> An employer shall provide written notification of the rate adjustments to each of its employees and make the necessary payroll adjustments by July 1 following the publication of the bulletin. Art. 15, Sec. 16 (A).

Defendants never provided any such written notification of any rate adjustment to the named plaintiff. See, Ex. "B", ¶ 3. The first such bulletin was issued by the Nevada Labor Commissioner on April 1, 2007, effectuating an increase of the Nevada Constitution's minimum hourly wage from $5.15 or $6.15 an hour to $5.30 or $6.33 per hour depending on whether health benefits were provided. Ex. "D."

Defendant's duty to the plaintiffs under Nevada's Constitution was twofold: To both pay the minimum hourly wage specified by the Constitution *and* provide "each"of its employees "written notification" of the yearly change in that minimum hourly wage. Defendant's violation of its written notification obligation should be subject to the most severe, and adverse to the defendant, consequences, in light of the fact such obligation was constitutionally commanded. Obviously if defendant had complied with that obligation, and so notified all of its employees, this lawsuit would very likely have been initiated years earlier. Accordingly, such violation,

either by itself or when considered in conjunction with defendant's knowing violation, as documented *infra*, of Nevada's Constitutional requirement to pay a minimum hourly wage, should toll the statute of limitations in this case from July 1, 2007, the date it was first compelled to give such notice, until such time as it actually gives that notice.

The Nevada Supreme Court has long recognized that, in appropriate cases, an equitable toll of the statute of limitations should be imposed. In *Copeland v. Desert Inn Hotel*, 673 P.2d 490 (Nev. Sup. Ct. 1998) the Supreme Court, after cautioning that its discussion of the factors to be considered in connection with a request for equitable tolling not be interpreted as "limiting or restricting the application of the doctrine of equitable tolling," went on to list a number of factors that were properly to be considered. 673 P.2d at 492. Significantly, *Copeland* was also an employee rights claim involving a plaintiff asserting they were discriminated against in violation of NRS 613.330(1), which prohibits employers from discharging physically handicapped employees. 673 P.2d at 491. Among the enumerated, but not exhaustive, factors *Copeland* found were properly considered when determining if an equitable toll of a statute of limitations should be imposed included "any deception or false assurances on the part of the employer against whom the claim is made."

In this case the defendant affirmatively deceived the named plaintiff and the class members by failing to provide them with written notification no later than July 1, 2007, of the minimum hourly wage rates imposed by Nevada's Constitution. Such "non-advisement" violation by an employer has been found to create an equitable statute of limitations toll in other employee rights cases. *See, Bonham v. Dresser Industries, Inc.*, 569 F.2d 187, 193 (3rd Cir. 1977) (Holding, and finding support for the conclusion in other authorities, that employer who fails to post statutorily required notice in workplace of employee rights under Age Discrimination in Employment Act, is subject to equitable statute of limitations toll,

at least until such time as the employee acquires actual knowledge of their legal rights); *Kamens v. Summit Stainless, Inc.*, 586 F. Supp. 324, 328 (E.D.Pa 1984) (Citing *Bonham* and recognizing such "notice violation" provides a basis to impose equitable estoppel on the statute of limitations of a Fair Labor Standards Act ("FLSA") claim, such act also being the federal minimum wage statute); *Henchy v. City of Absecon*, 148 F. Supp. 2d 435, 439 (Dist. N.J. 2001)(Citing *Kamens* and reaching same conclusion on availability of equitable tolling of statute of limitations as a result of "notice" violations by an employer) and numerous other cases reaching the same conclusion.[6]

It should also be presumed that defendant violated Nevada's Constitution with full knowledge it was doing so. Prior to the enactment of Article 15, Section 16 then Attorney General, and current Governor, Brian Sandoval, issued a public

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[6] In response to this line of authority defendant seems certain to cite other authorities, which do exist, taking a much narrower view than *Bonham, Kamens, Henchy* and similar cases of when an employer's "notice violation" can result in a statute of limitations toll. Presumably defendant, citing such other authorities, will assert that the named plaintiff's prior Nevada Labor Commissioner claim defeats any rationale for such a toll since the named plaintiff had manifested some suspicion that he had some sort of wage claim. Yet in other cases where an employee had documented suspicions that their employer had violated their legal rights, and had even gone to consult an attorney, an equitable statute of limitations toll was not completely foreclosed. *See, Meyer v. Riegel Products Corp.* 720 F.2d 303, 308-09 (3rd Cir. 1983) (So holding and discussing cases viewed as supporting that holding). Defendant will likely further try to distinguish *Meyer* and similar cases as involving affirmative, active, misrepresentations by an employer, rather than the sort of "notice violation" at issue in this case. It is submitted such distinction is meaningless as all of the authorities on this issue dealt with mere statutory "notice" directives. The specific constitutional notice directive in this case is of such weight it should displace all of the other considerations that defendants will raise and command a statute of limitations toll as a matter of course for its violation. Or at least that should occur in a case such as this involving a large commercial business that was clearly aware of the Nevada Constitution's requirements.

opinion stating that such Constitutional Amendment would abolish the pre-existing minimum wage exemptions for taxi drivers set forth in NRS 608.250. Ex. "F." Given this background, defendant should be deemed to have acted with full knowledge of its obligation to pay minimum wages under Nevada's Constitution and to have acted to intentionally violate that obligation.

III. NO BASIS EXISTS TO GRANT DEFENDANT'S MOTION TO DENY ANY CLASS CERTIFICATION IN THIS CASE

Defendant seeks to have this Court issue an Order barring any class certification of this case. It alleges such an Order would be proper for two reasons. The first is that the named plaintiff, Laksiri Perera, allegedly has no actionable minimum wage claim and summary judgment should be granted against him, meaning, according to the defendant, that there is no current plaintiff with a claim "typical" of the alleged class. The second is that this case is inherently unsuitable for class certification of any kind as a matter of law given the nature of the claims being made, both by the named plaintiff and on behalf of the putative class. Both of these claims by defendant are specious and based upon incorrect, and demonstrably false, assertions of law and fact.

A. Summary judgment cannot be granted against the named plaintiff Laksiri Perera and as a result he personally possesses a claim that is common to the alleged class.

As discussed, the named plaintiff Laksiri Perera not only personally possesses a claim for unpaid minimum wages, that claim is not even controverted by defendant, whose own records establish that claim. And even if the Court were to ignore the "qualified health benefits" issue, which it cannot do, the named plaintiff would still present a claim, based upon the disputed requirement that he pay for defendant's taxi fuel costs (assuming defendant wishes to dispute such assertion), which pushed his hourly level of compensation below $8.25 an hour as well. Defendant's assertion that Laksiri Perera cannot be an adequate class representative,

because he possesses no viable Nevada Constitutional minimum wage claim, is baseless.

B. Defendant's claim that this Court can conclude, on this record, that no common questions of law or fact predominate over individual questions is baseless.

None of the three authorities cited by defendant, *Wal-Mart Stores v. Dukes*, 131 S.Ct. 2541 (2011), *Vinole v. Countrywide Home Loans, Inc.*, 571 F.3d 935, 937, 948 (9th Cir. 2009) or *Shuette v. Beazer Homes Holdings Corp.*, 124 P.3d 530 (Sup. Ct. Nev. 2005) support defendant's claim that this Court even can, on the current record, properly issue an order barring any class certification of this case. Such decisions simply confirm longstanding, and bedrock, principles of class action law that in no way implicate the availability, or lack of availability, of class certification in this case.

1. The authorities relied upon by defendant involved commonality findings made upon a full record and after discovery, no such record exists in this case and no discovery has been conducted.

Wal-Mart, Vinole and *Shuette* all involved appellate court reviews of the granting, or denial, of class certification, such reviews being conducted upon the extensive factual record developed in the trial court through discovery (and in *Shuette* after a trial on the merits). Defendant would have this Court simply apply the *results* of those decisions, all denying class certification, in this case without any actual factual *record* before it. Nowhere does defendant explain how the facts in this case are similar to those in *Wal-Mart, Vinole* and *Shuette*. Defendant fails to do so because it is well aware this case shares no factual similarities whatsoever with such cases. Instead, defendant just insists that the Court accept its contention that it is factually impossible for a class of taxicab drivers with a common claim, appropriately subject to class certification, to exist in this case:

> Furthermore, he [named plaintiff Laksiri Perera] cannot show the

> existence of a class of taxicab drivers at Western Cab who have not been paid the minimum wage. Western Cab's taxicab drivers work different hours and earn different amounts of wages. None earn the same hourly wage. Exhibit 5. Therefore, Perera cannot show that he would be an adequate class representative. Moving brief, p. 10, l. 11-16.
>
> Pursuant to NRCP 23(b), Perera must show that common questions of law or fact predominate over individual questions. Perera cannot satisfy the commonality issue. Each of the taxicab drivers were employed for different periods of time, worked different hours and earned a different hourly wage. Moving brief, p. 11, l. 4-8.

While the Exhibit 5 declaration of defendant's general manager asserts all of defendant's taxi cab drivers earn different hourly wages, owing to the variations in the commissions they are paid, no explanation is offered by defendant as to the significance of that fact. That is because such fact, by itself, has no significance whatsoever.

The circumstances relevant to class certification in this case, succienctly stated are:

- Numerosity: Does there exist a sufficiently large group of defendant's employees who appear they may have claims for minimum wages under Nevada's Constitution? If the answer is yes, the next inquiry is:
- Commonality: Do the reasons for those numerous claims appear to involve common issues among the alleged class members? If the answer is yes, the next, and highly related inquiry, is:
- Predominance: Do those common issues among the class members predominate over individual questions that would have to be resolved, individually, for each member of the alleged class, thus rendering a class proceeding the "superior" means of adjudicating such claims?

There is no basis for this Court, without any record before it, to grant defendant's motion. That defendant's taxi drivers may have been paid different hourly rates is irrelevant if a sufficiently numerous number of those drivers were

paid less than the hourly minimum wage. That such drivers' who are owed unpaid minimum wages may have been paid different hourly rates, and worked different hours for different chronological periods, only bears upon the *measure of their damages* and cannot defeat class certification for liability purposes. "Our court long ago observed that 'the amount of damages is invariably an individual question and does not defeat class action treatment.'" *Yokoyama v. Midland National Life Insurance Co.*; 594 F. 3d 1087, 1089 (9th Cir. 2010) citing *Blackie v. Barrack*, 524 F.2d 891, 905 (9th Cir. 1975); *See, also, Mattson v. Montana Power Co.*, 291 P.3d 1209, 1221 (Sup. Ct. Mont. 2012), citing *Yokoyama* and stating "'[I]t has been commonly recognized that the necessity for calculation of damages on an individual basis should not preclude class determination when the common issues which determine liability predominate.' " citing and quoting *McDonald v. Washington*, 261 Mont. 862 P.2d 1150, 1157 (1993)(Sup. Ct. Mont. 1993) citing and quoting *Bogosian v. Gulf Oil Corp.*, 561 F.2d 434, 456 (3d Cir.1977).

There is no record before this Court upon which it can make an informed decision on the numerosity, commonality or predominance standards. At this stage of these proceedings, prior to discovery, a motion to dismiss a class action claim is almost always denied as a matter of course until discovery is conducted. *See, In re Wal-Mart Stores, Inc., Wage and Hour Litigation*, 505 F.Supp.2d 609, 615 (N.D. Cal. 2007) (Observing that while it is possible to dismiss a class claim at the pleading stage, prior to discovery, and "...while there is little authority on this issue within the Ninth Circuit, decisions from courts in other jurisdictions have made clear that "dismissal of class allegations at the pleading stage should be done rarely and that the better course is to deny such a motion because 'the shape and form of a class action evolves only through the process of discovery.'" citing and quoting various decisions). The only potentially proper basis upon which to grant such a motion is the very rigorous Rule 12(b)(6) motion to dismiss standard, based upon the deficiencies in the *complaint itself*, e.g., the complaint's allegations, assumed to be

true, would not allow a class to be certified. *See, Picus v. Wal-Mart Stores, Inc.*, 256 F.R.D. 651, 655 (D. Nev. 2009) citing *Blihovde v. St. Croix County, Wis.*, 219 F.R.D. 607, 614 (W.D.Wis.2003). *Picus* ultimately granted a Rule 12(b)(6) motion to deny class certification because for liability to be found in favor of any individual class member under the complaint's allegations would require proof of reliance upon defendant's "Made in the USA" label in respect each such person's decision to purchase the product at issue. 256 F.R.D. at 659. This need to individually determine the reliance of each class member, to find liability, rendered class certification clearly not a "superior" means of adjudication. *Id.*

Defendant simply insists, without explanation, that the existence of separate pay rates, hours, and chronological work histories, precludes class certification. It points to no actual deficiencies with the complaint's allegations, much less does it establish as a matter of law, as in *Picus*, how those allegations would, even if true, make this case unsuitable for class certification. It fails to make that showing because it cannot and this Court needs to allow for discovery to be conducted so it can appropriately determine whether class certification, should, or should not, be granted, and the extent of any such class certification.

2. The limited information available to the Court indicates that there is an overwhelming probability that it would be an abuse of discretion to deny class certification.

As discussed, it is not appropriate for the Court to ponder the merits of class certification at this time, such an examination must await discovery and an appropriate record. But if was to review the limited record before it, it would have to conclude that it is overwhelmingly likely such class certification, as requested by the plaintiff, could not be denied.

The claims in this case are all of a strict liability nature. If defendant did not pay the minimum wages to any particular taxi driver employee it owes those minimum wages, as established by the Supreme Court in *Thomas*. No proof of state of mind, due care, negligence, or any similar elements are involved in this case. To

the extent the records of defendant exist for all class members, as they have produced for the named plaintiff in their motion, those records will establish both defendant's liability to any particular class member and that class member's damages. Most significantly, a prior investigation by the United States Department of Labor determined in December of 2011 that the defendant owed 431 taxi driver employees over $285,000 in unpaid minimum wages under the federal Fair Labor Standards Act (the "FLSA"). Ex. "E." The amount owed to those drivers under the FLSA is *less* than that owed under the Nevada Constitution because the FLSA provides for a lower ($7.25 an hour) minimum wage for all workers and also allows for the payment of a reduced minimum wage, as low as $2.31 an hour, for employees who receive tips. Accordingly, the findings of the United States Department of Labor virtually ensure that a class claim under Nevada's Constitution must be certified in this case.

C. Class certification for injunctive relief is sought and is appropriately granted even if a damages class is not appropriately certified.

The Court is also advised to take note that plaintiff seeks both class wide damages and declaratory and injunctive relief. Part of that injunctive relief would be to require defendant to comply with the Nevada Constitution and correct the false income information it has filed with the Internal Revenue Service overstating the class members' income, as discussed, *infra*. If for some reason the Court were to find that a class is not properly certified on damages issues, it would still be appropriate to certify a class for declaratory and injunctive relief, *e.g.*, to determine that defendant, by forcing its taxi drivers to pay for defendant's taxis's fuel, is liable to those drivers for the amount, if any and as may be determined in separate, individual, proceedings, that their pay was reduced below the minimum hourly wage.

IV. DEFENDANT'S CLAIM THAT THE *THOMAS* DECISION HAS NO BEARING ON CONDUCT TAKING PLACE PRIOR TO ITS PUBLICATION ON JUNE 26, 2014 IS FRIVOLOUS

Defendant misrepresents the bedrock principles of law under which this Court operates and argues for a wholly frivolous, and absurd, "future conduct only" application of the *Thomas* decision.

A. Defendant proceeds from the wholly specious claim that *Thomas* announced a "new constitutional principle."

"The general rule that judicial decisions are given retroactive effect is basic in our legal tradition." *See, Newman v. Emerson Radio Corp.*, 48 Cal. 3d 973, 978 (Cal. Sup. Ct. 1989), citing *Linkletter v. Walker*, 381 U.S. 618, 622 (1965) ("At common law there was no authority for the proposition that judicial decisions made law only for the future", citing 1 Blackstone, Commentaries 69 (15th ed. 1809)).

Defendant seeks to apply a grossly corrupted version of the "prospective application" of certain decisions, such as in *Linkletter*, involving new *judicially created rights* or that *overrule prior judicial precedents*. In *Linkletter*, the United States Supreme Court declined to grant retroactive force to its decision in *Mapp v. Ohio*, 367 U.S. 643 (1961), which overruled prior Supreme Court precedents on the application of the Fourth Amendment's exclusionary rule to state criminal prosecutions. 381 U.S. at 637-38. Such a retroactive application would have invalidated countless convictions that were completely valid under prior United States Supreme Court precedents and created an untenable situation.

The legal duty at issue here did not involve, as in *Linkletter* and all of the "future conduct only" decisions that defendant relies upon, a new and otherwise unknowable "constitutional principle" *e.g.*, new "judicially created" law that overturns prior precedents or announces new, and previously unknown and unknowable, legal rights. Defendant was well aware of the duty imposed upon it and all other employers under the express language of Article 15, Section 16, of the Nevada Constitution. The Nevada Attorney General's opinion, 05-04 Op. Atty Gen.

(2005), issued before November 28, 2006, put the defendant on notice of that duty, which was confirmed in *Thomas*. Nor does, or can, defendant argue such constitutional amendment's language, read in isolation, fails to confer the rights claimed by the plaintiff. Rather it decided to rely upon *another law*, the previously enacted statute NRS 608.250, which it believed trumped the rights claimed by the plaintiff under the constitutional amendment.

Defendant could have sought a class action declaratory ruling of its responsibilities, and paid into escrow, under judicial supervision, all minimum wage amounts it disputed. Instead it declined to do so and elected to take its chances that its "coordinated" reading of the Nevada Constitution and NRS 608.250 was correct. It suffers no prejudice from the result in *Thomas*, it is merely being forced to pay the liability it was well aware of and chose to ignore.

B. Defendant cites irrelevant cases on whether to impose a new statute to events occurring prior to its effective date, a "retroactive application of law" issue not presented by this case.

Defendant misleads the court by citing cases dealing with "retroactive application of law" situations involving conduct taking place prior to the effective date of a statute. *See, County of Clark v. Roosevelt Title Insurance*, 396 P.2d 844, 846 (Nev. Sup. Ct. 1964) (Statute could not revive right to redeem land taken by county for tax lien when that right had expired *prior* to the statute's enactment) and *Pressler v. City of Reno*, 50 P.3d 1096, 1099 (Nev. Sup. Ct. 2002) (Statute changing municipal employee's status to "at will" cannot be applied to conduct taking place prior to its effective date). This principal of law, which is completely irrelevant to this case, is summed up in *Pub. Emps.' Benefits Program v. Las Vegas Metro. Police Dep't (PEBP)*, 179 P.3d 542, 553–54 (Nev. Sup. Ct. 2008): "A statute has retroactive effect when it takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, ***in respect to transactions or considerations already past.***"

No "retroactive application of law" issue is presented in this case.

Amendments to Nevada's Constitution become "effective upon the canvass of the votes by the supreme court." *Tovinen v. Rollins*, 560 P.2d 915, 916-917 (Nev. Sup. Ct. 1977). Article 15, Section 16, of the Nevada Constitution, creating new minimum wage rights for Nevada's employees, was enacted by the voters in the 2006 general election and became effective on November 28, 2006. *See*, N.R.S. § 293.395(2). This case only concerns conduct taking place *after* November 28, 2006.

C. The Nevada Supreme Court does not announce "future conduct only" rulings in the *sub silentio* fashion alleged by defendant.

The idea *Thomas* only applies to future conduct, because it speaks in certain places in the present tense and active voice verbs "supercedes" and "supplants" and not the past tense and passive voice verb forms of "superceded" and "supplanted" is absurd. Defendant cites no other opinion, in the entire universe of common law jurisprudence, where such an outcome has been divined from a judicial opinion that is otherwise completely silent on its "future conduct only" ruling.

Such argument by defendant is not only absurd in respect to the law, it is not logically consistent, either in respect to the internal language of the *Thomas* opinion or the style, grammar, and holdings of the Nevada Supreme Court's other decisions. *Thomas*, 327 P.3d at 521, when explaining its reasoning, states that a "...statute ***is deemed to have been impliedly repealed*** by the [constitutiona] amendment" (emphasis provided), the sort of past tense, passive voice, language that defendant insists would have a current, and not just "future conduct only" effect.

The interchangeable use of passive/active voice past/present tense verb forms in *Thomas* ignored by defendants appears repeatedly in the Nevada Supreme Court's Opinions. The present and past tense of "supercedes" and "superceded" appears in *State v. Connery,* 661 P.2d 1298, 1301 (Nev. Sup. Ct. 1983) ("...we hold that NRAP 4(b) supersedes NRS 177.066...") with the Nevada Supreme Court using the present tense and the West reporter in the headnotes and summary using the past tense. *Connery*, despite its use of the present tense "supercedes," did not make a

"future conduct only" ruling but applied its supersession finding to the procedural rule presented and to the controversy before it, and by doing so denied defendant the relief it sought. *See, also, Jacobson v. Estate of Clayton*, 119 P.3d 132, 134 (Nev. Sup. Ct. 2005) using "supercedes" and "superceded," present and past tenses, active and passive verb styles, interchangeably and applying its supersession finding to the controversy before it and not just to future cases (Stating in first paragraph "We conclude that *Bodine* is **superseded** by the Legislature's 1971 amendment of NRS 140.040..." and in last paragraph under the "Conclusion" heading "The current language of NRS 140.040(3) **supersedes** this court's decision in *Bodine*..."). *See, also, Goldman v. Clark*, 1 Nev. 607, 611 (1866) (Holding that if Nevada's Constitution, "by its own terms exempts a homestead from forced sale" it would **"supercede"** contrary provisions of prior statute "[b]ut if the Constitution did not take effect in regard to homesteads, until the legislature passed the required law, then the old act was not **superseded** until the new one went into effect.")

It is also preposterous to hold that the Nevada Supreme Court's post Opinion order in *Thomas*, rejecting plaintiffs' pre-emptive motion to change the Opinion's verbs to their past tense forms was affirming, again *sub silentio*, such"future conduct only" holding claimed by the defendant. Just like the Opinion itself, such order makes no mention of such a "future conduct only" holding. Rather, the Supreme Court was refusing to dignify the absurd arguments now being raised by defendant in this Court with even an acknowledgment that they deserved a response. It was confident it could stand by its stylistic choices of language and that this Court was competent enough to know that if the Supreme Court was making such a remarkable, and previously unheard of, "future conduct only" ruling, the Opinion would so state expressly and unmistakably.

C. Even if this case was of the type where a "future conduct only" application of the Nevada Supreme Court's Opinion could potentially be proper, the relevant circumstances do not justify such a "future conduct only" application.

While, as discussed in *Sierra Club v. San Joaquin Local Agency* 21 Cal 4th 489, 509-10 (Cal. Sup. Ct. 1999), citing and quoting *Newman*, there are "narrow exceptions" to the common law rule forbidding "future conduct only" rulings, such as was done in *Linkletter,* they require the demonstration that "considerations of fairness and public policy [that] are so compelling in a particular case that, on balance, they outweigh the considerations that underlie the basic rule." No basis exists to hold that such exceptional circumstances are present in this case. *See, Isbell v. County of Sonoma*, 21 Cal.3d 61, 74-75 (Cal. Sup. Ct. 1978) (Finding that Fourteenth Amendment's due process protections rendered California's statutory confession of judgment procedures void given limited application; in light of the massive number of judgments entered under those procedures, most or almost all of which presumably did involve legitimate debts such judgments would not be vacated en *mass*; but judgment debtors could seek hearings to void those judgments at which the creditor would have the burden of showing compliance with the new rule of law announced). The sort of "future conduct only" ruling defendants urge this Court to apply to *Thomas* goes far beyond the very narrow, and exceptionally justified, temporal limitations applied in *Isbell* and similar cases.

Nevada's very limited use of "future conduct only" rulings, as in *Isbell* and similar cases, is well illustrated by *Hansen v. Harrah's*, 675 P.2d 394 (Nev. Sup. Ct. 1984). *Hansen* created, through judicial recognition of Nevada's public policy, a tort cause of action for the retaliatory discharge of an employee who files a worker's compensation claim. No such cause of action was authorized in the text of any Nevada statute, the creation of such a cause of action was an exception to Nevada's well established "employment at will" law, and the creation by judicial recognition of such a cause of action had been rejected by some other state courts. 675 P.2d at

396. Nonetheless, even though the employer defendants in *Hansen* had no express advance notice that such a cause of action existed as an exception to the "employment at will" law of Nevada, the Nevada Supreme Court exposed the defendant/employers in that case to a *current* liability for compensatory damages. *Hansen* both created a new cause of action and allowed liability for that newly recognized caused of action to be imposed on the defendants' *prior* conduct, it did not merely determine the defendants' future legal obligations. The only branch of its holding that was limited to "future conduct only" was for punitive damages. It did so because the purpose of punitive damages is to punish and deter reprehensible conduct that violates the law, a purpose that would not be advance in *Hansen* since the defendants had no way to know their conduct was illegal. 675 P.2d at 397.

Unlike the defendants in *Hansen*, defendant in this case had every reason to believe their conduct was in violation of the plain language of Article 15, Section 16, of Nevada's Constitution, as ultimately found by the Supreme Court in *Thomas*. Such a conclusion by defendant was absolutely required by any isolated reading of such constitutional provision and in 2005 the Nevada Attorney General publicly opined that such conclusion was correct. Defendant's assertion that the Nevada Labor Commissioner somehow approved of its conduct is untrue and irrelevant (indeed, that office would rely upon the Nevada Attorney General for a legal advice and was the one that requested the 2005 AG Opinion). If a party, as in *Hansen*, can be liable for damages as a result of their conduct occurring *prior* to the Nevada Supreme Court's creation of a new cause action, one not set forth expressly in any written law, defendant in this case must be liable for their conduct occurring prior to June 26, 2014, which conduct was indisputably in violation of any "isolated" reading of Article 15, Section 16, of Nevada's Constitution.[7]

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[7] Plaintiffs do not concede that, as in *Hansen*, defendants should be excused from liability for punitive damages in this case. That issue should be addressed by the

IN SUPPORT OF THE COUNTER MOTION

I. THE COUNTER MOTION TO AMEND THE COMPLAINT SHOULD BE GRANTED

At Ex. "G" is a proposed second amended complaint. The purpose of this amended pleading is to seek relief in respect to defendant's policy of requiring class members to pay for defendant's taxi cabs' fuel and by doing so reduce their compensation below the hourly minimum wage. This is alleged in a new paragraph 16 and new injunctive relief request, in the form of a correct IRS income statements prepared by the defendant, is sought. Such amendment should be granted at this pre-answer stage of this litigation, as per NRCP Rule 15.

II. THE COUNTER MOTION FOR DISCOVERY UNDER NRCP RULE 56(F) SHOULD BE GRANTED

A. Defendant alleges the named plaintiff has no actual claim and no common circumstances exist meriting class certification, plaintiff should be allowed to conduct discovery on those issues.

As already discussed, it is fundamental that the plaintiff should be granted leave to conduct discovery on the class issue and on the nature of his individual claim. Plaintiff's request for formal leave to conduct such discovery under FRCP Rule 56(f) in response to defendant's summary judgment motion should be granted. Such discovery would seek information such as but not limited to full payroll and time worked records, employee health insurance benefit qualification policies, names and addresses of class members/witnesses and deposition testimony from defendant on their relevant practices and policies.

B. Discovery should be allowed on the statute of limitations tolling issue.

As discussed, *supra*, if the Court is unable to grant the plaintiffs' request for an equitable toll of the statute of limitations upon the current record it needs, under *Copeland,* to conduct an evidentiary hearing on such request. Plaintiff has been afforded no opportunity to conduct discovery in this case on that issue or any other

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Court at a future date if the parties are unable to resolve this litigation cooperatively.

issue. Accordingly, under such circumstances, plaintiffs need an opportunity to conduct discovery relevant to the equitable tolling issue. Such discovery would include ascertaining the extent of defendant's knowledge of its obligations under the Nevada Constitution and why it failed to comply with those obligations and notify the named plaintiff and the class members of their minimum wage rights, as required by the Nevada Constitution.

CONCLUSION

Wherefore, for all the foregoing reasons, the defendant's motion should be denied in its entirety and plaintiff's counter-motion granted it its entirety.

Dated: January 26, 2015

Respectfully submitted,

/s/ Leon Greenberg
Leon Greenberg, Esq. (Bar # 8094)
A Professional Corporation
2965 S. Jones Blvd., Suite E-3
Las Vegas, Nevada 89146
(702) 383-6085
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned certifies that on January 26, 2015, she served the within:

Plaintiff's Response to Defendant's Motion to Dismiss and Counter-motion to Amend the Complaint and Conduct Discovery under NRCP Rule 56(f).

by court electronic service:

TO:
Malani Kotchka
HEJMANOWSKI & MCCREA LLC
520 S. 4th St., Suite 320
Las Vegas, NV 89101

/s/ Dana Sniegocki
Dana Sniegocki

EXHIBIT "A"

An unpublished order shall not be regarded as precedent and shall not be cited as legal authority. SCR 123.

IN THE SUPREME COURT OF THE STATE OF NEVADA

LISA WILLIAMS, AN INDIVIDUAL; AMBER KLINE, AN INDIVIDUAL; LAWRENCE PARSONS, AN INDIVIDUAL; HANNAH SAFFORD, AN INDIVIDUAL; AND DYLAN LEACH, AN INDIVIDUAL, ALL ON BEHALF OF THEMSELVES AND ALL SIMILARLY-SITUATED INDIVIDUALS,
Petitioners,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE JEROME T. TAO, DISTRICT JUDGE,
Respondents,
and
CLAIM JUMPER ACQUISITION COMPANY, LLC, A NEVADA LIMITED LIABILITY COMPANY,
Real Party in Interest.

No. 66629

FILED

NOV 10 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

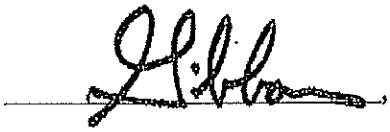
ORDER DIRECTING ANSWER

This original petition for a writ of mandamus or prohibition challenges a district court order that establishes the relevant limitations period in a labor law matter.

Having reviewed the petition, it appears that an answer may assist this court in resolving this matter. Therefore, real party in interest, on behalf of respondents, shall have 30 days from the date of this order within which to file and serve an answer, including authorities, against issuance of the requested writ. That answer should address the adequacy of the available legal remedies, the relevancy of the question raised to other pending cases and the interest of judicial economy, the advisory

nature of the district court's order, and the district court's recharacterization of the claims as arising under the statutory scheme, in addition to any other issues raised by the petition. Petitioners shall have 15 days from service of the answer to file and serve any reply.

It is so ORDERED.

 , C.J.

cc: Hon. Jerome T. Tao, District Judge
Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP/Las Vegas
Jackson Lewis P.C.
Eighth District Court Clerk

EXHIBIT "B"

DECL
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Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

LAKSIRI PERERA, Individually and on behalf of others similarly situated,

Plaintiff,

vs.

WESTERN CAB COMPANY,

Defendant.

Case No.: A-14-707425-C

Dept.: V

DECLARATION OF LAKSIRI PERERA

Laksiri Perera hereby affirms and declares under penalty of perjury the following:

1. I am the named plaintiff in this lawsuit seeking unpaid minimum wages from the defendant.

2. I was employed by defendant, Western Cab Company, as a taxi cab driver from January 2010 until October 2012.

3. Taxicab drivers did not receive an "hourly wage" from defendant at any time during the years I was employed. My method of compensation as a taxicab driver for defendant consisted of a 50% "split" of the fares I collected each day. Often, that 50% commission split would result in my receiving less than the required minimum wage of

$8.25 per hour for each hour I worked. During my entire period of employment, defendant never furnished me with any written document stating I was entitled to any Nevada mandated minimum hourly wage for my work for defendant. Nor did defendant ever orally advise me that I was entitled to any Nevada mandated minimum hourly wage.

4. Defendant offered its taxicab driver employees health benefits, but such health benefits were not "qualified" health benefits under the Nevada Constitution. Defendant required drivers to wait a minimum of one year after they became employed to become eligible to receive health insurance benefits. After one year, defendant would provide such health insurance benefits for free to its taxi drivers. However, defendant did not extend such free coverage to the family members of its taxi drivers. I know this is true because after I became eligible for health insurance coverage after one year of employment, I inquired with defendant's general manager, Martha, about obtaining coverage for myself and my wife and children. Martha told me that while the health coverage for myself was free, if I wanted to also include my wife and two children in my plan, I would have to pay $460.00 per month. Because I could not afford such a great expense each month, I was forced to forego obtaining health insurance coverage for my family.

5. Myself and all of defendant's taxicab drivers were required to work a 12 shift. I typically worked six (6) days per week every week. Although each shift was scheduled for 12 hours, often my shifts exceeded 12 hours in length. This was because at the end of the shift when drivers were required to report back to defendant's premises, it could often take 15 minutes or more to return our taxicabs, as defendant's procedure required the drivers to line their cabs up inside defendant's yard, and a mechanic would check each individual taxicab to see whether our gasoline tanks were full. If a taxicab was found to not have a full tank of gasoline, the mechanic would fill the tank to capacity using defendant's gasoline. At that point, the next taxicab in line would be checked by the mechanic.

6. Throughout the entirety of my 12 hour shift, I was never allowed to be "off duty" and was instead required to work a continuous shift. By that I mean, I remained "on call" throughout the entirety of my shift and remained eligible to pick up a fare should one be assigned to me. The only regular break time I had throughout my 12 hour shift was two 10 minute breaks per day during which I would leave my cab to use the restroom at a store or gas station and pick up fast food or food from a convenience store. I always ate my food in my cab while waiting for a fare, and I did not turn off my radio (which dispatch used to get a hold of taxicab drivers) at any time. There were many occasions during which I was sitting in my cab eating my food when I was required to stop eating and pick up a fare that was assigned to me by dispatch.

7. Prior to January 2012, the gasoline used to operate all of defendant's taxicabs was provided by defendant. Drivers were not required to pay for gasoline. Beginning in January 2012, defendant changed its policy and mandated that taxicab drivers purchase and pay for gasoline at outside gas stations. Since defendant started mandating drivers to pay for their own gasoline, I recorded the cost of such gasoline on the trip sheets that I was required to fill out and utilize daily. Those trip sheets contain an accurate statement of the total cost of gasoline I was required to pay out of my own pocket each shift I drove since January 2012. In the event that myself or another driver did not bring the taxicab back to defendant's facility with a full tank of gas, the drivers were required to pay defendant to fill up the gas tank on the defendant's property. I recall one occasion during which my cab broke down during my shift. It was towed back to defendant's property. Because the cab had to be towed, I could not fill up the gas tank prior to the cab returning to defendant's property. The next day when I reported for my shift, I was approached by one of defendant's supervisors, Tammy, who told me I owed defendant $22.00 for 6 gallons of gasoline which had to be put into my cab upon its return to defendant's property from the prior shift. I paid that $22.00 to Tammy, and requested a receipt from her. She gave me a post-it note, which is included as Exhibit "A" hereto, which confirmed my payment to

her for the gasoline used to fill up the gasoline tank of my broken down cab.

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

Lakshri Perera

12/16/14
Date

EXHIBIT "A"

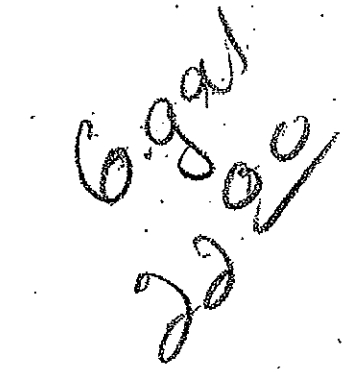

EXHIBIT "C"

000171

WESTERN CAB
COBRA RATES

EMPLOYEE PREMIUM

(ARRA)

Employee Cost per Month Single Coverage:
$293.00
If Dependents were covered on your plan when you were employed at Western Cab, your monthly premium is:
$791.05

If you choose to elect COBRA coverage after reviewing this information, please return the completed forms including the HPN Enrollment Form along with your check for the appropriate months to:

Chuck Giampa
Network Insurance Services, Inc.
PO Box 20066
Las Vegas, NV 89112

Please make your check payable to Western Cab and mail all future monthly COBRA payments to Western Cab; attn: Martha

TERMINATION DATE 10/1/12

EFFECTIVE DATE OF COBRA COVERAGE 11/1/12

FORMER EMPLOYEE NAME: Laksiri Perera

EXHIBIT "D"

STATE OF NEVADA
Department of Business & Industry
OFFICE OF THE LABOR COMMISSIONER
675 Fairview Drive Suite 226
Carson City, Nevada 89701
Telephone (775) 687-4850 Fax (775) 687-6409

JIM GIBBONS
Governor

MENDY ELLIOTT
Director

MICHAEL TANCHEK
Labor Commissioner

STATE OF NEVADA
MINIMUM WAGE
2007 ANNUAL BULLETIN

APRIL 1, 2007

PURSUANT TO ARTICLE 15, SECTION 16(A) OF THE CONSTITUTION OF THE STATE OF NEVADA, THE GOVERNOR HEREBY ANNOUNCES THAT THE FOLLOWING MINIMUM WAGE RATES SHALL APPLY TO ALL EMPLOYEES IN THE STATE OF NEVADA UNLESS OTHERWISE EXEMPTED. THESE RATES SHALL BECOME EFFECTIVE ON JULY 1, 2007.

FOR EMPLOYEES TO WHOM QUALIFIYING HEALTH BENEFITS HAVE BEEN MADE AVAILABLE BY THE EMPLOYER:

NO LESS THAN $5.30 PER HOUR

FOR ALL OTHER EMPLOYEES:

NO LESS THAN $6.33 PER HOUR

Copies of this bulletin may obtained on the internet at
{http://www.laborcommissioner.com/docs/4-1-07%20ANNUAL%20BULLETIN%20for%20site.doc}

Copies may also be obtained from the Labor Commissioner's Offices at

675 Fairview Drive, Suite 226
Carson City, Nevada 89701
(775) 687-4850

or

555 East Washington, Suite 4100
Las Vegas, Nevada 89101
(702) 486-2650

EXHIBIT "E"

Case File #: 1574184

Western Cab Company
801 S. Main Street
Las Vegas, NV 89101
Tel#: (702) 382-7100

EIN#: 20-8981212

Representative:
Moran Law Firm, LLC
John T. Moran, Jr., Attorney at Law
[redacted]

FLSA Narrative Report

COVERAGE

Nature of Business & Section 3(d) employer: The subject of this investigation is a cab company. The company has been in business since the 1950's. Mr. Tobman (now deceased) purchased the company in 1967. The company became incorporated in the State of Nevada in September 1950 as Western Cab.

[redacted]

The corporate officers are: Helen Tobman Martin, Director; Marylin Tobman Moran, Director; Janie Tobman Moore, President; and Jean Tobman, Secretary & Treasurer.
Mrs. Jean Tobman is retired and mother of Helen, Marylin and Jean.

The General Manager Martha Sarver and Director Helen Tobman Martin handle all the day to day operations of the business; they hire and fire the staff; therefore they're both the 3(d) Employer (see Exhibit Tab C-1).

Individual Coverage: The cab drivers do have individual coverage since they receive credit card payments from the customers.

203(s)(A)(1)ii: The subject company does meet ADV with gross revenues of [redacted] in 2008, [redacted] in 2009, and [redacted] YTD thru September 2010 (see Exhibit Tab C-1c).

[redacted]

Period of Investigation: January 1, 2009 thru September 30, 2010

MODO Office: LVDO is MODO office.

EXEMPTIONS

213(a)(1) applicable to:
(1) Helen Tobman Martin, Director
541.100 Exemption
Manages business, hires & fires staff, and does the employee scheduling
[redacted]
(2) Martha Sarver, General Manager
541.100 Exemption

Manages business, hires & fires staff, and does the business accounting

(3) Marylin Tobman Moran, Director
541.100 Exemption
Helps manage the business, has authority to hire & fire staff, and assist both Martha & Helen.

213(a)(1) not applicable to: Per Martha Sarver and Helen Tobman the office staff only work 40 hours per week, no overtime.

213(b)(1) applicable to: All mechanics servicing the taxicabs are exempt from overtime provisions. The mechanics duties affect the safety of operations of motor vehicles in transportation on public highways.

213(b)(17) applicable to: Taxicab drivers are exempt from overtime provisions.

No other exemptions were applicable.

STATUS OF COMPLIANCE

Prior History: No prior history was found in Whisard under Western Cab Company. FMLA violations were found and lost wages of $459.48 were computed and

paid by Western Cab.
There were two other cases found from more than 10 years ago:

1) FMLA case #1249824 from 9/26/02 thru 11/7/02 with no monetary findings;
2) FLSA case #1046854 from 7/1/98 thru 7/1/00 with Western Limousine Service with 39 EE's due $24,603.54.

[redacted] employer was not paying the required minimum wage rate for all hours worked. Taxicab drivers are paid a commission and employer was not verifying the commission earned by drivers when divided by the number of hours worked in the week was atleast the minimum wage rate or higher.

Section 206: The review of the company's payroll records confirmed employer was not paying minimum wage rate for all hours worked. When adding all earning, commission and tips, and dividing by the hours worked the drivers were making less than the minimum wage rate. [redacted] (see exhibit D-1).

Computations: All earnings (commissions & tips) were divided by the average number of hours worked (60 per week), and if the rate was below the minimum wage rate, the difference was computed as back wages due employees. However, credit was given for bonuses employees received at the end of the year. All employees received bonuses according to the employment period with company. The first year of employment employees received $50, second $100, third $300 and up to a max of $500.
Note that the bonuses were also pro-rated to only count the portion due for the number of weeks back wages were computed. Example: employee receives $500 bonus for the year and there were 10 weeks back wages were computed; therefore 500 would be divided by 26 [redacted] and then multiplied by 10 (number of weeks) and that's the portion of the bonus subtracted from the back wages computed to give employer credit for the bonus.

Section 207: No violations of overtime were found due cab drivers since they are exempt from overtime provisions. [redacted]

Section 211: Record keeping violations were found since employer failed to keep and maintain accurate

record of the employees work hours. Almost all cab drivers work a 12 hour shift, 5 days per week for a total of 60 hours per week, [redacted]

Section 212: No record of child labor violations were found, employer stated during initial conference that they did not hire minors under the age of 18. Minors cannot operate a taxicab, and the insurance will not insure a taxicab driven by a minor.

Civil Money Penalty Assessments: No CMPs recommended, as prior cases found occurred 10 years ago. Employer has agreed to comply and pay back wages.

DISPOSITION

A final conference was held on Nov. 15, 2011 with Owners, Helen Tobman Martin and Marylin Tobman Moran; General Manager Martha Sarver, Attorney John T. Moran, WHI [redacted], and WHI [redacted] The conference was held at employers' establishment.
When employer was asked why minimum wage violations occurred, their response was they were not checking the employees were making atleast the minimum wage rate by dividing their weekly earnings by the hours worked. Since my initial conference appointment they have started checking for minimum wage.

I discussed the sections of Fair Labor Standards Act that were reviewed in the course of the investigation: Sections 206, 207, 211, 212 & 213). I explained in full details each section of the FLSA reviewed.
I also explained in full detail the minimum wage violations found under sections 206, and record keeping violations found under Section 211. I then asked how they would come into compliance and correct the problems that lead up to the violations to avoid future violations. The employers Martha Sarver and Helen Tobman explained they have added an area in the trip sheets the drivers fill out daily where they must document the hours worked in the day, from start to end of shift. They are also verifying drivers' are documenting the work hours that they don't forget to complete this new setion of the trip sheet. They are also closely tracking the work hours, adding them up weekly, and making sure the driver has earned minimum wage rate or higher.
They are also implementing a program to monitor closely the non-productive drivers for potential lay-off if

they do not make minimum wage or higher. They are also working on implementing a change for the drivers to pay for a percentage of the gas, but have not yet decided what percent the drivers will pay. All these changes they stated will help eliminate potential future violations.

Once compliance was discussed and agreed upon, I let them know the amount of the back wages found due for the number of employees. The back wages found were $402,897.55 for 391 employees. Attorney John Moran asked if they could have a few days to look over the Summary of Unpaid Wages, and discuss how back wages would be paid and from where. I agreed and we planned to meet back on Wednesday, November 30, 2011 at 9:00am to sign WH-56 Summary of Unpaid Wages.

On December 1, 2011 I received a call from General Manager Martha Sarver explaining to me that the "wages" I had counted from the payroll records did not include the tips. I explained that the payroll records has the commission earned and the tips right below and underneath both is a total column for both and that is the amount that was counted as the employees' total wages. She pointed out to me that the two columns were not added to reflect the total underneath them. So I pulled up one of the payroll to verify and indeed she was correct. The total amount was the same as the commission amount therefore not adding in the tips the employee had declared. I explained to her I would need a week or two to add up the payroll records and make the necessary changes on the back wage computations. I also explained that although some employees may drop off the back wages computed, others may be added that had not been on the summary of unpaid wages before. She stated she understood. After I the added the payroll records and made the changes to the back wage computations, the results were: $285,229.89 due 431 employees. On Tuesday, December 13, 2011 I dropped off the new computations sheets and Summary of Unpaid Wages (WH-56) to Martha Sarver, General Manager at employers' establishment. She explained the owners Helen Tobman and Marylin Tobman as well as Attorney John Moran were all on vacation and would not return until after Christmas. I told her I needed to have the Summary of Unpaid Wages back and signed before the end of the year. She agreed to have it to me by Wednesday, December 28th.

On December 28th the Summary of Unpaid Wages (WH-56) was delivered to the office by courier. The owner Helen Tobman has agreed to pay the back wages to employees by Jan. 31, 21012, see signed Summary of Unpaid Wages in case file. The Receipt of Unpaid Wages (WH-58) for all 431 employees were printed and delivered to employers' establishment on Dec. 29th to be included in the envelope with checks.

No further action is necessary.

Recommendation: It is recommended that this case be closed administratively upon receipt of back wages paid to employees.

[redacted]

Publications: The employer was provided with an FS#44 and Handy Reference Guide to the FLSA included with the appointment letter. At initial conference, Owner, Helen Tobman Martin was provided with the following publications: 1261 & 1312.

_____ **Date:** _____

[redacted]
Wage Hour Investigator

[redacted]

EXHIBIT "F"

3 of 10 DOCUMENTS

OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF NEVADA

OPINION No. 2005-04

2005 Nev. AG LEXIS 4

March 2, 2005

SYLLABUS:
[*1]

BALLOTS; LABOR COMMISSIONER; WAGES: Notwithstanding the conclusion that the proposed amendment would effect an implied repeal of the provisions for calculation of the minimum wage and minimum wage entitlement found in *NRS 608.250*, the statutory exclusions from overtime compensation and the provisions of *NRS 608.250* relied upon in *NRS 608.018*, would stand as enacted for purposes of the overtime compensation law.

REQUESTBY:

Michael Tanchek, Nevada Labor Commissioner
Office of the Labor Commissioner
Department of Business and Industry
675 Fairview Drive, Suite 226
Carson City, Nevada 89701

OPINIONBY:

BRIAN SANDOVAL, Attorney General; PATRICIA PALM GASPARINO, Deputy Attorney General, Civil Division

OPINION:

As the Nevada Labor Commissioner, you are requesting an opinion regarding the potential effect of the amendment to the Nevada Constitution as proposed by the initiative placing Question No. 6, "Raise the Minimum Wage for Working Nevadans Act," on the 2004 General Election Ballot. Your questions concern the consequences of such an amendment upon Nevada's existing statutory framework for minimum [*2] wage and overtime compensation benefits. Notwithstanding the recent introduction of Assembly Bill 87 in the current session of the Nevada Legislature, the issues and conclusions of this opinion should be shared with appropriate legislative committees for consideration of prudent anticipatory statutory amendments to current laws that will be impacted by any passage of Question No. 6 amending the Nevada Constitution.

GENERAL BACKGROUND INFORMATION

Currently under *NRS 608.250*, certain employees in private employment are entitled to minimum wages at a rate to be established by the Nevada Labor Commissioner in accordance with federal law. Nevada's overtime compensation statute, *NRS 608.018*, incorporates select provisions of the minimum wage law at *NRS 608.250* to delineate which employees are excluded from entitlement to statutory overtime compensation. Complimenting these Nevada laws, the Fair Labor Standards Act of 1938, as amended (FLSA), at *29 U.S.C.A. § 201 et seq.*, sets forth the minimum wage and overtime compensation benefits [*3] required by federal law. n1 Under the FLSA, the general minimum wage rate is set at $ 5.15 per hour. *29 U.S.C.A. § 206*(a)(1) (1998). In accordance therewith, the Nevada Labor Commissioner has also set Nevada's general minimum wage rate at $ 5.15 per hour. *NAC 608.110(1)*.

n1 Although states remain free to enact their own laws governing minimum wages and overtime benefits, compliance with state legislation will not excuse noncompliance with the FLSA. *29 U.S.C.A. § 218*(a) (1998); *Alaska Int'l Indus., Inc. v. Musarra, 602 P.2d 1240, 1246 (Alaska 1979)*.

Ballot Question No. 6, which is aimed at raising Nevada's minimum wage rate, stemmed from an initiative petition. See Nev. Const. art. 19, § 2 (reserving to the people the power to propose, by initiative petition, amendments to the constitution, and to enact or reject them at the polls); *Garvin v. Ninth Judicial Dist. Court ex rel. County of Douglas, 118 Nev. 749, 751, 59 P.3d 1180, 1181 (2002)* [*4] (discussing the initiative power). The initiative proposes to amend Article 15 of the Nevada Constitution to add the following section addressing minimum wages:

Sec. 16. Payment of minimum compensation to employees. A. Each employer shall pay a wage to each employee of not less than the hourly rates set forth in this section. The rate shall be five dollars and fifteen cents ($ 5.15) per hour worked, if the employer provides health benefits as described herein, or six dollars and fifteen cents ($ 6.15) per hour if the employer does not provide such benefits. Offering health benefits within the meaning of this section shall consist of making health insurance available to the employee for the employee and the employee's dependents at a total cost to the employee for premiums of not more than 10 percent of the employee's gross taxable income from the employer. These rates of wages shall be adjusted by the amount of increases in the federal minimum wage over $ 5.15 per hour, or, if greater, by the cumulative increase in the cost of living. The cost of living increase shall be measured by the percentage increase as of December 31 in any year over the level as of December 31, 2004 [*5] *of the Consumer Price Index (All Urban Consumers, U.S. City Average) as published by the Bureau of Labor Statistics, U.S. Department of Labor or the successor index or federal agency. No CPI adjustment for any one-year period may be greater than 3%. The Governor or the State agency designated by the Governor shall publish a bulletin by April 1 of each year announcing the adjusted rates, which shall take effect the following July 1. Such bulletin will be made available to all employers and to any other person who has filed with the Governor or the designated agency a request to receive such notice but lack of notice shall not excuse noncompliance with this section. An employer shall provide written notification of the rate adjustments to each of its employees and make the necessary payroll adjustments by July 1 following the publication of the bulletin. Tips or gratuities received by employees shall not be credited as being any part of or offset against the wage rates required by this section.*

B. The provisions of this section may not be waived by agreement between an individual employee and an employer. All of the provisions of this section, or any part hereof, may be waived in [*6] *a bona fide collective bargaining agreement, but only if the waiver is explicitly set forth in such agreement in clear and unambiguous terms. Unilateral implementation of terms and conditions of employment by either party to a collective bargaining relationship shall not constitute, or be permitted, as a waiver of all or any part of the provisions of this section. An employer shall not discharge, reduce the compensation of or otherwise discriminate against any employee for using any civil remedies to enforce this section or otherwise asserting his or her rights under this section. An employee claiming violation of*

this section may bring an action against his or her employer in the courts of this State to enforce the provisions of this section and shall be entitled to all remedies available under the law or in equity appropriate to remedy any violation of this section, including but not limited to back pay, damages, reinstatement or injunctive relief. An employee who prevails in any action to enforce this section shall be awarded his or her reasonable attorney's fees and costs.

C. As used in this section, "employee" means any person who is employed by an employer as defined herein [*7] *but does not include an employee who is under eighteen (18) years of age, employed by a nonprofit organization for after school or summer employment or as a trainee for a period of not longer than ninety (90) days. "Employer" means any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity that may employ individuals or enter into contracts of employment.*

D. If any provision of this section is declared illegal, invalid or inoperative, in whole or in part, by the final decision of any court of competent jurisdiction, the remaining provisions and all portions not declared illegal, invalid or inoperative shall remain in full force or effect, and no such determination shall invalidate the remaining sections or portions of the sections of this section.

Compilation of Ballot Questions 2004, Question No. 6, § 3.

A majority of Nevada voters voting on Question No. 6 in the 2004 general election approved the proposed constitutional amendment. However, before the proposed amendment can become effective, the Secretary of State must resubmit the question for its approval by the voters in the 2006 general election. [*8] If a majority of the 2006 general election voters also approve the proposed amendment, it will become part of the Nevada Constitution upon certification of the election results. Nev. Const. art. 19 § 2(4); *NRS 295.035*.

QUESTION ONE

Would the provisions of *NRS 608.250* through *NRS 608.290* be voided by the successful passage of the proposed amendment?

ANALYSIS

Neither the arguments for or against the initiative's passage nor the text of the proposed constitutional amendment refer directly to the existing minimum wage statutes. *See* Compilation of Ballot Questions 2004, Question No. 6. Even so, the primary focus of the initiative is on raising the current Nevada minimum wage of $ 5.15 per hour, which wage is established pursuant to the statutory scheme. Thus it unmistakably appears that the voters intended for the proposed amendment to transform the existing statutory framework for minimum wages. The extent of the transformation that would actually be affected depends upon the extent of conflict between the proposed amendment and the existing statutes.

A constitutional [*9] amendment, ratified subsequent to the enactment of a statute, is controlling on any point covered in the amendment. *State ex rel. Nevada Orphan Asylum v. Hallock, 16 Nev. 373, 378 (1882)*. Further, ratification of a constitutional amendment will render void any existing law that is in conflict with the amendment. Op. Nev. Att'y Gen. 08 (May 19, 1908); *see also 16 AM. JUR. 2d Constitutional Law § 68* (1979) (if there is a conflict between a statute and a subsequently adopted constitutional provision, the statute must give way). We now consider the relevant statutory provisions in turn.

NRS 608.250

Responsibility for Wage Calculation

NRS 608.250 governs the minimum wage for private employment and provides as follows:

> 1. Except as otherwise provided in this section, the Labor Commissioner shall, in accordance with federal law, establish by regulation the minimum wage which may be paid to employees in private employment within the State. The Labor Commissioner shall prescribe increases in the minimum wage in accordance with those prescribed by [*10] federal law, unless he determines that those increases are contrary to the public interest.
>
> 2. The provisions of subsection 1 do not apply to:
>
> (a) Casual babysitters,
>
> (b) Domestic service employees who reside in the household where they work.
>
> (c) Outside salespersons whose earnings are based on commissions.
>
> (d) Employees engaged in an agricultural pursuit for an employer who did not use more than 500 man-days of agricultural labor in any calendar quarter of the preceding calendar year.
>
> (e) Taxicab and limousine drivers.
>
> (f) Severely handicapped persons whose disabilities have diminished their productive capacity in a specific job and who are specified in certificates issued by the Rehabilitation Division of the Department of Employment, Training and Rehabilitation.
>
> 3. It is unlawful for any person to employ, cause to be employed or permit to be employed, or to contract with, cause to be contracted with or permit to be contracted with, any person for a wage less than that established by the Labor Commissioner pursuant to the provisions of this section.

This statute's provisions for calculation of the minimum wage and the responsibility therefor are completely covered by and conflict [*11] with the corresponding provisions of the proposed amendment. First, like *NRS 608.250*, the proposed amendment provides a comprehensive minimum wage calculation method which is applicable to private employment. *See* Proposed Amendment, § 16(A),(C) (setting forth a minimum wage calculation applicable to "any . . . entity that may employ individuals or enter into contracts of employment").

Second, obvious conflict is revealed when comparing the competing methods of wage calculation. Specifically, *NRS 608.250(1)* requires that the Labor Commissioner, "in accordance with federal law, establish . . . the minimum wage" and "prescribe increases in the minimum wage in accordance with those prescribed by federal law, unless he determines that those increases are contrary to the public interest." By the terms of these provisions, the minimum wage rate cannot be higher than the federal minimum wage rate (which is currently $ 5.15 per hour). However, the proposed amendment sets the minimum wage rate at either $ 5.15 or $ 6.15 per hour, depending upon whether an employer provides sufficient health benefits. The proposed [*12] amendment also vests the Governor or a state agency designated by him with the responsibility of publishing adjustments to the minimum wage and requires those adjustments to be based upon increases in the federal minimum wage or increases in the Consumer Price Index not to exceed 3% per year, whichever is greater. *See* Proposed Amendment, § 16(A).

Based on this overlapping and contradictory coverage, the existing statutory provisions would not survive the proposed amendment. Instead, the proposed amendment would supplant and repeal by implication the provisions of *NRS 608.250* for wage calculation and the responsibility therefor.

Exclusions Based on Employee Type

Also apparent from a comparison of the proposed amendment and statute is the disagreement on the issue of which

employees are entitled to minimum wages. *NRS 608.250(2)* sets forth various exclusions from the statutory minimum wage entitlement for certain types of employees, *i.e.*, casual babysitters, domestic service employees who reside in the household where they work, etc. However, *NRS 608.250* [*13] does not provide any exclusion which is based on an employee's age, n2 the nonprofit status of an employer, or training periods of employment. In contrast, the proposed amendment does not exclude from its minimum wage coverage the types of employees listed at *NRS 608.250(2)*, except to the extent that those types of employees may also be "under eighteen (18) years of age, employed by a nonprofit organization for after school or summer employment or as a trainee for a period not longer than ninety (90) days." Proposed Amendment, § 16(C) (defining "employee" for coverage purposes to exclude certain employees under age eighteen).

n2 Previously, *NRS 608.250* expressly allowed for a minimum wage for minors that was eighty-five percent of the minimum wage for adults; however, the pertinent statutory language was deleted in 2001 when the statute was amended to allow the Labor Commissioner to establish prevailing wages in accordance with federal law. *See* 2001 Nev. Stat., ch. 90, § 9, at 564-65. Cf. *NAC 608.110(2)* (setting forth a lesser minimum wage for employees under age eighteen).

[*14]

The effect of the proposed amendment on the *NRS 608.250* exclusions is controlled by two presumptions. First, the voters should be presumed to know the state of the law in existence related to the subject upon which they vote. Op. Nev. Att'y Gen. 153 (December 21, 1934). Second, it is ordinarily presumed that "where a statute is amended, provisions of the former statute omitted from the amended statute are repealed." *McKay v. Board of Supervisors, 102 Nev. 644, 650, 730 P.2d 438, 442 (1986).* In keeping with these presumptions, the people, by acting to amend the minimum wage coverage and failing to include the statutory exclusions in the proposed amendment, are presumed to have intended the repeal of the existing exclusions so that the new minimum wage would be paid to all who meet its definition of "employee." Accordingly, the proposed amendment would effect an implied repeal of the exclusions from minimum wage coverage at *NRS 608.250(2)*.

NRS 608.260

Civil Court Remedies for Evasion of Minimum Wage Laws

Each competing minimum wage scheme provides a complete [*15] civil court remedy for evasion of its requirements. *See NRS 608.260* (stating, in part, "The employee may, at any time within 2 years, bring a civil action to recover the difference between the amount paid to the employee and the amount of the minimum wage."); *compare* Proposed Amendment, § 16(B) (an employee may bring an action against his employer in the courts of this state and shall be entitled to all appropriate remedies available under the law or in equity, including back pay, damages, reinstatement or injunctive relief, and if prevailing, shall be entitled to reasonable attorney's fees and costs). As the proposed amendment has completely covered the topic of a civil court remedy, providing for even greater relief, its remedy would supplant and repeal by implication the existing civil remedy provision at *NRS 608.260*.

NRS 608.270(1) and *NRS 608.290(2)*

Administrative Enforcement of Minimum Wage Laws

NRS 608.270(1)(a) states that the "Labor Commissioner shall . . . administer and enforce the provisions of *NRS 608.250* [*16] ." In addition, *NRS 608.290(2)* provides with regard to violations of *NRS 608.250* that "in addition to any other remedy or penalty, the Labor Commissioner may impose against the person an administrative penalty of not more than $ 5,000 for each such violation." The presumptive partial repeal of *NRS 608.250* notwithstanding, legal authority suggests that the proposed amendment would serve to modify these statutes as necessary to effectuate their continued use in enforcing the new minimum wage law.

The proposed amendment is silent with respect to the administrative enforcement authority of the Labor Commissioner and his imposition of administrative sanctions. Where, as here, "express terms of repeal are not used, the presumption is always against an intention to repeal an earlier statute, unless there is such inconsistency or repugnancy [between the laws] as to preclude the presumption, or the [new law] revises the whole subject-matter of the former. [Citations omitted.]" *Ronnow v. City of Las Vegas, 57 Nev. 332, 365, 65 P.2d 133, 145 (1937)*: [*17] [Text altered.] The statutes in question here are consistent with the basic provisions of the proposed amendment.

The minimum wage changes proposed by Question No. 6, though materially different in wage outcome, applicability and civil court remedy, essentially create a new method of calculating the wage rate and do not attempt to alter the underlying current statutory basis for administrative enforcement of the new wage by the Labor Commissioner. By providing for a higher minimum wage and a more extensive civil court remedy, the people intended to strengthen an employee's ability to assert his right to the minimum wage. The current administrative enforcement jurisdiction of the Labor Commissioner is well-suited to serve this general purpose, and it merely strengthens what the proposed amendment seeks to guaranty. *See Washington v. State, 117 Nev. 735, 739, 30 P.3d 1134, 1136 (2001)* (statutes must be interpreted consistently with their general purposes); *see also Rogers v. Heller, 117 Nev. 169, 176 n.17, 18 P.3d 1034, 1038 n.17 (2001)* (recognizing that rules of statutory construction apply [*18] to constitutional provisions).

The current minimum wage statutes evidence the Legislature's clear intent that the Labor Commissioner should enforce Nevada's minimum wage law and impose administrative sanctions for violations thereof. Additionally, *NRS 607.160(1)(a)(2)* provides that "the Labor Commissioner . . . shall enforce *all labor* laws of the State of Nevada . . . the enforcement of which is not specifically and exclusively vested in any other officer, board or commission." [Emphasis added.] *NRS 607.160(3)* -- (6) contemplate the Labor Commissioner will impose administrative penalties and pursue administrative and civil actions for violation of Nevada's labor laws. Further, *NRS 607.170(1)* allows the Labor Commissioner to prosecute claims and commence actions to collect wages for any person who is unable to afford counsel.

The intent behind the administrative enforcement provisions at *NRS 608.270(1)(a)* and *NRS 608.290(2)*, *i.e.*, that the Labor Commissioner shall enforce the state's [*19] minimum wage law, is likely to prevail despite the specific references to *NRS 608.250* in *NRS 608.270(1)(a)* and *NRS 608.290*. *McKay, 102 Nev. at 650, 730 P.2d at 443* (the intent behind a law will prevail over the literal sense of the words used in the law). However, given the specific references to *NRS 608.250* in *NRS 608.270(1)(a)* and *NRS 608.290*, it is conceivable that a court of law could find the Legislature intended the existing enforcement statutes apply only to the minimum wage as calculated under *NRS 608.250*, and not recognize the amendment to the Nevada Constitution as merely augmenting the statutes establishing the Labor Commissioner's pre-amendment administrative enforcement authority. If so, the intent behind existing statutes would be upset by allowing them to stand as enforcement tools for the new law, and the statutes should be treated as repealed. [*20] *See City and County of San Francisco v. County of San Mateo, 896 P.2d 181, 195 (Cal. 1995)* (Mosk, J., concurring) (existing statutes must be treated as repealed if the intent behind them would be thwarted by allowing them to stand in the face of a constitutional amendment). On the other hand, the more likely and appropriate conclusion is that the proposed amendment would modify these enforcement statutes to allow for the Labor Commissioner's enforcement of the new minimum wage law. *Cf. Perry v. Consolidated Special Tax Sch. Dist. No. 4, 103 So. 639, 642 (Fla. 1925)* (recognizing that previous statutory provisions, as modified by constitutional amendment, are sufficient to effectuate new constitutional provisions so that new provisions may be enforced even though they are not contained in or contemplated by present statutes).

NRS 608.270(1)(a), (2), *NRS 608.280*, and *NRS 608.290(1)*

Criminal Enforcement of Minimum Wage Laws

NRS 608.270(1)(a) and (2) establish that the district attorneys will prosecute [*21] violations of *NRS 608.250* and, for the willful failure to do so, will be subject to a misdemeanor conviction and removal from office. In addition, *NRS 608.280* requires the Attorney General to prosecute willful violations of *NRS 608.270*. Finally, *NRS 608.290(1)* also

makes the violation "of *NRS 608.250* or any regulation adopted pursuant thereto" a misdemeanor. For the same reasons given in the preceding section of this opinion (addressing the proposed amendment's effect upon the Labor Commissioner's administrative enforcement authority), it is also likely that a court would find that the proposed amendment only modifies, rather than repeals, the existing criminal enforcement statutes. In short, by enacting these criminal statutes the Legislature plainly intended that criminal sanctions would be used as a tool to enforce the state minimum wage law. Although, as with the provisions discussed in the preceding section, it is possible that a court could determine that the Legislature's intent [*22] is ambiguous with respect to application of the criminal enforcement statutes to the new minimum wage law. After considering this risk, the reasonable and fair conclusion is that the legislative intent behind the existing provisions is consistent with using these provisions to enforce the new minimum wage law. The criminal enforcement statutes are also consistent with the proposed amendment's apparent purpose of strengthening an employee's ability to collect minimum wages. The people, by presumption, were aware of the law's provisions when voting in favor of the proposed amendment. *See* Op. Nev. Att'y Gen. 153 (December 21, 1934). As both the initiative and the proposed amendment are silent as to repeal of the criminal enforcement provisions, these provisions are likely to survive as modified to effectuate their continued use as an enforcement tool for the new minimum wage law. *See Ronnow v. City of Las Vegas, 57 Nev. at 332, 365, 65 P.2d 133, 145 (1937).*

CONCLUSION TO QUESTION ONE

If the proposed constitutional amendment is approved at the 2006 general election as established by certified election results, it would supplant and [*23] repeal by implication the wage calculation and coverage provisions of *NRS 608.250* and the civil remedy of *NRS 608.260. NRS 608.270(1)* and *NRS 608.290(2)* would likely be found to have been modified as necessary to effectuate the Labor Commissioner's enforcement of the new minimum wage. The criminal enforcement provisions of *NRS 608.270(1)(b)* and (2), *NRS 608.280*, and *NRS 608.290(1)* also would likewise be found to be modified to allow for their continued use in enforcing the new minimum wage law.

QUESTION TWO

Would the passage of the proposed amendment require the payment of the minimum wage to those types of employees currently excluded under *NRS 608.250(2)*?

ANALYSIS

As discussed in response to Question One above, the proposed amendment does not contain any of the exceptions to coverage currently set forth at *NRS 608.250(2)* [*24] . The only exception under the proposed amendment is for employees who are "under eighteen (18) years of age, employed by a nonprofit organization for after school or summer employment or as a trainee for a period not longer than ninety (90) days." Proposed Amendment, § 16(C) (defining "employee" for coverage purposes to exclude certain employees under age eighteen). In light of this, the exclusions under *NRS 608.250* are repugnant to the proposed amendment, the plain wording of which requires payment of the minimum wage regardless of whether an employee is currently excluded under *NRS 608.250(2)*. Consequently, the proposed amendment would effect an implied repeal of the exclusions set forth at *NRS 608.250* from minimum wage coverage.

CONCLUSION TO QUESTION TWO

The proposed amendment would require payment of the new minimum wage to employees who are currently excluded under *NRS 608.250(2)* from entitlement to minimum wages, unless those employees fall outside the amendment's definition of a protected "employee."

QUESTION [*25] THREE

Does the language of Section 16(B) of the proposed amendment specifically and exclusively vest the enforcement of the minimum wage provisions with the courts, so as to preempt the enforcement jurisdiction of the Labor

Commissioner?

ANALYSIS

Your question alludes to the language of *NRS 607.160(1)(a)(2)*, which states, "The Labor Commissioner . . . shall enforce all labor laws of the State of Nevada . . . the enforcement of which is not specifically and exclusively vested in any other officer, board or commission." As discussed in response to Question One above, the provisions of *NRS 607.160* and *NRS 607.170*, as well as the provisions under *NRS 608.270(1)(a)* and *NRS 608.290(2)*, demonstrate the Legislature's intent that the Labor Commissioner enforce Nevada's minimum wage law, even as amended or supplanted by the instant initiative. Therefore, the proposed amendment would likely only modify the existing statutes as needed for such enforcement. The proposed amendment's civil remedy [*26] at section 16(B) would supplant the existing statutory civil remedy at *NRS 608.260*, but this would have no additional affect on the existing statutes providing for the Labor Commissioner's enforcement jurisdiction in other areas.

Moreover, section 16(B) of the proposed amendment provides, in relevant part, that an employee "*may* bring an action against his or her employer in the courts of this State to enforce the provisions of this section." [Emphasis added.] The use of the word "may" in this context indicates that the remedy is intended to be permissive and it does not indicate exclusivity of the remedy. *D'Angelo v. Gardner, 107 Nev. 704, 721 n.11, 819 P.2d 206, 217 n.11 (1991); Ewing v. Fahey, 86 Nev. 604, 608, 472 P.2d 347, 350 (1970).* Indeed, the analogous provision currently set forth in *NRS 608.260* states that an "employee may . . . bring a civil action," and this remedy coexists with other statutes providing for enforcement by the Labor Commissioner. Thus the proposed amendment's civil remedy at section [*27] 16(B) does not specifically and exclusively vest authority elsewhere or divest the Labor Commissioner of all of his jurisdiction.

CONCLUSION TO QUESTION THREE

Section 16(B) of the proposed amendment does not interfere with all of the enforcement jurisdiction of the Labor Commissioner. It is likely that authority not specifically in contradiction to the amendment would survive a legal challenge.

QUESTION FOUR

Would preemption of *NRS 608.250* have any effect on the statutory exclusions from entitlement to overtime compensation set forth in *NRS 608.018*?

ANALYSIS

The overtime compensation statute, *NRS 608.018*, should not be affected by the proposed amendment, even though it partially relies on *NRS 608.250*.

NRS 608.018 provides, in relevant part:

> 1. Except as otherwise provided in this section, an employer shall pay one and one-half times an employee's regular wage rate whenever an employee works:
>
> (a) More than 40 hours in any scheduled week of work; or
>
> (b) More than 8 hours in [*28] any workday unless by mutual agreement the employee works a scheduled 10 hours per day for 4 calendar days within any scheduled week of work.
>
> 2. The provisions of subsection 1 do not apply to:
>
> (a) Employees who are not covered by the minimum wage provisions of *NRS 608.250*;

(b) Employees who receive compensation for employment at a rate not less than one and one-half times the minimum rate prescribed pursuant to *NRS 608.250*;

. . . .

(d) Salesmen earning commissions in a retail business if their regular rate is more than one and one-half times the minimum wage, and more than one-half their compensation comes from commissions;

. . . .

(k) Drivers of taxicabs or limousines;

(l) Agricultural employees; n3

n3 The provisions of *NRS 608.018* do not refer to, rely on, or parallel the provisions of *NRS 608.250* and would not be affected by the repeal of the *NRS 608.250* scheme for minimum wage. Furthermore, it should be noted that *NRS 608.180* -- 608.195 provide for civil and criminal enforcement and remedies for violations of *NRS 608.018*. This enforcement scheme is unrelated to the topic of minimum wage and would likewise remain unaffected by the proposed amendment.

[*29]

As set forth above, *NRS 608.018(2)(a)* incorporates by reference the standard for minimum wage entitlement in *NRS 608.250*. By this, *NRS 608.018(2)(a)* excludes from entitlement to statutory overtime compensation those employees who are also not entitled to minimum wages. *NRS 608.250(2)* sets forth a list of employees who are not entitled to minimum wages, including casual babysitters, taxicab and limousine drivers, and certain domestic service employees, outside salespersons, employees engaged in agriculture and severely handicapped persons. *NRS 608.250(2)(a)* -- (f).

The exclusions at *NRS 608.250(2)(d)* (for employees "engaged in agricultural pursuit for an employer who did not use more than 500 man-days of agricultural labor") and in *NRS 608.250(2)(e)* (for "taxicab and limousine drivers") are also subsumed in other corresponding statutory exclusions from overtime compensation. In particular, *NRS 608.018(k)* [*30] and (l) set forth exclusions which are at least as broad as those at *NRS 608.250(2)(d)* and (e) and which do not depend on or refer to *NRS 608.250*. Accordingly, any question as to the continuing validity of *NRS 608.250(2)* cannot affect the lack of entitlement to statutory overtime compensation for taxicab and limousine drivers or for agricultural employees.

On the whole, the exclusions from statutory overtime coverage, as incorporated from *NRS 608.250(2)*, are complimentary to the exclusions under the FLSA's overtime compensation provisions. n4 Hence, it is apparent that the Legislature intended to enact state overtime compensation law that was generally consistent with federal law on the same topic and to exclude from statutory overtime compensation the types of employees identified at *NRS 608.250(2)*. This intent should be respected regardless of changes in the law on the distinct subject matter of minimum wages.

n4 *See, e.g., 29 U.S.C.A. § 213*(a)(1) (1998) (addressing outside salespersons); *29 U.S.C.A. § 213*(a)(6) (1998) (addressing employees employed in agriculture); *29 U.S.C.A. §§ 213*(a)(7), 214(c) (1998) (addressing handicapped workers); *29 U.S.C.A. § 213*(a)(15) (1998) (addressing casual babysitters and those engaged in domestic service).

[*31]

Moreover, *NRS 608.018(2)(a)* does not depend on the aspects of *NRS 608.250* that offend the proposed amendment, *i.e.*, the provisions for minimum wage calculation and entitlement. Because the subject of the proposed amendment is the minimum wage and not entitlement to overtime compensation, *NRS 608.018(2)(a)* does not conflict with the organic provisions of the proposed amendment. Therefore, *NRS 608.018(2)(a)*, which incorporates the identification of types of employees found in *NRS 608.250(2)*, would survive the limited repeal of *NRS 608.250(2)* specific to its exclusion from minimum wage coverage for the same types of employees.

In contrast, the exclusions from statutory overtime entitlement set forth at *NRS 608.018(2)(b)* and (d) rely on the calculation of the minimum wage under *NRS 608.250*. Subsection (2)(b) expressly does so, excluding from overtime compensation "employees [*32] who receive compensation for employment *at a rate not less than one and one-half times the minimum rate prescribed pursuant to NRS 608.250.*" [Emphasis added.] Subsection 2(d) excludes "salesmen earning commissions in a retail business *if their regular rate is more than one and one-half times the minimum wage,* and more than one-half their compensation comes from commissions." [Emphasis added.]

The apparent intent behind *NRS 608.018(2)(b)* and (d) was to exclude from overtime compensation employees and certain salesmen who earned as a regular rate at least one and one-half times the minimum rate set by the Labor Commissioner -- a rate that is limited by the rate provided by federal law. *See NRS 608.250(1)*. In enacting *NRS 608.018(2)(b)* and (d), the Legislature could not have anticipated that overtime compensation would be required even though an employee earned more than one and one-half times the rate under federal law and *NRS 608.250*. Incorporation of the wage calculation at [*33] *NRS 608.250* into *NRS 608.018* reflects the Legislature's determination as to the proper balance of state interests. Amending or supplanting *NRS 608.018(2)(b)* or (d) with the higher minimum wage rate of the proposed amendment would prove more costly for employers and would frustrate the apparent intent of the Legislature to tie this variable in the overtime calculation to the federal minimum wage. n5 For this reason, and even more so because the proposed amendment is not concerned with overtime compensation, it would not effect a repeal or modification of these overtime compensation exclusions linked to *NRS 608.250*.

> n5 For example, the current minimum wage rate is $ 5.15 per hour. This rate multiplied by one and one-half equals $ 7.73 per hour. Thus under *NRS 608.018(2)(b)* and (d), statutory overtime compensation is required until an employee or salesman with sufficient commissions earns at least $ 7.73 per hour. Under the proposed amendment, assuming no adequate insurance is provided, the minimum wage would be initially set at $ 6.15 per hour. This rate multiplied by one and one-half equals $ 9.23 per hour. If the calculation from the proposed amendment were incorporated into *NRS 608.018(2)(b)* and (d), then an employee would be entitled to statutory overtime compensation until he earned $ 9.23 per hour.

[*34]

The rule that all statutes in force and not inconsistent with the new constitutional provisions shall continue until amended or repealed by the Legislature seems particularly apt here. *See 16 AM. JUR. 2d Constitutional Law § 67*. Under this rule, the minimum wage calculation provisions of *NRS 608.250*, as incorporated into *NRS 608.018(2)(b)* and (d), should continue for the purpose of requiring the Labor Commissioner to establish a wage rate to be used in determining entitlement to statutory overtime compensation under *NRS 608.018(2)(b)* and (d).

CONCLUSION TO QUESTION FOUR

Notwithstanding the conclusion that the proposed amendment would effect an implied repeal of the provisions for calculation of the minimum wage and minimum wage entitlement found in *NRS 608.250*, the statutory exclusions from overtime compensation and the provisions of *NRS 608.250* relied upon in *NRS 608.018*, would [*35] stand as enacted for purposes of the overtime compensation law.

Legal Topics:

For related research and practice materials, see the following legal topics:
Administrative LawAgency RulemakingRule Application & InterpretationGeneral
OverviewGovernmentsLegislationExpirations, Repeals & SuspensionsGovernmentsLegislationInitiative & Referendum

EXHIBIT "G"

ACOM

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DISTRICT COURT

CLARK COUNTY, NEVADA

LAKSIRI PERERA, Individually and on behalf of others similarly situated, Plaintiff, vs. WESTERN CAB COMPANY, Defendant.	Case No.: A-14-707425-C Dept.: V **PROPOSED SECOND AMENDED COMPLAINT** **ARBITRATION EXEMPTION CLAIMED BECAUSE THIS IS A CLASS ACTION CASE**

LAKSIRI PERERA, individually and on behalf of others similarly situated, by and through his attorney, Leon Greenberg Professional Corporation, as and for a Second Amended Complaint against the defendant, states and alleges, as follows:

JURISDICTION, PARTIES AND PRELIMINARY STATEMENT

1. The plaintiff, LAKSIRI PERERA, (the "individual plaintiff" or the "named plaintiff") is a resident of Clark County in the State of Nevada and is a former employee of the defendant.

2. The defendant, WESTERN CAB COMPANY, (hereinafter referred to as "Western Cab" or "defendant") is a corporation existing and established pursuant to

the laws of the State of Nevada with its principal place of business in the County of Clark, State of Nevada and conducts business in Nevada.

CLASS ACTION ALLEGATIONS

3. The plaintiff brings this action as a class action pursuant to Nev. R. Civ. P. §23 on behalf of himself and a class of all similarly situated persons employed by the defendant in the State of Nevada.

4. The class of similarly situated persons consists of all persons employed by defendant in the State of Nevada during the applicable statute of limitations periods prior to the filing of this Complaint continuing until date of judgment, such persons being employed as taxi cab drivers (hereinafter referred to as "cab drivers" or "drivers") such employment involving the driving of taxi cabs for the defendant in the State of Nevada.

5. The common circumstance of the cab drivers giving rise to this suit is that while they were employed by defendant they were not paid the minimum wage required by Nevada's Constitution, Article 15, Section 16 for many or most of the days that they worked in that their hourly compensation, when calculated pursuant to the requirements of said Nevada Constitutional Provision, did not equal at least the minimum hourly wage provided for therein.

6. The named plaintiff is informed and believes, and based thereon alleges that there are at least 100 putative class action members. The actual number of class members is readily ascertainable by a review of the defendant's records through appropriate discovery.

7. There is a well-defined community of interest in the questions of law and fact affecting the class as a whole.

8. Proof of a common or single set of facts will establish the right of each member of the class to recover. These common questions of law and fact predominate over questions that affect only individual class members. The individual plaintiff's claims are typical of those of the class.

9. A class action is superior to other available methods for the fair and efficient adjudication of the controversy. Due to the typicality of the class members' claims, the interests of judicial economy will be best served by adjudication of this lawsuit as a class action. This type of case is uniquely well-suited for class treatment since the employer's practices were uniform and the burden is on the employer to establish that its method for compensating the class members complies with the requirements of Nevada law.

10. The individual plaintiff will fairly and adequately represent the interests of the class and has no interests that conflict with or are antagonistic to the interests of the class and has retained to represent him competent counsel experienced in the prosecution of class action cases and will thus be able to appropriately prosecute this case on behalf of the class.

11. The individual plaintiff and his counsel are aware of their fiduciary responsibilities to the members of the proposed class and are determined to diligently discharge those duties by vigorously seeking the maximum possible recovery for all members of the proposed class.

12. There is no plain, speedy, or adequate remedy other than by maintenance of this class action. The prosecution of individual remedies by members of the class will tend to establish inconsistent standards of conduct for the defendant and result in the impairment of class members' rights and the disposition of their interests through actions to which they were not parties. In addition, the class members' individual claims are small in amount and they have no substantial ability to vindicate their rights, and secure the assistance of competent counsel to do so, except by the prosecution of a class action case.

AS AND FOR A FIRST CLAIM FOR RELIEF ON BEHALF OF THE NAMED PLAINTIFF AND ALL PERSONS SIMILARLY SITUATED PURSUANT TO NEVADA'S CONSTITUTION.

13. The named plaintiff repeats all of the allegations previously made and brings this First Claim for Relief pursuant to Article 15, Section 16, of the Nevada

Constitution.

14. Pursuant to Article 15, Section 16, of the Nevada Constitution the named plaintiff and the class members were entitled to an hourly minimum wage for every hour that they worked for defendant and the named plaintiff and the class members were often not paid such required minimum wages.

15. The defendant's violation of Article 15, Section 16, of the Nevada Constitution involved malicious and/or fraudulent and/or oppressive conduct by the defendant sufficient to warrant an award of punitive damages for the following, amongst other reasons:

(a) Defendant despite having, and being aware of, an express obligation under Article 15, Section 16, of the Nevada Constitution, such obligation commencing no later than July 1, 2007, to advise the plaintiff and the class members, in writing, of their entitlement to the minimum hourly wage specified in such constitutional provision, failed to provide such written advisement;

(b) Defendant was aware that the highest law enforcement officer of the State of Nevada, the Nevada Attorney General, had issued a public opinion in 2005 that Article 15, Section 16, of the Nevada Constitution, upon its effective date, would require defendant and other employers of taxi cab drivers to compensate such employees with the minimum hourly wage specified in such constitutional provision. Defendant consciously elected to ignore that opinion and not pay the minimum wage required by Article 15, Section 16, of the Nevada Constitution to its taxi driver employees in the hope that it would be successful, if legal action was brought against it, in avoiding paying some or all of such minimum wages;

(c) Defendant, to the extent it believed it had a colorable basis to legitimately contest the applicability of Article 15, Section 16, of the Nevada Constitution to its taxi driver employees, made no effort to seek any judicial declaration of its obligation, or lack of obligation, under such constitutional provision and to pay into an escrow fund any amounts it disputed were so owed under that constitutional provision until such a final judicial determination was made.

16. Defendant also engaged in the following malicious, illegal and bad faith conduct which was intended to conceal its violations Article 15, Section 16, of the Nevada Constitution and caused additional injury to the plaintiffs for which they seek redress:

In or about January of 2012 defendant started requiring the plaintiff and the class members to pay from such plaintiff and class members' own, personal funds, 100% of the cost of the fuel consumed in the operation of the taxicabs they drove for the defendant. That fuel was essential for the operation of defendant's taxi cab business and plaintiffs could not work for defendants unless they agreed to pay for that fuel from their personal funds. By requiring the plaintiff and the class members to personally pay for the cost of such fuel the defendant was reducing the wages it actually paid the plaintiff and the class members to an amount below the minimum hourly wage required by Article 15, Section 16, of the Nevada Constitution. That was because after deducting from the "on the payroll records" wages paid by the defendant to the plaintiff and the class members the cost of the taxi cab fuel they were forced by the defendant to pay, the resulting "true" wage paid to such persons by the defendant was below the minimum hourly wage required by Article 15, Section 16, of the Nevada Constitution. Defendant willfully and maliciously engaged in this conduct to make it appear to any otherwise uninformed person who

was examining its payroll records that it was paying the minimum wage required by Article 15, Section 16, of the Nevada Constitution when it was not. Defendant instituted this policy specifically to deceive certain government agencies, including but not necessarily limited to, the United States Department of Labor which had previously found the defendant in violation of the minimum wage law enforced by such agency. Such conduct by the defendant also resulted in the defendant issuing knowingly false and inaccurate statements of the plaintiff's and the class members' income to the United States Internal Revenue Service and the Social Security Administration, such statements inflating and exaggerating the actual income earned by such persons and resulting in them being required to pay additional taxes that they did not actually owe.

17. Defendant engaged in the acts and/or omissions detailed in paragraphs 15 and 16 in an intentional scheme to maliciously, oppressively and fraudulently deprive its taxi driver employees of the hourly minimum wages that were guaranteed to those employees by Article 15, Section 16, of the Nevada Constitution. Defendant so acted in the hope that by the passage of time whatever rights such taxi driver employees had to such minimum hourly wages owed to them by the defendant would expire, in whole or in part, by operation of law. Defendant so acted consciously, willfully, and intentionally to deprive such taxi driver employees of any knowledge that they might be entitled to such minimum hourly wages, despite the defendant's obligation under Article 15, Section 16, of the Nevada Constitution to advise such taxi driver employees of their right to those minimum hourly wages. Defendant's malicious, oppressive and fraudulent conduct is also demonstrated by its failure to make any allowance to pay such minimum hourly wages if they were found to be due, such as through an escrow account, while seeking any judicial determination of its obligation to make those payments.

18. The named plaintiff seeks all relief available to him and the alleged class

under Nevada's Constitution, Article 15, Section 16 including appropriate injunctive and equitable relief to make the defendant cease its violations of Nevada's Constitution and a suitable award of punitive damages.

19. The named plaintiff on behalf of himself and the proposed plaintiff class members, seeks, on this First Claim for Relief, a judgment against the defendant for minimum wages owed since November 28, 2006 and continuing into the future, such sums to be determined based upon an accounting of the hours worked by, and wages actually paid to, the plaintiff and the class members along with an award of damages for the increased, and false, tax liability the defendant has caused the plaintiff and the class members to sustain, a suitable injunction and other equitable relief barring the defendant from continuing to violate Nevada's Constitution and requiring the defendant to remedy at its expense the injury to the class members it has caused by falsely reporting to the United States Internal Revenue Service and the Social Security Administration the income of the class members, a suitable award of punitive damages, and an award of attorneys' fees, interest and costs, as provided for by Nevada's Constitution and other applicable laws.

AS AND FOR A SECOND CLAIM FOR RELIEF PURSUANT TO NEVADA REVISED STATUTES § 608.040 ON BEHALF OF THE NAMED PLAINTIFF AND THE PUTATIVE CLASS

20. Plaintiff repeats and reiterates each and every allegation previously made herein.

21. The named plaintiff brings this Second Claim for Relief against the defendant pursuant to Nevada Revised Statutes § 608.040 on behalf of himself and the alleged class of all similarly situated employees of the defendant.

22. The named plaintiff has been separated from his employment with the defendant and at the time of such separation was owed unpaid wages by the defendant.

23. The defendant has failed and refused to pay the named plaintiff and numerous members of the putative plaintiff class who are the defendant's former employees their earned but unpaid wages, such conduct by such defendant constituting

a violation of Nevada Revised Statutes § 608.020, or § 608.030 and giving such named plaintiff and similarly situated members of the putative class of plaintiffs a claim against the defendant for a continuation after the termination of their employment with the defendant of the normal daily wages defendant would pay them, until such earned but unpaid wages are actually paid or for 30 days, whichever is less, pursuant to Nevada Revised Statutes § 608.040.

24. As a result of the foregoing, the named plaintiff seeks on behalf of himself and the similarly situated putative plaintiff class members a judgment against the defendant for the wages owed to him and such class members as prescribed by Nevada Revised Statutes § 608.040, to wit, for a sum equal to up to thirty days wages, along with interest, costs and attorneys' fees.

WHEREFORE, plaintiff demands the relief on each cause of action as alleged aforesaid.

Plaintiff demands a trial by jury on all issues so triable.

Dated this 26th day of January, 2015.

Leon Greenberg Professional Corporation

By: */s/ Leon Greenberg*

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EXHIBIT "H"

date	hours	Defendant's Payroll Wages	Gas cost from trip sheet	True wage	True Hourly Wage for Week
9/23/2012	12	122.6	28.36	94.15	
9/24/2012	12	125.35	28.45	96.41	
9/25/2012	12	121.3	28.94	96.52	
9/26/2012	11	88.6	24.78	65.76	
9/28/2012	12	89.4	22.84	60.69	
9/29/2012	12	84.25	28.71	84.25	
				497.78	7.010985915

APPENDIX 7

APPENDIX 7

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CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

LAKSIRI PERERA, Individually and on behalf of others similarly situated, Plaintiff, vs. WESTERN CAB COMPANY, Defendant.	Case No.: A-14-707425-C Dept.: XIV PLAINTIFF'S SUPPLEMENT TO HIS RESPONSE TO DEFENDANT'S MOTION TO DISMISS AND COUNTER-MOTION TO AMEND THE COMPLAINT AND CONDUCT DISCOVERY UNDER NRCP RULE 56(f). Day of Hearing: January 18, 2015 Time of Hearing: 9:30 a.m.

Plaintiff, by and through their attorney, Leon Greenberg Professional Corporation, submits this supplement his response to defendant's motion to dismiss and in support of plaintiff's counter-motion to amend the complaint and to conduct discovery under NRCP Rule 56(f). The purpose of this supplement is to advise the Court of a newly issued decision and provide additional relevant declarations. Plaintiff also seeks leave to serve and file a modified form of the proposed Second Amended Complaint submitted with plaintiff's original response and counter-motion.

MEMORANDUM OF POINTS AND AUTHORITIES

THIS SUPPLEMENT IS SUBMITTED ONLY ONE DAY AFTER THE DEADLINE SET FOR PLAINTIFF'S RESPONSE

This supplement is submitted on January 27, 2015, which is one day after

the January 26, 2015 deadline previously set for the submission of plaintiff's response to defendant's motion. Defendant's counsel has not responded to an email inquiry about whether they will consent to any supplementation of the plaintiff's original response and counter-motion which was filed on January 26, 2015. It is submitted that, given the issuance just today, January 27, 2015, of an important Ninth Circuit Court of Appeals decision, and plaintiff's counsel's retention, again just today, by a new individual class member/named plaintiff, such supplementation is proper.

SUPPLEMENTATION SOUGHT

A. An additional former employee of defendant seeks to join this case as a named plaintiff and a modified Second Amended Complaint is proposed.

Today, January 27, 2015, Irshad Ahmed, retained plaintiff's counsel. Mr. Ahmed is a former taxi driver of defendant who was not paid proper minimum wages and seeks to be appointed as a named plaintiff to represent the putative class of defendant's employees. His declaration is annexed as Ex. "A." Accordingly, the plaintiff's original counter motion to file and serve a second amended complaint should be supplemented and modified to grant leave to do so in the form annexed hereto as Ex. "B."

B. On January 27, 2015 the United States Court of Appeals for the Ninth Circuit rejected as "silly" and baseless the claim raised by defendant in this case that the *Thomas* Opinion has no application to conduct taking place before its issuance on June 26, 2014.

Annexed as Ex. "C" is a copy of the United States Court of Appeals for the Ninth Circuit's decision in *Greene v. Executive Coach & Carriage*, No. 12-17306 (Argued January 14, 2015, decision issued January 27, 2015). *Greene* involved the exact issue raised in defendant's motion to dismiss: Whether the Nevada Supreme Court's opinion in this case applied to conduct prior to its publication on June 26, 2014. It absolutely rejected that baseless argument raised in this case by defendant:

> The district court erred in dismissing Greene's claim under the Nevada Minimum Wage Amendment, embodied in Article 15, § 16 of the Nevada Constitution. *See Thomas v. Nevada Yellow Cab Corp.*, 327 P.3d 518, 522 (Nev. 2014) (holding that the Nevada Minimum Wage Amendment, which contains no taxicab and limousine exception, "supersedes and supplants the taxicab driver exception set out in [Nevada Revised Statutes §] 608.250(2)"). Because the repeal of § 608.250(2) occurred in 2006 when the amendment was ratified, we reject Executive Coach and Carriage's ("Executive") retroactivity argument. Greene does not allege that he is owed wages for hours worked prior to 2006. We therefore reverse the district court's dismissal of the minimum wage claim.
> Ex. "A"., p. 2, ¶ 1.

In respect to the post-opinion order issued by the Nevada Supreme Court in *Thomas*, declining to revise the "supercedes" and "supplants" (present tense) language of the *Thomas* opinion, the Ninth Circuit Court of Appeals, at oral argument, found the same to be irrelevant. In its colloquy with counsel for Executive Coach, who insisted that such post-opinion order indicated that the opinion was intended to have only "future conduct" application, such court stated the following (transcribed from the video of such argument online at http://www.ca9.uscourts.gov/media/view_video.php?pk_vid=0000006947):

> Starting at time count 10:54:
>
> Mr. Lovato (counsel for Executive Coach): The Amendment did not repeal any law. It was the Nevada Supreme Court in *Thomas* that implied the repeal of the law.
>
> Justice Friedland: Well, the Amendment was passed in 2006, correct?
>
> Mr. Lovato: It was passed in 2006.
>
> Justice Friedland: And so you're saying it didn't actually do anything in 2006...it didn't do anything until now?

Mr. Lovato: Well it did what it says. It can only be interpreted by the public for what it actually states. There's no question that it does not expressly repeal any other laws, and it makes no reference to any other laws.

Justice Friedland: But, the Nevada Supreme Court has now said that it did, and you're saying it didn't do it in 2006? There was just, like, this vacuum for eight years?

Mr. Lovato: The Nevada Supreme Court has not held that the Minimum Wage Amendment effectuated a repeal in 2006, in fact it said to the contrary where it used present tense language and...

Justice Friedland: But they're just interpreting the law in the present tense, saying this is what the law means, right?

Mr. Lovato: But, yeah, I think we can take the Nevada Supreme Court for what its saying when the issue is pointedly raised by way of a motion before it [referring to the post-opinion motion and resulting order at Ex. 3 of defendants' moving papers], requesting that [present tense] language be changed so that it is clearly retroactive.

Justice Friedland: But, maybe that's because it's so silly to think that when you say that this is what the law means it doesn't need to be changed because obviously it's interpreting what the law means.

Ending count time: 12:09

As Justice Friedland astutely observed, the Nevada Supreme Court's post-opinion order was, as stated in plaintiffs' memorandum already submitted to the

Court, refusing to dignify the "silly" argument now made by defendant about the use of "supercedes" and "supplants" and not "superceded" and "supplanted." It declined to amend that language on that basis, not because it was confirming such "silly" and absurd argument about its opinion having only a "future conduct" application.

C. Although unnecessary, plaintiff's counsel now submits a formal declaration detailing the discovery sought in connection with their counter-motion under NRCP Rule 56(f).

Annexed as Exhibit "D" is a declaration from Leon Greenberg, attorney for plaintiff, detailing some of the various discovery that is sought and that provides the basis for the plaintiff's NRCP Rule 56(f) motion. It is submitted that such declaration is unnecessary, as the plaintiff has had *no* opportunity yet to conduct *any* discovery in this case. Such needed discovery is also discussed in the plaintiff's already submitted response. Nonetheless, it is possible defendant may argue that a strict "technical" compliance with NRCP Rule 56(f) is required by setting forth the discovery sought in an affidavit (declaration) form. Accordingly, that declaration is now submitted herewith.

CONCLUSION

Wherefore, for all the foregoing reasons, the defendant's motion should be denied in its entirety and plaintiff's counter-motion granted it its entirety.

Dated: January 27, 2015

Respectfully submitted,

/s/ Leon Greenberg
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(702) 383-6085
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned certifies that on January 27, 2015, she served the within:

PLAINTIFF'S SUPPLEMENT TO HIS RESPONSE TO DEFENDANT'S MOTION TO DISMISS AND COUNTER-MOTION TO AMEND THE COMPLAINT AND CONDUCT DISCOVERY UNDER NRCP RULE 56(f).

by court electronic service:

TO:
Malani Kotchka
HEJMANOWSKI & MCCREA LLC
520 S. 4th St., Suite 320
Las Vegas, NV 89101

/s/ Dana Sniegocki
Dana Sniegocki

EXHIBIT "A"

DECL
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DISTRICT COURT

CLARK COUNTY, NEVADA

LAKSIRI PERERA, Individually and on behalf of others similarly situated, Plaintiff, vs. WESTERN CAB COMPANY, Defendant.	Case No.: A-14-707425-C Dept.: V **DECLARATION OF IRSHAD AHMED**

Irshad Ahmed hereby affirms and declares under penalty of perjury the following:

1. I am a former taxicab driver for the defendant, Western Cab Company. I am offering this declaration in support of the plaintiff's motion to amend the complaint to add me as a named plaintiff and to explain the nature of my work for the defendant.

2. I was employed by Western Cab Company for more than one year, until approximately July of 2013 when my employment ended.

3. Taxicab drivers did not receive an "hourly wage" from defendant at any time during the time I was employed. My method of compensation as a taxicab driver for defendant consisted of a 50% "split" of the fares I collected each day, minus certain

deductions known as "trip charges." Often, that commission split would result in my receiving less than the required minimum wage of $8.25 per hour for each hour I worked. During my entire period of employment, defendant never furnished me with any written document stating I was entitled to any Nevada mandated minimum hourly wage for my work for defendant. Nor did defendant ever orally advise me that I was entitled to any Nevada mandated minimum hourly wage.

4. Myself and all of defendant's taxicab drivers were required to work a 12 shift. During most of my employment with defendant, I was required to work (7) days per week. Towards the end of my employment, I would sometimes only work (6) days per week.

5. Throughout the entirety of my 12 hour shift, I was never allowed to be "off duty" and was instead required to work a continuous shift. By that I mean, I remained "on call" throughout the entirety of my shift and remained eligible to pick up a fare should one be assigned to me. The only regular "break time" I had throughout my 12 hour shift was for a few minutes to use the restroom or to pick up fast food. I always ate my food in my cab while waiting for a fare, and I did not turn off my radio (which dispatch used to get a hold of taxicab drivers) at any time. There were many occasions during which I was sitting in my cab eating my food when I was required to stop eating and pick up a fare that was assigned to me by dispatch.

6. During the entire time I was employed by the defendant, defendant mandated that all taxicab drivers purchase and pay for gasoline from their own personal funds for use in the taxicab. At no point did Western Cab Company pay for the gasoline, or reimburse taxicab drivers for the cost of gasoline. All drivers were required to return the taxicabs back to defendant's yard with a full tank of gas that was purchased from the taxicab drivers' own personal funds.

7. I understand that this case was commenced by the plaintiff as a class action for the purpose of collecting unpaid minimum wages owed to all of the taxicab drivers employed by the defendant who did not receive at least the constitutionally required

minimum wage for each hour they worked. I understand that if this case is certified as a class action, and I am appointed as a representative plaintiff for the class, I will have a responsibility to take action in this case that is in the best interest of all the class members, meaning all of the taxicab drivers who are part of the class. I cannot act only in what I believe is my best interest. I understand that responsibility and am comfortable performing that duty.

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

Irshad Ahmed

Jan 27th 2015
Date

EXHIBIT "B"

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Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

LAKSIRI PERERA and IRSHAD AHMED, Individually and on behalf of others similarly situated, Plaintiffs, vs. WESTERN CAB COMPANY, Defendant.	Case No.: A-14-707425-C Dept.: V **PROPOSED SECOND AMENDED COMPLAINT** **ARBITRATION EXEMPTION CLAIMED BECAUSE THIS IS A CLASS ACTION CASE**

LAKSIRI PERERA and IRSHAD AHMED, individually and on behalf of others similarly situated, by and through their attorney, Leon Greenberg Professional Corporation, as and for a Second Amended Complaint against the defendant, state and allege, as follows:

JURISDICTION, PARTIES AND PRELIMINARY STATEMENT

1. The plaintiff, LAKSIRI PERERA, is a resident of Clark County in the State of Nevada and is a former employee of the defendant. The plaintiff, IRSHAD AHMED, (collectively the "individual plaintiffs" or the "named plaintiffs") is a resident of Clark County in the State of Nevada and is a former employee of the defendant.

2. The defendant, WESTERN CAB COMPANY, (hereinafter referred to as "Western Cab" or "defendant") is a corporation existing and established pursuant to the laws of the State of Nevada with its principal place of business in the County of Clark, State of Nevada and conducts business in Nevada.

CLASS ACTION ALLEGATIONS

3. The plaintiffs bring this action as a class action pursuant to Nev. R. Civ. P. §23 on behalf of themselves and a class of all similarly situated persons employed by the defendant in the State of Nevada.

4. The class of similarly situated persons consists of all persons employed by defendant in the State of Nevada during the applicable statute of limitations periods prior to the filing of this Complaint continuing until date of judgment, such persons being employed as taxi cab drivers (hereinafter referred to as "cab drivers" or "drivers") such employment involving the driving of taxi cabs for the defendant in the State of Nevada.

5. The common circumstance of the cab drivers giving rise to this suit is that while they were employed by defendant they were not paid the minimum wage required by Nevada's Constitution, Article 15, Section 16 for many or most of the days that they worked in that their hourly compensation, when calculated pursuant to the requirements of said Nevada Constitutional Provision, did not equal at least the minimum hourly wage provided for therein.

6. The named plaintiffs are informed and believe, and based thereon allege that there are at least 100 putative class action members. The actual number of class members is readily ascertainable by a review of the defendant's records through appropriate discovery.

7. There is a well-defined community of interest in the questions of law and fact affecting the class as a whole.

8. Proof of a common or single set of facts will establish the right of each member of the class to recover. These common questions of law and fact predominate

over questions that affect only individual class members. The individual plaintiff's claims are typical of those of the class.

9. A class action is superior to other available methods for the fair and efficient adjudication of the controversy. Due to the typicality of the class members' claims, the interests of judicial economy will be best served by adjudication of this lawsuit as a class action. This type of case is uniquely well-suited for class treatment since the employer's practices were uniform and the burden is on the employer to establish that its method for compensating the class members complies with the requirements of Nevada law.

10. The individual plaintiffs will fairly and adequately represent the interests of the class and have no interests that conflict with or are antagonistic to the interests of the class and have retained to represent them competent counsel experienced in the prosecution of class action cases and will thus be able to appropriately prosecute this case on behalf of the class.

11. The individual plaintiffs and their counsel are aware of their fiduciary responsibilities to the members of the proposed class and are determined to diligently discharge those duties by vigorously seeking the maximum possible recovery for all members of the proposed class.

12. There is no plain, speedy, or adequate remedy other than by maintenance of this class action. The prosecution of individual remedies by members of the class will tend to establish inconsistent standards of conduct for the defendant and result in the impairment of class members' rights and the disposition of their interests through actions to which they were not parties. In addition, the class members' individual claims are small in amount and they have no substantial ability to vindicate their rights, and secure the assistance of competent counsel to do so, except by the prosecution of a class action case.

AS AND FOR A FIRST CLAIM FOR RELIEF ON BEHALF OF THE NAMED PLAINTIFF AND ALL PERSONS SIMILARLY SITUATED PURSUANT TO NEVADA'S CONSTITUTION

13. The named plaintiffs repeat all of the allegations previously made and bring this First Claim for Relief pursuant to Article 15, Section 16, of the Nevada Constitution.

14. Pursuant to Article 15, Section 16, of the Nevada Constitution the named plaintiffs and the class members were entitled to an hourly minimum wage for every hour that they worked for defendant and the named plaintiffs and the class members were often not paid such required minimum wages.

15. The defendant's violation of Article 15, Section 16, of the Nevada Constitution involved malicious and/or fraudulent and/or oppressive conduct by the defendant sufficient to warrant an award of punitive damages for the following, amongst other reasons:

(a) Defendant despite having, and being aware of, an express obligation under Article 15, Section 16, of the Nevada Constitution, such obligation commencing no later than July 1, 2007, to advise the plaintiff and the class members, in writing, of their entitlement to the minimum hourly wage specified in such constitutional provision, failed to provide such written advisement;

(b) Defendant was aware that the highest law enforcement officer of the State of Nevada, the Nevada Attorney General, had issued a public opinion in 2005 that Article 15, Section 16, of the Nevada Constitution, upon its effective date, would require defendant and other employers of taxi cab drivers to compensate such employees with the minimum hourly wage specified in such constitutional provision. Defendant consciously elected to ignore that opinion and not pay the minimum wage required by Article 15, Section 16, of the Nevada Constitution to its taxi driver

. employees in the hope that it would be successful, if legal action was brought against it, in avoiding paying some or all of such minimum wages;

(c) Defendant, to the extent it believed it had a colorable basis to legitimately contest the applicability of Article 15, Section 16, of the Nevada Constitution to its taxi driver employees, made no effort to seek any judicial declaration of its obligation, or lack of obligation, under such constitutional provision and to pay into an escrow fund any amounts it disputed were so owed under that constitutional provision until such a final judicial determination was made.

16. Defendant also engaged in the following malicious, illegal and bad faith conduct which was intended to conceal its violations Article 15, Section 16, of the Nevada Constitution and caused additional injury to the plaintiffs for which they seek redress:

In or about January of 2012, defendant started requiring the plaintiffs and the class members to pay from such plaintiffs' and class members' own, personal funds, 100% of the cost of the fuel consumed in the operation of the taxicabs they drove for the defendant. That fuel was essential for the operation of defendant's taxi cab business and plaintiffs could not work for defendants unless they agreed to pay for that fuel from their personal funds. By requiring the plaintiff and the class members to personally pay for the cost of such fuel the defendant was reducing the wages it actually paid the plaintiff and the class members to an amount below the minimum hourly wage required by Article 15, Section 16, of the Nevada Constitution. That was because after deducting from the "on the payroll records" wages paid by the defendant to the plaintiffs and the class members the cost of the taxi cab fuel they were forced by the defendant to

pay, the resulting "true" wage paid to such persons by the defendant was below the minimum hourly wage required by Article 15, Section 16, of the Nevada Constitution. Defendant willfully and maliciously engaged in this conduct to make it appear to any otherwise uninformed person who was examining its payroll records that it was paying the minimum wage required by Article 15, Section 16, of the Nevada Constitution when it was not. Defendant instituted this policy specifically to deceive certain government agencies, including but not necessarily limited to, the United States Department of Labor which had previously found the defendant in violation of the minimum wage law enforced by such agency. Such conduct by the defendant also resulted in the defendant issuing knowingly false and inaccurate statements of the plaintiff's and the class members' income to the United States Internal Revenue Service and the Social Security Administration, such statements inflating and exaggerating the actual income earned by such persons and resulting in them being required to pay additional taxes that they did not actually owe.

17. Defendant engaged in the acts and/or omissions detailed in paragraphs 15 and 16 in an intentional scheme to maliciously, oppressively and fraudulently deprive its taxi driver employees of the hourly minimum wages that were guaranteed to those employees by Article 15, Section 16, of the Nevada Constitution. Defendant so acted in the hope that by the passage of time whatever rights such taxi driver employees had to such minimum hourly wages owed to them by the defendant would expire, in whole or in part, by operation of law. Defendant so acted consciously, willfully, and intentionally to deprive such taxi driver employees of any knowledge that they might be entitled to such minimum hourly wages, despite the defendant's obligation under Article 15, Section 16, of the Nevada Constitution to advise such taxi driver employees of their right to those minimum hourly wages. Defendant's malicious, oppressive and fraudulent conduct is also demonstrated by its failure to make any

allowance to pay such minimum hourly wages if they were found to be due, such as through an escrow account, while seeking any judicial determination of its obligation to make those payments.

18. The named plaintiffs seek all relief available to them and the alleged class under Nevada's Constitution, Article 15, Section 16 including appropriate injunctive and equitable relief to make the defendant cease its violations of Nevada's Constitution and a suitable award of punitive damages.

19. The named plaintiffs on behalf of themselves and the proposed plaintiff class members, seek, on this First Claim for Relief, a judgment against the defendant for minimum wages owed since November 28, 2006 and continuing into the future, such sums to be determined based upon an accounting of the hours worked by, and wages actually paid to, the plaintiff and the class members along with an award of damages for the increased, and false, tax liability the defendant has caused the plaintiffs and the class members to sustain, a suitable injunction and other equitable relief barring the defendant from continuing to violate Nevada's Constitution and requiring the defendant to remedy at its expense the injury to the class members it has caused by falsely reporting to the United States Internal Revenue Service and the Social Security Administration the income of the class members, a suitable award of punitive damages, and an award of attorneys' fees, interest and costs, as provided for by Nevada's Constitution and other applicable laws.

AS AND FOR A SECOND CLAIM FOR RELIEF PURSUANT TO NEVADA REVISED STATUTES § 608.040 ON BEHALF OF THE NAMED PLAINTIFF AND THE PUTATIVE CLASS

20. Plaintiffs repeat and reiterate each and every allegation previously made herein.

21. The named plaintiffs bring this Second Claim for Relief against the defendant pursuant to Nevada Revised Statutes § 608.040 on behalf of themselves and the alleged class of all similarly situated employees of the defendant.

22. The named plaintiffs have been separated from their employment with the

defendant and at the time of such separation were owed unpaid wages by the defendant.

23. The defendant has failed and refused to pay the named plaintiffs and numerous members of the putative plaintiff class who are the defendant's former employees their earned but unpaid wages, such conduct by such defendant constituting a violation of Nevada Revised Statutes § 608.020, or § 608.030 and giving such named plaintiffs and similarly situated members of the putative class of plaintiffs a claim against the defendant for a continuation after the termination of their employment with the defendant of the normal daily wages defendant would pay them, until such earned but unpaid wages are actually paid or for 30 days, whichever is less, pursuant to Nevada Revised Statutes § 608.040.

24. As a result of the foregoing, the named plaintiffs seek, on behalf of themselves and the similarly situated putative plaintiff class members, a judgment against the defendant for the wages owed to them and such class members as prescribed by Nevada Revised Statutes § 608.040, to wit, for a sum equal to up to thirty days wages, along with interest, costs and attorneys' fees.

WHEREFORE, plaintiffs demand the relief on each cause of action as alleged aforesaid.

Plaintiffs demand a trial by jury on all issues so triable.

Dated this 27th day of January, 2015.

Leon Greenberg Professional Corporation

By: */s/ Leon Greenberg*

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EXHIBIT "C"

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JAN 27 2015

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ROBERT G. GREENE, AKA Robert A. Greene, Plaintiff - Appellant, v. EXECUTIVE COACH & CARRIAGE, a Nevada corporation, Defendant - Appellee.	No. 12-17306 D.C. No. 2:09-cv-00466-GMN-RJJ MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Gloria M. Navarro, Chief District Judge, Presiding

Argued and Submitted January 14, 2015
San Francisco California

Before: M. SMITH, NGUYEN, and FRIEDLAND, Circuit Judges.

Robert Greene ("Greene") appeals from the dismissal of his minimum wage claim, entry of summary judgment on another wage-and-hour claim, and denial of leave to amend his complaint. We have jurisdiction under 28 U.S.C. §1291. We

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

review the district court's interpretation of state law de novo, *Coughlin v. Tailhook Ass'n*, 112 F.3d 1052, 1055 (9th Cir. 1997), and its denial of leave to amend for abuse of discretion, *Ventress v. Japan Airlines*, 603 F.3d 676, 680 (9th Cir. 2010). We reverse and remand.

1. The district court erred in dismissing Greene's claim under the Nevada Minimum Wage Amendment, embodied in Article 15, § 16 of the Nevada Constitution. *See Thomas v. Nevada Yellow Cab Corp.*, 327 P.3d 518, 522 (Nev. 2014) (holding that the Nevada Minimum Wage Amendment, which contains no taxicab and limousine exception, "supersedes and supplants the taxicab driver exception set out in [Nevada Revised Statutes §] 608.250(2)"). Because the repeal of § 608.250(2) occurred in 2006 when the amendment was ratified, we reject Executive Coach and Carriage's ("Executive") retroactivity argument. Greene does not allege that he is owed wages for hours worked prior to 2006. We therefore reverse the district court's dismissal of the minimum wage claim.

2. The district court erred in granting summary judgment on Greene's claim under Nevada Revised Statute § 608.016. First, we assume, without deciding, that there is a private right of action to bring this claim, because Executive does not argue otherwise. *See Cal. Alliance of Child & Family Servs. v. Allenby*, 589 F.3d 1017, 1020 n.5 (9th Cir. 2009) (holding that because the

existence of a private right of action is not jurisdictional, the issue of whether a private right of action exists may be deemed waived if not raised). Second, the district court erred in finding that § 608.016 does not apply to commission-based pay arrangements. Regardless of how § 608.012 defines wages, they still must be paid "for each hour the employee works." Nev. Rev. Stat. § 608.016. We therefore reverse the district court's entry of judgment on this claim.

3. The court abused its discretion in denying Greene's motion for leave to amend the complaint. It had already found good cause and granted Greene leave to amend, but the court's order, issued on June 21, 2011, set the deadline for amendment on a date that had already passed—June 15, 2011. That is a deadline with which Greene of course *could not* have complied. Nevertheless, Greene attempted to amend promptly on June 21, 2011, the date the ruling was issued, but his request was denied. We reverse, and on remand Greene will be allowed to file an amended complaint.[1] *See United States v. Henderson*, 241 F.3d 638, 646 (9th Cir. 2001), *as amended* (holding that it is an abuse of discretion to "rule[] in an

[1] We note, however, that the proposed amended complaint would result in an overlap between the instant action and *Schemkes v. Jacob Transp. Servs., LLC*, No. 2:11-cv-00355-JAD-NJK (D. Nev.). Greene may not maintain identical claims against the same defendant in separate lawsuits, *see Adams v. Cal. Dep't Health Servs.*, 487 F.3d 684, 688 (9th Cir. 2007), but of course how these cases are managed—if Greene continues to maintain his Fair Labor Standards Act claims in both cases—is best left to the district court.

irrational manner"). For the same reason, we reverse the district court's imposition of sanctions on Greene, which was predicated on the conclusion that Greene's effort to amend his complaint was frivolous.

REVERSED AND REMANDED.

EXHIBIT "D"

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DISTRICT COURT

CLARK COUNTY, NEVADA

LAKSIRI PERERA, Individually and on behalf of others similarly situated, Plaintiff, vs. WESTERN CAB COMPANY, Defendant.	Case No.: A-14-707425-C Dept.: V **DECLARATION OF LEON GREENBERG, ESQ.**

Leon Greenberg, an attorney duly licensed to practice law in the State of Nevada, hereby affirms and declares under penalty of perjury the following:

1. I am the attorney for the plaintiff in this case.

2. I offer this declaration to set forth the status of the discovery in this case and what discovery is sought that provides the basis for the plaintiff's NRCP Rule 56(f) counter-motion filed on January 26, 2015.

3. In respect to the status of discovery in this case, no discovery has been conducted. Plaintiff has had no opportunity to conduct any discovery as defendant has not yet filed an answer to the plaintiff's complaint and instead has filed a pre-answer motion to dismiss. Defendant also has not agreed to voluntarily provide any

discovery.

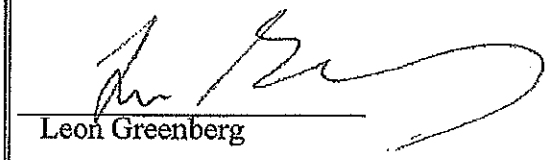
3. In respect to the discovery sought under NRCP Rule 56(f) that relates to the individual plaintiff's claim, such discovery would include documents on the health insurance benefits provided to the plaintiff. That would include the amount that the plaintiff would have had to pay to secure health insurance for his spouse and children. Such discovery would also include all records and policies of the defendant on whether they required the plaintiff to personally pay for the gasoline consumed by defendant's taxi that the plaintiff drove. Such discovery would also include defendant's deposition testimony on the hours it required the plaintiff to work and how the plaintiff was compensated along with all records setting forth what the defendant paid the plaintiff and his hours of work for the defendant. None of such discovery has been provided and no opportunity has been afforded to the plaintiff to seek such discovery as defendant has yet to answer the plaintiff's complaint.

4. In respect to the discovery sought under NRCP Rule 56(f) that relates to whether this case is suitable for class certification, such discovery would include the discovery discussed in paragraph 3, above, for all of the defendant's taxi driver employees. Such discovery would also include the names and addresses of those other taxi driver employees as such persons are relevant witnesses and would be able to offer testimony on whether their circumstances are similar and thus merit class action certification. None of such discovery has been provided and no opportunity has been afforded to the plaintiff to seek such discovery as defendant has yet to answer the plaintiff's complaint.

4. In respect to the discovery sought under NRCP Rule 56(f) that relates to whether the statute of limitations should be tolled in this case, such discovery would include copies of all documents distributed to the plaintiff and the putative class members about their right to a minimum hourly wage. Such discovery would also concern why defendant failed to provide its drivers with any written notice of their rights to a minimum hourly wage and the advice, if any, sought by or given to the

defendant about their obligation to pay the minimum hourly wage to their taxi driver employees and notify such employees of that obligation. Such discovery would also include why defendant failed to seek any legal advice on whether it should provide its taxi driver employees with written notification of their right to a minimum hourly wage and the ramifications, if any, that defendant considered it would face by failing to do so. The foregoing discovery would be pursued both through one or more depositions and other discovery requests. None of such discovery has been provided and no opportunity has been afforded to the plaintiff to seek such discovery as defendant has yet to answer the plaintiff's complaint.

I have read the foregoing and affirm under penalty of perjury on this 27th day of January, 2015 that the same is true and correct.



Leon Greenberg

APPENDIX 5

APPENDIX 5

Electronically Filed
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DISTRICT COURT

CLARK COUNTY, NEVADA

LAKSIRI PERERA, Individually and on behalf of others similarly situated, Plaintiff, v. WESTERN CAB COMPANY, Defendants.	Case No.: A-14-707425-C Dept. No.: V **DEFENDANT'S MOTION TO DISMISS FIRST AMENDED COMPLAINT** Date of Hearing: Time of Hearing:

Pursuant to NRCP 12(b)(5), 23 and 56(b), defendant Western Cab Company ("Western Cab") moves this Court to dismiss plaintiff Laksiri Perera's ("Perera's") First Amended Complaint for failure to state a claim upon which relief can be granted, for decertification of the

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class and for summary judgment as a matter of law. This motion is based upon the First Amended Complaint and all exhibits attached hereto and incorporated herein.

Respectfully submitted,

LIONEL SAWYER & COLLINS

By: /s/ Malani L. Kotchka
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Attorneys for Defendant

NOTICE OF HEARING

TO: Plaintiff Laksiri Perera, and his attorney of record, Leon Greenberg.

PLEASE TAKE NOTICE that the hearing on **DEFENDANT'S MOTION TO DISMISS FIRST AMENDED COMPLAINT** will be brought before Department V of the Eighth Judicial District Court of the State of Nevada in and for the County of Clark, on the **16** day of **JANUARY**, 2015, at **9: 00AM** a.m./p.m.

Respectfully submitted,

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MEMORANDUM OF POINTS AND AUTHORITIES

I. First Amended Complaint

Western Cab's taxicab drivers' tip income has traditionally been far beyond minimum wage. Perera alleges that he is bringing this action as a class action pursuant to NRCP 23. First Amended Complaint, ¶3. He purports to represent the taxicab drivers of Western Cab who were allegedly not paid the minimum wage. First Amended Complaint, ¶¶ 4, 5. He alleges that a **single set of facts** will establish the right of each member of the class to recover. First Amended Complaint, ¶ 8 (emphasis added). He alleges that he, the individual plaintiff, has no interests which conflict with the interest of the class. First Amended Complaint, ¶ 10. Finally, Perera seeks a judgment for unpaid minimum wages and a 30-day penalty for those unpaid minimum wages at the time of his separation from employment. First Amended Complaint, ¶¶ 18, 22.

II. The Thomas v. Yellow Cab Decision

On June 26, 2014, the Nevada Supreme Court held in *Thomas v. Nevada Yellow Cab Corp.*, 130 Nev. Adv. Op. 52, 327 P.3d 518 (2014), that the minimum wage statutory exception for taxicab drivers provided in NRS 608.250(2) was repealed by the Minimum Wage Amendment set forth in Article 15, Section 16 of the Nevada Constitution. The Court concluded, "The text of the Minimum Wage Amendment, by enumerating specific exceptions that do not include taxicab drivers, supersedes and supplants the taxicab driver exception set out in NRS 608.250(2)." 327 P.3d at 522.

III. Prospective Application of Thomas

Leon Greenberg, appellants' counsel in *Thomas*, is also Perera's counsel. On October 14, 2014, Greenberg, on behalf of Thomas, filed the Appellants' Motion to Correct Opinion of June 26, 2014 and Stay Remittitur ("Motion"), requesting the Court to "remov[e] any present tense

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language that can be interpreted as directing such Opinion is only to be applied prospectively." Exhibit 1, p. 1. He argued:

> The relief requested is sought to conserve judicial resources and promptly secure for the appellants, and many thousands of other employees in the Nevada taxicab industry, the relief afforded to them by the Court's Opinion of June 26, 2014. Appellants' counsel is aware of **six other pending litigations** involving taxi driver plaintiffs seeking minimum hourly wages, including one currently on appeal to this Court, *Gilmore v. Desert Cab, Inc.*, No. 62905. *See,* Ex. "A" ¶ 1. This case, the *Gilmore* appeal, and all of those other cases, involve the identical issue resolved by this appeal, the entitlement of taxi drivers to the minimum hourly wage specified by Nevada's Constitution.

Exhibit 1, p. 2 (emphasis added). This case is one of the six cases Greenberg names in his Declaration. Exhibit 1, Exhibit "A", p. 1. Greenberg argued, "Despite the speciousness of any claim that the Court's Opinion of June 26, 2014 only has prospective application, it seems virtually certain that respondents in this case, and one or more defendants in the other taxi driver minimum wage cases, will insist on litigating that issue." Exhibit 1, p. 2.

Greenberg further argued:

> Respondents' opposition confirms that upon remittitur respondents will claim that this Court's Opinion of June 26, 2014 only governs respondents' conduct *after* that date . . . . Yet, unless addressed by a correction of the Court's Opinion, respondents will press such argument upon the district court and back upon this Court in a subsequent appeal. This Court, in the interests of judicial efficiency, should put an end to such dilatory litigation tactics by respondents by granting appellants' motion.

Exhibit 2, p. 1. On October 27, 2014, the Nevada Supreme Court denied Greenberg's Motion and said:

> This court issued an opinion in this matter on June 26, 2014. Appellants have filed a motion to correct the opinion by changing three words from present tense to past tense, and also request that this court stay issuance of the remittitur, which was due to issue October 20, 2014. Respondents have filed an opposition to the motion, and appellants have filed a reply. No good cause appearing, ***we deny the motion to the extent it requests changes to the wording of the opinion; the opinion shall stand as issued*** ....

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Exhibit 3 (emphasis added).

The Nevada Labor Commissioner "primarily handles wage and hour matters in private employment and on public works projects." Exhibit 7, p. 2. Until the *Thomas* decision, the Nevada Labor Commissioner, who is charged with resolving wage disputes (Exhibit 7), believed that the Minimum Wage Amendment did not trump the minimum wage exemptions in NRS 608.250(2). In NAC 608.115(2), the Labor Commissioner describes how an employer shall pay for time worked. However, the regulation specifically states, "This subsection does not apply to an employee who is exempt from the minimum wage requirement pursuant to NRS 608.250." Since the agency charged with enforcing Nevada's statutes on wages and hours did not believe the Minimum Wage Amendment trumped the exemption, taxicab companies should not have to pay Nevada's minimum wage to the drivers until *Thomas* was decided. *See* Exhibit 7.

Unless there is a clear intent to apply the law retroactively, the law operates prospectively. In *Cnty. of Clark v. Roosevelt Title Ins. Co.*, 80 Nev. 530, 535, 396 P.2d 844, 846 (1964), the Nevada Supreme Court said:

> . . . . nor can it be seriously questioned that, if given such retroactive effect it would create not only in this respondent but in all persons in the past history of the state whose rights to redeem land had vanished with the expiration of the period of the period of redemption, new rights of redemption. Nor is it possible to point out in the 1957 amendment any language that conclusively negatives the rule and presumption that statutes are to be construed as prospective only. Certainly nothing in the 1957 amendment contains any express words or any clear, distinct, necessary, plain or unmistakable implication that a retroactive effect was intended. Both from the point of view of disturbing the County's vested right in the land and from the point of view, on the other hand of reviving the respondent's vanished right of redemption, we are compelled to hold that the statute had no such retroactive effect.

In *Pressler v. City of Reno*, 118 Nev. 506, 50 P.3d 1096, 1099 (2002), the Nevada Supreme Court held that a city charter amendment which provided that city employees were at-will

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employees did not apply retroactively to a department head who previously had a constitutionally protected property interest to be terminated only for cause. The Court held that the Legislature intended that the city charter amendment have only prospective effect. *Id.* By denying Greenberg's request in *Thomas* to change the prospective language of the Court's Opinion, the Nevada Supreme Court has made it clear that its interpretation of the Minimum Wage Amendment has only prospective application. Until the interpretation, the Labor Commissioner and all employers in Nevada believed the exemptions in NRS 608.250 were still applicable.

The *Thomas* decision is a new constitutional principle. It is an interpretation of a Nevada constitutional amendment and an existing Nevada statute. In *Gosa v. Mayden*, 413 U.S. 665 (1973), the United States Supreme Court held:

> That recognition and effect are given to a theretofore unrecognized and uneffectuated constitutional principle does not, of course, automatically mandate retroactivity. In Williams v. United States, 401 U.S. 646, 651, 91 S. Ct. 1148, 1151, 28 L. Ed. 2d 388 (1971), Mr. Justice White made it clear, citing Linkletter v. Walker, 381 U.S. 618, 85 S. Ct. 1731, 14 L. Ed. 2d 601 (1965), that the Court has "firmly rejected the idea that all new interpretations of the Constitution must be considered always to have been the law and the prior constructions to the contrary must always be ignored."

Id. at 675. Here, since the agency charged with administering Nevada's wage and hour laws believed the statutory exemptions still applied despite the Constitutional Amendment, the *Thomas* decision should be applied prospectively.

In *Gosa,* the Court determined that it would not give retroactive application to a new constitutional principal that military tribunals generally are not to try servicemen for offenses which are not service connected. The Court concluded the reliance factor favored prospectivity. *Id.* at 682.

In *Vartelas v. Holder*, 132 S. Ct. 1479, 1486-87 (2012), the United States Supreme Court

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held that the retrospective application of the law would collide with the presumption against retroactivity, where such application would take away or impair vested rights acquired under existing laws, would create a new obligation, impose a new duty, or attach a new disability, in respect to transactions or considerations already past. The Nevada Supreme Court's *Thomas* decision created a new obligation and imposed a new duty on taxicab companies to pay the state minimum wage. If the decision is applied retroactively, it will create a new obligation in respect to transactions already past. Therefore, this Court should interpret the *Thomas* decision to operate prospectively only.

In *Colwell v. State*, 118 Nev. 807, 59 P.3d 463, 473 (2002), the Nevada Supreme Court held that the new constitutional rule of criminal procedure announced by the United States Supreme Court in *Ring* operated prospectively only. Similarly, the constitutional interpretation set forth in *Thomas* should operate prospectively only .

IV. Statute of Limitations

Perera first filed his complaint in this case on September 23, 2014. The Minimum Wage Amendment does not contain a statute of limitations. However, NRS 608.260 provides, "If any employer pays an employee a lesser amount than the minimum wage prescribed by regulation of the Labor Commissioner pursuant to the provisions of NRS 608.250, the employee may, at any time within 2 years, bring a civil action to recover the difference between the amount paid to the employee and the amount of the minimum wage." Thus, a two-year statute of limitations applies to Perera's claim.

In *Williams v. Claim Jumper Acquisition Co.*, Exhibit 4, Judge Tao held that when a plaintiff makes a claim for unpaid minimum wage, NRS 608.260 provides a two-year statute of limitations. Exhibit 4. Judge Tao said, "Thus, the legal standard that the plaintiff alleged was violated is a wage rate established by the Labor Commissioner, not Article XV Section 16 itself."

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Exhibit 4, p. 9. If a two-year statute of limitations is applied to Perera's minimum wage claim, he can seek unpaid minimum wages only from September 23, 2012 until he quit on October 16, 2012. Exhibit 5.

V. Perera's Hourly Wage Rate

In 2012 the minimum wage for Nevada employees to whom qualifying health benefits had been made available by the employer was $7.25 per hour. Exhibit 6. According to Perera's trip sheets which reflect the hours he worked and the non-tipped wages he received on a work week basis, Perera was always paid more than minimum wage. Exhibit 5. Perera started receiving health insurance from Western Cab on February 1, 2011. Western Cab paid the entire premium for Perera's coverage. Exhibit 5. Therefore, the minimum wage due him was $7.25 an hour. From September 23, 2012 through October 15, 2012, Perera was always paid a minimum hourly wage (which did not include tips) of amounts exceeding $7.25 an hour, the applicable minimum wage for this time period. Exhibits 5 and 6. Therefore, he fails to state a claim upon which relief can be granted.

Moreover, Perera filed a claim for wages with the Nevada Labor Commissioner. On November 13, 2012, the Labor Commissioner said, "it appears that you have been paid correctly." Exhibit 5. Perera's wage claim with the Labor Commissioner was closed on November 23, 2012. Exhibit 5.

VI. The Class Representative

NRCP 23(c)(1) provides, "As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained." NRCP 23 substantially mimics FRCP 23. Therefore, federal court interpretations of FRCP 23 are relevant to this Court's interpretation of NRCP 23. *Executive Management Ltd. v. Ticor Title Ins.*, 118 Nev. 46, 53, 38 P.3d 872, 876-77 (2002).

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In *Vinole v. Countrywide Home Loans, Inc.*, 571 F.3d 935, 937, 948 (9th Cir. 2009), the Ninth Circuit Court of Appeals held that the class action rule of FRCP 23 did not preclude the defendant from bringing a preemptive motion to deny certification before the plaintiffs had filed a motion for class certification. In *Vinole* the plaintiffs sought to represent a proposed class of current and former Countrywide employees who were employed as External Home Loan Consultants. They alleged that Countrywide misclassified the home loan consultants as exempt outside sales employees and as a result, Countrywide impermissibly failed to pay premium overtime and other wages. *Id.* at 937. The Ninth Circuit found that the district court had not abused its discretion by denying certification under FRCP 23 because individualized determinations of each employee's work had to be made. *Id.* at 947-48. Here, individual determinations of each taxicab driver's hourly wages would have to be made. Exhibit 5.

The adequacy of the class representative inquiry under NRCP 23(a)(4) serves to uncover conflicts of interest between named parties and the class they seek to represent. *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 625 (1997). The *Windsor* court held, "[a] class representative must be part of the class and 'possess the same interest and suffer the same injury' as the class members." *Id.* at 625-26. Here, if Perera does not have a minimum wage claim against Western Cab, he cannot be a class representative.

In *General Telephone Company of the Southwest v. Falcon*, 457 U.S. 147, 156 (1982), the United States Supreme Court held that a class representative must be part of the class and possess the same interest and suffer the same injury as the class members. The court said:

> Conceptually, there is a wide gap between (a) an individual's claim that he has been denied a promotion on discriminatory grounds, and his otherwise unsupported allegation that the company has a policy of discrimination, and (b) the existence of a class of persons to have suffered the same injury as that individual, such that the individual's claim and the class claims will share common questions of law or fact and that the individual's claim will be typical of the class claims. For respondent to bridge that gap, he

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> must prove much more than the validity of his own claim. Even though evidence that he was passed over for a promotion when several less deserving whites were advanced may support the conclusion that respondent was denied the promotion because of his national origin, such evidence would not necessarily justify the additional inferences (1) that this discriminatory treatment is typical of petitioner's promotion practices, (2) that petitioner's promotion practices are motivated by a policy of ethnic discrimination that pervades petitioner's Irving division, or (3) that this policy of ethnic discrimination is reflected in petitioner's other employment practices, such as hiring, in the same way it is manifested in the promotion practices. These additional inferences demonstrate the tenuous character of any presumption that the class claims are "fairly encompassed" within respondent's claim.

Id. at 157-58. Here, Perera cannot show that he has a minimum wage claim for the time period covered by the applicable statute of limitations. Furthermore, he cannot show the existence of a class of taxicab drivers at Western Cab who have not been paid the minimum wage. Western Cab's taxicab drivers work different hours and earn different amounts of wages. None earn the same hourly wage. Exhibit 5. Therefore, Perera cannot show that he would be an adequate class representative.

In *Shuette v. Beazer Homes Holdings Corp.*, 121 Nev. 837, 124 P.3d 530 (2005), three homeowners individually and as proposed class representatives filed a complaint against Beazer Homes alleging constructional defects to their homes. 124 P.3d at 534. Although the trial court certified the case as a class action, the Nevada Supreme Court reversed. The Court held, "Class action suits are designed to allow representatives of a numerous class of similarly situated people to sue on behalf of that class in order to obtain a judgment that will bind all." *Id.* at 537. The Court addressed the adequacy of the representative issue. Relying on the United States Supreme Court's *Windsor* decision, the Nevada Supreme Court held that class members must possess the same interest and suffer the same injury as other class members. *Id.* at 539. As a practical matter, single-family residence constructional defect cases will rarely be appropriate for class action treatment, said the Court. *Id.* at 542. Since Perera cannot show that he has a minimum

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wage claim for the time period covered by the applicable statute of limitations, he cannot be an adequate class representative.

VII. No Common Answers

Pursuant to NRCP 23(b), Perera must show that common questions of law or fact predominate over individual questions. Perera cannot satisfy the commonality issue. Each of the taxicab drivers were employed for different periods of time, worked different hours and earned a different hourly wage.

In *Wal-Mart Stores, Inc. v. Dukes*, ____ U.S. ____, 131 S.Ct. 2541 (2011), three female employees filed a class action Title VII lawsuit against Wal-Mart on behalf of themselves and about 1.5 million other female employees alleging that Wal-Mart's local managers exercised their discretion over pay and promotions disproportionately in favor of male employees. 131 S. Ct. at 2547. The Supreme Court found that the crux of the case was commonality. *Id.* at 2550. The Court said:

> Commonality requires the plaintiff to demonstrate that the class members "have suffered the same injury," . . . . This does not mean merely that they have all suffered a violation of the same provision of law. . . . Quite obviously, the mere claim by employees of the same company that they have suffered a Title VII injury, or even a disparate-impact Title VII injury, gives no cause to believe that all their claims can productively be litigated at once . . . . That common contention, moreover, must be of such a nature that it is capable of classwide resolution -- which means that **determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.**

Id. at 2551 (emphasis added). As the Court pointed out in its earlier *Falcon* decision:

> "What matters to class certification . . . is not the raising of common 'questions' -- even in droves -- but, rather the capacity of a classwide proceeding to generate common *answers* apt to drive the resolution of the litigation. Dissimilarities within the proposed class are what have the potential to impede the generation of common answers." Nagareda, *supra*, at 132.

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Id. at 2551 n, 5.

The Court found that the plaintiffs could not establish commonality:

> Because respondents provide no convincing proof of a companywide discriminatory pay and promotion policy, we have concluded that they have not established the existence of any common question.
>
> In sum, we agree with Chief Judge Kozinski that the members of the class:
>
> "held a multitude of different jobs, at different levels of Wal-Mart's hierarchy, for variable lengths of time, in 3,400 stores, sprinkled across 50 states, with a kaleidoscope of supervisors (male and female), subject to a variety of regional policies that all differed .... Some thrived while others did poorly. They have little in common but their sex and this lawsuit." 603 F.3d, at 652 (dissenting opinion).

Id. at 2556-57.

The *Dukes* court also held that at a minimum, claims for individualized relief like the backpay at issue in that case did not satisfy FRCP 23(b)(2). *Id.* at 2557. The court concluded, "Similarly, it does not authorize class certification when each class member would be entitled to an individualized award of monetary damages." *Id.* Here, any taxicab driver who was not paid minimum wage during a payroll period would be entitled to an individualized award of monetary damages. This case cannot be maintained as a class action for the recovery of minimum wage. The *Dukes* court found that Trial by Formula was not authorized by FRCP 23. The Court concluded that a class cannot be certified on the premise that Wal-Mart will not be entitled to litigate statutory defenses to individual claims. *Id.* at 2561.

The Nevada Supreme Court agrees. The inquiry of predominance is more demanding than the commonality inquiry and requires that "[t]he importance of common questions must predominate over the importance of questions peculiar to individual class members." *See Shuette*, 121 Nev. at 851, 124 P.3d 530, 540. Plaintiffs, a group of homeowners, filed a class

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action against a home builder alleging that foundations and concrete slabs in plaintiffs' development were damaged by expansive soils. 121 Nev. at 843, 124 P.3d 530, 535. The home builder objected to class action certification arguing, in part, that the additional, unrelated constructional defects were not common or typical to all residents. *Id.* The district court certified the class and the jury found in favor of the plaintiffs. *Id.*, at 845, 124 P.3d 530, 536.

On appeal, the Nevada Supreme Court found that class action certification was not appropriate. In so finding, the Court focused partly on the predominance prong of NRCP 23(b)(3):

> The homeowners' claims fail to satisfy the predominance prong of NRCP 23(b)(3) because the individual questions of cause and effect are more important than any common questions of exposure, and they cannot be resolved with generalized proof. As the United States Supreme Court has explained, a shared experience alone does not justify a class action. Instead, it must be adequately demonstrated that this exposure was similar, and caused similar effects, within the class.
>
> With regard to the alleged constructional defects for which the class was certified, the homeowners asserted that all of the houses suffered from exposure to improper design and soil preparation in light of the nature of the soils on which they were built. But they admit that the houses were constructed in different phases, under different plans, and with at least two separate slab designs, and they did not show that each of the houses suffered from the same design or constructional flaw or were affected by the expanding soils in the same way. Further, the record contains evidence indicating that the houses' underlying soils required different levels or types of preparation.

Id. at 545.

According to the Nevada Supreme Court:

> ....common questions predominate over individual questions if they significantly and directly impact each class member's effort to establish liability and entitlement to relief, and their resolution can be achieved through generalized proof.

124 P.3d at 540. The *Shuette* Court reversed the district court's judgment in favor of the

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plaintiffs and held that class action certification was not warranted. 124 P.3d at 545. Western Cab requests that this Court deny certification of the class because there is no common question or common answer involved in this case.

VIII. Conclusion

Western Cab requests that this Court apply the *Thomas v. Nevada Yellow Cab Corporation* decision prospectively from June 26, 2014, the date it was decided by the Nevada Supreme Court. If this Court applies the decision prospectively, then Perera fails to state a claim upon which relief can be granted. Perera last worked for Western Cab on October 15, 2012.

Alternatively, if this Court decides to apply the *Thomas* decision retroactively, then Western Cab requests that the Court hold that a two-year statute of limitations applies to Perera's minimum wage claim. NRS 608.260. Since Perera was always paid minimum wage from September 23, 2012 through October 15, 2012, the last day he worked for Western Cab, Perera fails to state a claim upon which relief can be granted.

Western Cab also requests that this Court deny class certification or decertify the class. First, Perera cannot be a class representative since he does not have a minimum wage claim against Western Cab. Second, Perera cannot show that any common questions of law or fact predominate over individual questions. All of Western Cab's drivers were employed for different periods of time, worked different hours and earned a different hourly wage. Therefore, this Court should deny certification of or decertify the class. Perera has failed to state a claim

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upon which relief can be granted and Western Cab is entitled to summary judgment as a matter of law.

Respectfully submitted,

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EXHIBIT 1

EXHIBIT 1

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Oct 14 2014 03:39 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

CHRISTOPHER THOMAS and CHRISTOPHER CRAIG, Individually and on behalf of others similarly situated, Appellants, vs. NEVADA YELLOW CAB CORPORATION, NEVADA CHECKER CAB CORPORATION, NEVADA STAR CAB CORPORATION, Respondents,	Sup. Ct. No. 61681 Dist. Ct No.:A-12-661726-C Dept. No. XXVIII

APPELLANTS' MOTION TO CORRECT OPINION OF JUNE 26, 2014 AND STAY REMITTITUR

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Attorney for Appellants

Docket 61681 Document 2014-34145

Appellants, Christopher Thomas and Christopher Craig, hereby file this motion seeking to correct this Court's Opinion of June 26, 2014, by removing any present tense language that can be interpreted as directing such Opinion is only to be applied prospectively.

NATURE OF RELIEF SOUGHT

The holding of the Court's Opinion of June 26, 2014 is not in dispute. What is sought by this motion is a correction to the present tense language of two sentences, and three words, of the Opinion which, if uncorrected, will be the subject of further litigation, and a further appeal to this Court, over whether such Opinion's application is only prospective. These two sentences, with the requested corrected language in brackets and removed words struck through, are set forth below:

> We hold that the district court erred because the text of the Minimum Wage Amendment, by clearly setting out some exceptions to the minimum wage law and not others, ~~supplants~~ [supplanted] the exceptions listed in NRS 608.250(2). Opinion, page 2; 327 P.3d at 520.

> The text of the Minimum Wage Amendment, by enumerating specific exceptions that do not include taxicab drivers, ~~supersedes~~ [superceded] and ~~supplants~~ [supplanted] the taxicab driver exception set out in NRS 608.250(2). Opinion, page 9; 327 P.3d at 522.

WHY THE RELIEF REQUESTED SHOULD BE GRANTED

The relief requested is sought to conserve judicial resources and promptly secure for the appellants, and many thousands of other employees in the Nevada taxicab industry, the relief afforded to them by the Court's Opinion of June 26, 2014. Appellants' counsel is aware of six other pending litigations involving taxi driver plaintiffs seeking minimum hourly wages, including one currently on appeal to this Court, *Gilmore v. Desert Cab, Inc.* No. 62905. *See*, Ex. "A" ¶ 1. This case, the *Gilmore* appeal, and all of those other cases, involve the identical issue resolved by this appeal, the entitlement of taxi drivers to the minimum hourly wage specified by Nevada's Constitution.

This litigation has been most vigorously contested, as evidenced by respondents' recently denied, and wholly specious, Petition for Rehearing. *See*, Order of September 24, 2014. Despite the speciousness of any claim that the Court's Opinion of June 26, 2014 only has prospective application, it seems virtually certain that respondents in this case, and one or more defendants in the other taxi driver minimum wage cases, will insist on litigating that issue. They will do so based upon the foregoing enumerated language. If that language is not modified as requested they will insist it establishes that, under the Court's June 26, 2014 Opinion, the Minimum Wage Amendment has not "superceded" and "supplanted" the exceptions set out in NRS 608.250(2) as of the Amendment's effective date but only "supercedes" and "supplants" them as of the date of such Opinion. *See*, Ex. "A" ¶ 2.

THE COURT SHOULD STAY REMITTITUR TO CORRECT ITS OPINION

Pursuant to NRAP Rule 41(a)(1) this Court is to issue remittitur of this case on October 20, 2014, unless it enlarges the time for it to do so by appropriate Order. It is submitted that the Court should suitably enlarge the time for its remittitur to issue so it can consider and rule upon this motion

before it relinquishes jurisdiction over this appeal.

Dated this 14th day of October, 2014.

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EXHIBIT "A"

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTOPHER THOMAS and CHRISTOPHER CRAIG, Individually and on behalf of others similarly situated, Appellants, vs. NEVADA YELLOW CAB CORPORATION, NEVADA CHECKER CAB CORPORATION, NEVADA STAR CAB CORPORATION, Respondents,	Sup. Ct. No. 61681 Dist. Ct No.:A-12-661726-C Dept. No. XXVIII Declaration

Leon Greenberg, an attorney duly licensed to practice law in the State of Nevada, hereby affirms, under penalty of perjury, that:

1. I am counsel for the appellants in this case. I am also counsel for the plaintiffs in the following six other cases that also involve claims for unpaid minimum hourly wages allegedly owed to taxi cab driver employees pursuant to the Nevada Constitution: *Murray v. A Cab Taxi Service LLC,* Eighth Judicial District Court, Case No. A-12-669926-C; *Herring v. Boulder Cab, Inc.*, Eighth Judicial District Court, Case No. A-13-691551-C; *Tesema v. Lucky Cab Co.*, Eighth Judicial District Court, Case No. A-12-660700-C; *Golden v. Sun Cab, Inc.*, Eighth Judicial District Court, Case No. A-13-678109-C; *Perera v. Western Cab Company*, Eighth Judicial District Court, Case No. A-14-707425-C and *Gilmore v. Desert Cab, Inc.*, appeal pending, Nevada Supreme Court No. 62905. In all of these cases, except *Perera* which has yet to be served,

defendants have asserted that taxi cab drivers are not subject to the minimum wage protections of Nevada's Constitution, an issue resolved by this appeal.

2. I have engaged in discussions about the Court's Opinion of June 26, 2014 with several of the counsel representing defendants in the cases enumerated in paragraph 1. Such counsel have advised me that defendants in those cases believe that the Court's Opinion of June 26, 2014 has only prospective application. They claim to base that belief upon the Opinion's use of the present tense "supercede" and "supplant," and not the past tense of those words, in its discussion of how the Nevada Constitution has overridden the exceptions set out in NRS 608.250(2). Based upon those conversations it is my belief that defendants in some, or all, of such cases, and in this case as well, intend to argue that the Court's Opinion of June 26, 2014 found the Nevada Constitution "supercedes" and "supplants" the exceptions set out in NRS 608.250(2) only as of the date of such Opinion and not as of its enactment date.

Dated this 14th day of October, 2014.

/s/ Leon Greenberg
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Attorney for Appellant

EXHIBIT 2

EXHIBIT 2

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Oct 20 2014 11:10 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

CHRISTOPHER THOMAS and CHRISTOPHER CRAIG, Individually and on behalf of others similarly situated, Appellants, vs. NEVADA YELLOW CAB CORPORATION, NEVADA CHECKER CAB CORPORATION, NEVADA STAR CAB CORPORATION, Respondents,	Sup. Ct. No. 61681 Dist. Ct No.: A-12-661726-C Dept. No. XXVIII

APPELLANTS' REPLY TO RESPONDENTS' OPPOSITION TO APPELLANTS' MOTION TO CORRECT OPINION OF JUNE 26, 2014 AND STAY REMITTITUR

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Docket 61681 Document 2014-34752

SUMMARY

Respondents' opposition confirms that upon remittitur respondents will claim that this Court's Opinion of June 26, 2014 only governs respondents' conduct *after* that date. Such argument is, as was respondents' petition for rehearing, utterly lacking in merit. Yet, unless addressed by a correction of the Court's Opinion, respondents will press such argument upon the district court and back upon this Court in a subsequent appeal. This Court, in the interests of judicial efficiency, should put an end to such dilatory litigation tactics by respondents by granting appellants' motion.

ARGUMENT

I. Appellants' motion is not time barred under NRAP 41(a)(1).

Appellants' motion does not seek rehearing and is not governed by NRAP 41(a)(1). Appellants do not seek to rehear any of the findings made in such Opinion. They only seek to forestall respondents from fomenting another, completely pointless, appeal to this Court.

That the NRAP provides no specified procedure for seeking a correction of an Opinion's language does not prohibit this Court from ruling on the appellants' motion. This Court has the inherent power to govern its own procedures. *See, Berkson v. LePome,* 245 P.3d 560, 565 (Nev. Sup. Ct. 2010), citing *State v. Dist Ct. [Marshall],* 11 P.3d 1209, 1212 (Nev. Sup. Ct. 2000) and other cases. Accordingly, it has the power to correct the language of its own Opinions, and can choose to do so even after it issues a remittitur of an appeal. Respondent cites not an iota of authority suggesting otherwise.

II. No retroactive application of law issue is raised by this Court's Opinion.

A. Enforcing Nevada's Constitution in the manner held in this Court's Opinion does not raise any "retroactive" application of law issue.

Respondents' argument proceeds from the assumption that Article 15, Section 16, of the Nevada Constitution was not the law of Nevada until this

Court's Opinion was released on June 26, 2014. Respondents then argue applying Article 15, Section 16 of the Nevada Constitution to their conduct taking place prior to such law's "creation" date of June 26, 2014 would constitute an impermissible "retroactive application" of that law. There is no merit to either assertion.

Amendments to Nevada's Constitution become "effective upon the canvass of the votes by the supreme court." *Tovinen v. Rollins*, 560 P.2d 915, 916-917 (Nev. Sup. Ct. 1977). Article 15, Section 16, of the Nevada Constitution was enacted by the voters in the 2006 general election and became effective on November 28, 2006. *See*, N.R.S. § 293.395(2).

Article 15, Section 16, of the Nevada Constitution became the law of Nevada as of its effective date of November 28, 2006, not on the date of this Court's Opinion of June 26, 2014. Appellants are not making any claims against respondents involving conduct occurring prior to that effective date.[1] The only "prospective application" of Article 15, Section 16, of the Nevada Constitution is its application *after* November 28, 2006: "As a general rule, a constitutional amendment is to be given *only prospective application from its effective date* unless the intent to make it retrospective clearly appears from its terms." *Tovinen,* 560 P.2d at 917 (emphasis added).

This case does not present any retroactive application of law issue. The authority cited by respondents confirms that a "retroactive" application of law involves applying a new law to conduct taking place *prior* to its effective date. *See, Pub. Emps.' Benefits Program v. Las Vegas Metro. Police Dep't (PEBP)*, 179 P.3d 542, 553–54 (Nev. Sup. Ct. 2008) ("A statute has retroactive effect when it takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, *in*

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[1] The statute of limitations applicable to the appellants' claims is not before this Court and no request is made for the Court to consider that issue.

respect to transactions or considerations already past.")(emphasis provided).[2] No retroactive application of law issue is raised in respect to respondents' conduct occurring after November 28, 2006.

B. Legal rights created by the language of a newly enacted law, as opposed to those that are newly created by judicial action, are always enforced by the courts as of their specified effective date, not the later date that their validity is confirmed by the judiciary.

Respondents argue Article 15, Section 16, of the Nevada Constitution imposed no legal obligations upon them prior to this Court's Opinion of June 26, 2014, despite such provision of Nevada's Constitution otherwise having an effective date of November 28, 2006. This argument, which is tantamount to a claim that respondents have no obligation to comply with *any* duty imposed by the text of Nevada's Constitution until that duty is enforced by the Nevada Supreme Court, is not supported by any legal authority. Such assertion is also contrary to the fundamental principles of our system of justice whereby courts make substantive, and not merely future conduct, rulings about the legal rights of the parties. *See, Linkletter v. Walker*, 381 U.S. 618, 622 (1965) ("At common law there was no authority for the proposition that judicial decisions made law only for the future", citing 1 Blackstone, Commentaries 69 (15th ed. 1809)). The adoption of the doctrine urged by respondents, that "a new law imposes no consequences on violators until its effectiveness is confirmed by the Supreme Court of Nevada," would encourage, and reward, lawbreakers.

Respondents ask this Court to disregard nearly a thousand years of established legal doctrine and apply a grossly corrupted version of the "prospective application" of certain decisions, such as in *Linkletter*, involving new *judicially created rights* or that *overrule prior precedents*. Such decisions,

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[2] Every other authority cited by respondents, just as in *PEBP*, involves whether to apply a statute to conduct taking place *prior* to such statute's enactment and specified effective date.

none of which respondents discuss, are inapplicable to cases where a parties' rights are created by the express language of a newly enacted statute or constitutional provision. They are inapplicable because the parties whose conduct is governed by those new statutes and constitutional provisions ***have notice of the language of those new laws and are aware that they disregard the same at their peril.***

The respondents were aware of the "absolute" language of Article 15, Section 16, of the Nevada Constitution.[3] They do not argue such constitutional amendment's language, read in isolation, fails to confer the rights claimed by the appellants. They argued to the district court, and this Court, that *another law*, the previously enacted statute NRS 608.250, must be read together with the constitutional amendment and that under such a coordinated reading the rights claimed by the appellants do not exist. Respondents cannot claim any unfair prejudice as a result of this Court's rejection of their arguments.[4]

This Court's decision in *Hansen v. Harrah's*, 675 P.2d 394 (Nev. Sup. Ct. 1984) illustrates the complete lack of merit in respondents' arguments. *Hansen* created, through judicial recognition of Nevada's public policy, a tort cause of action for the retaliatory discharge of an employee who files a worker's compensation claim. No such cause of action was authorized in the text of any Nevada statute, the creation of such a cause of action was an exception to

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[3] They were also aware of the Nevada Attorney General's opinion, 05-04 Op. Atty Gen. (2005), issued before November 28, 2006, holding respondents were subject to that language.

[4] Respondents could have promptly sought a judicial declaration of their obligations after November 28, 2006 and arranged to pay into escrow, pending the issuance of such a declaration, the disputed sums now found to be owed to their employees. They declined to do so and now seek to profit from their failure to comply with the law by not having to pay any such sums accruing prior to June 26, 2014.

Nevada's well established "employment at will" law, and the creation by judicial recognition of such a cause of action had been rejected by some other state courts. 675 P.2d at 396. Nonetheless, even though the employer defendants in *Hansen* had no express advance notice that such a cause of action existed as an exception to the "employment at will" law of Nevada, this Court imposed a *current* liability for compensatory damages upon the defendant employers. *Hansen* both created a new cause of action and imposed liability for that newly recognized claim on the defendants' *prior* conduct, it did not merely determine the defendants' future legal obligations.

It is impossible to reconcile the very sound, and well grounded approach taken by this Court in *Hansen,* with the approach urged by respondents. If a party, as in *Hansen*, is liable for damages as a result of their conduct occurring *prior* to this Court's creation of a new cause action, one not set forth expressly in any written law, respondents in this case must be liable for their conduct occurring prior to June 26, 2014, which conduct was indisputably in violation of any "isolated" reading of Article 15, Section 16, of Nevada's Constitution.

CONCLUSION

Respondents must face the liability that they have brought upon themselves by violating the express terms of Nevada's Constitution. Respondents' attempt to foment another pointless appeal to this Court, by insisting this Court's June 26, 2014 Opinion does not govern their conduct prior to that date, should be extinguished by granting appellants' motion.

Dated this 19th day of October, 2014.

/s/ Leon Greenberg
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(702) 383-6085
Attorney for Appellants

CERTIFICATE OF MAILING

The undersigned certifies that on October 19, 2014, he served the within:

APPELLANTS' REPLY TO
RESPONDENTS OPPOSITION TO
APPELLANTS' MOTION TO
CORRECT OPINION OF JUNE 26,
2014 AND STAY REMITTITUR

by depositing the same in the U.S. mail, first class postage, prepaid, addressed as follows:

TO:

Marc C. Gordon, Esq.
General Counsel
Yellow Checker Star Transportation Co.
Legal Dept.
5225 W. Post Road
Las Vegas, NV 89118

/s/Leon Greenberg

Leon Greenberg

EXHIBIT 3

EXHIBIT 3

An unpublished order shall not be regarded as precedent and shall not be cited as legal authority. SCR 123.

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTOPHER THOMAS; AND CHRISTOPHER CRAIG, INDIVIDUALLY AND ON BEHALF OF OTHERS SIMILARILY SITUATED,
Appellants,
vs.
NEVADA YELLOW CAB CORPORATION; NEVADA CHECKER CAB CORPORATION; AND NEVADA STAR CAB CORPORATION,
Respondents.

No. 61681

FILED

OCT 27 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER

This court issued an opinion in this matter on June 26, 2014. Appellants have filed a motion to correct the opinion by changing three words from present tense to past tense, and also request that this court stay issuance of the remittitur, which was due to issue October 20, 2014. Respondents have filed an opposition to the motion, and appellants have filed a reply. No good cause appearing, we deny the motion to the extent it requests changes to the wording of the opinion; the opinion shall stand as issued. We grant the motion to the extent that the remittitur was not

issued while this court considered the motion. As we have now ruled on the motion, we direct the clerk to issue the remittitur forthwith.

It is so ORDERED.

Gibbons, C.J.

Pickering, J.

Hardesty, J.

Parraguirre, J.

Douglas, J.

Cherry, J.

Saitta, J.

cc: Hon. Ronald J. Israel, District Judge
Leon Greenberg Professional Corporation
Marc C. Gordon
Tamer B. Botros
Eighth District Court Clerk

EXHIBIT 4

EXHIBIT 4

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CLERK OF THE COURT

ORDR

DISTRICT COURT

CLARK COUNTY, NEVADA

LISA WILLIAMS, et al., Plaintiffs, v. CLAIM JUMPER ACQUISITION COMPANY, LLC, Defendant.	CASE NO.: A-14-702048 DEPARTMENT NO. XX **ORDER ON PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT REGARDING LIMITATION OF ACTION**

This matter having come on for hearing on the 10th day of September, 2014; Daniel Bravo, Esq., Bradley S. Schrager, Esq., and Don Springmeyer, Esq., appearing for the Plaintiffs; Elayna J. Touchah, Esq., appearing for the Defendant; and the Court having heard arguments of counsel, and being fully advised in the premises, finds:

(1) This matter comes before the Court on a Motion for Partial Summary Judgment brought by the Plaintiffs. This is an individual and proposed class action which seeks relief on behalf of all employees of the Defendant, Claim Jumper Acquisition Company LLC, who have been compensated during their employment at a rate less than the minimum hourly wage allegedly required under Nevada law. The Amended Complaint filed on July 23, 2014, asserts a single cause of action based upon alleged violations of Article XV, section 16 of the Nevada Constitution (commonly called the "Minimum Wage Amendment").

(2) The instant Motion seeks a ruling by the Court regarding the appropriate

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limitations period that should apply to the Plaintiffs' claim. Specifically, the parties seek clarification regarding whether the two-year limitations period set forth in NRS 608.260 applies to the instant cause of action. The Plaintiffs aver that the limitations period set forth in NRS 608.260 does not apply on its face to the instant claim which is based upon a Constitutional provision enacted after NRS 608.260 was enacted, and even if it can be read as somehow applying to the Plaintiffs' claims, it has been "impliedly repealed" by the enactment of Article XV, section 16. In Opposition, the Defendant avers that this action is governed by the two-year period set forth in NRS 608.260.

(3) The instant Motion is styled as a Motion seeking summary judgment pursuant to NRCP 56. The Defendant's Opposition argues that the instant Motion is not a proper NRCP 56 because it does not actually seek entry of judgment on any claim, but rather seeks something along the lines of an "advisory opinion" on a question of law that does not actually dispose of the claim asserted in the Amended Complaint. The Defendant is technically correct. The Plaintiffs' Motion seeks to know what limitations period governs it claims, a question whose answer would not actually result in the entry of judgment on its claim or any portion of its claim; at best, the answer to that question would only reduce the number of members of the putative class (by excluding members seeking relief solely for injuries that occurred before the expiration of the applicable limitations period) or reduce the amount of damages that the class members might be entitled to recover at trial (by limiting their recoverable damages only to injuries that occurred before the expiration of the applicable limitations period). Normally, a party cannot ask this Court to summarily enter "judgment" pursuant to NRCP 56 on something less than a claim or cause of action. *E.g., Arado v. General Fire Extinguisher Corp.*, 626 F.Supp. 506, 509 (N.D.Ill. 1985) (FRCP 56 "simply does not permit the piecemealing of a single claim or the type of issue-narrowing sought here [because] the Rule authorizes only the granting of

appealable 'judgments' disposing of entire claims")[1]; *RePass v. Vreeland*, 357 F.2d 801, 805 (3d Cir. 1966) ("it is clear that summary judgment cannot be invoked to dispose of [something less than a] claim"); *Westinghouse Electric Corp. v. Fidelity and Deposit Co.*, 63 B.R. 18, 23 (E.D.Pa. 1986) ("Partial summary judgment may not be invoked to dispose of only part of a single claim"). However, in this case, the question raised by the Plaintiffs' Motion is one that will likely recur at various points during this litigation (for example, when certifying and defining the class, during discovery, or when deciding how the jury is to be instructed on the damages that it can award) and therefore it needs to be resolved at some point during this litigation. Moreover, the question is purely one of law whose resolution does not appear to depend on any particular facts or evidence that might be uncovered during discovery, and therefore its answer is unlikely to change during the course of this litigation. Therefore, even if the instant Motion is not procedurally proper in all respects under NRCP 56 and would not result in the entry of a final judgment for any party, it raises a question that will guide the parties during this litigation and therefore for reasons of efficiency and judicial economy the Court deems it prudent to address the legal question presented by the parties, even if doing so results in an Order by this Court that may technically be somewhat premature in that it would ordinarily have been brought at a later point in the litigation.

(4) The question at hand is whether the two-year limitations period of NRS 608.260 applies to a claim alleging a violation of Article XV, section 16 of the Nevada Constitution. The Minimum Wage Amendment (Article XV, section 16) was adopted in 2006 with an effective date of November 28, 2006, and reads in its entirety as follows:

[1] Where the Nevada Rules of Civil Procedure parallel the Federal Rules of Civil Procedure, rulings of federal courts interpreting and applying the federal rules are persuasive authority for this Court in applying the Nevada Rules. *E.g., Executive Management Ltd. v. Ticor Title Ins.*, 118 Nev. 46, 53 (2002). NRCP 56 is identical to FRCP 56.

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Sec. 16. **Payment of minimum compensation to employees.**

A. Each employer shall pay a wage to each employee of not less than the hourly rates set forth in this section. The rate shall be five dollars and fifteen cents ($5.15) per hour worked, if the employer provides health benefits as described herein, or six dollars and fifteen cents ($6.15) per hour if the employer does not provide such benefits. Offering health benefits within the meaning of this section shall consist of making health insurance available to the employee for the employee and the employee's dependents at a total cost to the employee for premiums of not more than 10 percent of the employee's gross taxable income from the employer. These rates of wages shall be adjusted by the amount of increases in the federal minimum wage over $5.15 per hour, or, if greater, by the cumulative increase in the cost of living. The cost of living increase shall be measured by the percentage increase as of December 31 in any year over the level as of December 31, 2004 of the Consumer Price Index (All Urban Consumers, U.S. City Average) as published by the Bureau of Labor Statistics, U.S. Department of Labor or the successor index or federal agency. No CPI adjustment for any one-year period may be greater than 3%. The Governor or the State agency designated by the Governor shall publish a bulletin by April 1 of each year announcing the adjusted rates, which shall take effect the following July 1. Such bulletin will be made available to all employers and to any other person who has filed with the Governor or the designated agency a request to receive such notice but lack of notice shall not excuse noncompliance with this section. An employer shall provide written notification of the rate adjustments to each of its employees and make the necessary payroll adjustments by July 1 following the publication of the bulletin. Tips or gratuities received by employees shall not be credited as being any part of or offset against the wage rates required by this section.

B. The provisions of this section may not be waived by agreement between an individual employee and an employer. All of the provisions of this section, or any part hereof, may be waived in a bona fide collective bargaining agreement, but only if the waiver is explicitly set forth in such agreement in clear and unambiguous terms. Unilateral implementation of terms and conditions of employment by either party to a collective bargaining relationship shall not constitute, or be permitted, as a waiver of all or any part of the provisions of this section. An employer shall not discharge, reduce the compensation of or otherwise discriminate against any employee for using any civil remedies to enforce this section or otherwise asserting his or her rights under this section. An employee claiming violation of this section may bring an action against his or her employer in the courts of this State to enforce the provisions of this section and shall be entitled to all remedies available under the law or in equity appropriate to remedy any violation of this section, including but not limited to back pay, damages, reinstatement or injunctive relief. An

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employee who prevails in any action to enforce this section shall be awarded his or her reasonable attorney's fees and costs.

C. As used in this section, "employee" means any person who is employed by an employer as defined herein but does not include an employee who is under eighteen (18) years of age, employed by a nonprofit organization for after school or summer employment or as a trainee for a period not longer than ninety (90) days. "Employer" means any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity that may employ individuals or enter into contracts of employment.

D. If any provision of this section is declared illegal, invalid or inoperative, in whole or in part, by the final decision of any court of competent jurisdiction, the remaining provisions and all portions not declared illegal, invalid or inoperative shall remain in full force or effect, and no such determination shall invalidate the remaining sections or portions of the sections of this section.

(5) NRS 608.260 reads as follows:

NRS 608.260 Action by employee to recover difference between minimum wage and amount paid; limitation of action. If any employer pays any employee a lesser amount than the minimum wage prescribed by regulation of the Labor Commissioner pursuant to the provisions of NRS 608.250, the employee may, at any time within 2 years, bring a civil action to recover the difference between the amount paid to the employee and the amount of the minimum wage. A contract between the employer and the employee or any acceptance of a lesser wage by the employee is not a bar to the action.

(6) NRS 608.250 states as follows:

NRS 608.250 Establishment by Labor Commissioner; exceptions; penalty.

1. Except as otherwise provided in this section, the Labor Commissioner shall, in accordance with federal law, establish by regulation the minimum wage which may be paid to employees in private employment within the State. The Labor Commissioner shall prescribe increases in the minimum wage in accordance with those prescribed by federal law, unless the Labor Commissioner determines that those increases are contrary to the public interest.

2. The provisions of subsection 1 do not apply to:

(a) Casual babysitters.

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(b) Domestic service employees who reside in the household where they work.
(c) Outside salespersons whose earnings are based on commissions.
(d) Employees engaged in an agricultural pursuit for an employer who did not use more than 500 days of agricultural labor in any calendar quarter of the preceding calendar year.
(e) Taxicab and limousine drivers.
(f) Persons with severe disabilities whose disabilities have diminished their productive capacity in a specific job and who are specified in certificates issued by the Rehabilitation Division of the Department of Employment, Training and Rehabilitation.
3. It is unlawful for any person to employ, cause to be employed or permit to be employed, or to contract with, cause to be contracted with or permit to be contracted with, any person for a wage less than that established by the Labor Commissioner pursuant to the provisions of this section.

(7) By this Motion, the Plaintiffs argue that the two-year limitations period of NRS 608.260 does not apply on its face to claims brought under the Minimum Wage Amendment because the Plaintiffs' Constitutional claim does not allege that they were paid a wage less than that "prescribed by regulation of the Labor Commissioner." The Plaintiffs also contend that, even if NRS 608.260 were construed to apply to Constitutional claims rather than violations of regulations, NRS 608.260 has been "impliedly repealed" by the enactment of the Minimum Wage Amendment because the Labor Commissioner's power to perform the duties set forth in NRS 608.250 no longer exist by operation of the Minimum Wage Amendment. The Plaintiffs cite *Thomas v. Yellow Cab Corp.*, 327 P.3d 518 (Nev. 2014) for the proposition that NRS 608.250 has been repealed by the Minimum Wage Amendment. Because NRS 608.250 is a major portion of NRS 608.260, the Plaintiffs contend that NRS 608.260 has been repealed as well. In *Thomas v. Yellow Cab Corp.*, 327 P.3d 518 (Nev. 2014), the Nevada Supreme Court held that the Minimum Wage Amendment operated to impliedly repeal the portions of NRS 608.250 that created any statutory "exclusions" among the class of "employees" expressly eligible to receive the minimum wage under the Minimum Wage Amendment. The Court held that a statute could not operate to carve out an exclusion to a class expressly defined in the Nevada Constitution, because "a

constitutional amendment, adopted subsequent to the enactment of the statute relied on by counsel for petitioner, is controlling over the statute that addresses the same issue. Statutes are construed to accord with constitutions, not vice versa." *Id.* at 521 (internal citations omitted). Thus, when a statute and a Constitutional provision are "irreconcilably repugnant" such that "both cannot stand," the Constitutional provision must be read to have "impliedly repealed" the statute. *Id.* (citations omitted). From this, the Plaintiffs argue that the entirety of NRS 608.250 and 608.260 have been "impliedly repealed" by the Minimum Wage Amendment. Specifically, the Plaintiffs argue that the duties of the Labor Commissioner set forth in NRS 608.250 have been entirely abolished by the Minimum Wage Amendment and therefore the entire scheme set forth in NRS 608.250 and 608.260 no longer exists.

(8) Two federal courts have concluded that the two-year limitations period of NRS 608.260 applies to claims alleging a violation of the Minimum Wage Amendment. *E.g., Rivera v. Peri & Sons*, 735 F.3d 892 (9th Cir. 2013); *McDonough v. Harrah's Las Vegas*, 2014 WL 2742874 (D.Nev. June 17, 2014). However, federal court decisions on questions of state law, while persuasive if their reasoning is sound, are not binding either on this Court or upon the Nevada Supreme Court.

(9) Prior to the enactment of the Minimum Wage Amendment in 2006, any claim alleging a violation of Nevada's minimum wage laws or regulations would have been subject to a limitations period of two years under NRS 608.260. There is no indication anywhere on the face of the Minimum Wage Amendment that it was intended to change this scheme. For this reason, federal courts have concluded that claims arising under the Minimum Wage Amendment were intended to be governed by the two-year limitations period that previously governed such claims under NRS 608.260. However, the reasoning employed by those federal courts strikes this Court as somewhat superficial because it is also true that, prior to 2006, the minimum wage in Nevada was established by way of regulation issued by the state Labor Commissioner pursuant to standards set forth in NRS 608.250, and any claim based upon a failure by

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an employer to pay the minimum wage when required to do so would have been based upon a violation of NRS 608.260 and those regulations. In contrast, in this case the Plaintiffs attempt to frame their claim as a "Constitutional tort" based directly upon a violation of a provision of the Nevada Constitution, rather than as a claim brought under NRS 608.260 alleging a violation of a regulation issued by the Labor Commissioner. If the Plaintiffs' claim is indeed a true Constitutional tort rather than a claim based upon a violation of NRS 608.260, then at least arguably the two-year limitations period of NRS 608.260 would not apply to such a Constitutional tort.

(10) A cause of action can be based directly upon a violation of a provision of a state Constitution or the U.S. Constitution if the plaintiff can demonstrate that a constitutional violation was a "cause-in-fact" of the injuries and the resulting damages, and the injuries were a "reasonably foreseeable consequence" of the actor's act or omission. *E.g., Smith v. City of Oak Hill*, 2014 WL 4627947 (11th Cir. September 17, 2014); *Gillette v. Delmore*, 979 F.2d 1342, 1346 (9th Cir. 1992). The "cause-in-fact" must arise from an action that violates a specific constitutional provision. *E.g., Strehlke v. Grosse Pointe Public Schools System*, 2014 WL 4603482 (E.D.Mich. September 15, 2014) (not "every governmental decision with which one disagrees [is] a constitutional tort").

(11) But in this case, it is not clear that the Plaintiffs' claim is such a thing. On its face, the Minimum Wage Amendment does not merely establish a straightforward uniform minimum wage rate to be paid to every employee in Nevada at all times. Rather, the Minimum Wage Amendment sets a specific floor and then expressly requires the Governor (through the state Labor Commissioner) to adjust the rate periodically as follows:

> These rates of wages shall be adjusted by the amount of increases in the federal minimum wage over $5.15 per hour, or, if greater, by the cumulative increase in the cost of living. The cost of living increase shall be measured by the percentage increase as of December 31 in any year over the level as of December 31, 2004 of the Consumer Price Index (All

> Urban Consumers, U.S. City Average) as published by the Bureau of Labor Statistics, U.S. Department of Labor or the successor index or federal agency. No CPI adjustment for any one-year period may be greater than 3%. The Governor or the State agency designated by the Governor shall publish a bulletin by April 1 of each year announcing the adjusted rates, which shall take effect the following July 1.

(12) Thus, the effective minimum wage rate in Nevada is not merely what is stated in Article XV section 16, but rather is expressly defined as a wage rate set by the Labor Commissioner based partially upon data from the U.S. Department of Labor. It follows that any employee who claims to have been illegally paid less than the then-existing minimum wage is not necessarily alleging a Constitutional tort, but rather is alleging a violation of the wage rates established in the bulletin issued by the state Labor Commissioner in effect on the date of the alleged violation. In other words, the "cause-in-fact" of any such claim is not that the employee has not been paid the particular dollar amount set forth in the Minimum Wage Amendment, but that he has not been paid the wage rate set forth in the periodic bulletins issued by the Labor Commissioner pursuant to the Minimum Wage Amendment. Thus, the legal standard that the Plaintiffs allege was violated is the wage rate established by the Labor Commissioner, not Article XV section 16 itself. Although that wage rate is established pursuant to the methodology articulated in the Minimum Wage Amendment, the Minimum Wage Amendment does not itself define what that exact rate is at any given moment in time. Therefore, any claim that an employee has been illegally paid less than the effective minimum wage rate actually alleges a violation of wage rates established by state regulation rather than alleging a direct violation of Article XV section 16 of the Nevada Constitution. Consequently, although styled as a "Constitutional tort," the Plaintiffs' claim actually appears to be one alleging a violation arising under NRS 608.260.

(13) The Court notes that the Minimum Wage Amendment does, by its plain terms, impose duties directly upon private employers doing business in Nevada. Thus, the Plaintiffs' claim could plausibly be interpreted as a "Constitutional tort" based upon

an alleged violation of the duties imposed upon employers by the Minimum Wage Amendment to pay the minimally required wage rate. But those minimally required wage rates are nonetheless set by the Labor Commissioner, not by the Minimum Wage Amendment itself. Thus, even if the Plaintiffs' claim were construed in this manner as a "Constitutional-tort" arising from the failure of an employer to pay the minimum wage as required by Article XV section 16, the genesis or "cause-in-fact" of the claim is that the employer did not pay the wage rates set by the Labor Commissioner.

(14) For purposes of the present Motion the Court need not definitively determine which interpretation is correct, because, under either interpretation, the Minimum Wage Amendment is not "irreconcilably repugnant" with the regulatory and statutory scheme set forth in NRS 608.250 and 608.260 (excepting that the exclusions of NRS 608.250(2) have been repealed). The Minimum Wage Amendment does not supplant or abolish the duties of the state Labor Commissioner in establishing the current minimum wage rate, but rather still requires the Labor Commissioner to issue regulations establishing minimum wage rates, albeit changing how those duties are performed. The state Labor Commissioner still sets the effective minimum wage rate in Nevada via periodic regulation, and he still does so based upon data from the federal government, and he still cannot violate federal law in doing so. Therefore, on its face, NRS 608.250 and 608.260 are not irreconcilable with the Minimum Wage Amendment, but rather are quite obviously intended to be complementary (with the exception noted in *Thomas*).

(15) Accordingly, a claim alleging that an employee has been illegally paid less than the effective minimum wage rate is a claim that alleges a violation of the rates established by the Labor Commissioner, not a claim that alleges a violation of the rates set forth in the Minimum Wage Amendment. Thus, the Plaintiffs' claim in this case, although styled as a violation of Article XV section 16, actually appears to allege a violation arising under NRS 608.260. Such a claim is governed by the two-year statutory period set forth in NRS 608.260.

JEROME TAO
DISTRICT JUDGE
DEPARTMENT XX

(16) It is so ORDERED.

DATED: September 22, 2014

JEROME T. TAO
DISTRICT COURT JUDGE

JEROME TAO
DISTRICT JUDGE
DEPARTMENT XX

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing, by E-Service, by mailing, by placing copies in the attorney folder's in the Clerk's Office or faxing as follows:

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Paula Walsh

Paula Walsh, Executive Assistant

JEROME TAO
DISTRICT JUDGE
DEPARTMENT XX

EXHIBIT 5

EXHIBIT 5

AFFIDAVIT OF MARTHA SARVER

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

Martha Sarver, being duly sworn upon her oath, deposes and says that:

1. I am the General Manager of Western Cab Company and I have held this position since 2006.

2. Laksiri Perera worked as a taxicab driver for Western Cab from January 13, 2010, until he called in and quit on October 16, 2012. He last worked for Western Cab on October 15, 2012.

3. In 2010 and 2011, the U.S. Department of Labor conducted a federal minimum wage audit of Western Cab. On January 23, 2012, Perera received a back minimum wage payment of $231.53 from Western Cab. At the time he received the payment, he was told in writing "Generally, a two-year statute of limitations applies to the recovery of back wages. Do not sign this receipt unless you have actually received this payment in the amount indicated above of the wages and other compensation due you."

4. Perera started receiving health insurance from Western Cab on February 1, 2011. Western Cab paid the entire health insurance premium on behalf of Perera from February 1, 2011 through October 15, 2012. In 2012, Western Cab paid $253.07 per month for Perera's health insurance coverage.

5. Two years before Perera filed his current complaint on September 23, 2014, was September 23, 2012. Attached hereto as Exhibit 5-1 are my computations of the hours Perera worked based on his trip sheets from September 23, 2012 through October 15, 2012, and the non-tipped wages he received based on his payroll detail report. I calculated Perera's hourly

wage based on Exhibit 5-2, which is Section 30b02 of the Field Operations Handbook of the United States Department of Labor. According to the Department of Labor's instructions, Perera's total earnings for the workweek divided by his compensable hours equal or exceeds the applicable state minimum wage. Exhibit 5-1. I also calculated Perera's minimum wage based on pay periods pursuant to NAC 608.115(2). I combined the weeks of September 30 through October 13, 2012, because they were one pay period at Western Cab. Perera's hourly wage for that pay period was $8.03. Perera's total earnings for the applicable payroll periods divided by his compensable hours equal or exceed the state minimum wage.

6. Perera filed a wage claim with the Nevada Labor Commissioner which included the time period of September 23 through October 15, 2012. Western Cab was represented by Justin W. Smerber, who wrote a response to Perera's wage claim. On November 13, 2012, the Nevada Labor Commissioner said, "With these evidentiary documents, it appears that you have been paid correctly." Exhibit 5-3. Until Perera filed this case, Western Cab heard nothing further from Perera or the Nevada Labor Commissioner concerning Perera's wage claim.

7. Western Cab allowed all of its drivers to take breaks and a one-hour meal period during their shifts. In calculating Perera's hourly wage, I did not deduct the one-hour meal period Perera was supposed to take.

8. All of Western Cab's drivers work different hours and earn different wages. Their compensation is based on a formula determined by their total number of trips and their bookings. Federal minimum wage law allows the drivers' tips to be considered as part of their compensation in determining minimum wage. Since the *Thomas* decision this summer, I have checked all of the drivers' compensation based on wages alone and not counting their tips to

make sure that all are being paid the state minimum wage. All have been paid the state minimum wage since the *Thomas* decision.

MARTHA SARVER

SUBSCRIBED and SWORN to before me this 20 day of November, 2014 by Martha Sarver.

NOTARY PUBLIC

KRISTIN FALKNER
Notary Public State of Nevada
No. 11-5347-1
My Appt. Exp. July 1, 2015

EXHIBIT 5-1

EXHIBIT 5-1

Perera Started Health Insurance on 02/01/11.

Date	Hours	Wages	Sept. 23 - 29, 2012 Hourly Wage
09/23/12	12 hours	122.60	
09/24/12	12 hours	125.35	
09/25/12	12 hours	121.30	
09/26/12	11 hours	88.60	
09/28/12	12 hours	89.40	
09/29/12	12 hours	84.25	
TOTALS:	**71 hours**	**$631.50**	$8.89

Date	Hours	Wages	Sept. 30 - Oct. 6, 2012 Hourly Wage
09/30/12	2 hours	17.85	
10/01/12	11 hours	88.75	
10/02/12	12 hours	77.75	
10/03/12	12 hours	97.35	
10/05/12	12 hours	98.45	
10/06/12	12 hours	103.20	
TOTALS:	**61 hours**	**$483.35**	$7.92

Date	Hours	Wages	Oct. 7 - 12, 2012 Hourly Wage
10/07/12	12 hours	105.60	
10/08/12	12 hours	77.05	
10/09/12	12 hours	99.65	
10/10/12	11 hours	107.55	
10/12/12	11 hours	89.20	
10/13/12	12 hours	89.75	
TOTALS:	**70 hours**	**$568.80**	$8.13

Date	Hours	Wages	Oct. 14 - 20, 2012 Hourly Wage
10/14/12	12 hours	108.95	
10/15/12	11 hours	64.80	
TOTALS:	**23 hours**	**$173.75**	$7.55

Thursday, September 25, 2014

Payroll Detail Report

Pay period of: 9/23/2012 through 10/15/2012

Perera, Laksiri

Western Cab

Pay: **$1,857.40**
Tips: **358.92**
O\S: **.00**
Time: **.00**

Date	Shift	Cab	Trips	Paid Miles	Paid Mile%	Book	Trip Chrg	Book	Wage	O/S
9/23/2012	11-01	182	18	71	52.6 %	263.20	18.00	245.20	122.60	0.00
9/24/2012	11-01	182	21	63	50.4 %	271.70	21.00	250.70	125.35	0.00
9/25/2012	11-01	182	20	62	51.2 %	262.60	20.00	242.60	121.30	0.00
9/26/2012	11-01	100	12	49	48.0 %	189.20	12.00	177.20	88.60	0.00
9/28/2012	11-01	182	12	51	45.6 %	190.80	12.00	178.80	89.40	0.00
9/29/2012	11-01	182	8	45	42.1 %	176.50	8.00	168.50	84.25	0.00
9/30/2012	11-01	182	3	10	33.3 %	38.70	3.00	35.70	17.85	0.00
10/1/2012	11-01	182	13	47	46.2 %	190.50	13.00	177.50	88.75	0.00
10/2/2012	11-01	182	13	41	39.8 %	168.50	13.00	155.50	77.75	0.00
10/3/2012	11-01	182	13	48	43.2 %	207.70	13.00	194.70	97.35	0.00
10/5/2012	11-01	182	13	51	49.0 %	209.90	13.00	196.90	98.45	0.00
10/6/2012	11-01	182	16	54	45.0 %	222.40	16.00	206.40	103.20	0.00
10/7/2012	11-01	182	18	54	46.8 %	229.20	18.00	211.20	105.60	0.00
10/8/2012	11-01	182	11	40	36.4 %	165.10	11.00	154.10	77.05	0.00
10/9/2012	11-01	182	17	53	47.3 %	216.30	17.00	199.30	99.65	0.00
0/10/2012	11-01	182	13	57	47.1 %	228.10	13.00	215.10	107.55	0.00
0/12/2012	11-01	182	12	45	46.4 %	190.40	12.00	178.40	89.20	0.00
0/13/2012	11-01	182	13	44	45.4 %	192.50	13.00	179.50	89.75	0.00
0/14/2012	11-01	182	19	64	53.5 %	236.90	19.00	217.90	108.95	0.00
0/15/2012	11-01	182	8	37	33.6 %	137.60	8.00	129.60	64.80	0.00

VOUCHERS | LAST NAME Rehrer | FIRST NAME Lahsad | CAB NO. 180 | SHIFT | MEDALLION # 4L4 | METER # | MO. 09 | DAY 23 | YR. 12 | T.A. # 100027

GAS $ 28.36 | GALS. 7.880

RECORD ALL DIGITS

RADIO CALLS OMIT 10 THS ODOMETER	1. TOTAL MILES	2. PAID MILES	3. TRIPS	4. TOTAL MONEY	5. EXTRA MONEY
STOP 274496	94526	4743	2285	4703	1 8357
START 274364	94180	4672	2276	4677	11 8237
DIFF. 132	1346	71	189	26	120 8

BOOK

	AMOUNT
Total Money	26822
Extra Money	362
NOT ON METER	—
GROSS BOOK	2684

CHECK-IN

	AMOUNT
Gross Book	22665
Cash Turn In	24488
Less Extra Money	2623
Less Trips At 1.00	1800
NET BOOK	24522

TURN IN THIS AMOUNT

JPS	NO. PSGRS	TIME START	FROM	DESTINATION	TOTAL FARE INCL EXTRAS
1.00	1	0434	O'Hare	Wilson	42
2.00	1	3054	9 Lions	Addison	62
3.00	1	8413	Hyatt	Addison	53
4.00	2	5220	Bryn Mawr/Broadway	Ridge	14
5.00	2	4518	Belmont/Broadway	Belmont	10
6.00	2	7110	Addison/Ashland	Ashland	10
7.00	1	7433	Belmont/Lincoln	Belmont	10
8.00	1	8044	Belmont/Ashland	Belmont	16
9.00	4	8336	Belmont/Ashland	Belmont	43
10.00	2	8-52	Belmont/Broadway	Belmont	8
11.00	1	9229	Belmont/Broadway	Belmont	7
12.00	2	10.04	Belmont/Broadway	Belmont	4
13.00	1	11 10	Belmont/Broadway	Belmont	24
14.00	2	1132	Belmont/Broadway	Belmont	16
15.00	2	12 12	Belmont/Broadway	Belmont	24
16.00	2	138	Belmont/Broadway	Belmont	9
17.00	2	1444	Belmont/Broadway	Belmont	15
18.00	2	204	Belmont/Broadway	Belmont	12
19.00					
20.00					
21.00					
22.00					
23.00					
24.00					
25.00					
26.00					
27.00					
28.00					
29.00					
30.00					
31.00					
32.00					
33.00					
34.00					

TOTAL PSGRS.

VOUCHERS | LAST NAME Peters | FIRST NAME Lakeisha | CAB NO. 187 | MEDALLION # 5L4 | METER # | MO. 09 DAY 12 YR. 12 | T.A.# 106025

RECORD ALL DIGITS | SHIFT | GAS $ 23.47 | GALS. 7.904

	OMIT 10 THS ODOMETER	1. TOTAL MILES	2. PAID MILES	3. TRIPS	4. TOTAL MONEY	5. EXTRA MONEY	BOOK: Total Money	BOOK: Extra Money	BOOK: NOT ON METER	AMOUNT	CHECK-IN: Gross Book	CHECK-IN: Cash Turn In	CHECK-IN: Less Extra Money	CHECK-IN: Less Trips At 1.00	AMOUNT
STOP	227518	47865	36677	28827	84	85				27176					273.50
START	216397	46578	30803	28006	81	85				1880					273.50
DIFF	11121	1287	6874	821	3	00				—					21.00
GROSS BOOK										25682	NET BOOK				25682

← TURN IN THIS AMOUNT

IPS	NO. PSGRS	TIME START	FROM	DESTINATION	TOTAL FARE INCL EXTRAS
1.00	2	2:57	Taco	Cosmy	16.25
2.00	4	4:36	5/Bdwy	E/Bdwy	8.25
3.00	2	5:10	5/Bdwy	B/Bdwy	13.25
4.00	5	5:52	5/Bdwy	Bdwy	9.25
5.00	1	6:22	Mesha	B/P	14.25
6.00	2	7:06	B/Bdwy	N/P	9.25
7.00	2	8:38	S/Bdwy	B/P	16.25
8.00	4	9:31	Bdwy	B/P	13.25
9.00	2	9:10	Bdwy	E/Bdwy	16.25
10.00	1	9:56	E/Bdwy	B/P	13.25
11.00	2	10:16	72/Bdwy	E/Bdwy	9.25
12.00	2	10:33	Blo	B/P	16.25
13.00	2	11:51	Bdwy	B/P	4.25
14.00	2	11:14	Blo	Bdwy	16.25
15.00	4	11:20	Bdwy	B/P	16.25
16.00	4	11:57	Bdwy	Bdwy	11.25
17.00	2	12:26	E/Bdwy	E/Bdwy	7.25
18.00	1	12:52	Bdwy	Bdwy	4.25
19.00	2	1:18	14/Bdwy	B/Bdwy	9.25
20.00	1	1:48	Bdwy	E/Bdwy	9.25
21.00	1	2:04	E/Bdwy	Bdwy	9.25
22.00					
23.00					
24.00					
25.00					
26.00					
27.00					
28.00					
29.00					
30.00					
31.00					
32.00					
33.00					
34.00					

TOTAL PSGRS.

VOUCHERS | LAST NAME | FIRST NAME | CAB NO. | SHIFT | MEDALLION # | METER # | MO. DAY YR. | T.A. #

RADIO CALLS | RECORD ALL DIGITS | GAS $ | GALS.

	OMIT 10 THS ODOMETER	1. TOTAL MILES	2. PAID MILES	3. TRIPS	4. TOTAL MONEY	5. EXTRA MONEY	BOOK	AMOUNT	CHECK-IN	AMOUNT
STOP							Total Money		Gross Book	
START							Extra Money		Cash Turn In	← TURN IN THIS AMOUNT
									Less Extra Money	
DIFF							NOT ON METER		Less Trips At 1.00	
							GROSS BOOK		NET BOOK	

	NO. PSGRS	TIME START	FROM	DESTINATION	TOTAL FARE INCL EXTRAS	
1.00						
2.00						
3.00						
4.00						
5.00						
6.00						
7.00						
8.00						
9.00						
0.00						
1.00						
2.00						
3.00						
4.00						
5.00						
6.00						
7.00						
8.00						
9.00						
0.00						
1.00						
2.00						
3.00						
4.00						

TOTAL PSGRS. _____

$6.99	Rivera	Carlos	100	6-2		09	25	12	10002
VOUCHERS	LAST NAME	FIRST NAME	CAB NO.	MEDALLION #	METER #	MO.	DAY	YR.	T.A. #

000100

RADIO CALLS | RECORD ALL DIGITS | SHIFT | GAS $ 24.78 | GALS. 6.924

	OMIT 10 THS ODOMETER	1- TOTAL MILES	2- PAID MILES	3- TRIPS	4- TOTAL MONEY	5- EXTRA MONEY
STOP	28235C	612620	56420	19779	61197820	499220
START	28225300	602456	56341	19667	59130558	499220
DIFF	1103	1021	79	112	1892620	000

BOOK	AMOUNT	CHECK-IN	AMOUNT
Total Money	189 20	Gross Book	189 20
Extra Money	—	Cash Turn In	189 20
	—	Less Extra Money	189 20
NOT ON METER	—	Less Trips At 1.00	12 00
GROSS BOOK	189 20	NET BOOK	177 20

← TURN IN THIS AMOUNT

IPS	NO. PSGRS	TIME START	FROM	DESTINATION	TOTAL FARE INCL EXTRAS
1.00	2	3 40	Tyler & Pkwy	Wm Penn Hwy	12
2.00	1	4 18	S Pkwy	Penn Hwy	13
3.00	4	5 08	S Pkwy	Penn Hwy	14
4.00	1	7 33	Penn Hwy	Penn Hwy	12
6.00	2	8 48	Penn Hwy	Penn Hwy	13
6.00	2	9 28	Penn Hwy	Penn Hwy	15
7.00	3	9 50	Penn Hwy	Penn Hwy	14
8.00	1	10 24	Penn Hwy	Penn Hwy	19
9.00	3	11 32	Penn Hwy	Penn Hwy	19
10.00	4	12 16	Penn Hwy	Penn Hwy	11
11.00	1	12 36	Penn Hwy	Penn Hwy	13
12.00	2	1 02	Penn Hwy	Penn Hwy	
13.00					
14.00			Cab	B/Down Airport	
15.00					
16.00					
17.00					
18.00					
19.00					
20.00					
21.00					
22.00					
23.00					
24.00					
25.00					
26.00					
27.00					
28.00					
29.00					
30.00					
31.00					
32.00					
33.00					
34.00					

TOTAL PSGRS.

VOUCHERS | LAST NAME: Barrera | FIRST NAME: Lorenzo | CAB NO.: 185 | SHIFT | MEDALLION #: 4-4 | METER # | MO. 09 DAY 28 YR. 12 | T.A. # 100025

GAS $ 22.57 GALS. 6.374

RECORD ALL DIGITS

	RADIO CALLS OMIT 10 THS ODOMETER	1. TOTAL MILES	2. PAID MILES	3. TRIPS	4. TOTAL MONEY	5. EXTRA MONEY	BOOK	AMOUNT	CHECK-IN	AMOUNT
STOP	276093	61465	41580	2865	87703	8548	Total Money	191 42	Gross Book	191 42
START	275983	60055	40580	2865	87703	8548	Extra Money	—	Cash Turn In	191 42
DIFF	110	1410	1000	121	1440	80	NOT ON METER	—	Less Extra Money	191 42
							GROSS BOOK	191 42	Less Trips At 1.00	12 00
									NET BOOK	179 42

← TURN IN THIS AMOUNT

IPS	NO. PSGRS	TIME START	FROM	DESTINATION	TOTAL FARE INCL. EXTRAS	
1.00	1	357	Tyco	Bethany	14	84
2.00	1	834	Dig	Hwy 34 & Jay	19	97
3.00	2	920	Sterling	Bethany	14	84
4.00	4	704	Pecos	Pecos	19	97
5.00	2	810	Pecos	Pecos	14	84
6.00	1	045	Pecos	Hwy 18 & Sycamore	13	83
7.00	1	938	Pecos	Bethany	12	82
8.00	1	1128	Chu	Clear	13	83
9.00	2	1209	Pecos	Bethany	15	85
10.00	2	1244	Pecos	Hwy 18 & Sycamore	12	82
11.00	2	121	Pecos	Bethany	19	97
12.00	1	153	Pecos	Hwy 18	24	102
13.00						
14.00						
15.00						
16.00						
17.00						
18.00						
19.00						
20.00						
21.00						
22.00						
23.00						
24.00						
25.00						
26.00						
27.00						
28.00						
29.00						
30.00						
31.00						
32.00						
33.00						
34.00						

TOTAL PSGRS

VOUCHERS | LAST NAME Rivera | FIRST NAME Luis | CAB NO. 182 | SHIFT A | MEDALLION # 4W4 | METER # | GAS $ 28.74 | GALS. 8.027 | MO. 09 | DAY. 25 | YR. 12 | T.A.# 10002

RADIO CALLS

RECORD ALL DIGITS

	OMIT 10 THS ODOMETER	1. TOTAL MILES	2. PAID MILES	3. TRIPS	4. TOTAL MONEY	5. EXTRA MONEY
STOP	276837	53411	48306	1294	17650	8548
START	276271	03480	42306	1281	12601	8548
DIFF	1664	1053	4500	13	1650	000

BOOK

	AMOUNT
Total Money	176 50
Extra Money	—
NOT ON METER	—
GROSS BOOK	176 50

CHECK-IN

	AMOUNT
Gross Book	176 50
Cash Turn In	133 00
Less Extra Money	176 50
Less Trips At 1.00	13 00
NET BOOK	163 50

TURN IN THIS AMOUNT

IPS	NO. PSGRS	TIME START	FROM	DESTINATION	TOTAL FARE INCL EXTRAS
1.00	4	3 04	Tyler	Hamp/Allerton	16 50
2.00	1	9 38	Woodhaven	Myrtle/Cypress	6 50
3.00	3	4 29	Tyler	Myrtle/Cypress	9 50
4.00	2	4 52	Bay/Bay	Myrtle/Cypress	9 50
5.00	2	5 38	Bay/Rose	Myrtle/Cypress	9 50
6.00	2	7 29	Bay/Bay	Myrtle/Cypress	9 50
7.00	3	8 16	Bay/Berry	Myrtle/Cypress	9 50
8.00	2	9 25	Bay	Myrtle/Cypress	9 50
9.00	3	10 08	Tyler/Or	Myrtle/Cypress	9 50
10.00	4	10 32	Bay/Berry	Myrtle/Cypress	9 50
11.00	1	11 58	Bay/Cooper	Myrtle/Cypress	9 50
12.00	2		Bay/Orchard	Myrtle/Cypress	9 50
13.00	4		Bay/Orchard	Myrtle/Cypress	16 50
14.00					
15.00					
16.00					
17.00					
18.00					
19.00					
20.00					
21.00					
22.00					
23.00					
24.00					
25.00					
26.00					
27.00					
28.00					
29.00					
30.00					
31.00					
32.00					
33.00					
34.00					

TOTAL PSGRS. ———

VOUCHERS	LAST NAME	FIRST NAME	CAB NO.	MEDALLION #	METER #	MO.	DAY	YR.	T.A. #
	Pereira	Lorenzo	182	W 4		09	30	12	10002

RADIO CALLS — RECORD ALL DIGITS — SHIFT — GAS $ — GALS.

	OMIT 10 THS ODOMETER	1. TOTAL MILES	2. PAID MILES	3. TRIPS	4. TOTAL MONEY	5. EXTRA MONEY
STOP	276517	06022	07532	2943	003091	85480
START	276489	05730	07432	2940	999221	85480
DIFF	28	39	10	03	3870	000

BOOK	AMOUNT	CHECK-IN	AMOUNT
Total Money	38 70	Gross Book	38 70
Extra Money	—	Cash Turn In	38 70
	—	Less Extra Money	38 70
NOT ON METER	—	Less Trips At 1.00	3 00
GROSS BOOK	38 70	NET BOOK	35 70

← TURN IN THIS AMOUNT

TIPS	NO. PSGRS	TIME START	FROM	DESTINATION	TOTAL FARE INCL EXTRAS
1.00	1	336	Tolly	W/S/M	16 90
2.00	2	416	Jump	Irving	8 00
3.00	2	520	S/B-M	B/M	12 00
4.00					
5.00					
6.00					
7.00					
8.00					
9.00					
10.00					
11.00					
12.00					
13.00					
14.00					
15.00					
16.00					
17.00					
18.00					
19.00					
20.00					
21.00					
22.00					
23.00					
24.00					
25.00					
26.00					
27.00					
28.00					
29.00					
30.00					
31.00					
32.00					
33.00					
34.00					

Sick

TOTAL PSGRS.

000103

VOUCHERS | LAST NAME Rubio | FIRST NAME Lucio | CAB NO. 182 | SHIFT | MEDALLION # | METER # | MO. 10 | DAY 12 | YR. | T.A. # 1000

GAS $ 23.72 GALS: 6.627

RECORD ALL DIGITS

	OMIT TO THS ODOMETER	1- TOTAL MILES	2 PAID MILES	3. TRIPS	4. TOTAL MONEY	5. EXTRA MONEY
STOP	276180	107106	087533	25 56	022141	854280
START	276118	106021	075334	25 43	020309	085480
DIFF	1061	1085	11999	113	1732	800

BOOK

	AMOUNT
Total Money	190 50
Extra Money	-
NOT ON METER	-
GROSS BOOK	190 50

CHECK-IN

	AMOUNT
Gross Book	190 50
Cash Turn In	190 50
Less Extra Money	190 50
Less Trips At 1.00	13 00
NET BOOK	177 50

← TURN IN THIS AMOUNT

TIPS	NO. PSGRS	TIME START	FROM	DESTINATION	TOTAL FARE INCL EXTRAS
1.00	1	316	1816	Cass Ave	18 65
2.00	1	1116	S/Bear	Bagley	12 65
3.00	4	1559	S/Bear	Bagley	19 65
4.00	2	1718	Pelmus	Pelmus	18 65
5.00	1	1838	Pelmus	Broadway Market	23 65
6.00	2	1911	Wyandotte	Wyandotte	23 65
7.00	2	1958	Wyandotte	Main/Gen	14 65
8.00	1	2018	W/Grand	Wyandotte	4 65
9.00	4	2039	Wyandotte	Baltimore	6 65
10.00	3	1143	Pierpont	Cherokee	12 65
11.00	3	12:23	E/Lexington	Oakland	12 65
12.00	4	1119	Taylor	Cass	5 65
13.00	2	1952	Elm	Elmwood	12 65
14.00			Pleasant	Elmwood Cemetery	
15.00				Elmwood Cemetery to Quality Hill	
16.00					
17.00			Pleasant	Need day off	
18.00					
19.00			Grand	12th and Main	
20.00					
21.00					
22.00					
23.00					
24.00					
25.00					
26.00					
27.00					
28.00					
29.00					
30.00					
31.00					
32.00					
33.00					
34.00					

VOUCHERS | LAST NAME Rivera | FIRST NAME Lakesia | CAB NO. 182 | MEDALLION # 4 | METER # | GAS $ 26.50 | MO. 10 DAY 12 YR. 12 | T.A. # 100025

RADIO CALLS | RECORD ALL DIGITS | SHIFT | GALS. 7.409

	OMIT 10 THS ODOMETER	1. TOTAL MILES	2. PAID MILES	3. TRIPS	4. TOTAL MONEY	5. EXTRA MONEY	BOOK	AMOUNT	CHECK-IN	AMOUNT
STOP	2247718	0850	0418	069	0389	85-48	Total Money	168.85	Gross Book	168.85
START	2246619	0743	0358	056	0221	8574	Extra Money	—	Cash Turn In	168.85
DIFF	99	1102	41	13	168	100			Less Extra Money	168.85
							NOT ON METER	—	Less Trips At 1.00	13
							GROSS BOOK	168.85	NET BOOK	155.85

← TURN IN THIS AMOUNT

TOTAL PGS/RS. _____

JPS	NO. PGRS	TIME START	FROM	DESTINATION	TOTAL FARE INCL EXTRAS	
1.00	3	812	7 Tyler	Wyck Jr	8	13
2.00	1	3 58	S/ Bell	A/ Jr	12	13
3.00	2	4 20	S/ Bell	A/ Jr	13	13
4.00	2	5 44	C/ Bell	A/ M	14	14
5.00	2	7 46	Dennis	Peters	9	14
6.00	2	8 19	S/ Bell	S/ Jerry	6	12
7.00	2	9.58	C/ Jerry	A/ Jr	16	15
8.00	2	10 22	S/ Bell	Bishop Harold	15	18
9.00	1	11 58	The Last	M/ Dyke	13	15
10.00	2	12 44	S/ Bell	A/ Jr	10	13
11.00	1	1 16	Pelham	A/ Jerry	13	15
12.00	4	1 40	S/ Bell	A/ Jerry	18	17
13.00	2	2 03	S/ Bell	J/ Jr	18	17
14.00						
15.00						
16.00						
17.00						
18.00						
19.00						
20.00						
21.00						
22.00						
23.00						
24.00						
25.00						
26.00						
27.00						
28.00						
29.00						
30.00						
31.00						
32.00						
33.00						
34.00						

VOUCHERS $7.00

LAST NAME Rivera

FIRST NAME Lourdes

CAB NO. 182

SHIFT

MEDALLION # 4W4

METER #

MO. 08 DAY 03 YR. 12

T.A. # 100025

GAS $ 23.18 GALS. 6.436

RECORD ALL DIGITS

RADIO CALLS

OMIT 10 THS ODOMETER

	1. TOTAL MILES	2. PAID MILES	3. TRIPS	4. TOTAL MONEY	5. EXTRA MONEY
STOP	276257	08889	2482	0585	7685
START	275718	08411	2469	0385	9911
DIFF	1107	478	13	2077	1880

BOOK

	AMOUNT
Total Money	207.75
Extra Money	1.80
	—
NOT ON METER	—
GROSS BOOK	209.55

CHECK-IN

	AMOUNT
Gross Book	209.55
Cash Turn In	209.55
Less Extra Money	209.55
Less Trips At 1.00	13
NET BOOK	196.50

← TURN IN THIS AMOUNT

IPS	NO. PSGRS	TIME START	FROM	DESTINATION	TOTAL FARE INCL. EXTRAS
1.00	1	2026	Bay Manor	Throgs Neck	13.00
2.00	3	0328	Throg	Belmont	12.50
3.00	2	1442	Throg Neck	Belmont	12.50
4.00	1	0604	Throg Neck	Belmont	12.50
5.00	1	0832	Pelham	Belmont	12.50
6.00	1	0852	Throg Neck	Belmont	12.50
7.00	1	0948	Throg Neck	Belmont	12.50
8.00	2	0953	Throg Neck	Belmont	12.50
9.00	2	1155	Throg Neck	Belmont	12.50
10.00	1	1209	Throg Neck	Belmont	12.50
11.00	2	1403	Throg Neck	Belmont	12.50
12.00	1	1526	Throg Neck	Belmont	12.50
13.00	2	2001	Throg Neck	Belmont	12.50
14.00					
15.00					
16.00					
17.00					
18.00					
19.00					
20.00					
21.00					
22.00					
23.00					
24.00					
25.00					
26.00					
27.00					
28.00					
28.00					
30.00					
31.00					
32.00					
33.00					
34.00					

TOTAL PSGRS. _____

VOUCHERS | | LAST NAME Perera | FIRST NAME Lahiru | CAB NO. 182 | MEDALLION # 6N4 | METER # | MO. 08 DAY 11 YR. 2007 | T.A.#

RECORD ALL DIGITS | SHIFT | GAS $ 20.58 | GALS. 8.204

RADIO CALLS		1. TOTAL MILES	2. PAID MILES	3. TRIPS	4. TOTAL MONEY	5. EXTRA MONEY	BOOK		AMOUNT	CHECK-IN	AMOUNT
OMIT 10 THS ODOMETER							Total Money			Gross Book	
STOP	2776539	113324	06853	4360	97	85	Extra Money			Cash Turn In	
START	2766836	103288	09933	4357	97	85				Less Extra Money	
DIFF	1163	1041	51	13	2		NOT ON METER			Less Trips At 1.00	
							GROSS BOOK		212.70	NET BOOK	197.92

← TURN IN THIS AMOUNT

PS	NO. PSGRS	TIME START	FROM	DESTINATION	TOTAL FARE INCL EXTRAS	
1.00	1	2 46	Brooklyn	Manhattan	11	22
2.00	3	4 10	Bronx	Chelsea	16	43
3.00	2	5 52	Staten Island	Astoria	12	24
4.00	1	7 06	Staten Island	Bayside	9	17
5.00	1	8 38	Bronx	Bayside	16	28
6.00	2	9 28	Bronx	Manhattan	14	30
7.00	2	10 01	Bronx	Bronx	4	10
8.00	1	10 46	Bronx	Queens	8	16
9.00	2	N 46	Brooklyn	Manhattan	20	42
10.00	1	12 15	Brooklyn	Queens	20	42
11.00	2	12 55	Brooklyn	Flushing	17	42
12.00	1	1 24	Staten Island	Manhattan	14	25
13.00	2	1 46	Queens	Manhattan	22	42

TOTAL PSGRS.

VOUCHERS | LAST NAME Delcid | FIRST NAME Landin | CAB NO. 182 | MEDALLION # 4W4 | METER # | MO. 10 DAY 06 YR 12 | T.A. # 100032

RADIO CALLS | RECORD ALL DIGITS | SHIFT | GAS $ 26.42 | GALS 7.1746

	OMIT 10 THS ODOMETER	1. TOTAL MILES	2. PAID MILES	3. TRIPS	4. TOTAL MONEY	5. EXTRA MONEY
STOP	217153	112	108	2064	12136	8540
START	217048	111	102	2060	09904	8540
DIFF	113	1116	574	116	22240	0

BOOK: Total Money 222.42 | Extra Money — | NOT ON METER — | GROSS BOOK 222.42

CHECK-IN: Gross Book 221.42 | Cash Turn In 222.42 | Less Extra Money 222.42 | Less Trips At 1.00 1.00 | NET BOOK 26.42

TURN IN THIS AMOUNT

IPS	NO. PSGRS	TIME START	FROM	DESTINATION	TOTAL FARE INCL EXTRAS	AMOUNT
1.00	4	9:43	Fl. Lau.	P/Scotch	6	
2.00	4	3:28	@/@	Mme.	15.-	
3.00	2	8:52	Fwd. Ave.	C/Dalva	13.-	
4.00	2	5:10	S/Bed.	B/P	14	
5.00	2	9:52	S/Bed.	BA/P	14	
6.00	1	6:38	Tlc/Dr.	S/Bed.	6	
7.00	4	9:22	Tlc/Cap.	Bro/Lma.	9	
8.00	2	10:08	Tlc/Dr.	BA/P	7	
9.00	2	10:22	S/Bed.	B/Mme.	6	
10.00	2	10:48	S/Bed.	BA/P	12	
11.00	2	11:22	S/Bed.	Mme.	6	
12.00	1	12:10	P/Bed.	Mme.	11	
13.00	4	12:56	S/Bed.	BA/P	16	
14.00	2	1:16	S/Bed.	BA/P	18	
15.00	3	1:35	S/Bed.	C/Mme.	24	
16.00	2	2:04	S/Cap.	Mme.	20	
17.00						
18.00						
19.00						
20.00						
21.00						
22.00						
23.00						
24.00						
25.00						
26.00						
27.00						
28.00						
29.00						
30.00						
31.00						
32.00						
33.00						
34.00						

TOTAL PAGE

VOUCHERS | LAST NAME | FIRST NAME | CAB NO. | SHIFT | MEDALLION # | METER # | MO. DAY YR. | T.A.#

RADIO CALLS | RECORD ALL DIGITS | GAS $ | GALS.

	OMIT 10 THS ODOMETER	1. TOTAL MILES	2. PAID MILES	3. TRIPS	4. TOTAL MONEY	5. EXTRA MONEY
STOP						
START						
DIFF						

BOOK: Total Money | Extra Money | NOT ON METER | GROSS BOOK

CHECK-IN: Gross Book | Cash Turn In | Less Extra Money | Less Trips At 1.00 | NET BOOK

AMOUNT

TURN IN THIS AMOUNT

TIPS	NO. PSGRS	TIME START	FROM	DESTINATION	TOTAL FARE INCL EXTRAS		AMOUNT
1.00							
2.00							
3.00							
4.00							
5.00							
6.00							
7.00							
8.00							
9.00							
10.00							
11.00							
12.00							
13.00							
14.00							
15.00							
16.00							
17.00							
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19.00							
20.00							
21.00							
22.00							
23.00							
24.00							
25.00							
26.00							
27.00							
28.00							
29.00							
30.00							
31.00							
32.00							
33.00							
34.00							

TOTAL PSGRS. _____

VOUCHERS | LAST NAME Perera | FIRST NAME Lasith | CAB NO. 182 | MEDALLION # 449 | METER # | MO. 10 DAY 09 YR. 12 | T.A. # 108027

GAS $ 25.79 | GALS. 7.011

RADIO CALLS | RECORD ALL DIGITS | SHIFT

	OMIT 10 THS ODOMETER	1. TOTAL MILES	2. PAID MILES	3. TRIPS	4. TOTAL MONEY	5. EXTRA MONEY	BOOK	AMOUNT	CHECK-IN	AMOUNT
STOP	376472	1850	1320	2341	2311	8660	Total Money	216.35	Gross Book	216.35
START	275283	168864	12449	30974	21048	8600	Extra Money	—	Cash Turn In	213.25
									Less Extra Money	213.25
							NOT ON METER	-	Less Trips At 1.00	17.00
DIFF	1094	122	63	17	1263	60	GROSS BOOK	216.35	NET BOOK	196.35

← TURN IN THIS AMOUNT

JPS	NO. PSGRS	TIME START	FROM	DESTINATION	TOTAL FARE INCL EXTRAS
1.00	4	2415	Tnca	Fremont	6
2.00	4	922	Tysons	Rosslyn	7
3.00	4	1142	L/Penn	Wardman Pk	9
4.00	2	1455	S/Penn	Dupont	14
5.00	2	1525	Se/Penn	Dupont	12
6.00	2	1733	S/Penn	Dupont	12
7.00	1	1818	Tysons	Dupont	12
8.00	1	1934	Tysons	W/P	15
9.00	1	2048	Pentagon	W/P	16
10.00	2	2102	Arlington	Georgetown	8
11.00	2	2126	Arlington	Georgetown	16
12.00	2	2218	Arlington	Georgetown	12
13.00	2	2302	P/Dupont	Georgetown	13
14.00	1	2340	H/Glover Park	Georgetown	13
15.00	1	115	Bethesda	Georgetown	6
16.00	1	1234	Tysons	Georgetown	15
17.00	1	2028	Bolo	Georgetown	13
18.00					
19.00					
20.00					
21.00					
22.00					
23.00					
24.00					
25.00					
26.00					
27.00					
28.00					
29.00					
30.00					
31.00					
32.00					
33.00					
34.00					

TOTAL PSGRS.

VOUCHERS: 87 | LAST NAME: Delrosario | FIRST NAME: Enrique | CAB NO.: 187 | MEDALLION #: W 4 | METER #: | MO. 10 DAY 10 YR. 12 | T.A. # 10002

GAS $ 29.35 GALS. 7.885

SHIFT

RECORD ALL DIGITS

OMIT 10 THS ODOMETER | 1. TOTAL MILES | 2. PAID MILES | 3. TRIPS | 4. TOTAL MONEY | 5. EXTRA MONEY

	OMIT 10 THS ODOMETER	1. TOTAL MILES	2. PAID MILES	3. TRIPS	4. TOTAL MONEY	5. EXTRA MONEY
STOP	27778	19221	13541	3124	2549	8602
START	27667	21886	13002	2211	2321	8602
DIFF	111	421	54	13	228	0

BOOK

		AMOUNT
Total Money		228.00
Extra Money		—
		—
NOT ON METER		—
GROSS BOOK		228.00

CHECK-IN

	AMOUNT
Gross Book	228.00
Cash Turn In	228.00
Less Extra Money	228.00
Less Trips At 1.00	13.00
NET BOOK	215.00

TURN IN THIS AMOUNT

TPS	NO. PSGRS	TIME START	FROM	DESTINATION	TOTAL FARE INCL EXTRAS
1.00	2	322	Penn	Cortlandt	16.50
2.00	2	433	Essex / Delancey	Astor Pl / Lex	14.00
3.00	2	498	Bleecker / Bedford	4 Av / 9 St	14.00
4.00	2	547	Houston / Elizabeth	Astor Pl / 4 Av	13.00
5.00	2	632	Penn	Wash Sq	13.00
6.00	2	713	9 Av / 23 St	Astor Pl / Lex	13.00
7.00	2	914	9 Av / 23 St	Astor Pl / Lex	13.00
8.00	2	1028	6 Av / Bleecker	Astor Pl / Lex	13.00
9.00	2	1058	14 St / 9 Av	18 / Madison	13.00
10.00	1	1148	18 / Broadway	6 Av / 14 St	13.00
11.00	2	1212	Bleecker / Lafayette	8 / Lex	13.00
12.00	2	1128	8 / Broadway	23 / Lex	13.00
13.00	2	1201	Penn	Delancey / Essex	13.00
14.00					
15.00					
16.00					
17.00					
18.00					
19.00					
20.00					
21.00					
22.00					
23.00					
24.00					
25.00					
26.00					
27.00					
28.00					
29.00					
30.00					
31.00					
32.00					
33.00					
34.00					

TOTAL PSGRS.

VOUCHERS | LAST NAME: Elmera | FIRST NAME: Cadasni | CAB NO.: 152 | MEDALLION #: 1J 60 | METER #: | MO. DAY YR.: 10 12 12 | T.A. #: 1B0023

RECORD ALL DIGITS | SHIFT | GAS $ 28.90 | GALS. 7.729

	RADIO CALLS OMIT 10 THS ODOMETER	1. TOTAL MILES	2. PAID MILES	3. TRIPS	4. TOTAL MONEY	5. EXTRA MONEY	BOOK	AMOUNT	CHECK-IN	AMOUNT
STOP	2 7 7 8 8 1	2 4 1 2	1 4 3 8	1 5 1	2 9 0 4 9	1 8 6 0	Total Money	190 45	Gross Book	190 45
START	2 7 7 8 8 1	2 2 0 4	1 3 9 3	1 3 9	2 7 1 4 5	8 6 0	Extra Money	—	Cash Turn In	190 45
DIFF	1 1 3	9 6	4 5	1 2	1 9 0 4 0	8 0 0	NOT ON METER	—	Less Extra Money	190 45
							GROSS BOOK	190 45	Less Trips At 1.00	12 00
									NET BOOK	178 45

← TURN IN THIS AMOUNT

LPS	NO. PSGRS	TIME START	FROM	DESTINATION	TOTAL FARE INCL EXTRAS
1.00	2	333	Mayo	Wynn	18 50
2.00	1	658	Wedgwood	Bally's	12 50
3.00	1	658	Bonanza	Bally's	13 50
4.00	2	728	Rio	Wynn	60 00
5.00	1	924	Palms	Wynn/Bean	11 00
6.00	1	924	Hooters	Bally's	12 50
7.00	2	1035	The Ivar	Stratosphere	14 00
8.00	1	1129	Trump	Circus Circus	22 00
9.00	1	1249	Palms	Palazzo	17 00
10.00	4	1258	Palms	Stratosphere	20 00
11.00	2	120	Stratosphere	Bonanza	14 00
12.00	2	202	Village Inn	Bally's	17 00
13.00					
14.00					
15.00					
16.00					
17.00					
18.00					
19.00					
20.00					
21.00					
22.00					
23.00					
24.00					
25.00					
26.00					
27.00					
28.00					
29.00					
30.00					
31.00					
32.00					
33.00					
34.00					

TOTAL PSGRS. _____

VOUCHERS	LAST NAME	FIRST NAME	CAB NO.	MEDALLION #	METER #	MO.	DAY	YR.	T.A. #
	Perera	Carson	182	04		10	13	12	10002

RADIO CALLS — RECORD ALL DIGITS — SHIFT — GAS $ 2231 — GALS. 5,968

	OMIT 10 THS ODOMETER	1. TOTAL MILES	2. PAID MILES	3. TRIPS	4. TOTAL MONEY	5. EXTRA MONEY
STOP	278172	2327	1543	3184	338541	86020
START	278081	2231	1499	3171	319291	86020
DIFF	91	96	44	13	19250	0.00

BOOK	AMOUNT	CHECK-IN	AMOUNT
Total Money	192 50	Gross Book	192 50
Extra Money	—	Cash Turn In	192 50
	—	Less Extra Money	192 50
NOT ON METER	—	Less Trips At 1.00	13 00
GROSS BOOK	192 50	NET BOOK	179 50

← TURN IN THIS AMOUNT

IPS	NO. PSGRS	TIME START	FROM	DESTINATION	TOTAL FARE INCL EXTRAS
1.00	4	252	O/G	Bellis	19 50
2.00	2	338	O/G	P/Holly	17 10
3.00	2	450	S/Bay	A/P	19 70
4.00	2	532	S/Bay	Vones	9 60
5.00	2	621	S/Bay	Bovis	8 00
6.00	3	802	S/Bay	A/P	15 90
7.00	2	926	S/Bay	A/P	16 90
8.00	2	1052	P/outlets	Palazzo	15 50
9.00	2	1149	S/Bay	F/wyn	6 00
10.00	4	1238	P/outlets	Cir/Cr	16 50
11.00	1	120	S/Bay	Dora	13 00
12.00	4	126	To/out/Bar	B/chap	21 00
13.00	2	134	C/h/LVB	M/S/M	22 00
14.00					
15.00					
16.00					
17.00					
18.00					
19.00					
20.00					
21.00					
22.00					
23.00					
24.00					
25.00					
26.00					
27.00					
28.00					
29.00					
30.00					
31.00					
32.00					
33.00					
34.00					

TOTAL PSGRS.

VOUCHERS | LAST NAME Parsons | FIRST NAME Lakesha | CAB NO. 182 | SHIFT | MEDALLION # 4W4 | METER # | MO. 10 DAY 16 YR. 12 | T.A. # 100072

RADIO CALLS | RECORD ALL DIGITS | GAS $ 23.17 | GALS. 6.203

	OMIT 10 THS ODOMETER	1. TOTAL MILES	2 PAID MILES	3. TRIPS	4. TOTAL MONEY	5. EXTRA MONEY	BOOK	AMOUNT	CHECK-IN	AMOUNT
STOP	7	25551	16661	232	3932	1860	Total Money	234 62	Gross Book	234 62
START	27	24508	16123	210	3701	1860	Extra Money	—	Cash Turn In	234 62
DIFF		1051	543	19	231	60	NOT ON METER	—	Less Extra Money	23 62
									Less Trips At 1.00	19
							GROSS BOOK	236 62	NET BOOK	217 62

← TURN IN THIS AMOUNT

IPS	PSGRS NO.	TIME START	FROM	DESTINATION	TOTAL FARE INCL EXTRAS
1.00	3	0756	Hyde	Kelly	13
2.00	4	3 28	Mace	Stuart	7
3.00	3	8 19	Tyree	Main	9
4.00	3	4 36	Main	Reaver	7
5.00	2	5 41	S Boone	Walnut	13
6.00	2	6 18	S Boone	Poplar	12
7.00	1	6 35	Tyler	Main	15
8.00	3	7 28	S Boone	Depot	9
9.00	1	8 14	Kentucky	Creek	9
10.00	2	9 06	S Boone	Fairview	23
11.00	2	9 16	S Boone	Main	5
12.00	2	9 32	S Boone	Hyatt	8
13.00	2	9 52	S Boone	Main	12
14.00	2	10 28	Dunham	Main	23
15.00	2	11 12	S Boone	Fourth	21
16.00	2	12 20	S Locust	Main	16
17.00	2	4 32	Main	Elm	22
18.00	2	1 57	Hyde	Main	10
19.00	2	9 12	Walnut	Poplar	12
20.00					
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33.00					
34.00					

TOTAL PSGRS.

VOUCHERS | LAST NAME Rodriguez | FIRST NAME Leonardo | CAB NO. 181 | MEDALLION # 6 4 | METER # | MO. 10 DAY 15 YR. 12 | T.A.# 10022

RADIO CALLS | RECORD ALL DIGITS | SHIFT | GAS $ 25.00 | GALS. 6.68

	OMIT 10 THS ODOMETER	1. TOTAL MILES	2. PAID MILES	3. TRIPS	4. TOTAL MONEY	5. EXTRA MONEY	BOOK	AMOUNT	CHECK-IN	AMOUNT
STOP	248188	21621	17083	2337	46 71631	18600220	Total Money	137 60	Gross Book	137 60
START	238625	16665	12279		37 13760		Extra Money	-	Cash Turn In	137 60
DIFF	11	1057	1058		1360	0 00	NOT ON METER	-	Less Extra Money	
									Less Trips At 1.00	65
							GROSS BOOK	137 60	NET BOOK	129 60

← TURN IN THIS AMOUNT

IPS	NO. PSGRS	TIME START	FROM	DESTINATION	TOTAL FARE INCL EXTRAS
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2.00	3	5 42	P Delmas	B 125	16 00
3.00	3	7 58	Pre / 80	B 125	13 50
4.00	1	9 38	Pre / 80	B 125	14 50
5.00	1	10 11	B / Bird	B 125	14 50
6.00	2	11 49	B / Liberty	B 125	15 50
7.00	2	1 15	P / Redwood	Lincoln	19 50
8.00	2	1 49	Sept 11	Cass W	26 50
9.00			7th / 4th St		
10.00					
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32.00					
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34.00					

TOTAL PSGRS.

EXHIBIT 5-2

EXHIBIT 5-2

30b MINIMUM WAGE

30b00 FLSA MW.

(a) The FLSA MW rate is $3.35 per hour, effective 1/1/81.

30b01 Monthly salary equivalents.

(a) Since the number of regularly scheduled work hours may be greater in long months than in short months, the strict allocation of a regular monthly salary to the hours worked within each month may result in a technical MW violation in the longer months. However, for enforcement purposes, a regular monthly salary of $580.67 shall be considered as equivalent to a weekly wage of $134.00 and accepted as compliance with the $3.35 MW requirement if it is compensation for 40 hours of work or less in the w/w. If the employer rounds out this amount to not more than $585.00 per month, this will not affect the regular rate (i.e., $3.35) for OT purposes.

(b) Where an employee is paid a salary for a period in excess of a w/w (for example, on a monthly or semi-monthly basis) and works an alternating schedule of fixed w/w's, and an equal allocation of the salary would result in payment of less than the MW for the long w/w's, there will be compliance with the MW provisions of FLSA provided:

(1) the salary is sufficient to meet the MW requirements for all hours worked during the pay period; and

(2) there is an agreement or understanding between the parties that a larger portion of the salary is to be allocated to the longer w/w's. The employer shall be advised that the firm's records should properly reflect the allocation of the salary on a w/w basis.

30b02 Minimum rate of pay for non-OT weeks.

In non-OT w/w's or in w/w's in which the OT provisions do not apply, an employee subject to section 6 of FLSA is considered to be paid in compliance if the overall earnings for the w/w equal or exceed the amount due at the applicable MW. This is true regardless of whether the employee is paid on the basis of a single hourly rate, different hourly rates, commissions, certain bonuses, or some combination of these methods. In other words, if the employee's total earnings for the w/w (including certain bonuses such as a production bonus - see FOH 30b07) divided by compensable hours equals or exceeds the applicable MW, the employee has been paid in compliance with Sec 6. These principles will also apply where an employee is not compensated for time which is compensable under FLSA. For example, if an employee subject to the $3.35 MW during a w/w is paid for 32 hours at $5.50 per hour and is paid at a lesser rate or nothing at all for 8 or fewer additional hours worked, this individual is considered to have been paid in compliance with Sec 6. The WH position regarding proper payment in w/w's where OT is due is set out in 32j02.

EXHIBIT 5-3

EXHIBIT 5-3

BRIAN SANDOVAL
Governor

BRUCE BRESLOW
Director

THORAN TOWLER
Labor Commissioner

STATE OF NEVADA

REPLY TO:
X OFFICE OF THE LABOR COMMISSIONER
555 E. WASHINGTON AVENUE, SUITE 4100
LAS VEGAS, NEVADA 89101
PHONE (702) 486-2650
FAX (702) 486-2660

O OFFICE OF THE LABOR COMMISSIONER
875 PARVIEW DRIVE, SUITE 226
CARSON CITY, NEVADA 89701
PHONE (775) 687-4850
FAX (775) 687-6409

Department of Business & Industry

OFFICE OF THE LABOR COMMISSIONER

http://www.LaborCommissioner.com

November 13, 2012

LAKSIRI P. PERERA
6500 PEARCREST RD
LAS VEGAS, NV 89108

File number: 20076

With regards to your claim for wages filed against WESTERN CAB COMPANY please refer to the attached response from JUSTIN W. SMERBER, ESQ. representing WESTERN CAB COMPANY. To substantiate response provided are copies of payroll records. With these evidentiary documents, it appears that you have been paid correctly.

If you disagree, please respond in writing not later than 11/23/2012. Provide evidentiary documents to substantiate why you disagree. If you fail to respond properly by 11/23/2012, your claim will be closed.

Thank you for your cooperation.

CESAR M. PICAZO
Auditor / Investigator
Office of the Labor Commissioner

EXHIBIT 6

EXHIBIT 6

BRIAN SANDOVAL
Governor

TERRY JOHNSON
Director

THORAN TOWLER
Labor Commissioner

STATE OF NEVADA

REPLY TO:

- OFFICE OF THE LABOR COMMISSIONER
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Department of Business & Industry

OFFICE OF THE LABOR COMMISSIONER

http://www.LaborCommissioner.com

STATE OF NEVADA
MINIMUM WAGE
2012 ANNUAL BULLETIN

POSTED APRIL 1, 2012

PURSUANT TO ARTICLE 15, SECTION 16(A) OF THE CONSTITUTION OF THE STATE OF NEVADA, THE GOVERNOR HEREBY ANNOUNCES THAT THE FOLLOWING MINIMUM WAGE RATES SHALL APPLY TO ALL EMPLOYEES IN THE STATE OF NEVADA UNLESS OTHERWISE EXEMPTED. THESE RATES ARE EFFECTIVE AS OF JULY 1, 2012.

FOR EMPLOYEES TO WHOM QUALIFIYING HEALTH BENEFITS HAVE BEEN MADE AVAILABLE BY THE EMPLOYER:

NO LESS THAN $7.25 PER HOUR

FOR ALL OTHER EMPLOYEES:

NO LESS THAN $8.25 PER HOUR

Copies may also be obtained from the Labor Commissioner's Offices at

675 Fairview Drive, Suite 226
Carson City, Nevada 89701
(775) 687-4850

or

555 East Washington, Suite 4100
Las Vegas, Nevada 89101
(702) 486-2650

EXHIBIT 7

EXHIBIT 7

BRIAN SANDOVAL
GOVERNOR

BRUCE BRESLOW
DIRECTOR

THORAN TOWLER
LABOR COMMISSIONER

STATE OF NEVADA

OFFICE OF THE LABOR COMMISSIONER
675 FAIRVIEW DRIVE, SUITE 226
CARSON CITY, NV 89701
PHONE: (775) 687-4850
FAX (775) 687-6409

Department of Business & Industry
OFFICE OF THE LABOR COMMISSIONER
www.LaborCommissioner.com

Biennial Report to the Governor and the Legislature Pursuant to NRS 607.080
July 1, 2014

MISSION

The Office of the Labor Commissioner is the principal labor and industrial relations regulatory agency for the State of Nevada. As such, it is the mission of this office to enforce all labor and industrial relations laws of the State of Nevada not otherwise assigned to another entity to ensure the fair and lawful conduct of business in the State of Nevada.

The Office of the Labor Commissioner envisions a labor force in which all employees are compensated for all work performed and where all employers are aware of and comply with labor laws, ultimately resulting in an economic benefit for the State of Nevada.

GOALS

As an agency, it is our goal to help the public resolve labor-related problems in an efficient, professional, and effective manner. This includes educating employers and employees regarding their rights and responsibilities under the law in an effort to promote the growth of business in Nevada. Additionally, it includes taking enforcement action, when necessary, to ensure that Nevada's workers are treated fairly and compensated for all time worked.

STATUTORY AND REGULATORY AUTHORITY

NRS 607 – Office of the Labor Commissioner
NRS 608 – Compensation, Wages and Hours
NRS 609 – Employment of Minors
NRS 610 – Apprenticeship
NRS 611 – Private Employment Agencies
NRS 613 – Employment Practices*
NRS 614 – Organized Labor and Labor Disputes
NRS 338 – Public Works

NAC 607 – Rules of Practice
NAC 608 – Compensation, Wages and Hours
NAC 609 – Employment of Minors
NAC 610 – Apprenticeship
NAC 611 – Private Employment Agencies
NAC 613 – Employment Practices
NAC 338 – Public Works

**NRS 613.040-613.070 and NRS 613.310-613.435 are not enforced by the Labor Commissioner.*

FUNCTION AND PURPOSE OF THE OFFICE

While the Office of the Labor Commissioner is the principal labor and industrial relations regulatory agency for the State of Nevada, we do not have jurisdiction over all employment matters. The Office of the Labor Commissioner primarily handles wage and hour matters in private employment and on public works projects. Matters related to discrimination, unemployment, worker's compensation, etc. are handled by other government entities.

The Office of the Labor Commissioner investigates complaints for the non-payment of wages, minimum wage, overtime, and prevailing wage on public works projects. Additionally, the office monitors youth employment practices, apprenticeship programs, and private employment agencies operating in the State of Nevada.

Employment Practices

The Office of the Labor Commissioner ensures that certain safeguards and enforcement mechanisms exist in the workplace with regard to hours of service and working conditions. However, the Labor Commissioner does not have authority over employment practices related to political affiliation or employment discrimination; those duties are vested in other entities.

Minimum Wage Calculation

Pursuant to Article 15, Section 16(A) of the Nevada Constitution, the Governor or the State agency designated by the Governor must calculate the State minimum wage annually and publish a bulletin announcing the adjusted rates, if any, by April 1 of each year. The new rates, if any, go into effect the following July 1.

The Office of the Labor Commissioner is the agency designated by the Governor to make the minimum wage calculation each year and publish the bulletin announcing the rates. This is a duty this office takes very seriously as we understand the impact the determination of minimum wage has on the Nevada economy.

In 2014, the minimum wage rates for the State of Nevada did not increase from the year before. Presently, minimum wage in Nevada is $7.25 for workers offered qualified health insurance and $8.25 for workers without employer-provided health insurance.

Wage Claim Disputes

Resolution of wage disputes between employers and employees is the primary service provided by the Office of the Labor Commissioner. These disputes often relate to claims that an employee was not paid for all time worked, was not paid the appropriate overtime or was not paid timely.

Due to the significant financial impact unpaid wages can have on Nevada workforce and their families, this office strives to resolve all claims as quickly as possible. To that end, it is our goal to complete 90% of all wage claim investigations within 90 days of opening the claim. An investigation is considered completed when money due to the worker is received, the wage claim is dismissed or a final order has been issued.

In 2012 and 2013, the Office of the Labor Commissioner recovered over $4.5 million in wages and penalties for Nevada workers. To date, approximately 850 wage claims have been filed with over $650,000 in wages and penalties recovered in 2014.

Public Works Enforcement and Administration

The Office of the Labor Commissioner oversees the enforcement and administration of public works in Nevada. This includes the survey and determination of the minimum prevailing rate to be paid for each of the 36 job classifications recognized by Nevada law; the assignment of identifying numbers for public works projects and management of project files; and the adjudication of disputes between workers, contractors, and public bodies sponsoring or financing a public works project.

The Office of the Labor Commissioner issued public works project numbers for over 1,200 projects statewide in 2012 and 2013. The amount of these awarded projects totaled over $2.25 billion. Thus far in 2014, the Office of the Labor Commissioner has issued public works project numbers for 431 projects statewide, totaling $1.27 billion.

The Office of the Labor Commissioner's annual survey for 612 wage rate (36 classifications in 17 counties) resulted in approximately 3,500 individual rates being generated. For the first time in 2013, our office accepted these surveys electronically. This resulted in greater participation by contractors statewide. The Office of the Labor Commissioner expects the same for 2014.

Additionally, the Office of the Labor Commissioner oversaw 224 public works complaints in 2013. The resolution of those claims resulted in the recovery of over $1,000,000 for Nevada workers employed on public works projects. To date, 42 public works complaints have been filed with our office in 2014. The total number of complaints is down from prior years due in large part to efforts by our office to educate contractors and public bodies about Nevada's public works law.

Apprenticeship

Apprenticeship, often referred to as the "original 4-year degree," is a system of supervised training leading to certification in a trade, occupation or craft. It combines on-the-job training with classroom-related instruction. There are currently 91 approved apprenticeship programs and 2,714 registered apprentices in the State of Nevada.

With oversight by the Office of the Labor Commissioner, apprenticeship in Nevada is administered by the State Apprenticeship Council. The State Apprenticeship Council is comprised of seven members appointed by the Labor Commissioner, who serves are the State Director of Apprenticeship. Members of the State Apprenticeship Council represent the general public, labor, and management. The State Apprenticeship Council meets quarterly in February, May, August and November.

Any and all matters decided by the Council involving a registered apprentice or apprenticeship program, union or non-union, is subject to review and appeal by the Labor Commissioner. Unless appealed, all decisions rendered by the Labor Commissioner are binding and final.

Private Employment Agencies

The Office of the Labor Commissioner provides licensing and regulatory oversight of all private employment agencies in the State of Nevada. A private employment agency as defined by the Nevada Revised Statutes (NRS) is any person who, for a fee, commission or charge furnishes information to a person seeking employment enabling or tending to enable the person to seek employment; furnishes information to a person seeking employees enabling or tending to enable the person to obtain employees; or maintains a record of persons seeking employment or employees.

In 2013, all application materials to apply for a private employment agency license or to renew a previously issued private employment agency license were made available, for the first time, on the Office of the Labor Commissioner website. A total of 109 private employment agency licenses were issued or renewed in 2013. For 2014, a total of 103 private employment agency licenses were issued or renewed. This number includes 8 new agencies licensed and 16 agencies that closed or failed to renew.

Employment of Minors

The Office of the Labor Commissioner enforces the child labor laws outlined in NRS 609, including providing for the safety of minors in the workplace and ensuring that minors only work certain jobs, certain hours, and at certain ages.

OFFICE OF THE LABOR COMMISSIONER STAFF

The Office of the Labor Commissioner maintains offices in Carson City and Las Vegas with a staff of 19 individuals statewide. This is the same number of staff members the office had in 1991.

Executive Staff

Labor Commissioner

The Labor Commissioner serves as the administrator and primary hearing officer for the Office of the Labor Commissioner. Pursuant to NRS 607.030, the Labor Commissioner devotes his/her entire time and attention to these duties and the business of this office.

In his role as administrator, the Labor Commissioner oversees the day-to-day management and operation of the Carson City and Las Vegas offices. This includes hiring, training, supervising and evaluating administrative and investigative staff; representing the Office of the Labor Commissioner before the State Legislature and Legislative Committees; researching and, if necessary, revising applicable statutes and regulations; and educating Nevada employers and employees on Nevada's labor laws through outreach. Additionally, the Labor Commissioner oversees the preparation and administration of the agency's biennial budget.

In his role as hearing officer, the Labor Commissioner conducts administrative hearings on complaints of alleged violations of NRS 608 and/or NRS 338 in Northern Nevada (all counties except Clark, Esmeralda, Lincoln and Nye). Additionally, the Labor Commissioner serves as hearing officer over complex matters within the jurisdiction of the Las Vegas office.

In addition to his duties as administrator and primary hearing officer, the Labor Commissioner also serves as State Director of Apprenticeship with oversight of the Nevada State Apprenticeship Council.

The Labor Commissioner is based out of the Carson City office.

Deputy Labor Commissioner

The Deputy Labor Commissioner acts under the direction of the Labor Commissioner and assists in the performance of the Labor Commissioner's duties. Pursuant to NRS 607.030, the Deputy Labor Commissioner devotes his/her entire time and attention to these duties and the business of this office.

The Deputy Labor Commissioner acts as supervisor for the administrative staff of the Las Vegas office. Except in complex matters in which the Labor Commissioner serves as hearing officer, the Deputy Labor Commissioner serves as hearing officer for matters arising within the jurisdiction of the Las Vegas office.

Chief Assistant to the Labor Commissioner

The Chief Assistant to the Labor Commissioner serves as the Executive Assistant to the Labor Commissioner with both programmatic and administrative responsibilities as directed by the Labor Commissioner. Specific responsibilities include, but are not limited to: drafting and editing correspondence; managing the Commissioner's calendar, including scheduling travel and speaking engagements; drafting legal pleadings and orders of the Labor Commissioner; serving as Custodian of Records for the Office of the Labor Commissioner; and assisting with general administrative functions including payroll, personnel, budget, and agency finances.

The Chief Assistant to the Labor Commissioner is based out of the Carson City office.

Administrative Staff

Administrative Assistants

The Office of the Labor Commissioner employs an administrative staff of eight individuals statewide, including Administrative Assistant IVs, Administrative Assistant IIIs, and Administrative Assistant IIs.

The administrative staff primarily provides assistance to the public by answering questions and concerns pertaining to Nevada wage and hour laws by telephone, email, and in person. For matters not within the jurisdiction of the Labor Commissioner, administrative staff directs the public to other state and federal government agencies. Administrative staff also assists members of the public with filing wage claims, general employment complaints, and requests for personnel and wage records.

In addition to the duties referenced above, administrative staff members assist investigative staff with preparing case files, researching business information, and preparing letters to claimants and/or respondents. Further, the Administrative Assistant IVs are responsible for the administration of the Apprenticeship and Private Employment Agency programs.

Investigative Staff

Compliance/Audit Investigators

The Office of the Labor Commissioner employs an investigative staff of eight individuals statewide.

Investigators review wage claims to determine the issues and applicable statutes to make a determination as to whether there has been a violation of Nevada wage and hour laws. Investigators are required to exercise independent judgment in determining what actions to take during an investigation and must utilize available search techniques in the investigation of a claim. Investigators are often called upon to explain the claim process and answer questions regarding relevant provisions of Nevada wage and hour law.

The investigative process begins with an initial review of the wage claim to ensure that the claim falls within the jurisdiction of the Office of the Labor Commissioner. Next, the employer is notified that a claim has been filed alleging a violation of Nevada. Many times investigators are able to resolve the claim at this initial stage. If not, the employer must submit a response to the claim. Upon receipt of the employer's response and any relevant documentation, the investigative process begins. During the investigative process, investigators often meet with both parties to negotiate a settlement of the claim. If the parties cannot reach a settlement and the investigator believes the claim is sustainable, a formal written determination will issue. If an objection to the determination is filed, the investigation may move to the formal hearing process in which the matter is present to a hearing officer (usually the Labor Commissioner or Deputy Labor Commissioner). A Final Order of the Labor Commissioner may issue either as a result of the hearing or where no objection to the determination is submitted.

IN THE SUPREME COURT OF THE STATE OF NEVADA

WESTERN CAB COMPANY,

Petitioner,

vs.

EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, in and for the COUNTY OF CLARK; and THE HONORABLE LINDA MARIE BELL, District Judge,

Respondents,

and

LAKSIRI PERERA, IRSHAD AHMED, MICHAEL SARGEANT Individually and on behalf of others similarly situated,

Real Parties in Interest.

Case No.: _____

District Court Case No. A-14-707425-C

Electronically Filed
Dec 18 2015 03:06 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

PETITIONER'S APPENDIX IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS OR PROHIBITION
Volume 1 of 3

Malani L. Kotchka
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Attorneys for Petitioner
Western Cab Company

APPENDIX #	DOCUMENT DESCRIPTION	PAGES
1	Eighth Judicial District Court's 12/01/15 Decision and Order	1-15
2	Eighth Judicial District Court's 6/16/15 Decision and Order	16-29
3	Perera's 9/23/14 Complaint	30-35
4	Perera's 10/20/14 First Amended Complaint	36-42
5	Western Cab's 12/8/14 Motion to Dismiss	43-128
6	Perera's 1/26/15 Response to Defendant's Motion to Dismiss and Countermotion to Amend the Complaint and Conduct Discovery under NRCP Rule 56(f)	129-205
7	Perera's 1/27/15 Supplement to His Response to Defendant's Motion to Dismiss and Countermotion to Amend the Complaint and Conduct Discovery under NRCP Rule 56(f)	206-233
8	Western Cab's 2/10/15 Reply to Plaintiff's Response and Supplement to His Response to Defendant's Motion to Dismiss and Opposition to Plaintiff's Counter-Motion to Amend Complaint and Conduct Discovery under NRCP Rule 56(f)	234-312

APPENDIX 1

APPENDIX 1

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DAO

EIGHTH JUDICIAL DISTRICT COURT
CLERK OF THE COURT

CLARK COUNTY, NEVADA

LAKSIRI PERERA, individually and on behalf of others similarly situated,

Plaintiff,

vs.

WESTERN CAB COMPANY,

Defendant.

Case No. A-14-707425-C
Dep't No. VII

DECISION AND ORDER

This case arises from the employment relationship between Defendant Western Cab Company ("Western") and its former employee taxi driver, Plaintiff Perera. The motions addressed in this Order are Western's Motion for Reconsideration regarding this Courts June 16, 2015 Decision and Order, Western's Motion to Dismiss Second Amended Complaint, and Perera's Countermotion to Amend Complaint. The Court heard oral arguments on August 27, 2015 and October 8, 2015. After consideration of all submitted documents and oral arguments, the Court denies Perera's Motion for Reconsideration, grants Western's Motion to Dismiss in part, and grants Perera's Motion to Amend.

I. Procedural Background

Perera filed his first Complaint in this case on September 23, 2014. He alleges that Western violated the Minimum Wage Amendment of the Nevada Constitution by paying less than the required minimum wage and violated NRS § 608.040 by not paying former employees their earned but unpaid wages. Perera filed his First Amended Complaint on October 20, 2014, asserting the same two causes of action. Western filed a Motion to Dismiss the First Amended Complaint on December 8, 2014. Western argued that Perera failed to state a claim upon which relief could be granted. Perera filed an Opposition and

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

Countermotion to Amend the Complaint on January 26, 2015. The Court issued a Decision on June 16, 2015. The Court held that Perera could assert a violation of the Minimum Wage Amendment against Western and that the statute of limitations to bring the action is four years. The Court granted Perera's Motion to Amend "to add a claim related to cab drivers being required to pay for fuel costs." (June 16, 2015 Decision and Order at 2: 12-13.)

Perera filed a Second Amended Complaint on June 16, 2015. The Second Amended Complaint added an allegation that cab drivers were required to pay for their fuel, thus decreasing the amount of their wages. It also added Irshad Ahmed as a named Plaintiff in the action.

Western filed a Motion for Reconsideration on July 1, 2015. Western asks the Court to reconsider its ruling regarding the applicable statute of limitations. Western cites to several federal and lower state court cases that held that a two-year statute of limitations applies in these types of cases. Western does not cite to any binding legal authority or evidence that the Court had failed to consider in its Order or that had arisen after the Order issued.

Western filed a Motion to Dismiss Second Amended Complaint on July 7, 2015. Western argues that the Second Amended Complaint does not comply with the Court's June 16, 2015 Order, because it adds a named Plaintiff. (Western's Mot. to Dismiss at 3: 3-12.) Next, Western moves to dismiss Paragraph 19 from the Second Amended Complaint because it seeks damages for minimum wages owed since 2006, four years before the four-year statute of limitations period. (Id. at 2: 13-21.) Western also moves to dismiss Perera's NRS § 608.040 claim on the grounds that Perera was paid the correct amount when he stopped working for Western and Perera did not complete the statutory process for seeking a remedy under NRS § 608.040. In addition, Western argues that the Minimum Wage Amendment of the Nevada Constitution is preempted by the Employee Retirement Income Security Act ("ERISA"), the Affordable Care Act ("ACA"), and the Due Process Clause of the United States and Nevada Constitution. Finally, Western argues that Perera cannot seek punitive damages in this action because his claims are based on contract law.

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

Perera filed an Opposition and Countermotion to Amend and for Sanctions on August 14, 2015. Perera argues that Western's preemption claims are based on incorrect readings of the law or are irrelevant. (Perera's Opp'n and Countermot. at pp. 4-9.) Perera further argues that he has standing under NRS §608.040 to bring a private right of action at this time. (Id. at pp. 10-16.) Next, Perera argues that his claims are based on the Nevada Constitution rather than contract, so punitive damages are proper. (Id. at 16: 10-14.) Perera also argues that he has agreed to withdraw the Second Amended Complaint and treat the First Amended Complaint as the operative complaint in this action. (Id. at 3: 16-21.) This would resolve the issue of adding a named plaintiff. Perera moves to amend his Second Amended Complaint to add Irshad Ahmed and Michael Sargeant as plaintiffs. (Id. at Ex. A.) Finally, Perera asks for sanctions against Western's counsel, alleging that its Motion to Dismiss' only purpose was to delay the case. (Id. at 22: 20-21.)

II. Discussion

A. Western's Motion to Reconsider June 16, 2015 Decision and Order

Pursuant to EDCR 2.24, a court may reconsider a matter upon a motion filed by a party and served within ten days of notice of entry of order. Reconsideration is only appropriate when "substantially different evidence is subsequently introduced or the decision is clearly erroneous." Masonry & Title Contractors Ass'n of S. Nev. v. Jolley, Urga & Wirth, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997). Established practice does not allow litigants to raise new issues on rehearing. Cannon v. Taylor, 88 Nev. 89, 92, 493 P.2d 1313, 1314 (1972). "Rehearings are not granted as a matter of right, and are not allowed for the purposes of reargument . . . ." Geller v. McCowan, 64 Nev. 106, 108, 178 P.2d 380, 381 (1947). As Western has provided no basis for reconsideration other than a conflicting decision from another District Court Judge (which this Court was aware of at the time of the ruling), the Motion for Reconsideration is denied.

B. Western's Motion to Dismiss Second Amended Complaint

Nevada Rule of Civil Procedure 12(b)(5) authorizes dismissal of a claim if it fails to state a claim upon which relief can be granted. When considering a motion to dismiss, a

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

court must accept the allegations of the complaint as true and draw all inferences in favor of the non-moving party. Buzz Stew, LLC v. City of N. Las Vegas, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008). "Dismissal is proper where the allegations are insufficient to establish the elements of a claim for relief." Hampe v. Foote, 118 Nev. 405, 408, 47 P.3d 438, 439 (2002).

1. Minimum Wages from 2006

Western argues in its Motion to Dismiss that Paragraph 19 from the Second Amended Complaint should be removed because it seeks damages for minimum wages owed since 2006, four years before the four-year statute of limitations period. This Court ruled on June 16, 2015 that the statute of limitations in this action was four years. The original Complaint in this case was filed on September 23, 2014.

Perera does not address Western's argument regarding the statute of limitations in its Opposition. The court may construe failure to oppose a motion as admission to the merits or consent to grant the motion. See EDCR 2.20(e). Therefore, the Court orders that Perera will issue a Third Amended Complaint. Paragraph 19 of Perera's Third Amended Complaint must be amended to change the date "November 28, 2006" to "September 23, 2010." September 23, 2010 is the earliest date to fall within the statute of limitations in this action.

2. NRS § 608.040

Western also argues that Perera's NRS § 608.040 claim must be dismissed because Perera was paid the amount Western owed him under his employment agreement when he stopped working for Western. Perera argues that he can bring suit under NRS § 608.040 for the wages allegedly due under the Minimum Wage Amendment.

Assuming Perera has a private right to action under NRS § 608.040, the Complaint fails to state a cause of action. NRS § 608.140 refers to suits for "wages earned and due according to the terms of...employment." NRS § 608.012 defines wages as the "amount which an employer agrees to pay an employee." Perera's Second Amended Complaint does not allege that Western failed to pay the amount it owed Perera under his terms of

LINDA MARIE BELL
DISTRICT JUDGE
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employment. Perera alleges that the amount Western agreed to pay him in his terms of employment violates the Nevada Constitution. Though the Second Amended Complaint must be read liberally on a Motion to Dismiss, its causes of action rest on the allegation that Western required its employees to pay the cost of fuel, a term of their employment, thereby reducing their true minimum wage in violation of the Nevada Constitution. This allegation gives evidence that Western was abiding by the terms of its wage agreement with Perera, not that it was violating those terms.

The Second Amended Complaint fails to state a claim for a violation of NRS 608.040 upon which relief can be granted. Its allegations are insufficient to establish the elements of that claim. Therefore, the Court orders that Perera's second cause of action pursuant to NRS § 608.040 be dismissed.

3. Federal Preemption

In addition, Western argues that the Minimum Wage Amendment of the Nevada Constitution is preempted by ERISA, the ACA, and the Due Process Clause of the United States and Nevada Constitution. According to Western, ERISA and the ACA are comprehensive federal statutory systems that preempt state laws that "relate to" employee benefit plans (Western's Mot. to Dismiss at 8: 18) or "[pose] and obstacle to the ACA's purposes and objectives (Id. at 9: 16-17). Western also states that the Minimum Wage Amendment and related Nevada Administrative Code ("NAC") additions violate due process "because they do not give fair notice of what is required or prohibited under them or provide reasonable standards for compliance, thereby encouraging arbitrary and discriminatory enforcement." (Id. at 18: 21-25.) Perera argues that the Minimum Wage Act does not interfere with employer's ability to provide ERISA plans or follow the ACA and that the provisions of the Minimum Wage Act and NAC are not unconstitutionally vague. (Perera's Opp'n at 7: 28-8: 10, 8: 20-23.)

The Minimum Wage Amendment, Art. 15, Sec. 16(A) of the Nevada Constitution, states:

> Each employer shall pay a wage to each employee of not less than the hourly rates set forth in this section. The rate shall be five dollars and fifteen cents ($5.15) per hour worked, if the employer provides health benefits as described herein, or six dollars and fifteen cents ($6.15) per hour if the employer does not provide such benefits. Offering health benefits within the meaning of this section shall consist of making health insurance available to the employee for the employee and the employee's dependents at a total cost to the employee for premiums of not more than 10 percent of the employee's gross taxable income from the employer.

The Minimum Wage Amendment does not define what is meant by "health benefits" or "health insurance." The Labor Commissioner added NAC §§ 608.100-.108 to address the Amendment. NAC § 608.102 lists requirements for what health insurance qualifies an employer to pay the lower tier minimum wage. One type of health plan which qualifies an employer for the lower tier minimum wage is a plan that provides health benefits pursuant to a Taft-Hartley trust and qualifies as an employee welfare benefit plan under ERISA.

a. ERISA and the ACA

"ERISA section 514(a) preempts all state laws that 'relate to' any employee benefit plan." Cervantes v. Health Plan of Nevada, Inc., 127 Nev. Adv. Op. 70, 263 P.3d 261, 265 (2011) The "basic purpose of ERISA section 514(a) was to avoid multiplicity of regulation." Id. at 265. "A law references an ERISA plan when it acts immediately and exclusively upon ERISA plans or where the existence of ERISA plans is essential to the law's operation." Id. at 266 (internal citations omitted). "[S]tatutes that mandate employee benefit structures or their administration are preempted by ERISA section 514(a)." Id. (internal citations omitted).

The Minimum Wage Amendment and NAC § 608.102 do not act immediately or exclusively upon ERISA plans, not are ERISA plans essential to the laws' operation. Providing ERISA plans are one way that employers can qualify to pay the lower tier minimum wage. Providing an ERISA plan is not the only circumstance that brings the Minimum Wage Amendment and NAC § 608.102 into effect. Furthermore, the Minimum Wage Amendment and NAC § 608.102 do not mandate that employers provide certain

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employee benefit structures. The Minimum Wage Amendment and NAC § 608.102 are primarily about Nevada's minimum wage. Employers can provide any health insurance they deem appropriate, as long as they comply with Nevada's minimum wage laws. Making health insurance a condition of minimum wage will not create a multiplicity of regulation regarding health insurance. In fact, because NAC § 608.102 directly references ERISA plans, it allows employers to look to ERISA for guidance and reduces the need to develop different health insurance regulations.

The Minimum Wage Amendment and NAC § 608.102 do not implicate the ACA. The consequence of not providing a qualified health insurance plan to employees under the Minimum Wage Amendment and NAC § 608.102 is to pay a higher minimum wage. Is an employer does not comply with the ACA, it may be required to make an Employer Shared Responsibility Payment under 26 U.S.C. § 4980H. The requirements and consequences under these separate laws do not conflict. The Minimum Wage Amendment and NAC § 608.102 do not pose an obstacle to the ACA's purposes or objectives. Employers should, and must, be aware that they are required to adhere to both federal and state regulations.

The Minimum Wage Amendment and NAC § 608.102 do not impermissibly implicate or interfere with ERISA or the ACA. The Minimum Wage Amendment and NAC § 608.102 are primarily concerned with the minimum wage, while ERISA and the ACA deal with health insurance. Though health insurance is a condition of what minimum wage an employer must pay, the Nevada laws do not seek to redefine or pose an obstacle to any federal statutes. Therefore, the Minimum Wage Amendment and NAC § 608.102 are not preempted by ERISA or the ACA.

b. The Due Process Clause

"The criterion under which we examine the assertion of vagueness is whether the statute either forbids or requires the doing of any act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application." State v. Glusman, 98 Nev. 412, 420, 651 P.2d 639, 644 (1982) (internal citation omitted). "[S]tatutes are presumed to be valid, and the burden is on the challenger

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to make a clear showing of their unconstitutionality." Douglas Disposal, Inc. v. Wee Haul, LLC, 123 Nev. 552, 557, 170 P.3d 508, 512 (2007).

The Minimum Wage Amendment does not define what is meant by "health benefits" or "health insurance." NAC § 608.102 lists requirements for what health insurance qualifies an employer to pay the lower tier minimum wage. It states that employers must offer plans that either conform with requirements pursuant to 26 U.S.C. § 213, guidelines in the Internal Revenue Service, or 29 U.S.C. § 1001 et seq.

Western argues that the Labor Commissioner does not have the authority to define what the Minimum Wage Amendment meant by "health benefits." (Western's Mot. to Dismiss 19: 5-11.) NRS § 607.160 states that the "Labor Commissioner: (a) Shall enforce all labor laws of the State of Nevada...The enforcement of which is not specifically and exclusively vested in any other officer...(b) May adopt regulations to carry out the provisions of paragraph (a)." The Minimum Wage Amendment is a labor law of the state of Nevada. As Western states, "the Minimum Wage Amendment does not authorize any person, board, entity or division of the State government to enforce, administer, or regulate what is meant by 'health benefits.'" (Western's Mot. to Dismiss 19: 5-7.) When the power to enforce a labor law is not specifically delegated to another party, the Labor Commissioner has the authority to create regulations regarding that law in order to enforce it. That precise procedure has been followed in the creation of NAC § 608.102.

NAC § 608.102 defines what health benefits will qualify an employer for the lower tier minimum wage under the Minimum Wage Amendment. NAC § 608.102 was properly made into law by the Labor Commissioner. Therefore, the Minimum Wage Act is not unconstitutionally vague. The Court denies Western's Motion to Dismiss on the ground of preemption.

4. Punitive Damages

Finally, Western argues that Perera cannot seek punitive damages in this action because his claims are based on contract law. NRS § 42.005 provides that "in an

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action for the breach of an obligation not arising from contract," the plaintiff may recover punitive damages. NRS 608.010 defines an employee as a person under a "contract of hire."

Perera is not claiming that Western violated the terms of its employment contract. Perera is claiming that the terms violate the Nevada Constitution; however, Western's obligation to pay Perera as an employee arose under an employment contract. The Nevada Constitution did not create the obligation for Western to pay Perera. It merely set the amount of the obligation.

Western's alleged wrongdoing breached an obligation arising from an employment contract. Punitive damages are not available in this type of action. Therefore, the Court grants Western's Motion to Dismiss on this ground. Perera's Third Amended Complaint must be amended to remove all claims for punitive damages.

C. Perera's Countermotion to Amend Complaint

Leave to amend shall be freely given when justice so requires. See NRCP 15(a). "[L]eave to amend should not be granted if the proposed amendment would be futile. A proposed amendment may be deemed futile if the plaintiff seeks to amend the complaint in order to plead an impermissible claim." Halcrow, Inc. v. Eighth Jud. Dist. Ct., 129 Nev. Adv. Op. 42, 302 P.3d 1148, 1152 (2013), as corrected (Aug. 14, 2013) (internal citations omitted).

Perera argues in its Countermotion to Amend that Irshad Ahmed and Michael Sargeant were in situations similar to Perera: they are former employees of Western that had to pay for fuel out of their personal finances. Western argues that Irshad Ahmed and Michael Sargeant should not be added as plaintiffs for several reasons, all of which are discussed below.

1. Failure to State a Cause of Action

Western argues that both Irshad Ahmed and Michael Sargeant were paid above the upper tier minimum wage. Therefore, they cannot claim a violation of Nevada's Minimum Wage Amendment. Western already made this argument in relation to Perera. The Court rejects this argument. The proposed plaintiffs' claims is that paying for fuel

decreased their wages from the amount shown on Western's records. Therefore, this is not a valid ground for the Court to deny Perera's Countermotion to Amend.

2. Jurisdiction

Article 6, Section 6(1) of the Nevada Constitution states, "The District Courts in the several Judicial Districts of this State have original jurisdiction in all cases excluded by law from the original jurisdiction of justices' courts." Justice Court has original jurisdiction over cases seeking damages "[i]n actions arising on contract for the recovery of money only" if the damages claimed does not exceed $10,000. Nev. Rev. Stat. § 4.370(1)(b). A "request for injunctive relief provide[s] an independent basis for the district court's jurisdiction." Edwards v. Direct Access, LLC, 121 Nev. 929, 933, 124 P.3d 1158, 1161 (2005) abrogated on other grounds by Buzz Stew, LLC v. City of N. Las Vegas, 124 Nev. 224, 181 P.3d 670 (2008).

Western argues that Laksiri Perera, Irshad Ahmed, and Michael Sargeant's claims fail to meet the jurisdictional requirement of District Court. Western asserts that (1) no individual's claim exceeds $10,000.00, (2) the claims' values cannot be aggregated, and (3) the plaintiffs lack standing to bring claims for injunctive relief. Thus, any amendment to add the proposed plaintiffs would be futile.

For the purpose of his Countermotion to Amend, Perera does not argue that any individual plaintiff's claim exceeds $10,000.00. Perera argues that claim aggregation is permitted to meet a jurisdictional limit. The Court does not rule on the issue of aggregation and the claims' monetary value because the Court finds the issue of injunctive relief to be dispositive of this issue.

NRS 4.370 does not grant original jurisdiction to Justice Court for actions seeking injunctive relief based on breaches of contract. Generally, requests for injunctive relief are properly heard in district court as stated above. "An injunction may be granted...[w]hen it shall appear by the complaint that the plaintiff is entitled to the relief demanded, and such relief or any part thereof consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually." NRS 33.010.

Perera's Second Amended Complaint asks for:

> a suitable injunction and other equitable relief barring the defendant from continuing to violate Nevada's Constitution and requiring the defendant to remedy at its expense the injury to the class members it has caused by falsely reporting to the United States Internal Revenue Service and the Social Security Administration the income of the class members...

(At ¶ 19.) For the purposes of Perera's Countermotion to Amend, an amendment to add Irshad Ahmed and Michael Sargeant as plaintiffs does not appear to be futile. Perera has stated a claim for relief that would restrain the continuance of the act at issue in Perera's complaint. Perera asserts that Western's method of calculating wages is incorrect. These calculations do not only impact Western's employees and former employees. These calculations also affect the Internal Revenue Service and the Social Security Administration. Perera seeks the Court's assistance in having Western correct any incorrect calculations that have been reported to the Internal Revenue Service and the Social Security Administration.

Perera states a facially valid injunctive relief claim in his Second Amended Complaint. This properly places the case in District Court. Adding Irshad Ahmed and Michael Sargeant with identical injunctive relief claims would not be futile. Therefore, this is not a valid ground for the Court to deny Perera's Countermotion to Amend.

3. Preemption by National Labor Relations Act

Western argues that because the AFL-CIO drafted the Minimum Wage Amendment, according to the declaration of the AFL-CIO's Executive Secretary-Treasurer in a separate case, the Minimum Wage Amendment is preempted by federal law. 29 U.S.C. § 151 states:

> It is declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective

> bargaining and by protecting the exercise by workers of full freedom of association, self- organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

Assuming that the AFL-CIO completely and without any outside assistance drafted the Minimum Wage Amendment, the Court does not find that it is preempted by the National Labor Relations Act. The AFL-CIO's purpose may have been to help "level the playing field between non-union employers and unionized employers" (Western's Opp'n to Countermot. to Amend at Ex. 1, 2; 3-4); however, there is no language demonstrating this intent in the Amendment itself. The Amendment applies a minimum wage to all workers. "[C]ourts should not add things to what a statutory text states or reasonably implies." Douglas v. State, 130 Nev. Adv. Op. 31, 327 P.3d 492, 498 (2014).

There is one section of the Minimum Wage Amendment that favors unionized workers. The provisions of the Amendment may be waived by a collective bargaining agreement. Nev. Const., Art. 15, Sec. 16(B). The provisions cannot be waived by an agreement between an individual worker and employer. Id. Whether this portion of the Minimum Wage Amendment is preempted by federal law is not relative to this case.

> If any provision of [the Minimum Wage Amendment] is declared illegal, invalid or inoperative, in whole or in part, by the final decision of any court of competent jurisdiction, the remaining provisions and all portions not declared illegal, invalid or inoperative shall remain in full force or effect, and no such determination shall invalidate the remaining sections or portions of the sections of this section.

Nev. Const., Art. 15, Sec. 16 (D). This case has no relation to collective bargaining or unionized employees. If this Court were to find that Sec. 16(B) is invalid, the rest of the Minimum Wage Amendment would remain in effect. Therefore, this is not a valid ground for the Court to deny Perera's Countermotion to Amend.

4. Separation of Powers

Western again argues that the Labor Commissioner does not have the authority to define what the Minimum Wage Amendment meant by "health benefits." Now,

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Western asserts that the interpretation should be left to the judiciary branch "through the resolution of the individual's claims." (Western's Opp'n to Countermot. to Amend 18: 26-27.) As previously discussed, NRS § 607.160 states that the "Labor Commissioner: (a) Shall enforce all labor laws of the State of Nevada...The enforcement of which is not specifically and exclusively vested in any other officer...(b) May adopt regulations to carry out the provisions of paragraph (a)." The Minimum Wage Amendment is a labor law of the state of Nevada. When the power to enforce a labor law is not specifically delegated to another party, the Labor Commissioner has the authority to create regulations regarding that law in order to enforce it. That precise procedure has been followed in the creation of NAC § 608.102.

The Labor Commissioner has followed statutory procedures for interpreting the Minimum Wage Amendment. Therefore, this is not a valid ground for the Court to deny Perera's Countermotion to Amend.

The Court should liberally grant leave to amend when justice requires. Perera has shown how granting leave to amend his Second amended Complaint to add Irshad Ahmed and Michael Sargeant as plaintiffs would serve justice. Western failed to raise a valid ground to deny Perera's Countermotion. Therefore, the Court grants Perera's Countermotion to Amend.

D. Perera's Motion for Sanctions

The Court denies Perera's motion for sanctions. There is no evidence that Western filed its Motion to Dismiss purely to delay the case. Western responded to the operative Complaint in this action, despite Perera's argument that he was willing to withdraw it.

III. Conclusion

The Court denies Perera's Motion for Reconsideration. The Court grants Western's Motion to Dismiss in part. The Court grants Perera's Motion to Amend Complaint. The Court denies Perera's Countermotion for Sanctions against Western.

The Court orders Perera to file a Third Amended Complaint. The Third Amended Complaint will have three individuals as named plaintiffs: Laksiri Perera, Irshad Ahmed and Michael Sargeant. Paragraph 19 of Perera's Third Amended Complaint must be amended to reflect the correct statute of limitations as discussed above. The Third Amended Complaint must also be amended to remove any claim for punitive damages. Perera's second claim for relief pursuant to NRS § 608.040 is dismissed, and it cannot be included in Perera's Third Amended Complaint.

DATED this 1st day of ~~November~~ December, 2015.

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DISTRICT COURT JUDGE

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date of filing, a copy of this Order was electronically served through the Eighth Judicial District Court EFP system or, if no e-mail was provided, by facsimile, U.S. Mail and/or placed in the Clerk's Office attorney folder(s) for:

Name	Party
Leon Greenberg, Esq. Leon Greenberg Professional Corporation	Counsel for Plaintiff
Malani L. Kotchka, Esq. Hejmanowski & McCrea LLC	Counsel for Defendant

SHELBY A. DAHL
LAW CLERK, DEPARTMENT VII

AFFIRMATION
Pursuant to NRS 239B.030
The undersigned does hereby affirm that the preceding Decision and Order filed in District Court case number A707425 DOES NOT contain the social security number of any person.

/s/ Linda Marie Bell Date 11/23/15
District Court Judge

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DISTRICT JUDGE
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APPENDIX 2

APPENDIX 2

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EIGHTH JUDICIAL DISTRICT COURT CLERK OF THE COURT

CLARK COUNTY, NEVADA

LAKSIRI PERERA, individually and on behalf of others similarly situated,

Plaintiff,

vs.

WESTERN CAB COMPANY,

Defendant.

Case No. A-14-707425-C
Dept No. VII

DECISION AND ORDER

This case is an individual and proposed class action brought by a taxicab driver against his former employer-taxi company to recover unpaid hourly minimum wage. On December 8, 2014, Defendant Western Cab Company filed a Motion to Dismiss Plaintiff Laksiri Perera's First Amended Complaint for failure to state a claim upon which relief can be granted. Western Cab argues that dismissal is appropriate because Thomas v. Nevada Yellow Cab Corporation applies prospectively only. 130 Nev. Adv. Op. 52, 327 P.3d 518, 519-21 (2014), reh'g denied (Sept. 24, 2014). Mr. Perera's claims involve the time after passage of the Minimum Wage Amendment but prior to Thomas. Western Cab also argues that, under a two-year statute of limitations, Mr. Perera was always paid minimum wage. In the alternative, Western Cab moves to preemptively decertify the class and obtain summary judgment in its favor.

Mr. Perera filed an Opposition and Countermotion on January 26, 2015. Mr. Perera's Countermotion moves to amend his Complaint, adding an additional ground for relief. Mr. Perera also seeks leave to conduct Nevada Rule of Civil Procedure 56(f)

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discovery regarding the appropriateness of class certification and tolling of the statute of limitations. Western Cab filed a Reply and Opposition on February 10, 2015.

The Court heard these motions on March 12, 2015. The Court finds taxicab drivers' right to bring an action to enforce the provisions of the Minimum Wage Amendment arose on November 28, 2006, when the Amendment was ratified; claims for violations of the provisions of the Amendment must be brought within four years of the cause of action having accrued; genuine issues of material fact regarding Mr. Perera's wages and wage rate preclude summary judgment of this case; and preemptive decertification of the class would be premature because discovery has not commenced. The Court therefore denies Defendant Western Cab Company's Motion to Dismiss First Amended Complaint in its entirety, and grants Plaintiff Laksiri Perera's Countermotion only as to his request for leave to amend his complaint to add a claim related to cab drivers being required to pay for fuel costs.

I. Discussion

A. Defendant's Motion to Dismiss

Nevada Rule of Civil Procedure 12(b)(5) authorizes dismissal of a claim if it fails to state a claim upon which relief can be granted. When considering an NRCP 12(b)(5) motion, a court must accept the allegations of the complaint as true, and draw all inferences in favor of the non-moving party. Buzz Stew, LLC v. City of N. Las Vegas, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008). "Dismissal is proper where the allegations are insufficient to establish the elements of a claim for relief." Hampe v. Foote, 118 Nev. 405, 408, 47 P.3d 438, 439 (2002). "When the defense of the statute of limitations appears from the complaint itself, a motion to dismiss is proper." Kellar v. Snowden, 87 Nev. 488, 491, 489 P.2d 90, 92 (1971).

The primary question presented is whether the Nevada Supreme Court's decision in Thomas v. Nevada Yellow Cab Corporation applies the full force and effect of Article 15, Section 16 of the Nevada Constitution (the Minimum Wage Amendment) from the date of the Amendment's enactment or from the date of the Court's decision. Thomas held that the

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Minimum Wage Amendment "revised Nevada's then-statutory minimum wage scheme" and repealed the statutory minimum wage exemptions enumerated in NRS 608.250(2), including the exemption for taxicab drivers. Thomas, 130 Nev. Adv. Op. 52, 327 P.3d at 519-21; see also NRS 608.250(2)(b). In reaching this question, the Court examines the relationship between statutory minimum wage and constitutional minimum wage, the effect of Thomas, and the claims limitation period applicable to this case.

1. Minimum Wage in Nevada

Prior to enactment of the Minimum Wage Amendment, minimum wage in Nevada was purely a creature of statutory authority and administrative regulation; born from Chapter 608 of the Nevada Revised Statutes, minimum wage was set and regulated within the Nevada Administrative Code. See NRS §§ 608.250-.290; see also Nev. Admin. Code §§ 608.050-.160. Chapter 608 vested the power to establish the minimum wage in the Labor Commissioner, who was required to prescribe the minimum wage by administrative regulation. See NRS 680.250(1).

Chapter 608 did not offer all employees the right to receive minimum wage. Specifically, NRS 608.250(2) denied the protections of minimum wage regulations to certain kinds of employees. Those employees not entitled to minimum wage under Chapter 608 included (a) "casual babysitters;" (b) "domestic service employees who reside in the household where they work;" (c) "outside salespersons whose earnings are based on commissions;" (d) some agricultural workers; (e) "taxicab and limousine drivers;" and (f) certain "persons with severe disabilities [that] have diminished their productive capacity." NRS 608.250(2)(a)-(f).

The Minimum Wage Amendment was proposed by initiative petition, approved and ratified by the people, and became effective on November 28, 2006. The Amendment provided a new formula for setting minimum wage and extended minimum wage protections to nearly all employees in the State. "The Minimum Wage Amendment expressly and broadly defines employee, exempting only certain groups." Thomas, 130 Nev. Adv. Op. 52, 327 P.3d at 521. The only employees exempted by the Minimum Wage

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Amendment are employees who are "under eighteen (18) years of age, employed by a nonprofit organization for after school or summer employment or as a trainee for a period not longer than ninety (90) days." Nev. Const. art. 15, § 16(C).

On June 26, 2014, the Nevada Supreme Court held that the Minimum Wage Amendment "supersedes and supplants" Chapter 608's exceptions. Thomas, 130 Nev. Adv. Op. 52, 327 P.3d at 522. The Court reasoned that, because the "expression of one thing is the exclusion of another . . . the text [of the Amendment] necessarily implies that all employees not exempted by the Amendment, including taxicab drivers, must be paid the minimum wage set out in the Amendment." Id., 130 Nev. Adv. Op. 52, 327 P.3d at 521. The Court ultimately held that "the legislative exception for taxicab drivers established by NRS 608.250(2)(e) . . . is impliedly repealed by the constitutional amendment." Id.

2. Application of Thomas

After Thomas, the question becomes when the cause of action for violations of the Minimum Wage Amendment came into existence for taxicab drivers. If the enactment of the Minimum Wage Amendment alone gave birth to the cause of action, the cause of action has been available since the Amendment's effective date of November 28, 2006. On the other hand, if Thomas created a new, otherwise unrecognized constitutional rule, Mr. Perera's claims did not become available until June 26, 2014.

The inquiry begins with whether Thomas announced a new rule or merely clarified the law. See Mitchell v. State, 122 Nev. 1269, 1276, 149 P.3d 33, 37-38 (2006) (vacating habeas corpus petitioner's attempted murder conviction in light of the Court's decision clarifying the mens rea required for aiding and abetting attempted murder).

> There is no bright-line rule for determining whether a rule is new, but there are basic guidelines to follow . . . "When a decision merely interprets and clarifies an existing rule . . . and does not announce an altogether new rule of law, the court's interpretation is merely a restatement of existing law." Similarly, a decision is not new if "it has simply applied a well-established constitutional principle to govern a case which is closely analogous to those which have been previously considered in the prior case law." . . . However, a rule is new, for example, when the decision announcing it overrules precedent, "or

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> disapprove[s] a practice this Court had arguably sanctioned in prior cases, or overturn[s] a longstanding practice that lower courts had uniformly approved."

Id., 122 Nev. at 1276, 149 P.3d at 37-38 (quoting Colwell v. State, 118 Nev. 807, 819-20, 59 P.3d 463, 472 (2002)); Cf. Bridgewater v. Warden, Nevada State Prison, 109 Nev. 1159, 1161, 865 P.2d 1166, 1167 (1993) (holding that Court's recent decision created a new "unforeseeable definition" of deadly weapon which was not of "constitutional moment," so the new definition did not apply retroactively).

Thomas did not espouse a new constitutional principle; it squared the readily apparent definition of "employee" contained in the Minimum Wage Amendment with the exemption contained in NRS 608.250(2). In clarifying the Minimum Wage Amendment, Thomas simply applied a well-established constitutional principle. "The principle of constitutional supremacy prevents the Nevada Legislature from creating exceptions to the rights and privileges protected by Nevada's Constitution." Thomas, 130 Nev. Adv. Op. 52, 327 P.3d at 522. "Statutes are construed to accord with constitutions, not vice versa." Id., 130 Nev. Adv. Op. 52, 327 P.3d at 521 (citing Foley v. Kennedy, 110 Nev. 1295, 1300, 885 P.2d 583, 586 (1994)). The Nevada Supreme Court determined the broad definition of employee in the Minimum Wage Amendment augmented the statutory definition: "The Amendment's broad definition of employee and very specific exemptions necessarily and directly conflict with the legislative exception for taxicab drivers established by NRS 608.250(2)(e)." Thomas, 130 Nev. Adv. Op. 52, 327 P.3d at 521. Moreover, Thomas did not overrule precedent or overturn a longstanding practice that lower courts had uniformly approved. Thomas merely interpreted and clarified existing law.

Western Cab argues that the Nevada Supreme Court intended to limit Thomas based upon the Court's use of present tense language instead of, presumably, using strictly past tense language. But this Court is not persuaded that the Nevada Supreme Court was seeking to limit the application of Thomas by its use of present-tense language. In fact, in the first sentence of the Thomas decision, the Nevada Supreme Court described "Article 15, Section 16 of the Nevada Constitution, [as] a constitutional amendment that revised

Nevada's then-statutory minimum wage scheme." Thomas, 130 Nev. Adv. Op. 52, 327 P.3d at 519 (emphasis added). The Nevada Supreme Court's use of the word "revised" in the first sentence of Thomas suggests the Court had no intention of limiting the decision.

Furthermore, the Ninth Circuit Court of Appeals has rejected the argument that Thomas applies only retroactively. See Greene v. Executive Coach & Carriage, 591 F. App'x 550 (9th Cir. 2015); see also CTA9 Rule 36-3 (unpublished decisions of the Ninth Circuit are not precedent, but may be cited). In Executive Coach & Carriage, the Ninth Circuit held "[t]he district court erred in dismissing Greene's claim under the Nevada Minimum Wage Amendment . . . [b]ecause the repeal of § 608.250(2) occurred in 2006 when the amendment was ratified." Executive Coach & Carriage, 591 F. App'x 550.

The Minimum Wage Amendment announced a new, straightforward constitutional right. Thomas simply clarified that nothing in Chapter 608 diminished that right. The Minimum Wage Amendment became law on November 28, 2006, and required nothing more to establish the rights contained within it. Therefore, taxicab drivers' right to bring an action to enforce the provisions of the Minimum Wage Amendment arose on November 28, 2006.

3. Statute of Limitations

The next issue the Court must address is the applicable statute of limitations. Mr. Perera argues the four-year "catch all" statute of limitations of NRS 11.220 applies; Western Cab argues the two-year statute of limitations of Chapter 608 applies. The Minimum Wage Amendment provided taxicab drivers the constitutional right to receive minimum wage, a right previously denied under the Chapter 608 statutory framework. "Our constitution can be amended only after a long time and much labor. When an amendment is made it is reasonable to conclude that, in the minds of the people, there is good reason for the change; that it is wise to avoid a possible recurrence of evils borne in the past, or the happening of those which threaten them in the future, or, it may be, both." State v. Hallock, 16 Nev. 373, 379 (1882). Therefore, when a taxicab driver brings a minimum wage claim, the taxicab

driver brings that claim under the provisions of the Minimum Wage Amendment, not Chapter 608.

The Minimum Wage Amendment expressly provides a private right of action for an employee claiming violation of the Minimum Wage Amendment. Specifically, the Minimum Wage Amendment provides:

> An employee claiming violation of this section may bring an action against his or her employer in the courts of this State to enforce the provisions of this section and shall be entitled to all remedies available under the law or in equity appropriate to remedy any violation of this section, including but not limited to back pay, damages, reinstatement or injunctive relief. An employee who prevails in any action to enforce this section shall be awarded his or her reasonable attorney's fees and costs.

Nev. Const. art. 15, § 16(B) (emphasis added).

On the contrary, Chapter 608 provides a private right of action only for an employee claiming violation of regulations promulgated under NRS 608.250:

> If any employer pays any employee a lesser amount than the minimum wage prescribed by regulation of the Labor Commissioner pursuant to the provisions of NRS 608.250, the employee may, at any time within 2 years, bring a civil action to recover the difference between the amount paid to the employee and the amount of the minimum wage.

NRS 608.260 (emphasis added).

The distinction between minimum wage prescribed by regulation of the Labor Commissioner pursuant to the provisions of NRS 608.250 and minimum wage established by the Minimum Wage Amendment is the method by which the minimum wage is established: Chapter 608 grants the Labor Commissioner authority to set and discretion to raise the minimum wage through administrative regulation; while the Minimum Wage Amendment establishes a two-tiered minimum wage floor that is automatically adjusted upward without administrative discretion. See NRS 680.250(1); but cf. Nev. Const. art. 15, § 16(A).

Under Chapter 608's statutory framework, "the Labor Commissioner shall prescribe increases in the minimum wage in accordance with those prescribed by federal law, unless

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the Labor Commissioner determines that those increases are contrary to the public interest." NRS 608.250(1). Chapter 608 affords the Labor Commissioner discretion to refuse minimum wage increases prescribed by federal law if the Labor Commissioner determines such minimum wage increases are "contrary to the public interest." Id.

In contrast, under the Minimum Wage Amendment's formula, the minimum wage floor is to be adjusted upward by "the amount of increases in the federal minimum wage over $5.15 per hour, or, if greater, by the cumulative increase in the cost of living." Nev. Const. art. 15, § 16(A). Any cost of living increase is "measured by the [annual] percentage increase . . . of the Consumer Price Index . . . as published by the Bureau of Labor Statistics, U.S. Department of Labor or the successor index or federal agency." The only involvement the State's executive branch has in establishing the minimum wage set by the Minimum Wage Amendment is that "[t]he Governor or the State agency designated by the Governor shall publish a bulletin . . . each year announcing the adjusted rates." Id.

The Minimum Wage Amendment and Chapter 608 prescribe different methods for establishing the minimum wage, and so too, for privately enforcing the minimum wage. Thus, an action brought to enforce an employee's right to minimum wage established by the Minimum Wage Amendment is wholly different than an action brought to recover minimum wage as prescribed by regulation of the Labor Commissioner pursuant to the provisions of NRS 608.250. This is not a new notion; in fact, the Attorney General of Nevada issued an official opinion declaring as much before the Minimum Wage Amendment had been ratified. Then Attorney General Brian Sandoval opined:

> Each competing minimum wage scheme provides a complete civil court remedy for evasion of its requirements . . . As the proposed amendment has completely covered the topic of a civil court remedy, providing for even greater relief, its remedy would supplant and repeal by implication the existing civil remedy provision at NRS 608.260.

2005 Nev. Op. Att'y Gen. No. 04 (Mar. 2, 2005); see also Blackjack Bonding v. City of Las Vegas Municipal Court, 116 Nev. 1213, 1218, 14 P.3d 1275, 1279 (2000) ("Opinions of the Attorney General are not binding legal authority or precedent").

Here, Mr. Perera was expressly prohibited from receiving minimum wage under the provisions of NRS 608.250, therefore Mr. Perera was also expressly prohibited from exercising the private right of action made available in NRS 608.260. So too is Mr. Perera prohibited from exercise an implied private right of action under NRS 608.260. Even in light of the repeal of the NRS 680.250 exceptions, an implied private right of action is not available to taxicab drivers under NRS 608.260 because the legislature did not intend to extend a private right of action to individuals who were expressly excluded from the protections of the statute. See Allstate Ins. Co. v. Thorpe, 123 Nev. 565, 571, 170 P.3d 989, 993 (2007) ("We look to legislative intent when the statute does not expressly create a cause of action"). Moreover, the Labor Commissioner's statutory authority to establish regulations related to the enforcement of the minimum wage does not create a private right of action for taxicab drivers. Though the intent displayed in regulations may determine whether the regulation is privately enforceable, the language of a regulation cannot conjure up a private right of action that has not been authorized by the legislature. See Alexander v. Sandoval, 532 U.S. 275, 291, 121 S. Ct. 1511, 1522, 149 L. Ed. 2d 517 (2001) ("Agencies may play the sorcerer's apprentice but not the sorcerer himself"). Therefore, Mr. Perera does not have a private right of action under the provisions of Chapter 608.

The Minimum Wage Amendment provides the exclusive private right of action for taxicab drivers to enforce Nevada's minimum wage law. Accordingly, the limitation on a taxicab driver's right to enforce the minimum wage law is defined by the limitations on the Minimum Wage Amendment itself. Although the Minimum Wage Amendment does not provide a claims limitation period for an employee claiming violation of the Amendment, Nevada Revised Statute section 11.220 provides that "[a]n action for relief, not hereinbefore provided for, must be commenced within 4 years after the cause of action shall have accrued." NRS 11.220. So without specific statutory prescription stating otherwise, claims for violations of the provisions of the Minimum Wage Amendment must be brought within four years of the cause of action having accrued. Therefore, Mr. Perera's action to enforce

Nevada minimum wage law pursuant to the Minimum Wage Amendment is subject to the four-year claims limitation period provided under NRS 11.220.

B. Defendant's Alternative Motion for Summary Judgment and to Preemptively Decertify the Class

Western Cab moves for summary judgment in its favor premised on its argument that Mr. Perera was always paid over $7.25 per hour worked, the wage rate for employees receiving qualifying health insurance at the time. Western Cab further argues that Mr. Perera is not a proper class representative because Mr. Perera has no individual claim and issues of commonality exist.

1. Plaintiff's Claims

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." NRCP 56(c). An issue is "genuine" if sufficient evidence exists such that a reasonable fact finder could find for the non-moving party. Wood v. Safeway, Inc., 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005). The underlying substantive law of the cause of action controls which factual disputes are material. Id.

The Minimum Wage Amendment established minimum wage as a two-tiered floor; employees with access to certain health insurance benefits are entitled to a lower minimum wage than employees without access to such benefits. Nev. Const. art. 15, § 16(A). Only certain health insurance benefits qualify under the Amendment: "health insurance [made] available . . . for the employee and the employee's dependents at a total cost . . . for premiums of not more than 10 percent of the employee's gross taxable income from the employer." Id. During the time period covered by Mr. Perera's claims, the minimum wage floor was seven dollars and twenty-five cents ($7.25) per hour worked if the employer made qualified health insurance available; otherwise, the minimum wage floor was eight dollars and twenty-five cents ($8.25) per hour worked. Regardless of the minimum wage tier,

"[t]ips or gratuities received by employees shall not be credited as being any part of or offset against the wage rates required by this section." Id.

Here, summary judgment is inappropriate in light of the genuine issues of material fact that exist. A genuine issue of material fact exists as to whether Western Cab provided Mr. Perera and his dependents access to health insurance at a total cost for premiums of not more than ten percent of the Mr. Perera's gross taxable income. If not, Mr. Perera would have a right to the higher tier of minimum wage. Additionally, a genuine issue of material fact exists as to whether Mr. Perera's earnings were overstated due to his tips or expenses being accounted for incorrectly. Therefore, summary judgment shall not be granted at this time, and so, Mr. Perera's individual claims survive.

2. Class Certification

Seeing as summary judgment is not appropriate and Mr. Perera's claims survive, Western Cab has a remaining argument for preemptive decertification of the class. Western Cab argues the Court should preemptively decertify the class because this case is unsuitable for class certification based upon issues of commonality that exist between Mr. Perera, the class representative, and other prospective members of the class.

Nevada Rule of Civil Procedure 23(c)(1) provides that "[a]s soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained."

> [C]lass allegations may be stricken at the pleading stage, [but] the granting of motions to dismiss class allegations before discovery has commenced is rare. Indeed, while there is little authority on this issue within the Ninth Circuit, decisions from courts in other jurisdictions have made clear that "dismissal of class allegations at the pleading stage should be done rarely and that the better course is to deny such a motion because 'the shape and form of a class action evolves only through the process of discovery.' "

In re Wal-Mart Stores, Inc. Wage & Hour Litig., 505 F. Supp. 2d 609, 615 (N.D. Cal. 2007) (quoting Myers v. MedQuist, Inc., No. 05–4608, 2006 WL 3751210, *4 (D.N.J.2006) (also citing Abdallah v. Coca–Cola Co., No. Civ.A. 1:98CV3679–RW, 1999 WL 527835 (N.D.Ga.1999) (dismissal of class allegations prior to discovery is premature); 7AA Charles

Alan Wright, Arthur R. Miller & Mary K. Kane, Federal Practice and Procedure Civil § 1785.3 (3d 2005) (the practice employed in the overwhelming majority of class actions is to resolve class certification only after an appropriate period of discovery)).

Here, where discovery has not commenced, preemptive decertification of the class would be premature. Decertification of the class should be left for the Court to consider after discovery has sufficiently commenced. Therefore, Defendant Western Cab Company's Motion to decertify the class is denied without prejudice.

C. Plaintiff's Countermotions for Leave to Amend Complaint and Conduct Discovery

Mr. Perera seeks leave to file a Second Amended Complaint. Mr. Perera also seeks leave to conduct discovery under Nevada Rule of Civil Procedure 56(f) regarding class certification and tolling of the statute of limitations.

1. Leave to Amend Complaint

Leave to amend shall be freely given when justice so requires. NRCP 15(a). Mr. Perera seeks to add a ground for relief alleging that Western Cab required Mr. Perera to pay for fuel costs, causing Mr. Perera's hourly wage to drop below the minimum wage. Finding no grounds to justify denial, Mr. Perera shall be freely granted leave to amend his Complaint. Therefore, Mr. Perera's Countermotion is granted as to his request for leave to amend his Complaint.

2. Leave to Conduct NRCP 56(f) Discovery

Mr. Perera further seeks to conduct discovery pursuant to NRCP 56(f). Specifically, Mr. Perera seeks to conduct discovery relevant to the Western Cabs summary judgment motion regarding certification of the class and whether the two-year statute of limitations that Western Cab argued for should be equitably tolled.

Nevada Rule of Civil Procedure 56(f) provides,

> Should it appear from the affidavits of a party opposing the motion [for summary judgment] that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

NRCP 56(f). In light of the Court's denial of Western Cab's motion for summary judgment, Mr. Perera's request to conduct NRCP 56(f) discovery is moot. Therefore, Mr. Perera's Countermotion is denied.

Conclusion

The Court finds the Nevada Supreme Court's decision in Thomas v. Nevada Yellow Cab Corp., 130 Nev. Adv. Op. 52, 327 P.3d 518, 519-21 (2014), reh'g denied (Sept. 24, 2014), did not introduce a new rule of law and the Minimum Wage Amendment to the Nevada Constitution became effective November 28, 2006. The Court further finds that Mr. Perera brings his claims under the provisions of the Minimum Wage Amendment and, as such, Mr. Perera's claims are subject to the four-year statute of limitations period provided in Nevada Revised Statute section 11.220. At this point, genuine issues of fact exist regarding the presence of a legitimate class. Consequently, decertification of the class prior to discovery would be premature. Mr. Perera's request for NRCP 56(f) discovery is therefore moot. The Court grants Mr. Perera leave to amend his Complaint. Therefore, Defendant Western Cab Company's Motion to Dismiss First Amended Complaint is denied in its entirety, and Plaintiff Laksiri Perera's Countermotion is granted only as to his request for leave to amend his complaint.

DATED this 15th day of June, 2015.

LINDA MARIE BELL
DISTRICT COURT JUDGE

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 15th of June, 2015, he caused to be served the foregoing Decision and Order by faxing, mailing, or electronically serving a copy to counsel as listed below:

Name	Party	Phone	Service Method
Leon Greenberg, Esq. Dana Sniegocki, Esq.	Attorneys for Plaintiff Laksiri Perera		E-Service -or- leongreenberg@overtimelaw.com dana@overtimelaw.com
Malani Kotchka, Esq. John Moran, Jr., Esq.	Attorneys for Defendant Western Cab Co.		E-Service -or- mlk@hmlawlv.com

MICHAEL R. DICKERSON
LAW CLERK, DEPARTMENT VII

AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Decision and Order filed in District Court case number A707425 **DOES NOT** contain the social security number of any person.

/s/ Linda Marie Bell Date 6/15/2015
District Court Judge

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

APPENDIX 3

APPENDIX 3

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CLERK OF THE COURT

COMP
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dana@overtimelaw.com

Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

LAKSIRI PERERA, Individually and on behalf of others similarly situated, Plaintiff, vs. WESTERN CAB COMPANY, Defendant.	Case No.: A-14-707425-C Dept.: V **COMPLAINT** **ARBITRATION EXEMPTION CLAIMED BECAUSE THIS IS A CLASS ACTION CASE**

LAKSIRI PERERA, individually and on behalf of others similarly situated, by and through his attorney, Leon Greenberg Professional Corporation, as and for a Complaint against the defendant, states and alleges, as follows:

JURISDICTION, PARTIES AND PRELIMINARY STATEMENT

1. The plaintiff, LAKSIRI PERERA, (the "individual plaintiff" or the "named plaintiff") is a resident of Clark County in the State of Nevada and is a former employee of the defendant.

2. The defendant, WESTERN CAB COMPANY, (hereinafter referred to as "Western Cab" or "defendant") is a corporation existing and established pursuant to the laws of the State of Nevada with its principal place of business in the County of

Clark, State of Nevada and conducts business in Nevada.

CLASS ACTION ALLEGATIONS

3. The plaintiff brings this action as a class action pursuant to Nev. R. Civ. P. §23 on behalf of himself and a class of all similarly situated persons employed by the defendant in the State of Nevada.

4. The class of similarly situated persons consists of all persons employed by defendant in the State of Nevada during the applicable statute of limitations periods prior to the filing of this Complaint continuing until date of judgment, such persons being employed as taxi cab drivers (hereinafter referred to as "cab drivers" or "drivers") such employment involving the driving of taxi cabs for the defendant in the State of Nevada.

5. The common circumstance of the cab drivers giving rise to this suit is that while they were employed by defendant they were not paid the minimum wage required by Nevada's Constitution, Article 15, Section 16 for many or most of the days that they worked in that their hourly compensation, when calculated pursuant to the requirements of said Nevada Constitutional Provision, did not equal at least the minimum hourly wage provided for therein.

6. The named plaintiff is informed and believes, and based thereon alleges that there are at least 100 putative class action members. The actual number of class members is readily ascertainable by a review of the defendant's records through appropriate discovery.

7. There is a well-defined community of interest in the questions of law and fact affecting the class as a whole.

8. Proof of a common or single set of facts will establish the right of each member of the class to recover. These common questions of law and fact predominate over questions that affect only individual class members. The individual plaintiff's claims are typical of those of the class.

9. A class action is superior to other available methods for the fair and

efficient adjudication of the controversy. Due to the typicality of the class members' claims, the interests of judicial economy will be best served by adjudication of this lawsuit as a class action. This type of case is uniquely well-suited for class treatment since the employer's practices were uniform and the burden is on the employer to establish that its method for compensating the class members complies with the requirements of Nevada law.

10. The individual plaintiff will fairly and adequately represent the interests of the class and has no interests that conflict with or are antagonistic to the interests of the class and has retained to represent him competent counsel experienced in the prosecution of class action cases and will thus be able to appropriately prosecute this case on behalf of the class.

11. The individual plaintiff and his counsel are aware of their fiduciary responsibilities to the members of the proposed class and are determined to diligently discharge those duties by vigorously seeking the maximum possible recovery for all members of the proposed class.

12. There is no plain, speedy, or adequate remedy other than by maintenance of this class action. The prosecution of individual remedies by members of the class will tend to establish inconsistent standards of conduct for the defendant and result in the impairment of class members' rights and the disposition of their interests through actions to which they were not parties. In addition, the class members' individual claims are small in amount and they have no substantial ability to vindicate their rights, and secure the assistance of competent counsel to do so, except by the prosecution of a class action case.

AS AND FOR A FIRST CLAIM FOR RELIEF ON BEHALF OF THE NAMED PLAINTIFF AND ALL PERSONS SIMILARLY SITUATED PURSUANT TO NEVADA'S CONSTITUTION

13. The named plaintiff repeats all of the allegations previously made and brings this First Claim for Relief pursuant to Article 15, Section 16, of the Nevada Constitution.

14. Pursuant to Article 15, Section 16, of the Nevada Constitution the named plaintiff and the class members were entitled to an hourly minimum wage for every hour that they worked and the named plaintiff and the class members were often not paid such required minimum wages.

15. The named plaintiff seeks all relief available to him and the alleged class under Nevada's Constitution, Article 15, Section 16 including appropriate injunctive and equitable relief to make the defendant cease its violations of Nevada's Constitution and a suitable award of punitive damages.

16. The named plaintiff on behalf of himself and the proposed plaintiff class members, seeks, on this First Claim for Relief, a judgment against the defendant for minimum wages, such sums to be determined based upon an accounting of the hours worked by, and wages actually paid to, the plaintiff and the class members, a suitable injunction and other equitable relief barring the defendant from continuing to violate Nevada's Constitution, a suitable award of punitive damages, and an award of attorneys' fees, interest and costs, as provided for by Nevada's Constitution and other applicable laws.

AS AND FOR A SECOND CLAIM FOR RELIEF PURSUANT TO NEVADA REVISED STATUTES § 608.040 ON BEHALF OF THE NAMED PLAINTIFF AND THE PUTATIVE CLASS

17. Plaintiff repeats and reiterates each and every allegation previously made herein.

18. The named plaintiff brings this Second Claim for Relief against the defendant pursuant to Nevada Revised Statutes § 608.040 on behalf of himself and the alleged class of all similarly situated employees of the defendant.

19. The named plaintiff has been separated from his employment with the defendant and at the time of such separation was owed unpaid wages by the defendant.

20. The defendant has failed and refused to pay the named plaintiff and numerous members of the putative plaintiff class who are the defendant's former employees their earned but unpaid wages, such conduct by such defendant constituting

a violation of Nevada Revised Statutes § 608.020, or § 608.030 and giving such named plaintiff and similarly situated members of the putative class of plaintiffs a claim against the defendant for a continuation after the termination of their employment with the defendant of the normal daily wages defendant would pay them, until such earned but unpaid wages are actually paid or for 30 days, whichever is less, pursuant to Nevada Revised Statutes § 608.040.

21. As a result of the foregoing, the named plaintiff seeks on behalf of himself and the similarly situated putative plaintiff class members a judgment against the defendant for the wages owed to him and such class members as prescribed by Nevada Revised Statutes § 608.040, to wit, for a sum equal to up to thirty days wages, along with interest, costs and attorneys' fees.

WHEREFORE, plaintiff demands the relief on each cause of action as alleged aforesaid.

Plaintiff demands a trial by jury on all issues so triable.

Dated this 23rd day of September, 2014.

Leon Greenberg Professional Corporation

By: */s/ Leon Greenberg*

LEON GREENBERG, Esq.
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Las Vegas, Nevada 89146
Tel (702) 383-6085
Fax (702) 385-1827

Attorney for Plaintiff

DISTRICT COURT CIVIL COVER SHEET

Clark County, Nevada

Case No. A-14-707425-C Dept V

(Assigned by Clerk's Office)

I. Party Information *(provide both home and mailing addresses if different)*

Plaintiff(s) (name/address/phone):	Defendant(s) (name/address/phone):
Laksiri Perera	Western Cab Company
6500 Pearcrest Road	630 S. Fourth Street
Las Vegas, NV 89108	Las Vegas, NV 89101
Attorney (name/address/phone):	**Attorney (name/address/phone):**
Leon Greenberg, Esq. Dana Sniegocki, Esq.	Unknown
2965 S. Jones Blvd., Suite E-3	
Las Vegas, NV 89146	
702-383-6085	

II. Nature of Controversy *(please select the one most applicable filing type below)*

Civil Case Filing Types

Real Property	Torts	
Landlord/Tenant	**Negligence**	**Other Torts**
☐ Unlawful Detainer	☐ Auto	☐ Product Liability
☐ Other Landlord/Tenant	☐ Premises Liability	☐ Intentional Misconduct
Title to Property	☐ Other Negligence	☐ Employment Tort
☐ Judicial Foreclosure	**Malpractice**	☐ Insurance Tort
☐ Other Title to Property	☐ Medical/Dental	☐ Other Tort
Other Real Property	☐ Legal	
☐ Condemnation/Eminent Domain	☐ Accounting	
☐ Other Real Property	☐ Other Malpractice	

Probate	Construction Defect & Contract	Judicial Review/Appeal
Probate *(select case type and estate value)*	**Construction Defect**	**Judicial Review**
☐ Summary Administration	☐ Chapter 40	☐ Foreclosure Mediation Case
☐ General Administration	☐ Other Construction Defect	☐ Petition to Seal Records
☐ Special Administration	**Contract Case**	☐ Mental Competency
☐ Set Aside	☐ Uniform Commercial Code	**Nevada State Agency Appeal**
☐ Trust/Conservatorship	☐ Building and Construction	☐ Department of Motor Vehicle
☐ Other Probate	☐ Insurance Carrier	☐ Worker's Compensation
Estate Value	☐ Commercial Instrument	☐ Other Nevada State Agency
☐ Over $200,000	☐ Collection of Accounts	**Appeal Other**
☐ Between $100,000 and $200,000	☐ Employment Contract	☐ Appeal from Lower Court
☐ Under $100,000 or Unknown	☐ Other Contract	☐ Other Judicial Review/Appeal
☐ Under $2,500		

Civil Writ		Other Civil Filing
Civil Writ		**Other Civil Filing**
☐ Writ of Habeas Corpus	☐ Writ of Prohibition	☐ Compromise of Minor's Claim
☐ Writ of Mandamus	☐ Other Civil Writ	☐ Foreign Judgment
☐ Writ of Quo Warrant		■ Other Civil Matters

Business Court filings should be filed using the Business Court civil coversheet.

9-23-2014

Date

Signature of initiating party or representative

See other side for family-related case filings.

Nevada AOC - Research Statistics Unit
Pursuant to NRS 3.275

Form PA 201
Rev 3.1

APPENDIX 4

APPENDIX 4

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CLERK OF THE COURT

ACOM

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Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

LAKSIRI PERERA, Individually and on behalf of others similarly situated,

Plaintiff,

vs.

WESTERN CAB COMPANY,

Defendant.

Case No.: A-14-707425-C

Dept.: V

FIRST AMENDED COMPLAINT

ARBITRATION EXEMPTION CLAIMED BECAUSE THIS IS A CLASS ACTION CASE

LAKSIRI PERERA, individually and on behalf of others similarly situated, by and through his attorney, Leon Greenberg Professional Corporation, as and for a First Amended Complaint against the defendant, states and alleges, as follows:

JURISDICTION, PARTIES AND PRELIMINARY STATEMENT

1. The plaintiff, LAKSIRI PERERA, (the "individual plaintiff" or the "named plaintiff") is a resident of Clark County in the State of Nevada and is a former employee of the defendant.

2. The defendant, WESTERN CAB COMPANY, (hereinafter referred to as "Western Cab" or "defendant") is a corporation existing and established pursuant to

the laws of the State of Nevada with its principal place of business in the County of Clark, State of Nevada and conducts business in Nevada.

CLASS ACTION ALLEGATIONS

3. The plaintiff brings this action as a class action pursuant to Nev. R. Civ. P. §23 on behalf of himself and a class of all similarly situated persons employed by the defendant in the State of Nevada.

4. The class of similarly situated persons consists of all persons employed by defendant in the State of Nevada during the applicable statute of limitations periods prior to the filing of this Complaint continuing until date of judgment, such persons being employed as taxi cab drivers (hereinafter referred to as "cab drivers" or "drivers") such employment involving the driving of taxi cabs for the defendant in the State of Nevada.

5. The common circumstance of the cab drivers giving rise to this suit is that while they were employed by defendant they were not paid the minimum wage required by Nevada's Constitution, Article 15, Section 16 for many or most of the days that they worked in that their hourly compensation, when calculated pursuant to the requirements of said Nevada Constitutional Provision, did not equal at least the minimum hourly wage provided for therein.

6. The named plaintiff is informed and believes, and based thereon alleges that there are at least 100 putative class action members. The actual number of class members is readily ascertainable by a review of the defendant's records through appropriate discovery.

7. There is a well-defined community of interest in the questions of law and fact affecting the class as a whole.

8. Proof of a common or single set of facts will establish the right of each member of the class to recover. These common questions of law and fact predominate over questions that affect only individual class members. The individual plaintiff's claims are typical of those of the class.

9. A class action is superior to other available methods for the fair and efficient adjudication of the controversy. Due to the typicality of the class members' claims, the interests of judicial economy will be best served by adjudication of this lawsuit as a class action. This type of case is uniquely well-suited for class treatment since the employer's practices were uniform and the burden is on the employer to establish that its method for compensating the class members complies with the requirements of Nevada law.

10. The individual plaintiff will fairly and adequately represent the interests of the class and has no interests that conflict with or are antagonistic to the interests of the class and has retained to represent him competent counsel experienced in the prosecution of class action cases and will thus be able to appropriately prosecute this case on behalf of the class.

11. The individual plaintiff and his counsel are aware of their fiduciary responsibilities to the members of the proposed class and are determined to diligently discharge those duties by vigorously seeking the maximum possible recovery for all members of the proposed class.

12. There is no plain, speedy, or adequate remedy other than by maintenance of this class action. The prosecution of individual remedies by members of the class will tend to establish inconsistent standards of conduct for the defendant and result in the impairment of class members' rights and the disposition of their interests through actions to which they were not parties. In addition, the class members' individual claims are small in amount and they have no substantial ability to vindicate their rights, and secure the assistance of competent counsel to do so, except by the prosecution of a class action case.

AS AND FOR A FIRST CLAIM FOR RELIEF ON BEHALF OF THE NAMED PLAINTIFF AND ALL PERSONS SIMILARLY SITUATED PURSUANT TO NEVADA'S CONSTITUTION

13. The named plaintiff repeats all of the allegations previously made and brings this First Claim for Relief pursuant to Article 15, Section 16, of the Nevada

Constitution.

14. Pursuant to Article 15, Section 16, of the Nevada Constitution the named plaintiff and the class members were entitled to an hourly minimum wage for every hour that they worked for defendant and the named plaintiff and the class members were often not paid such required minimum wages.

15. The defendant's violation of Article 15, Section 16, of the Nevada Constitution involved malicious and/or fraudulent and/or oppressive conduct by the defendant sufficient to warrant an award of punitive damages for the following, amongst other reasons:

(a) Defendant despite having, and being aware of, an express obligation under Article 15, Section 16, of the Nevada Constitution, such obligation commencing no later than July 1, 2007, to advise the plaintiff and the class members, in writing, of their entitlement to the minimum hourly wage specified in such constitutional provision, failed to provide such written advisement;

(b) Defendant was aware that the highest law enforcement officer of the State of Nevada, the Nevada Attorney General, had issued a public opinion in 2005 that Article 15, Section 16, of the Nevada Constitution, upon its effective date, would require defendant and other employers of taxi cab drivers to compensate such employees with the minimum hourly wage specified in such constitutional provision. Defendant consciously elected to ignore that opinion and not pay the minimum wage required by Article 15, Section 16, of the Nevada Constitution to its taxi driver employees in the hope that it would be successful, if legal action was brought against it, in avoiding paying some or all of such minimum wages;

(c) Defendant, to the extent it believed it had a colorable basis to legitimately contest the applicability of Article 15, Section 16, of the Nevada Constitution to its taxi driver employees, made no effort to seek any judicial declaration of its obligation, or lack of obligation, under such constitutional provision and to pay into an escrow fund any amounts it disputed were so owed under that constitutional provision until such a final judicial determination was made.

16. Defendant engaged in the acts and/or omissions detailed in paragraph 15 in an intentional scheme to maliciously, oppressively and fraudulently deprive its taxi driver employees of the hourly minimum wages that were guaranteed to those employees by Article 15, Section 16, of the Nevada Constitution. Defendant so acted in the hope that by the passage of time whatever rights such taxi driver employees had to such minimum hourly wages owed to them by the defendant would expire, in whole or in part, by operation of law. Defendant so acted consciously, willfully, and intentionally to deprive such taxi driver employees of any knowledge that they might be entitled to such minimum hourly wages, despite the defendant's obligation under Article 15, Section 16, of the Nevada Constitution to advise such taxi driver employees of their right to those minimum hourly wages. Defendant's malicious, oppressive and fraudulent conduct is also demonstrated by its failure to make any allowance to pay such minimum hourly wages if they were found to be due, such as through an escrow account, while seeking any judicial determination of its obligation to make those payments.

17. The named plaintiff seeks all relief available to him and the alleged class under Nevada's Constitution, Article 15, Section 16 including appropriate injunctive and equitable relief to make the defendant cease its violations of Nevada's Constitution and a suitable award of punitive damages.

18. The named plaintiff on behalf of himself and the proposed plaintiff class members, seeks, on this First Claim for Relief, a judgment against the defendant for

minimum wages owed since November 28, 2006 and continuing into the future, such sums to be determined based upon an accounting of the hours worked by, and wages actually paid to, the plaintiff and the class members, a suitable injunction and other equitable relief barring the defendant from continuing to violate Nevada's Constitution, a suitable award of punitive damages, and an award of attorneys' fees, interest and costs, as provided for by Nevada's Constitution and other applicable laws.

AS AND FOR A SECOND CLAIM FOR RELIEF PURSUANT TO NEVADA REVISED STATUTES § 608.040 ON BEHALF OF THE NAMED PLAINTIFF AND THE PUTATIVE CLASS

19. Plaintiff repeats and reiterates each and every allegation previously made herein.

20. The named plaintiff brings this Second Claim for Relief against the defendant pursuant to Nevada Revised Statutes § 608.040 on behalf of himself and the alleged class of all similarly situated employees of the defendant.

21. The named plaintiff has been separated from his employment with the defendant and at the time of such separation was owed unpaid wages by the defendant.

22. The defendant has failed and refused to pay the named plaintiff and numerous members of the putative plaintiff class who are the defendant's former employees their earned but unpaid wages, such conduct by such defendant constituting a violation of Nevada Revised Statutes § 608.020, or § 608.030 and giving such named plaintiff and similarly situated members of the putative class of plaintiffs a claim against the defendant for a continuation after the termination of their employment with the defendant of the normal daily wages defendant would pay them, until such earned but unpaid wages are actually paid or for 30 days, whichever is less, pursuant to Nevada Revised Statutes § 608.040.

23. As a result of the foregoing, the named plaintiff seeks on behalf of himself and the similarly situated putative plaintiff class members a judgment against the defendant for the wages owed to him and such class members as prescribed by Nevada Revised Statutes § 608.040, to wit, for a sum equal to up to thirty days wages, along

with interest, costs and attorneys' fees.

WHEREFORE, plaintiff demands the relief on each cause of action as alleged aforesaid.

Plaintiff demands a trial by jury on all issues so triable.

Dated this 20th day of October, 2014.

Leon Greenberg Professional Corporation

By: */s/ Leon Greenberg*

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