EXHIBIT 1

EXHIBIT 1

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DAO

EIGHTH JUDICIAL DISTRICT COURT CLERK OF THE COURT

CLARK COUNTY, NEVADA

LAKSIRI PERERA, IRSHAD AHMED, and MICHAEL SARGEANT, 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 drivers, Plaintiffs Laksiri Perera, Irshad Ahmed, and Michael Sargeant. Now before the Court are (1) Western's motion for a more definite statements and/or to strike certain language in the third amended complaint, (2) Western's motion for stay, and (3) Perera, Ahmed, and Sargeant's countermotion for sanctions. These matters were scheduled to come before the Court on January 19, 2016. The Court reaches a decision on these matters without oral argument pursuant to EDCR 2.23(c). The Court denies Western's motion to strike; denies Western's motion to stay; and denies Perera, Ahmed, and Sargeant's countermotion for sanctions.

I. Procedural Background

Perera filed his first Complaint in this case on September 23, 2014. Perera filed his First Amended Complaint on October 20, 2014. He alleged 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. 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 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 asked the Court to reconsider its ruling regarding the applicable statute of limitations. Western filed a Motion to Dismiss the Second Amended Complaint on July 7, 2015. Western argued (1) that the Second Amended Complaint did not comply with the Court's June 16, 2015 Order, because it added a named Plaintiff, (2) Paragraph 19 from the Second Amended Complaint sought damages for minimum wages owed four years before the four-year statute of limitations period, (3) Perera's NRS § 608.040 claim was improper because Perera was paid the correct amount when he stopped working for Western, (4) the Minimum Wage Amendment of the Nevada Constitution was preempted by several federal laws, and (5) Perera could not seek punitive damages in this action.

Perera filed an Opposition and Countermotion to Amend and for Sanctions on August 14, 2015. Perera moved to amend his Second Amended Complaint to add Irshad Ahmed and Michael Sargeant as plaintiffs. Perera asked for sanctions against Western's counsel, alleging that its Motion to Dismiss' only purpose was to delay the case. (Id. at 22: 20-21.)

The Court issued a Decision and Order on December 1, 2015. The Court denied Western's motion for reconsideration. The Court granted Western's motion to dismiss on all grounds except the preemption argument. The Court granted Perera's countermotion to

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amend. The Court denied Perera's countermotion for sanctions, finding "no evidence that Western filed its Motion to Dismiss purely to delay the case." (Decision and Order at 13: 20-21.)

Perera, Ahmed, and Sargeant filed a Third Amended Complaint on December 2, 2015. Both Western, Perera, Ahmed, and Sargeant have submitted evidence to the Court of a disagreement regarding the language of the Third Amended Complaint. Perera, Ahmed, and Sargeant removed their claim for punitive damages; however, they retained language that Western's actions were "malicious," "oppressive," and "dishonest," and were committed in "bad faith," "consciously," "willfully," and "intentionally." (Third Am. Compl. at ¶¶15-17.) Western sought to have this language removed. Though all parties agreed to remove the language, both sides attached conditions to the agreement that the other could not stipulate to. Perea wanted to have the case stayed. Perera, Ahmed, and Sargeant wanted language in the stipulation stating that the removal of the language would not impact its ability to pursue equitable relief.

When no agreement could be reached, Western filed a motion for a more definite statements and/or to strike certain language in the third amended complaint and a motion to stay on December 15, 2015. Western argues that Perera, Ahmed, and Sargeant did not properly remove all language associated with its dismissed punitive damage claim as directed by the Court's December 1, 2015 Decision and Order. Western moves that the case be stayed pending the Nevada Supreme Court's ruling on the statute of limitations period in Minimum Wage Amendment cases. Western also asks that the case be stayed due to a petition for a writ of mandamus or prohibition in this case. The Supreme Court ruled that an answer may assist it in resolving the issue on January 13, 2016.

Perera, Ahmed, and Sargeant filed an opposition and countermotion for sanctions on January 4, 2016. They argue that this is the third pre-answer motion to dismiss Western has filed in this case. Western has never filed an answer in this case.

II. Western's Motion for More Definite Statement and/or to Strike

This motion is best addressed as a motion to strike. Pursuant to NRCP 12(f), "the court may order stricken from any pleading...any redundant, immaterial, impertinent, or scandalous matter." Though Western's motion is presented as a motion to strike or for a more definite statement, Western never addresses how the Third Amended Complaint is "so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading..."

Western asks that the Court order that certain language be removed from the Third Amended Complaint. Specifically, Western seeks any allegation that Western's actions were "malicious," "oppressive," and "dishonest," and were committed in "bad faith," "consciously," "willfully," and "intentionally" be removed. (Third Am. Compl. at ¶¶15-17.)

Western argues that including the contested language violates the Court's December 1, 2015 Decision and Order directing Perera, Ahmed, and Sargeant to remove their claim for punitive damages. The Court is not persuaded by this argument. A claim for punitive damages requires that the party asserts it has a right to punitive damages. Perera, Ahmed, and Sargeant removed all mention of punitive damages from their third amended complaint. The remaining language does not assert a right to punitive damages; these allegations support Perera, Ahmed, and Sargeant's claims for monetary and equitable relief under Nevada's constitution.

Though the Court cannot agree with Western's argument as it is phrased, the Court recognizes that Western may be attempting to argue that the contested language is immaterial since the punitive damage claim was dismissed. Perera, Ahmed, and Sargeant indicate that they are asserting strict liability claims. (Pls.' Oppn. to Mot. to Strike at 5: 16.) "In a strict liability action, of course, culpability in the sense of fault need not be established." Jeep Corp. v. Murray, 708 P.2d 297, 302 (Nev. 1985), superseded by statute on other grounds as stated in Countrywide Home Loans v. Thitchener, 192 P.3d 243 (Nev. 2008).

The Court finds that the contested language could be material to the issue of equitable relief. "When therefore it is shown that there is a complete and adequate remedy at law, equity will afford no assistance." Sherman v. Clark, 4 Nev. 138, 141 (1868). "The courts favor relief which prevents a wrong in preference to that which may afford redress." Czipott v. Fleigh, 489 P.2d 681, 683 (Nev. 1971). Perera, Ahmed, and Sargeant seek "appropriate injunctive and equitable relief to make the defendant cease its violations of Nevada's Constitution." (Third Am. Compl. at ¶ 18.) A trier of fact could be persuaded to determine that injunctive or equitable relief is necessary if Perera, Ahmed, and Sargeant show that Western acted maliciously and willfully rather than finding that Western acted based on a reasonable misinterpretation of the Nevada Constitution.

The Court finds that the contested language does not assert a claim for punitive damages and is not immaterial. Therefore, the Court denies Western's motion to strike.

III. Western's Motion to Stay

Western raises two arguments in favor of its motion to stay. The first is that the Nevada Supreme Court is currently evaluating the state of limitations applicable to the Minimum Wage Amendment in a separate case. The second is that Western filed a petition for a writ of mandamus or prohibition in this case and the Nevada Supreme Court has directed Perera, Ahmed, and Sargeant to file an answer.

The Court finds that staying the case to await the Nevada Supreme Court's ruling on the statute of limitations is not warranted in the instant case. This case has been open for more than a year already, and no answer has been filed. It is unlikely a scheduling order would issue prior to a decision on the writ. Requiring Western to take part in discovery will not substantially prejudice Western.

The also Court finds that staying the case to await the Nevada Supreme Court's ruling on Western's petition for a writ of mandamus or prohibition is not warranted in the instant case. In deciding whether to issue a stay during the pendency of a petition for a writ of mandamus or prohibition, the Supreme Court considers:

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> (1) whether the object of the appeal or writ petition will be defeated if the stay or injunction is denied; (2) whether appellant/petitioner will suffer irreparable or serious injury if the stay or injunction is denied; (3) whether respondent/real party in interest will suffer irreparable or serious injury if the stay or injunction is granted; and (4) whether appellant/petitioner is likely to prevail on the merits in the appeal or writ petition

N.R.A.P. 8(c). Though the Supreme Court's ruling on Western's petition has the potential to be dispositive, the Court finds it more likely that some discovery will have to commence in this case regardless of what conclusion the Nevada Supreme Court reaches. Perera, Ahmed, and Sargeant's complaint is very fact-intensive and the case is not likely to be dismissed on purely legal grounds. In addition, as previously discussed, Western will not be seriously prejudiced by being actively involved in this litigation at this time. All parties will benefit from moving toward a resolution of this matter.

The Court finds that staying the case would not serve a useful purpose in this case. Therefore, the Court denies Western's motion to stay.

IV. Perera, Ahmed, and Sargeant's Countermotion for Sanctions.

Perera, Ahmed, and Sargeant argues that Western filed this motion to strike and motion to stay "for no other purpose than delay..." (Pls.' Countermot. for Sanctions at 5: 27.) For this reason, Perera, Ahmed, and Sargeant move that the Court issue sanctions against Western.

The Court recognizes the complicated procedural history of this case. There have been four complaints in this matter. Perera was responsible for amending the complaint twice. Western was successful in dismissing several claims by Perera in one of its motion to dismiss. This will be the first time following one of Western's motions to dismiss that Perera will not be filing a new amended complaint.

The Court also finds that Western made legitimate arguments in its motions, though the Court was not persuaded by them. It is reasonable for a party to move to stay a case while the Supreme Court considers issues relevant to the case.

Finally, the Court acknowledges the age of the case. The case has been open for more than a year without an answer being filed. While this is understandable, since there have been four complaints filed in this matter, it is also concerning.

Though the Court has concerns regarding the age of the case, the Court finds that Western had legitimate reasons to file its motion to strike and motion to stay. Therefore, the Court denies Perera, Ahmed, and Sargeant's countermotion for sanctions.

V. Conclusion

The Court denies Western's motion to strike and motion to stay. The Court denies Perera, Ahmed, and Sargeant's countermotion for sanctions.

DATED this 3rd day of February, 2016.

LINDA MARIE BELL
DISTRICT COURT JUDGE

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

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 Plaintiffs
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 1/28/2016
District Court Judge

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

EXHIBIT 2

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CLERK OF THE COURT

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Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

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

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

JURISDICTION, PARTIES AND PRELIMINARY STATEMENT

1. The plaintiffs, LAKSIRI PERERA, IRSHAD AHMED, and MICHAEL SARGEANT (collectively the "individual plaintiffs" or the "named plaintiffs") during all times employed by the defendant were residents of Clark County in the State of Nevada and are former employees 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 period 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 PLAINTIFFS 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 also involved malicious and/or dishonest and/or oppressive conduct by the defendant including the following:

(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 plaintiffs 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 illegal, dishonest 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 defendant unless they agreed to pay for that fuel from their personal funds. By requiring the plaintiffs and the class members to personally pay for the cost of such fuel, the defendant was reducing the wages it actually paid the plaintiffs 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 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 plaintiffs' 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 dishonestly 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 dishonest 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.

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 for the applicable statute of limitations period, which the Court has previously specified in this case is four years and would commence on September 23, 2010, 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, and an award of attorneys' fees, interest and costs, as provided for by Nevada's Constitution and other applicable laws.

WHEREFORE, plaintiffs demand the relief as alleged aforesaid.

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

Dated this 2nd day of December, 2015.

Leon Greenberg Professional Corporation

By: /s/ *Leon Greenberg*

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Attorney for Plaintiff

IAFD

DISTRICT COURT

CLARK COUNTY, NEVADA

Laksiri Perera et al.

Plaintiff(s),

-vs-

Western Cab Company

Defendant(s).

CASE NO. A-14-707425-C

DEPT. NO. V

INITIAL APPEARANCE FEE DISCLOSURE (NRS CHAPTER 19)

Pursuant to NRS Chapter 19, as amended by Senate Bill 106, filing fees are submitted for parties appearing in the above entitled action as indicated below:

New Complaint Fee	**1st Appearance Fee**
☐ $1530 ☐ $520 ☐ $299 ☐ $270.00	☐ $1483.00 ☐ $473.00 ☐ $223.00

Name:	
Michael Sargeant	☒ $30
	☐ $30
	☐ $30
	☐ $30
☐ Total of Continuation Sheet Attached	☐ $____
TOTAL REMITTED: (Required) Total Paid	$ 30

DATED this 2nd day of December, 2015.

/s/ *Leon Greenberg*
Leon Greenberg

EXHIBIT 3

EXHIBIT 3

LEON GREENBERG
Attorney at Law
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Leon Greenberg
Member Nevada, California
New York, Pennsylvania and New Jersey Bars
Admitted to the United States District Court of Colorado

Dana Sniegocki
Member Nevada and California Bars

February 26, 2016

Hermanowski & McCrea LLC
520 South Fourth Street - Suite 320
Las Vegas, Nevada 89101

Attention: Malani L. Kotchka, Esq.

VIA EMAIL AND FIRST CLASS MAIL

Re: Perera v. Western Cab Company
Request for voluntary agreement by your client to refrain from having taxi driver paid expenses reduce wage payments below the minimum wage rate.

Dear Ms. Kotchka:

This office is in receipt of the defendant's answer in this case. I thank you for the same.

As you are aware, one of the outstanding issues in this litigation is the alleged "minimum wage violation expenses" paid by the putative class of taxi driver employees of the defendant. I well understand your position that no such claims can be stated, as a matter of law, in this case. You are also aware that the Court has disagreed with that position and expressly ruled that a claim for minimum wage violations *can* be stated by such alleged circumstances.

I am writing to see whether the defendant will agree to refrain from

requiring its taxi drivers pay for expenses (which at the present time I understand are limited to gasoline for taxi cabs) to the extent such expenses reduce those taxi drivers' wage, paid by your client, below the minimum hourly wage rate specified by Nevada's Constitution. To clarify and reiterate: I am not calling upon the defendant to refrain from imposing *all* expenses it may require its taxi drivers to pay, only those expenses that would reduce their hourly wage below the minimum hourly wage rate.

In the absence of an agreement by the defendant to limit the expenses it requires its taxi drivers to pay I intend to seek appropriate injunctive relief from the Court imposing such a limitation upon the defendant. I would also seek class certification for such injunctive relief under NRCP Rule 23(b)(2). I intend to include in that request for injunctive relief the imposition of a suitable regimen to ensure defendant's compliance with that injunction, perhaps through the appointment of a special master paid for by the defendant. If I am forced to proceed in such a fashion I will also ask that the Court grant me an award of attorney's fees in connection with my work in securing such an injunction.

While defendant need not agree to my request, it seems incumbent upon me to communicate this request to defendant, and attempt to secure defendant's voluntary compliance with the same, before seeking injunctive relief from the Court. It is for that reason I now write you to set forth this request.

I trust you will review my foregoing request with your client and advise me, no later then March 8, 2016, whether your client will agree to my request. In the event your client declines to so agree I would greatly appreciate being advised of that fact. I also, of course, remain available to discuss this and would be pleased to do so.

I remain,

Very truly yours,

Leon Greenberg

EXHIBIT 4

EXHIBIT 4

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

GOBEILLE, CHAIR OF THE VERMONT GREEN MOUNTAIN CARE BOARD *v.* LIBERTY MUTUAL INSURANCE CO.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 14–181. Argued December 2, 2015—Decided March 1, 2016

Vermont law requires certain entities, including health insurers, to report payments relating to health care claims and other information relating to health care services to a state agency for compilation in an all-inclusive health care database. Respondent Liberty Mutual Insurance Company's health plan (Plan), which provides benefits in all 50 States, is an "employee welfare benefit plan" under the Employee Retirement Income Security Act of 1974 (ERISA). The Plan's third-party administrator, Blue Cross Blue Shield of Massachusetts, Inc. (Blue Cross), which is subject to Vermont's disclosure statute, was ordered to transmit its files on eligibility, medical claims, and pharmacy claims for the Plan's Vermont members. Respondent, concerned that the disclosure of such confidential information might violate its fiduciary duties, instructed Blue Cross not to comply and filed suit, seeking a declaration that ERISA pre-empts application of Vermont's statute and regulation to the Plan and an injunction prohibiting Vermont from trying to acquire data about the Plan or its members. The District Court granted summary judgment to Vermont, but the Second Circuit reversed, concluding that Vermont's reporting scheme is pre-empted by ERISA.

Held: ERISA pre-empts Vermont's statute as applied to ERISA plans. Pp. 5–13.

(a) ERISA expressly pre-empts "any and all State laws insofar as they may now or hereafter relate to any employee benefit plan." 29 U. S. C. §1144(a). As relevant here, the clause pre-empts a state law that has an impermissible "connection with" ERISA plans, *i.e.*, a law

Syllabus

that governs, or interferes with the uniformity of, plan administration. *Egelhoff* v. *Egelhoff*, 532 U. S. 141, 148. Pp. 5–6.

(b) The considerations relevant to the determination whether an impermissible connection exists—ERISA's objectives "as a guide to the scope of the state law that Congress understood would survive," *New York State Conference of Blue Cross & Blue Shield Plans* v. *Travelers Ins. Co.*, 514 U. S. 645, 656, and "the nature of" the state law's "effect . . . on ERISA plans," *California Div. of Labor Standards Enforcement* v. *Dillingham Constr., N. A., Inc.*, 519 U. S. 316, 325—lead to the conclusion that Vermont's regime, as applied to ERISA plans, is pre-empted. Pp. 6–12.

(1) ERISA seeks to make the benefits promised by an employer more secure by mandating certain oversight systems and other standard procedures, *Travelers*, 514 U. S., at 651, and those systems and procedures are intended to be uniform, *id.*, at 656. ERISA's extensive reporting, disclosure, and recordkeeping requirements are central to, and an essential part of, this uniform plan administration system. Vermont's law and regulation, however, also govern plan reporting, disclosure, and recordkeeping. Pre-emption is necessary in order to prevent multiple jurisdictions from imposing differing, or even parallel, regulations, creating wasteful administrative costs and threatening to subject plans to wide-ranging liability. ERISA's uniform rule design also makes clear that it is the Secretary of Labor, not the separate States, that is authorized to decide whether to exempt plans from ERISA reporting requirements or to require ERISA plans to report data such as that sought by Vermont. Pp. 7–10.

(2) Vermont's counterarguments are unpersuasive. Vermont argues that respondent has not shown that the State scheme has caused it to suffer economic costs, but respondent need not wait to bring its pre-emption claim until confronted with numerous inconsistent obligations and encumbered with any ensuing costs. In addition, the fact that ERISA and the state reporting scheme have different objectives does not transform Vermont's direct regulation of a fundamental ERISA function into an innocuous and peripheral set of additional rules. Vermont's regime also cannot be saved by invoking the State's traditional power to regulate in the area of public health. Pp. 10–12.

(c) ERISA's pre-existing reporting, disclosure, and recordkeeping provisions maintain their pre-emptive force regardless of whether the new Patient Protection and Affordable Care Act's reporting obligations also pre-empt state law. Pp. 12–13.

746 F. 3d 497, affirmed.

KENNEDY, J., delivered the opinion of the Court, in which ROBERTS,

Syllabus

C. J., and THOMAS, BREYER, ALITO, and KAGAN, JJ., joined. THOMAS, J., and BREYER, J., filed concurring opinions. GINSBURG, J., filed a dissenting opinion, in which SOTOMAYOR, J., joined.

SUPREME COURT OF THE UNITED STATES

No. 14–181

ALFRED GOBEILLE, IN HIS OFFICIAL CAPACITY AS CHAIR OF THE VERMONT GREEN MOUNTAIN CARE BOARD, PETITIONER *v.* LIBERTY MUTUAL INSURANCE COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

[March 1, 2016]

JUSTICE KENNEDY delivered the opinion of the Court.

This case presents a challenge to the applicability of a state law requiring disclosure of payments relating to health care claims and other information relating to health care services. Vermont enacted the statute so it could maintain an all-inclusive health care database. Vt. Stat. Ann., Tit. 18, §9410(a)(1) (2015 Cum. Supp.) (V. S. A.). The state law, by its terms, applies to health plans established by employers and regulated by the Employee Retirement Income Security Act of 1974 (ERISA), 88 Stat. 829, as amended, 29 U. S. C. §1001 *et seq.* The question before the Court is whether ERISA pre-empts the Vermont statute as it applies to ERISA plans.

I

A

Vermont requires certain public and private entities that provide and pay for health care services to report information to a state agency. The reported information is

compiled into a database reflecting "all health care utilization, costs, and resources in [Vermont], and health care utilization and costs for services provided to Vermont residents in another state." 18 V. S. A. §9410(b). A database of this kind is sometimes called an all-payer claims database, for it requires submission of data from all health insurers and other entities that pay for health care services. Almost 20 States have or are implementing similar databases. See Brief for State of New York et al. as *Amici Curiae* 1, and n. 1.

Vermont's law requires health insurers, health care providers, health care facilities, and governmental agencies to report any "information relating to health care costs, prices, quality, utilization, or resources required" by the state agency, including data relating to health insurance claims and enrollment. §9410(c)(3). Health insurers must submit claims data on members, subscribers, and policyholders. §9410(h). The Vermont law defines health insurer to include a "self-insured . . . health care benefit plan," §9402(8), as well as "any third party administrator" and any "similar entity with claims data, eligibility data, provider files, and other information relating to health care provided to a Vermont resident." §9410(j)(1)(B). The database must be made "available as a resource for insurers, employers, providers, purchasers of health care, and State agencies to continuously review health care utilization, expenditures, and performance in Vermont." §9410(h)(3)(B).

Vermont law leaves to a state agency the responsibility to "establish the types of information to be filed under this section, and the time and place and the manner in which such information shall be filed." §9410(d). The law has been implemented by a regulation creating the Vermont Healthcare Claims Uniform Reporting and Evaluation System. The regulation requires the submission of "medical claims data, pharmacy claims data, member eligibility

data, provider data, and other information," Reg. H–2008–01, Code of Vt. Rules 21–040–021, §4(D) (2016) (CVR), in accordance with specific formatting, coding, and other requirements, §5. Under the regulation, health insurers must report data about the health care services provided to Vermonters regardless of whether they are treated in Vermont or out-of-state and about non-Vermonters who are treated in Vermont. §4(D); see also §1. The agency at present does not collect data on denied claims, §5(A)(8), but the statute would allow it to do so.

Covered entities (reporters) must register with the State and must submit data monthly, quarterly, or annually, depending on the number of individuals that an entity serves. The more people served, the more frequently the reports must be filed. §§4, 6(I). Entities with fewer than 200 members need not report at all, *ibid.*, and are termed "voluntary" reporters as distinct from "mandated" reporters, §3. Reporters can be fined for not complying with the statute or the regulation. §10; 18 V. S. A. §9410(g).

B

Respondent Liberty Mutual Insurance Company maintains a health plan (Plan) that provides benefits in all 50 States to over 80,000 individuals, comprising respondent's employees, their families, and former employees. The Plan is self-insured and self-funded, which means that Plan benefits are paid by respondent. The Plan, which qualifies as an "employee welfare benefit plan" under ERISA, 29 U. S. C. §1002(1), is subject to "ERISA's comprehensive regulation," *New York State Conference of Blue Cross & Blue Shield Plans* v. *Travelers Ins. Co.*, 514 U. S. 645, 650 (1995). Respondent, as the Plan sponsor, is both a fiduciary and plan administrator.

The Plan uses Blue Cross Blue Shield of Massachusetts, Inc. (Blue Cross) as a third-party administrator. Blue Cross manages the "processing, review, and payment" of

claims for respondent. *Liberty Mut. Ins. Co.* v. *Donegan*, 746 F. 3d 497, 502 (CA2 2014) (case below). In its contract with Blue Cross, respondent agreed to "hold [Blue Cross] harmless for any charges, including legal fees, judgments, administrative expenses and benefit payment requirements, . . . arising from or in connection with [the Plan] or due to [respondent's] failure to comply with any laws or regulations." App. 82. The Plan is a voluntary reporter under the Vermont regulation because it covers some 137 Vermonters, which is fewer than the 200-person cutoff for mandated reporting. Blue Cross, however, serves several thousand Vermonters, and so it is a mandated reporter. Blue Cross, therefore, must report the information it possesses about the Plan's members in Vermont.

In August 2011, Vermont issued a subpoena ordering Blue Cross to transmit to a state-appointed contractor all the files it possessed on member eligibility, medical claims, and pharmacy claims for Vermont members. *Id.*, at 33. (For clarity, the Court uses "Vermont" to refer not only to the State but also to state officials acting in their official capacity.) The penalty for noncompliance, Vermont threatened, would be a fine of up to $2,000 a day and a suspension of Blue Cross' authorization to operate in Vermont for as long as six months. *Id.*, at 31. Respondent, concerned in part that the disclosure of confidential information regarding its members might violate its fiduciary duties under the Plan, instructed Blue Cross not to comply. Respondent then filed this action in the United States District Court for the District of Vermont. It sought a declaration that ERISA pre-empts application of Vermont's statute and regulation to the Plan and an injunction forbidding Vermont from trying to acquire data about the Plan or its members.

Vermont filed a motion to dismiss, which the District Court treated as one for summary judgment, see Fed. Rule Civ. Proc. 12(d), and respondent filed a cross-motion for

summary judgment. The District Court granted summary judgment to Vermont. It first held that respondent, despite being a mere voluntary reporter, had standing to sue because it was faced with either allegedly violating its "fiduciary and administrative responsibilities to the Plan" or assuming liability for Blue Cross' withholding of the data from Vermont. *Liberty Mut. Ins. Co.* v. *Kimbell*, No. 2:11–cv–204 (D Vt., Nov. 9, 2012), p. 12. The District Court then concluded that the State's reporting scheme was not pre-empted. Although that scheme "may have some indirect effect on health benefit plans," the court reasoned that the "effect is so peripheral that the regulation cannot be considered an attempt to interfere with the administration or structure of a welfare benefit plan." *Id.*, at 31–32.

The Court of Appeals for the Second Circuit reversed. The panel was unanimous in concluding that respondent had standing, but it divided on the merits of the pre-emption challenge. The panel majority explained that "one of ERISA's core functions—reporting—[cannot] be laden with burdens, subject to incompatible, multiple and variable demands, and freighted with risk of fines, breach of duty, and legal expense." 746 F. 3d, at 510. The Vermont regime, the court held, does just that. *Id.*, at 508–510.

This Court granted certiorari to address the important issue of ERISA pre-emption. 576 U. S. ___ (2015).

II

The text of ERISA's express pre-emption clause is the necessary starting point. It is terse but comprehensive. ERISA pre-empts

> "any and all State laws insofar as they may now or hereafter relate to any employee benefit plan." 29 U. S. C. §1144(a).

The Court has addressed the potential reach of this clause before. In *Travelers,* the Court observed that "[i]f 'relate to' were taken to extend to the furthest stretch of its indeterminacy, then for all practical purposes pre-emption would never run its course." 514 U. S., at 655. That is a result "no sensible person could have intended." *California Div. of Labor Standards Enforcement* v. *Dillingham Constr., N. A., Inc.*, 519 U. S. 316, 336 (1997) (Scalia, J., concurring). So the need for workable standards has led the Court to reject "uncritical literalism" in applying the clause. *Travelers*, 514 U. S., at 656.

Implementing these principles, the Court's case law to date has described two categories of state laws that ERISA pre-empts. First, ERISA pre-empts a state law if it has a "'reference to'" ERISA plans. *Ibid.* To be more precise, "[w]here a State's law acts immediately and exclusively upon ERISA plans . . . or where the existence of ERISA plans is essential to the law's operation . . . , that 'reference' will result in pre-emption." *Dillingham*, *supra,* at 325. Second, ERISA pre-empts a state law that has an impermissible "connection with" ERISA plans, meaning a state law that "governs . . . a central matter of plan administration" or "interferes with nationally uniform plan administration." *Egelhoff* v. *Egelhoff*, 532 U. S. 141, 148 (2001). A state law also might have an impermissible connection with ERISA plans if "acute, albeit indirect, economic effects" of the state law "force an ERISA plan to adopt a certain scheme of substantive coverage or effectively restrict its choice of insurers." *Travelers*, *supra*, at 668. When considered together, these formulations ensure that ERISA's express pre-emption clause receives the broad scope Congress intended while avoiding the clause's susceptibility to limitless application.

III

Respondent contends that Vermont's law falls in the

second category of state laws that are pre-empted by ERISA: laws that govern, or interfere with the uniformity of, plan administration and so have an impermissible "'connection with'" ERISA plans. *Egelhoff*, *supra*, at 148; *Travelers*, 514 U. S., at 656. When presented with these contentions in earlier cases, the Court has considered "the objectives of the ERISA statute as a guide to the scope of the state law that Congress understood would survive," *ibid.*, and "the nature of the effect of the state law on ERISA plans," *Dillingham*, *supra*, at 325. Here, those considerations lead the Court to conclude that Vermont's regime, as applied to ERISA plans, is pre-empted.

A

ERISA does not guarantee substantive benefits. The statute, instead, seeks to make the benefits promised by an employer more secure by mandating certain oversight systems and other standard procedures. *Travelers*, 514 U. S., at 651. Those systems and procedures are intended to be uniform. *Id.*, at 656 (ERISA's pre-emption clause "indicates Congress's intent to establish the regulation of employee welfare benefit plans 'as exclusively a federal concern'" (quoting *Alessi* v. *Raybestos-Manhattan, Inc.*, 451 U. S. 504, 523 (1981))). "Requiring ERISA administrators to master the relevant laws of 50 States and to contend with litigation would undermine the congressional goal of 'minimiz[ing] the administrative and financial burden[s]' on plan administrators—burdens ultimately borne by the beneficiaries." *Egelhoff*, *supra*, at 149–150 (quoting *Ingersoll-Rand Co.* v. *McClendon*, 498 U. S. 133, 142 (1990)); see also *Fort Halifax Packing Co.* v. *Coyne*, 482 U. S. 1, 9 (1987).

ERISA's reporting, disclosure, and recordkeeping requirements for welfare benefit plans are extensive. ERISA plans must present participants with a plan description explaining, among other things, the plan's eligi-

bility requirements and claims-processing procedures. §§1021(a)(1), 1022, 1024(b)(1). Plans must notify participants when a claim is denied and state the basis for the denial. §1133(1). Most important for the pre-emption question presented here, welfare benefit plans governed by ERISA must file an annual report with the Secretary of Labor. The report must include a financial statement listing assets and liabilities for the previous year and, further, receipts and disbursements of funds. §§1021(b), 1023(b)(1), 1023(b)(3)(A)–(B), 1024(a). The information on assets and liabilities as well as receipts and disbursements must be provided to plan participants on an annual basis as well. §§1021(a)(2), 1023(b)(3)(A)–(B), 1024(b)(3). Because welfare benefit plans are in the business of providing benefits to plan participants, a plan's reporting of data on disbursements by definition incorporates paid claims. See Dept. of Labor, Schedule H (Form 5500) Financial Information (2015) (requiring reporting of "[b]enefit claims payable" and "[b]enefit payment and payments to provide benefits"), online at http://www.dol.gov/ebsa/pdf/2015-5500-Schedule-H.pdf (as last visited Feb. 26, 2016).

The Secretary of Labor has authority to establish additional reporting and disclosure requirements for ERISA plans. ERISA permits the Secretary to use the data disclosed by plans "for statistical and research purposes, and [to] compile and publish such studies, analyses, reports, and surveys based thereon as he may deem appropriate." §1026(a). The Secretary also may, "in connection" with any research, "collect, compile, analyze, and publish data, information, and statistics relating to" plans. §1143(a)(1); see also §1143(a)(3) (approving "other studies relating to employee benefit plans, the matters regulated by this subchapter, and the enforcement procedures provided for under this subchapter").

ERISA further permits the Secretary of Labor to "re-

quir[e] any information or data from any [plan] where he finds such data or information is necessary to carry out the purposes of" the statute, §1024(a)(2)(B), and, when investigating a possible statutory violation, "to require the submission of reports, books, and records, and the filing of data" related to other requisite filings, §1134(a)(1). The Secretary has the general power to promulgate regulations "necessary or appropriate" to administer the statute, §1135, and to provide exemptions from any reporting obligations, §1024(a)(3).

It should come as no surprise, then, that plans must keep detailed records so compliance with ERISA's reporting and disclosure requirements may be "verified, explained, or clarified, and checked for accuracy and completeness." §1027. The records to be retained must "include vouchers, worksheets, receipts, and applicable resolutions." *Ibid.*; see also §1135 (allowing the Secretary to "provide for the keeping of books and records, and for the inspection of such books and records").

These various requirements are not mere formalities. Violation of any one of them may result in both civil and criminal liability. See §§1131–1132.

As all this makes plain, reporting, disclosure, and recordkeeping are central to, and an essential part of, the uniform system of plan administration contemplated by ERISA. The Court, in fact, has noted often that these requirements are integral aspects of ERISA. See, *e.g.*, *Dillingham*, 519 U. S., at 327; *Travelers*, *supra,* at 651; *Ingersoll-Rand, supra,* at 137; *Massachusetts* v. *Morash*, 490 U. S. 107, 113, 115 (1989); *Fort Halifax*, *supra*, at 9; *Metropolitan Life Ins. Co.* v. *Massachusetts*, 471 U. S. 724, 732 (1985).

Vermont's reporting regime, which compels plans to report detailed information about claims and plan members, both intrudes upon "a central matter of plan administration" and "interferes with nationally uniform plan

administration." *Egelhoff*, 532 U. S., at 148. The State's law and regulation govern plan reporting, disclosure, and—by necessary implication—recordkeeping. These matters are fundamental components of ERISA's regulation of plan administration. Differing, or even parallel, regulations from multiple jurisdictions could create wasteful administrative costs and threaten to subject plans to wide-ranging liability. See, *e.g.*, 18 V. S. A. §9410(g) (supplying penalties for violation of Vermont's reporting rules); CVR §10 (same). Pre-emption is necessary to prevent the States from imposing novel, inconsistent, and burdensome reporting requirements on plans.

The Secretary of Labor, not the States, is authorized to administer the reporting requirements of plans governed by ERISA. He may exempt plans from ERISA reporting requirements altogether. See §1024(a)(3); 29 CFR §2520.104–44 (2005) (exempting self-insured health plans from the annual financial reporting requirement). And, he may be authorized to require ERISA plans to report data similar to that which Vermont seeks, though that question is not presented here. Either way, the uniform rule design of ERISA makes it clear that these decisions are for federal authorities, not for the separate States.

B

Vermont disputes the pre-emption of its reporting regime on several fronts. The State argues that respondent has not demonstrated that the reporting regime in fact has caused it to suffer economic costs. Brief for Petitioner 52–54. But respondent's challenge is not based on the theory that the State's law must be pre-empted solely because of economic burdens caused by the state law. See *Travelers*, 514 U. S., at 668. Respondent argues, rather, that Vermont's scheme regulates a central aspect of plan administration and, if the scheme is not pre-empted, plans will face the possibility of a body of disuniform state re-

porting laws and, even if uniform, the necessity to accommodate multiple governmental agencies. A plan need not wait to bring a pre-emption claim until confronted with numerous inconsistent obligations and encumbered with any ensuing costs.

Vermont contends, furthermore, that ERISA does not pre-empt the state statute and regulation because the state reporting scheme has different objectives. This Court has recognized that "[t]he principal object of [ERISA] is to protect plan participants and beneficiaries." *Boggs* v. *Boggs*, 520 U. S. 833, 845 (1997). And "[i]n enacting ERISA, Congress' primary concern was with the mismanagement of funds accumulated to finance employee benefits and the failure to pay employees benefits from accumulated funds." *Morash*, *supra*, at 115. The State maintains that its program has nothing to do with the financial solvency of plans or the prudent behavior of fiduciaries. See Brief for Petitioner 29. This does not suffice to avoid federal pre-emption.

"[P]re-emption claims turn on Congress's intent." *Travelers*, 514 U. S., at 655. The purpose of a state law, then, is relevant only as it may relate to the "scope of the state law that Congress understood would survive," *id.*, at 656, or "the nature of the effect of the state law on ERISA plans," *Dillingham*, *supra*, at 325. In *Travelers*, for example, the Court noted that "[b]oth the purpose and the effects of" the state law at issue "distinguish[ed] it from" laws that "function as a regulation of an ERISA plan itself." 514 U. S., at 658–659. The perceived difference here in the objectives of the Vermont law and ERISA does not shield Vermont's reporting regime from pre-emption. Vermont orders health insurers, including ERISA plans, to report detailed information about the administration of benefits in a systematic manner. This is a direct regulation of a fundamental ERISA function. Any difference in purpose does not transform this direct regulation of "a

central matter of plan administration," *Egelhoff*, *supra*, at 148, into an innocuous and peripheral set of additional rules.

The Vermont regime cannot be saved by invoking the State's traditional power to regulate in the area of public health. The Court in the past has "addressed claims of pre-emption with the starting presumption that Congress does not intend to supplant state law," in particular state laws regulating a subject of traditional state power. *Travelers*, *supra*, at 654–655. ERISA, however, "certainly contemplated the pre-emption of substantial areas of traditional state regulation." *Dillingham*, 519 U. S., at 330. ERISA pre-empts a state law that regulates a key facet of plan administration even if the state law exercises a traditional state power. See *Egelhoff*, 532 U. S., at 151–152. The fact that reporting is a principal and essential feature of ERISA demonstrates that Congress intended to pre-empt state reporting laws like Vermont's, including those that operate with the purpose of furthering public health. The analysis may be different when applied to a state law, such as a tax on hospitals, see *De Buono* v. *NYSA–ILA Medical and Clinical Services Fund*, 520 U. S. 806 (1997), the enforcement of which necessitates incidental reporting by ERISA plans; but that is not the law before the Court. Any presumption against pre-emption, whatever its force in other instances, cannot validate a state law that enters a fundamental area of ERISA regulation and thereby counters the federal purpose in the way this state law does.

IV

Respondent suggests that the Patient Protection and Affordable Care Act (ACA), which created new reporting obligations for employer-sponsored health plans and incorporated those requirements into the body of ERISA, further demonstrates that ERISA pre-empts Vermont's

reporting regime. See 29 U. S. C. §1185d; 42 U. S. C. §§300gg–15a, 17; §18031(e)(3). The ACA, however, specified that it shall not "be construed to preempt any State law that does not prevent the application of the provisions" of the ACA. 42 U. S. C. §18041(d). This anti-preemption provision might prevent any new ACA-created reporting obligations from pre-empting state reporting regimes like Vermont's, notwithstanding the incorporation of these requirements in the heart of ERISA. But see 29 U. S. C. §1191(a)(2) (providing that the new ACA provisions shall not be construed to affect or modify the ERISA pre-emption clause as applied to group health plans); 42 U. S. C. §300gg–23(a)(2) (same).

The Court has no need to resolve this issue. ERISA's pre-existing reporting, disclosure, and recordkeeping provisions—upon which the Court's conclusion rests—maintain their pre-emptive force whether or not the new ACA reporting obligations also pre-empt state law.

* * *

ERISA's express pre-emption clause requires invalidation of the Vermont reporting statute as applied to ERISA plans. The state statute imposes duties that are inconsistent with the central design of ERISA, which is to provide a single uniform national scheme for the administration of ERISA plans without interference from laws of the several States even when those laws, to a large extent, impose parallel requirements. The judgment of the Court of Appeals for the Second Circuit is

Affirmed.

EXHIBIT 5

EXHIBIT 5

Per Curiam

SUPREME COURT OF THE UNITED STATES

MELENE JAMES *v.* CITY OF BOISE, IDAHO, ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF IDAHO

No. 15–493. Decided January 25, 2016

PER CURIAM.

Under federal law, a court has discretion to "allow the prevailing party, other than the United States, a reasonable attorney's fee" in a civil rights lawsuit filed under 42 U. S. C. §1983. 42 U. S. C. §1988. In *Hughes* v. *Rowe*, 449 U. S. 5 (1980) (*per curiam*), this Court interpreted §1988 to permit a prevailing defendant in such a suit to recover fees only if "the plaintiff's action was frivolous, unreasonable, or without foundation." *Id.*, at 14 (quoting *Christiansburg Garment Co.* v. *EEOC*, 434 U. S. 412, 421 (1978) (internal quotation marks omitted)).

In the decision below, the Idaho Supreme Court concluded that it was not bound by this Court's interpretation of §1988 in *Hughes*. According to that court, "[a]lthough the Supreme Court may have the authority to limit the discretion of lower federal courts, it does not have the authority to limit the discretion of state courts where such limitation is not contained in the statute." 158 Idaho 713, 734, 351 P. 3d 1171, 1192 (2015). The court then proceeded to award attorney's fees under §1988 to a prevailing defendant without first determining that "the plaintiff's action was frivolous, unreasonable, or without foundation." The court's fee award rested solely on its interpretation of federal law; the court explicitly refused to award fees under state law. *Id.*, at 734–735, 351 P. 3d, at 1192–1193. We grant certiorari, and now reverse.

Section 1988 is a federal statute. "It is this Court's responsibility to say what a [federal] statute means, and once the Court has spoken, it is the duty of other courts to

respect that understanding of the governing rule of law." *Nitro-Lift Technologies, L. L. C.* v. *Howard*, 568 U. S. ___, ___ (2012) (*per curiam*) (slip op., at 5) (quoting *Rivers* v. *Roadway Express, Inc.*, 511 U. S. 298, 312 (1994) (internal quotation marks omitted)). And for good reason. As Justice Story explained 200 years ago, if state courts were permitted to disregard this Court's rulings on federal law, "the laws, the treaties, and the constitution of the United States would be different in different states, and might, perhaps, never have precisely the same construction, obligation, or efficacy, in any two states. The public mischiefs that would attend such a state of things would be truly deplorable." *Martin* v. *Hunter's Lessee*, 1 Wheat. 304, 348 (1816).

The Idaho Supreme Court, like any other state or federal court, is bound by this Court's interpretation of federal law. The state court erred in concluding otherwise. The judgment of the Idaho Supreme Court is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

EXHIBIT 6

EXHIBIT 6

WESTERN CAB COMPANY

Business Entity Information

Status:	Active	File Date:	9/28/1950
Type:	Domestic Corporation	Entity Number:	C501-1950
Qualifying State:	NV	List of Officers Due:	9/30/2016
Managed By:		Expiration Date:	
NV Business ID:	NV19501000274	Business License Exp:	9/30/2016

Registered Agent Information

Name:	JOHN T MORAN JR	Address 1:	630 S FOURTH ST
Address 2:		City:	LAS VEGAS
State:	NV	Zip Code:	89101
Phone:		Fax:	
Mailing Address 1:		Mailing Address 2:	
Mailing City:		Mailing State:	NV
Mailing Zip Code:			
Agent Type:	Commercial Registered Agent		
Status:	Active		

Financial Information

No Par Share Count:	0	Capital Amount:	$ 100,000.00
Par Share Count:	500.00	Par Share Value:	$ 10.00
Par Share Count:	9,500.00	Par Share Value:	$ 10.00

− Officers

☐ Include Inactive Officers

Secretary - HELEN MARTIN			
Address 1:	801 SOUTH MAIN STREET	Address 2:	
City:	LAS VEGAS	State:	NV
Zip Code:	89101	Country:	
Status:	Active	Email:	
President - JANIE TOBMAN MOORE			
Address 1:	801 SOUTH MAIN STREET	Address 2:	
City:	LAS VEGAS	State:	NV
Zip Code:	89101	Country:	
Status:	Active	Email:	
Director - MARILYN A MORAN			
Address 1:	801 SOUTH MAIN STREET	Address 2:	
City:	LAS VEGAS	State:	NV
Zip Code:	89101	Country:	

Status:	Active	Email:	
Treasurer - JEAN TOBMAN			
Address 1:	801 SOUTH MAIN STREET	Address 2:	
City:	LAS VEGAS	State:	NV
Zip Code:	89101	Country:	
Status:	Active	Email:	

Actions\Amendments

Action Type:	Amendment		
Document Number:	C501-1950-003	# of Pages:	1
File Date:	9/28/1950	Effective Date:	
WESTERN ENTERPRISES, INC. B k 001			
NO AMENDMENT ON FILE. SEEMS TO BE JUST A COMMENT			

Action Type:	Articles of Incorporation		
Document Number:	C501-1950-001	# of Pages:	7
File Date:	9/28/1950	Effective Date:	
(No notes for this action)			

Action Type:	Amendment		
Document Number:	C501-1950-004	# of Pages:	4
File Date:	6/7/1968	Effective Date:	
REINSTATED UNDER NEW NAME IN ACCORDANCE WITH NRS 78.185			

Action Type:	Registered Agent Address Change		
Document Number:	C501-1950-005	# of Pages:	1
File Date:	6/15/1976	Effective Date:	
MYRON E LEAVITT SUITE 608			
3201 MARYLAND PARKWAY LAS VEGAS NV			

Action Type:	Registered Agent Change		
Document Number:	C501-1950-006	# of Pages:	1
File Date:	9/9/1977	Effective Date:	
MYRON E LEAVITT BOYD & LEAVITT			
SUITE ONE ONE MAIN ST LAS VEGAS NV 89101			

Action Type:	Registered Agent Address Change		
Document Number:	C501-1950-007	# of Pages:	1
File Date:	7/18/1979	Effective Date:	
HOUSTON & MORAN SUITE 1106			
300 SO. 4TH ST. LAS VEGAS NV			

Action Type:	Registered Agent Change		
Document Number:	C501-1950-008	# of Pages:	1
File Date:	8/26/1981	Effective Date:	
HOUSTON & MORAN SUITE 1212			
300 S. FOURTH ST LAS VEGAS NV 89101			

Action Type:	Registered Agent Address Change		
Document Number:	C501-1950-009	# of Pages:	1
File Date:	10/7/1985	Effective Date:	
JOHN T. MORAN, JR. SUITE 1212			
300 S. FOURTH ST. LAS VEGAS NV 89101			
Action Type:	Annual List		
Document Number:	C501-1950-014	# of Pages:	1
File Date:	9/2/1998	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	C501-1950-013	# of Pages:	1
File Date:	9/14/1999	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	C501-1950-015	# of Pages:	1
File Date:	8/30/2000	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	C501-1950-011	# of Pages:	1
File Date:	9/25/2001	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	C501-1950-012	# of Pages:	1
File Date:	8/21/2002	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	C501-1950-010	# of Pages:	1
File Date:	8/15/2003	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	C501-1950-002	# of Pages:	1
File Date:	9/20/2004	Effective Date:	
List of Officers for 2004 to 2005			
Action Type:	Annual List		
Document Number:	20050384554-36	# of Pages:	1
File Date:	8/24/2005	Effective Date:	
(No notes for this action)			
Action Type:	Amended List		
Document Number:	20060314466-12	# of Pages:	2
File Date:	5/16/2006	Effective Date:	
(No notes for this action)			

Action Type:	Amendment		
Document Number:	20060334470-99	# of Pages:	2
File Date:	5/25/2006	Effective Date:	
Previous Stock Value: Par Value Shares: 10,000 Value: $ 10.00 No Par Value Shares: 0 ---------- Total Authorized Capital: $ 100,000.00 New Stock Value: Par Value Shares: 500 Value: $ 10.00 Par Value Shares: 9,500 Value: $ 10.00 No Par Value Shares: 0 ---------- Total Authorized Capital: $ 100,000.00			

Action Type:	Annual List		
Document Number:	20060534284-74	# of Pages:	1
File Date:	8/21/2006	Effective Date:	
(No notes for this action)			

Action Type:	Annual List		
Document Number:	20070524383-84	# of Pages:	1
File Date:	7/30/2007	Effective Date:	
(No notes for this action)			

Action Type:	Annual List		
Document Number:	20080635546-29	# of Pages:	1
File Date:	9/24/2008	Effective Date:	
(No notes for this action)			

Action Type:	Annual List		
Document Number:	20090655942-62	# of Pages:	1
File Date:	8/28/2009	Effective Date:	
(No notes for this action)			

Action Type:	Annual List		
Document Number:	20100671676-06	# of Pages:	1
File Date:	9/2/2010	Effective Date:	
(No notes for this action)			

Action Type:	Annual List		
Document Number:	20110845989-97	# of Pages:	1
File Date:	11/30/2011	Effective Date:	
(No notes for this action)			

Action Type:	Annual List		
Document Number:	20120580719-35	# of Pages:	1
File Date:	8/23/2012	Effective Date:	
2012-2013			

Action Type:	Annual List		
Document Number:	20130524278-34	# of Pages:	1
File Date:	8/8/2013	Effective Date:	
13-14			

Action Type:	Amended List		
Document Number:	20140159650-23	# of Pages:	1
File Date:	3/3/2014	Effective Date:	

2013/2014			
Action Type:	Annual List		
Document Number:	20140651624-41	# of Pages:	1
File Date:	9/9/2014	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20150417086-84	# of Pages:	1
File Date:	9/21/2015	Effective Date:	
(No notes for this action)			

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.: 69408

District Court Case No. A-14-707425-C

PETITIONER'S MOTION FOR STAY

Pursuant to NRAP 8(a) and (c), Petitioner Western Cab Company ("Western Cab") respectfully requests that this Court stay the proceedings in district court pending resolution of Western Cab's petition to the Nevada Supreme Court for an

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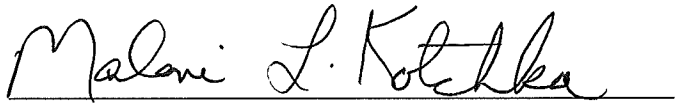
extraordinary writ. This motion is based on the attached exhibits and the memorandum of points and authorities.

HEJMANOWSKI & McCREA, LLC



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MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction

Western Cab has operated continuously as a cab company in Clark County, Nevada for over 65 years. Exhibit 6. Like the rest of the cab industry, it is a highly regulated business. NRS 706.881-706.885. Until this Court's 4-3 decision in *Thomas v. Nevada Yellow Cab Corp.*, 327 P.3d 518 (2014), on June 26, 2014, Western Cab believed it was exempt from Nevada's minimum wage pursuant to NRS 608.250(2)(e). App. at 258. Prior to the *Thomas* decision, Western Cab was audited by the U.S. Department of Labor for federal minimum wage compliance. As a result of what it was told by the Department of Labor, Western Cab decided in February 2012 to require drivers to pay for their own fuel. App. at 257-58. All

tips, both reported and unreported, and vendor fees are and were used by the drivers to pay for fuel. In February 2012, Western Cab increased its commission formula for its drivers from 30% of the book to 50% of the book. App. at 257-58.

After a former driver Perera filed suit for the recovery of unpaid minimum wage on September 23, 2014, the district court allowed him to twice amend his complaint. Exhibit 1. The district court defined the issue as whether the payments for fuel "should actually reduce the amounts of their income when looking at whether they're being paid minimum wage." App. at 356. "Wage" and "income" are **not** equivalent terms. Even if the former drivers' income (tips) was reduced by requiring them to pay for fuel, their wages were not. NAC 608.120(3) provides, "**All commissions** that an employer pays to an employee during a pay period may be used to meet the minimum wage requirement described in subsection 3 of NAC 608.115." (Emphasis added.) There is no authority to reduce any of the commissions by subtracting fuel costs from them.

II. Application for Stay to District Court

On December 18, 2015, Western Cab filed its Petition for Writ of Mandamus or Prohibition ("Petition") with this Court. Western Cab raised four issues involving federal preemption, due process and the fuel payments. This Court directed Perera, Ahmed and Sargeant, all **former drivers** of Western Cab (Exhibit 1, p. 1), to file an Answer.

On December 15, 2015, Western Cab moved the district court for a stay of the proceedings in district court while this Court considered the Petition. NRAP 8(a). On February 2, 2016, the district court denied the motion for stay and said:

> Though the Supreme Court's ruling on Western's petition **has the potential to be dispositive**, the Court finds it more likely that some discovery will have to commence in this case regardless of what conclusion the Nevada Supreme Court reaches.

Exhibit 1, p. 6 (emphasis added). Since the denial of its motion for stay, Western Cab filed its Answer, Counterclaims and Third-Party Complaint to Perera's Third Amended Complaint.

III. Threat by Perera's Counsel

This Court is considering the issue "that fuel costs need not be deducted from non-tipped wages prior to determining minimum wage." January 13, 2016 Order Directing Answer. Perera filed his Answer to the Petition on February 26, 2016, and on the same day, he sent a letter to Western Cab. Although Perera's counsel represents three former drivers and **no current employees** of Western Cab, he threatened:

> In the absence of an agreement by the defendant to limit the expenses it requires its taxi drivers to pay I intend to seek appropriate injunctive relief from the Court imposing such a limitation upon the defendant. I would also seek class certification for such injunctive relief under NRCP Rule 23(b)(2). I intend to include in that request for injunctive relief the imposition of a suitable regimen to ensure defendant's compliance with

> that injunction, **perhaps through the appointment of a special master paid for by the defendant.** If I am forced to proceed in such a fashion I will also ask that the Court grant me an award of attorney's fees in connection with my work in securing such an injunction.

Exhibit 3 (emphasis added).

IV. NRAP 8(c) Requirements

In deciding whether to issue a stay, this Court considers NRAP 8(c):

> (1) whether the object of the appeal or writ petition will be defeated if the stay or injunction is denied; (2) whether appellant/petitioner will suffer irreparable or serious injury if the stay or injunction is denied; (3) whether respondent/real party in interest will suffer irreparable or serious injury if the stay or injunction is granted; and (4) whether appellant/petitioner is likely to prevail on the merits in the appeal or writ petition.

V. Interference with Western Cab's Business

Prior to any discovery, Perera's counsel has threatened a misplaced request for a special master. Perera's counsel seeks to improperly restrain, curtail and control Western Cab's lawful highly regulated 65-year old business on behalf of current employees whom he does not even represent. Therefore, Western Cab requests that this Court stay all proceedings before the district court until it rules upon this Petition.

In *Hansen v. Eighth Judicial District Court*, 116 Nev. 650, 6 P.3d 982, 987 (2000), this Court, citing *Sobol v. Capital Management Consultants, Inc.*, 102 Nev. 444, 726 P.2d 335 (1986), noted that acts committed without just cause which

unreasonably interfered with a business or destroyed its credit or profits may do an irreparable injury. Here, the object of the Petition will be defeated if the stay is denied. Allowing the district court to appoint a special master to run Western Cab's business will interfere with the lawful highly regulated operation of the business and will destroy its profitability. To allow this result would effectively dissolve and be detrimental to the longstanding employer-employee relationship which Western Cab has with its drivers.

There are at least seven Minimum Wage Amendment cases pending before this Court. Granting a stay will give this Court time to not rush to judgment and to decide the many issues concerning the Minimum Wage Amendment in the transportation and restaurant industries.

VI. Likelihood of Prevailing on the Merits

A. Fuel Costs

Wages are "[t]he amount which an employer agrees to pay an employee for the time the employee has worked, computed in proportion to time" and commissions. NRS 608.012. While tips are part of income or compensation, they are not part of wages under the Minimum Wage Amendment. Requiring fuel costs to be paid from tips is **not** the equivalent of requiring such costs to be paid from non-tipped wages. While paying for fuel may reduce a driver's income, it does not reduce his wages.

In his Answer, Perera cites only federal authority under the Fair Labor Standards Act as support for his argument that fuel costs must be deducted from non-tipped wages. None of his authority is applicable to this case. First, there is no Nevada law (constitution, statute or regulation) which holds this. Second, federal law allows tip credits and never addresses the cost of fuel. 29 CFR § 531.36 addresses deductions for "facilities", not fuel costs. Moreover, Western Cab does **not** make any deductions from drivers' wages to pay for fuel.

Arriaga v. Florida Pacific Farms, LLC, 305 F.3d 1228 (11th Cir. 2002), addressed pre-employment expenses under the Fair Labor Standards Act, not fuel costs. Finally, *Ayres v. 127 Restaurant Corp.*, 12 F. Supp. 2d 305 (S.D.N.Y. 1998), addressed whether certain required clothing was a uniform under the Fair Labor Standards Act and New York Labor Law. The Minimum Wage Amendment does not address facilities, pre-employment expenses or uniforms.

The Minimum Wage Amendment does not address the cost of fuel which can be and is paid from reported and unreported tips and vendors fees. There is no legal requirement that the cost of fuel be deducted from non-tipped wages in calculating whether minimum wage has been paid. In fact, NAC 608.120(3) requires that **all commissions** be used to meet the minimum wage requirement. Because Western Cab is likely to prevail on the merits, the stay should be granted.

B. Federal Labor Law Preemption

The drafter of the Minimum Wage Amendment states that its purpose is to level the playing field between non-union and union companies. App. at 664, 666-67. It is not up to Nevada through its minimum wage constitutional amendment to "level" the playing field between union and non-union companies. The "leveling" is controlled exclusively by the federal government through the National Labor Relations Act. *Chamber of Commerce of U.S. v. Bragdon*, 64 F.3d 497, 501-02 (9th Cir. 1995); *Bechtel Const., Inc. v. United Brotherhood of Carpenters & Joiners of America*, 812 F.2d 1220, 1226 (9th Cir. 1987). Here, the Minimum Wage Amendment does not affect all workers equally. It is not a true "minimum" and its purpose is preempted by federal labor law. Because Western Cab is likely to prevail on the merits, the stay should be granted.

C. ERISA Preemption

ERISA is a federal statute. It is the United States Supreme Court's responsibility to say what the federal statute means and once the Court has spoken, it is the duty of other courts to respect that understanding of the governing rule of law. *James v. Boise*, 577 U.S. ____, 2016, Exhibit 5.

In *Gobeille v. Liberty Mutual Insurance Co.*, 577 U.S. ____ (March 1, 2016), Exhibit 4, the United States Supreme Court said:

> Second, ERISA pre-empts a state law that has an impermissible "connection with" ERISA plans, meaning

> a state law that "governs . . . a central matter of plan administration" or "interferes with nationally uniform plan administration." *Egelhoff v. Egelhoff*, 532 U.S. 141, 148 (2001). A state law also might have an impermissible connection with ERISA plans if "acute, albeit indirect, economic effects" of the state law "force an ERISA plan to adopt a **certain scheme of substantive coverage** or effectively restrict its choice of insurers." *Travelers, supra*, at 668. When considered together, these formulations ensure that ERISA's express pre-emption clause receives the broad scope Congress intended while avoiding the clause's susceptibility to limitless application.

Exhibit 4 (emphasis added).

NAC 608.102 requires an employer to offer a health insurance "plan" which covers health care expenses deductible pursuant to federal income tax law or health care benefits provided pursuant to Taft-Hartley trusts which qualify as an employee welfare benefit plan under ERISA. Thus, Nevada law requires a health insurance plan to adopt a certain scheme of substantive coverage. The Supreme Court found that Vermont's law as applied to ERISA plans was preempted and concluded, "Either way, the uniform rule design of ERISA makes it clear that these decisions are for federal authorities, not for the separate States." Exhibit 4.

Nevada's laws NAC 608.102 and 608.108 relate to and require employers to offer a health insurance plan (employee benefit plan) which meets certain substantive requirements. Western Cab is likely to prevail on the merits of its ERISA preemption argument.

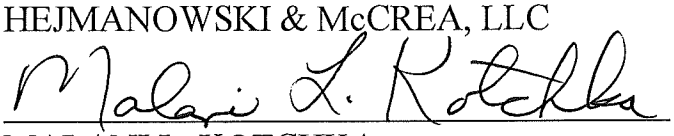
VII. Conclusion

Western Cab has met the requirements of NRAP 8(a) and (c). The object of the Petition will be defeated if this stay is denied. Perera is seeking the appointment of a special master to run Western Cab's lawful highly regulated 65-year old business even though he, Ahmed and Sargeant are **former employees** and have no interest in the current operation of Western Cab's business.

Western Cab's business interests will suffer irreparable or serious injury if a special master is appointed and this stay is denied. Perera, Ahmed and Sargeant will suffer no injury if the stay is granted. They are former employees and if they ultimately prevail, they will be paid back pay under the Minimum Wage Amendment Pursuant to their Third Amended Complaint.

Finally, Western Cab is likely to prevail on the merits of its Petition as forth above. Western Cab respectfully requests that this Court stay the proceedings in the district court pending the resolution of Western Cab's Petition.

HEJMANOWSKI & McCREA, LLC



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CERTIFICATE OF SERVICE

The undersigned does hereby certify that pursuant to NRAP 25(c), a true and correct copy of the foregoing **PETITIONER'S MOTION FOR STAY** was filed electronically with the Nevada Supreme Court Electronic Filing System, and a copy was served electronically on this 8th day of March, 2016, to the following:

Leon Greenberg, Esq.
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And a true and correct copy of the foregoing **PETITIONER'S MOTION FOR STAY** was served via first class, postage-paid U.S. Mail on this 8th day of March 2016, to the following:

The Honorable Linda Marie Bell
District Court Judge
Eighth Judicial District Court of Nevada
200 Lewis Avenue, #3B
Las Vegas, NV 89101

Rosalie Bacca

An Employee of Hejmanowski & McCrea LLC