

EXHIBIT 1

EXHIBIT 1

Richard McCracken, SBN 2748
Andrew J. Kahn, SBN 3751
McCRACKEN, STEMERMAN & HOLSBERRY
1630 S. Commerce Street, Suite A-1
Las Vegas, NV 89102
Telephone: (702) 386-5107
Facsimile: (702) 386-9848
Email: rmccracken@dcbsf.com
ajk@dcbsf.com

Attorneys for Proposed Intervenor Nevada AFL-CIO

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA -- SOUTHERN DIVISION

LANDRYS, INC., a Delaware corporation; BUBBA GUMP SHRIMP CO., RESTAURANTS, INC., a Delaware corporation; NEVADA RESTAURANT SERVICES, INC. d/b/a DOTTY'S GAMING AND SPIRITS, a Nevada Corporation; NEVADA RESTAURANT SERVICES, INC. d/b/a LAUGHLIN RIVER LODGE, a Nevada corporation; NEVADA RESTAURANT SERVICES, INC. d/b/a HOOVER DAM LODGE, a Nevada Corporation,

Plaintiffs,

vs.

BRIAN SANDOVAL, in his official capacity as Governor of the State of Nevada; SHANNON CHAMBERS, in her official capacity as Labor Commissioner in the State of Nevada ex rel,

Defendants.

NEVADA AFL-CIO.

Proposed Intervenor-Defendant

CASE NO. 2:15-cv-01160-GMN-PAL

DECLARATION OF DANNY THOMPSON
IN SUPPORT OF NEVADA AFL-CIO's
MOTION TO INTERVENE

I, Danny Thompson, declare:

1. I am the Executive Secretary-Treasurer of the Nevada AFL-CIO and have held that position since 1999, and am competent to testify to the following: the Nevada AFL-CIO is comprised of over 120 local unions with over 200,000 members in Nevada. The Nevada AFL-CIO and its affiliates actively

1 adoption by voters in 2004 and 2006 of the Minimum Wage Amendment to the Nevada Constitution
2 ("MWA") which we drafted in conjunction with our lawyers at the law firm of McCracken, Stenerman
3 & Holsberry. This law helped increase the compensation of AFL-CIO members in Nevada and helps level
4 the playing field between non-union employers and unionized employers (who generally have been paying
5 their employees better than non-union employers). Most unionized employers provide health benefits
6 readily meeting the MWA's standard of not costing employees more than 10 percent of their gross income,
7 while a number of nonunion plans are reported to be falling such standard inside Nevada, and we
8 understand many outside Nevada fall such standard.

10 2. We are unaware of any MWA enforcement efforts by the Labor Commissioner. We have had serious
11 differences with the Office of the Labor Commissioner and their counsel in recent years, and we recently
12 submitted comments to that office in a rulemaking process over their minimum wage regulations in which
13 we objected to a number of these regulations.

15 3. We are very active in the health benefits arena within Nevada and have developed expertise in this
16 arena as many unionized employers provide health benefits through plans which are jointly administered
17 by union and employer trustees. Even where the plan does not have union trustees, our unions are still
18 involved in negotiating over and monitoring the employer plans.

20 I declare under penalty of perjury of the laws of the United States and Nevada that the foregoing is true
21 and correct. Executed this ___ day of _____, 2015.

22 
23 DANNY THOMPSON

EXHIBIT 2

EXHIBIT 2

Richard McCracken, SBN 2748
Andrew J. Kahn, SBN 3751
McCRACKEN, STEMBERMAN & HOLSBERRY
1630 S. Commerce Street, Suite A-1
Las Vegas, NV 89102
Telephone: (702) 386-5107
Facsimile: (702) 386-9848
Email: rmcocracken@dcbsf.com
ajk@dcbsf.com

Attorneys for Proposed Intervenor Nevada AFL-CIO

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA – SOUTHERN DIVISION

LANDRYS, INC., a Delaware corporation; BUBBA
GUMP SHRIMP CO., RESTAURANTS, INC., a
Delaware corporation; NEVADA RESTAURANT
SERVICES, INC. d/b/a DOTTY'S GAMING AND
SPIRITS, a Nevada Corporation; NEVADA
RESTAURANT SERVICES, INC. d/b/a
LAUGHLIN RIVER LODGE, a Nevada
corporation; NEVADA RESTAURANT
SERVICES, INC. d/b/a/HOOVER DAM LODGE, a
Nevada Corporation,

Plaintiffs,

vs.

BRIAN SANDOVAL, in his official capacity as
Governor of the State of Nevada; SHANNON
CHAMBERS, in her official capacity as Labor
Commissioner in the State of Nevada ex rel,

Defendants.

NEVADA AFL-CIO.

Proposed Intervenor-Defendant

Case No. 2:15-cv-01160-GMN-PAL

SUPPLEMENTAL DECLARATION OF
DANNY THOMPSON IN SUPPORT OF
NEVADA AFL-CIO's MOTION TO
INTERVENE

I, Danny Thompson, declare:

1. I am the Executive Secretary-Treasurer of the Nevada AFL-CIO and am competent to testify to the
following: members of some Nevada AFL-CIO affiliates receive wages below \$8.25 per hour but also

1 receive health benefits from their employer which qualify their employer to the lower minimum rate under
2 the State Constitution. They work as cab drivers and casino dealers.

3 2. Unionized employers in this State compete constantly with non-union employers paying only the state
4 minimum wage, particularly in the restaurant industry. If those non-union employers were allowed to
5 lower wages to pay only the lower federal minimum wage, there would be large amounts of business lost
6 by unionized employers, and hence losses to union members of paid hours worked, tips, and jobs, and
7 losses in dues income to AFL-CIO affiliates.
8

9 I declare under penalty of perjury of the laws of the United States and Nevada that the foregoing
10 is true and correct. Executed this ___ day of August 2015.

11 
12 DANNY THOMPSON

EXHIBIT 3

EXHIBIT 3

1 Richard McCracken, SBN 2748
2 Andrew J. Kahn, SBN 3751
3 McCracken, Stemerma & Holsberry
4 1630 S. Commerce Street, Suite A-1
5 Las Vegas, NV 89102
6 Telephone: (702) 386-5107
7 Facsimile: (702) 386-9848
8 Email: rmccracken@debsf.com
9 ajk@debsf.com
10 *Attorneys for Proposed Intervenor Nevada AFL-CIO*

11 UNITED STATES DISTRICT COURT

12 DISTRICT OF NEVADA – SOUTHERN DIVISION

13 LANDRYS, INC., a Delaware corporation; BUBBA
14 GUMP SHRIMP CO., RESTAURANTS, INC., a
15 Delaware corporation; NEVADA RESTAURANT
16 SERVICES, INC. d/b/a DOTTY'S GAMING AND
17 SPIRITS, a Nevada Corporation; NEVADA
18 RESTAURANT SERVICES, INC. d/b/a
19 LAUGHLIN RIVER LODGE, a Nevada
20 corporation; NEVADA RESTAURANT
21 SERVICES, INC. d/b/a/ HOOVER DAM LODGE, a
22 Nevada Corporation,

23 Plaintiffs,

24 vs.

25 BRIAN SANDOVAL, in his official capacity as
26 Governor of the State of Nevada; SHANNON
27 CHAMBERS, in her official capacity as Labor
28 Commissioner in the State of Nevada ex rel,

Defendants.

NEVADA AFL-CIO.

Proposed Intervenor-Defendant

Case No. 2:15-cv-01160-GMN-PAL

SECOND SUPPLEMENTAL
DECLARATION OF DANNY
THOMPSON IN SUPPORT OF NEVADA
AFL-CIO's MOTION TO INTERVENE

I, Danny Thompson, declare:

I, I am the Executive Secretary-Treasurer of the Nevada AFL-CIO and am competent to testify to the following: members of some Nevada AFL-CIO affiliates receive wages below \$8.25 per hour but also receive health benefits from their employer which qualify their employer to the lower minimum rate under

EXHIBIT 3

000669

1 the State Constitution. These include those working as new hires at a number of Las Vegas downtown
2 casinos belonging to Culinary Workers Union Local 226, as its contracts at eight facilities call for such
3 rates for certain benefited workers hired recently: Blnlons, Four Queens, Fremont, Main Street, Plaza,
4 Las Vegas Club, Dupars and Golden Gate.

5
6 2. Unionized employers in this State compete constantly with non-union employers paying only the state
7 minimum wage, particularly in the restaurant industry. If those non-union employers were allowed to
8 lower wages to pay only the lower federal minimum wage, there would be large amounts of business lost
9 by unionized employers, and hence losses to union members of paid hours worked, tips, and jobs, and
10 losses in dues income to AFL-CIO affiliates.

11
12 I declare under penalty of perjury of the laws of the United States and Nevada that the foregoing
13 is true and correct. Executed this __ day of August 2015.

14 
15 DANNY THOMPSON

CERTIFICATE OF SERVICE

I hereby certify that on August 25, 2015, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal and a Notice of Electronic Filing was electronically transmitted from the court to the e-mail addresses on file.

/s/ Joyce Archain

EXHIBIT 2

EXHIBIT 2

AFFIDAVIT OF GREGORY E. SMITH

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

Gregory E. Smith, being duly sworn upon his oath, deposes and says that:

1. I am a member of the law firm of Hejmanowski & McCrea LLC. I previously was employed by the National Labor Relations Board and have spent the past 37 years working as a labor lawyer. I have represented Western Cab Company in union negotiations since approximately August 2013. I was retained to represent Western Cab after it had already entered into a recognition agreement under which it officially "recognized" the United Steel Paper and Forestry, Rubber, Manufacturing, Energy, Allied-Industrial and Service Workers International Union (AFL-CIO/CLC) (herein "Union" or "Steelworkers' Union") as the exclusive bargaining representative of Western Cab's employee cab drivers.

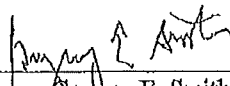
2. The effect of that recognition was to require Western Cab to "bargain in good faith" with the Union for a collective bargaining agreement to cover Western Cab's drivers. The phrase "bargaining in good faith" also includes the duty to not unilaterally change any material term or condition of employment of employees without first bargaining with the Union. Western Cab did not realize that its bargaining obligation might require it to bargain with the Union about a change in health insurance coverage even when that change, reducing the waiting period from 1 year to 90 days, was mandated by the federal government in the form of the Affordable Care Act ("ACA") and even though the change was clearly in favor of the employees.

3. The Union filed unfair labor practice charges against Western Cab, alleging that such compliance with the federal law giving the employees more benefits than they had before,

EXHIBIT 4

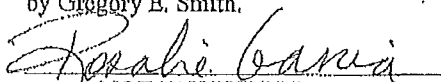
was a matter that had to be bargained about with the Union first. In my experience as a labor lawyer over the past 37 years, I am aware that this is a recurring problem that many employers face not realizing that changes of employment terms, even if in the employee's favor, still must be subject to bargaining with the Union first. Indeed, in this case the NLRB's Administrative Law Judge recently found that Western Cab violated its bargaining obligation by not giving the Union a chance to bargain about the waiting period for health insurance coverage before the change was made. The Minimum Wage Amendment exerts pressure on Western Cab, that it otherwise would not have had, to reach a collective bargaining agreement with the Union on wages and health benefits.

4. In addition the Minimum Wage Amendment allows waiver of the minimum wage only in a collective bargaining agreement. This fact further exerts pressure to reach a collective bargaining agreement with the Union. Moreover, unilateral implementation under the National Labor Relations Act allows for wages to be unilaterally implemented after an impasse in bargaining. The definition of unilateral implementation in the Minimum Wage Amendment is different from the term defined in cases by the National Labor Relations Board and thus interferes with the implementation of federal labor policy.



Gregory E. Smith

SUBSCRIBED and SWORN to before
me this 21st day of September, 2015
by Gregory E. Smith.



ROSALIE GARCIA
NOTARY PUBLIC

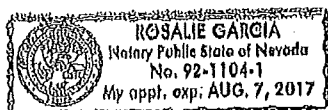


EXHIBIT 3

EXHIBIT 3

RECEIVED

OCT 19 2012

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

Rev. by Inv. Assign

CLAIM FOR WAGES Keith

NEVADA LABOR COMMISSIONER EMPLOYEE INFORMATION (Include copy of Photo Identification)	EMPLOYER INFORMATION
1. Name: <u>Laksiri P. Perera</u> First M.I. Last	9. Business name: <u>Western cab company</u>
2. Address: <u>6500 Pearcrest Rd.</u> Number City State Zip <u>Las Vegas NV 89108</u>	10. Name of Employer: <u>Helen</u>
3. Home Phone: <u>(702) 454-7588</u>	11. Business address: <u>801 South Main St.</u> City: <u>Las Vegas</u> State: <u>NV</u> Zip: <u>89101</u>
4. Other Phone: ()	12. Mailing address (if different): City State Zip
5. Email address: <u>ushaniperera@yahoo.com</u>	13. Telephone: <u>(702) 382-7100</u> Fax: ()
6. Will you provide a financial statement if requested? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	14. County where you worked: <u>Clark</u>
7. 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? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	15. Type of work performed: <u>driver</u>
8. Were you offered Health Insurance? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	16. Type of Business: <u>Taxi</u>
9. Does this claim include NSF checks? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

JOB INFORMATION

10. Base Pay Rate: Comm Date Hired: 01/2010 Last day worked: 10/15/2012 Reason for leaving: ☒ Discharged/fired off ☐ Quit ☐ Still Employed

11. Employment Agreement ☒ Oral Agreement ☐ Written Agreement: Please attach a copy

12. Basis of pay ☐ Piece work ☐ Salary ☐ Hourly ☐ Commissions Method of payment ☒ Check ☐ Cash If paid in cash, did you sign a receipt for payment? ☐ Yes ☐ No

WAGES CLAIMED

13. Reason(s) for wage claim: different pay period

14. Evidence submitted to support wage claim (attach copies):
☐ Nonpayment of regular wages ☐ Bad check(s) ☒ Unauthorized deductions ☐ Other
☐ Nonpayment of overtime ☐ Pay stubs ☐ Company documents ☐ Witnesses (attach list)
☐ Nonpayment of commissions ☐ Time records ☐ Agreement/contract ☐ Other
☐ Nonpayment of prevailing wage ☐ Tax records (i.e. FORM W-2)

15. Did you ask for your wages? ☒ Yes ☐ No If so, from whom: Helen Date: January 2012 ☒ Oral ☐ Written demand

16. Dates unpaid/underpaid From 01/10/10 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
Total amount paid	48,534.12	\$ 48,534.12
Subtotal (subtract line 24 from line 23)	7,025.88	\$ 7,025.88
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

SUMMARY OF TIME WORKED

Week	3/5/11	3/11/11	3/12/11	3/13/11	3/14/11	3/15/11	3/16/11	3/17/11	3/18/11	Total Hours
Day	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	
Date	3/5	3/6	3/7	3/8	3/9	3/10	3/11	3/12	3/13	72
Regular Hours	12.0	12.0	12.0	12.0	12.0	12.0	12.0	12.0	12.0	72
Overtime Hours	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Total Hours	12.0	12.0	12.0	12.0	12.0	12.0	12.0	12.0	12.0	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

Week	From: 3/12/11	To: 3/17/11	3/18/11	3/19/11	3/20/11	3/21/11	3/22/11	3/23/11	3/24/11	Total Hours
Day	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	
Date	3/12	3/13	3/14	3/15	3/16	3/17	3/18	3/19	3/20	72
Regular Hours	12.0	12.0	12.0	12.0	12.0	12.0	12.0	12.0	12.0	72
Overtime Hours	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Total Hours	12.0	12.0	12.0	12.0	12.0	12.0	12.0	12.0	12.0	72

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

Week	From: 3/18/11	To: 3/24/11	3/25/11	3/26/11	3/27/11	3/28/11	3/29/11	3/30/11	3/31/11	Total Hours
Day	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	
Date	3/18	3/19	3/20	3/21	3/22	3/23	3/24	3/25	3/26	72
Regular Hours	12.0	12.0	12.0	12.0	12.0	12.0	12.0	12.0	12.0	72
Overtime Hours	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Total Hours	12.0	12.0	12.0	12.0	12.0	12.0	12.0	12.0	12.0	72

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

Start Benefit

Week	From: 3/25/11	To: 3/31/11	3/31/11	3/31/11	3/31/11	3/31/11	3/31/11	3/31/11	3/31/11	Total Hours
Day	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	
Date	3/25	3/26	3/27	3/28	3/29	3/30	3/31	3/31	3/31	72
Regular Hours	12.0	12.0	12.0	12.0	12.0	12.0	12.0	12.0	12.0	72
Overtime Hours	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Total Hours	12.0	12.0	12.0	12.0	12.0	12.0	12.0	12.0	12.0	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 Carb com Employee Name Leticia Perez

ATTACHMENT 1(A)
SUMMARY OF TIME WORK!!D

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	X	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	X	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	X	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	X	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

Employer Name Westren Cab Co Employee Name Cristina Perea

EXHIBIT 4

EXHIBIT 4

BRIAN SANDOVAL
Governor

BRIAN SANDOVAL
Director

THOMAS FOHLER
Labor Commissioner

STATE OF NEVADA



Department of Business & Industry

OFFICE OF THE LABOR COMMISSIONER

<http://www.LaborCommissioner.com>

REPLY TO:

OFFICE OF THE LABOR COMMISSIONER
888 W. WASHINGTON AVENUE, SUITE 4100
LAS VEGAS, NEVADA 89101
PHONE (702) 486-2000
FAX (702) 486-2000

OFFICE OF THE LABOR COMMISSIONER
875 PARKWAY DRIVE, SUITE 230
SPRINGFIELD, NEVADA 89701
PHONE (702) 687-4650
FAX (702) 687-4650

November 13, 2012

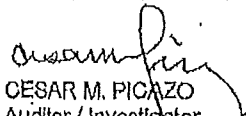
LAKSIRI P. PERERA
6500 PEARCREST RD
LAS VEGAS, NV 89108

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

000119

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 \$353.07 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

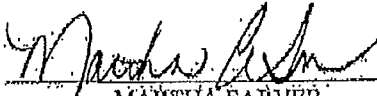
wage based on Exhibit 5-2, which is Section 30b02 of the Field Operations Handbook of the United States Department of Labor. According to the Department of Labor's instructions, Perera's total earnings for the workweek divided by his compensable hours equal or exceeds the applicable state minimum wage. 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. Smorber, 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.

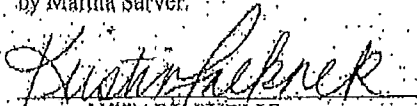
7. Western Cab allowed all of its drivers to take breaks and a one-hour meal period during their shifts. In calculating Perera's hourly wage, I did not deduct the one-hour meal period Perera was supposed to take.

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

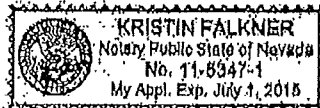


EXHIBIT 6

EXHIBIT 6

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.

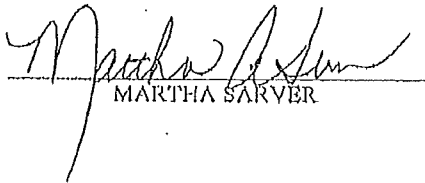
9. On August 29, 2012, I attended a meeting with Ms. Salazar and her supervisor at the U.S. Department of Labor. Western Cab had been audited by the U.S. Department of Labor for minimum wage compliance pursuant to federal law. The Department of Labor said that Western Cab's payment of gasoline for the 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.

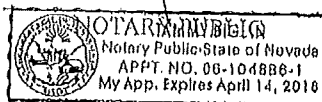
11. In August 2012 the U.S. Department of Labor again contacted Western Cab. The Department asked to review all the drivers' trip sheets to determine if Western Cab was in compliance with federal minimum wage requirements. Western Cab made available 44 boxes of trip sheets. The U.S. Department of Labor 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.



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

Electronically Filed
Jun 07 2016 02:41 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

**PETITIONER'S REPLY TO AMICUS CURIAE BRIEF OF THE NEVADA
AFFILIATE CHAPTER OF THE NATIONAL EMPLOYMENT LAWYERS
ASSOCIATION IN SUPPORT OF RESPONDENTS AND THE REAL
PARTIES IN INTEREST**

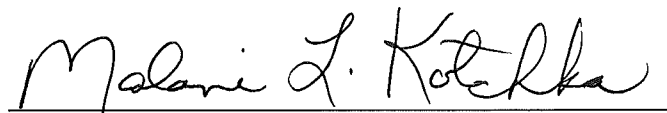
MALANI L. KOTCHKA
Nevada Bar No. 283
HEJMANOWSKI & McCREA, LLC
520 South Fourth Street, Suite 320
Las Vegas, Nevada, 89101
Telephone: (702) 834-8777
Facsimile: (702) 834-5262
Email: mlk@hmlawlv.com
*Attorneys for Petitioner
Western Cab Company*

NRAP 26.1 DISCLOSURE

Pursuant to NRAP 26.1, the undersigned counsel of record certifies that Petitioner Western Cab Company has no parent corporation and no publicly held company owns 10% or more of its stock.

The undersigned counsel of record further certifies that she is the only attorney who has appeared for Petitioner Western Cab Company in the proceedings in the District Court and in this Court, and that she appeared since January 2015 through the law firm of Hejmanowski & McCrea, LLC, and previously through the law firm Lionel Sawyer & Collins.

HEJMANOWSKI & McCREA, LLC

A handwritten signature in black ink, reading "Malani L. Kotchka". The signature is fluid and cursive, with the first name "Malani" and last name "Kotchka" clearly legible. The signature is positioned above a horizontal line.

MALANI L. KOTCHKA

Nevada Bar No. 283

520 South Fourth Street, Suite 320

Las Vegas, Nevada, 89101

Telephone: (702) 834-8777

Facsimile: (702) 834-5262

Email: mlk@hmlawlv.com

*Attorneys for Petitioner
Western Cab Company*

TABLE OF CONTENTS

ARGUMENT	1
----------------	---

ARGUMENT

The MWA was drafted by the AFL-CIO. Exhibit 1, App. at 663-64, 666-67. The AFL-CIO was acting like a legislator in drafting legislation, the ballot initiative.¹ See Article 19 of the Nevada Constitution. It was not merely engaged in lobbying like the unions were with the City of Los Angeles minimum wage ordinance. In *Chula Vista Citizens for Jobs and Fair Competition v. Norris*, 782 F.3d 520, 529-30 (9th Cir. 2015), the Ninth Circuit said the initiative power that California and the City of Chula Vista reserved to electors was indisputably a legislative power. The court said:

Much like a legislator who begins the traditional legislative process by placing a bill in the hopper, an official proponent commences the process of legislating by initiative by asking voters to sign a petition to place an initiative on the ballot. . . . Thus, by seeking to serve as official proponents, the plaintiffs seek to wield a legislative power.

Id. at 530.

The court continued:

Thus, while all California voters play a quasi-legislative role in the initiative process, **the official proponent is particularly akin to a legislator**-----sponsoring legislation and shepherding it through the legislative process. Indeed, like a legislator introducing legislation, and unlike a mere lobbyist (the plaintiffs' preferred characterization),

¹ The ballot initiative refers to "hotel maids, childcare workers, and nursing home employees." It does not refer to cab drivers who are traditionally paid by commission. App. at 423. Taxicab drivers are tipped employees. Hotel maids, childcare workers and nursing home employees typically are not. The ballot initiative does not refer to taxicab employees.

an official proponent performs a series of *necessary* steps for the people to exercise the power to legislate by initiative.

Id. at 530-31 (emphasis added).

Here, the AFL-CIO acted as a legislator, **not** as a lobbyist. The AFL-CIO drafted, with the help of its attorneys, the MWA for the **sole purpose** of leveling the playing field between union and non-union companies. Exhibit 1, App. at 663-71. Thus, the sole legislative purpose was to interfere with economic forces. “State legislation, which interferes with the economic forces that labor or management can employ in reaching agreements, is preempted by the NLRA because of its interference with the bargaining process.” *Chamber of Commerce of U.S. v. Bragdon*, 64 F.3d 497, 501 (9th Cir. 1995).

The AFL-CIO was acting not only as the legislator of the MWA but also as the exclusive bargaining agent of Western Cab’s drivers. Exhibit 2, App. at 673-74. Western Cab has a duty to not unilaterally change any material term or condition of employment of its cab drivers without first bargaining with the Steelworkers Union, a member of the AFL-CIO, who drafted the MWA. Exhibit 2, App. at 673. Western Cab’s bargaining representative states indisputably, “The Minimum Wage Amendment exerts pressure on Western Cab, that it otherwise would not have had, to reach a collective bargaining agreement with the Union on wages and health benefits.” Exhibit 2, App. at 674. *Machinists* preemption forbids both the NLRB and the States to regulate conduct that Congress intended be

unregulated because the conduct should be controlled by the free play of economic forces. *Chamber of Commerce of U.S. v. Brown*, 554 U.S. 60, 65 (2008).

“The definition of unilateral implementation in the Minimum Wage Amendment is different from the term defined in cases by the National Labor Relations Board and thus interferes with the implementation of federal labor policy.” Exhibit 2, App. at 674. *Garmon* preemption forbids the States to regulate activity that the NLRA protects, prohibits, or arguably protects or prohibits. *Brown*, 554 U.S. at 65.

NELA misrepresents the criteria for finding federal labor law preemption and attempts to analogize an ordinance enacted by a City to a ballot initiative proposed by a union, the AFL-CIO. As the Seventh Circuit held in *520 South Michigan Avenue Associates v. Shannon*, 549 F.3d 1119, 1124 (7th Cir. 2008), “[t]he statute’s narrow application equates more to a benefit for a bargaining unit than an individual protection.” Here, the MWA on its face prohibits individual waivers but allows unions to waive the MWA’s requirements. Article 15, § 16(B). The MWA is preempted by federal labor law. Congress never intended that labor unions act as legislators in shepherding state ballot initiatives through the process to upset the balance struck by the National Labor Relations Act. There is no dispute that the MWA interferes with the economic forces that labor or management can employ in reaching agreements.


Perera filed a minimum wage claim with the Nevada Labor Commissioner. His own claim states that he started receiving health benefits on March 24, 2011. Exhibit 3, App. at 282. After that date, Perera requested the lower tier of the minimum wage. Exhibit 3, App. at 282. The Labor Commissioner ruled on Perera's claim and said on November 13, 2012, "With these evidentiary documents, it appears that you have been paid correctly." Exhibit 4, App. at 119. Thus, Western Cab **relied** on the Labor Commissioner's ruling in November 2012 and believed it was complying with the minimum wage law. NELA grossly misrepresents the record when it claims that Western Cab did not provide health insurance and seeks to compare this case with *Calop*.

The regulations of the Nevada Labor Commissioner regulate the type of plan Western Cab may have to provide health benefits. NAC 608.102 gives an employer two choices of the type of plan it must have. It 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 regulations relate to an employee benefit plan which is expressly preempted by ERISA.

In *Gobeille v. Liberty Mutual Insurance Company*, 136 S. Ct. 936 (2006), the United States Supreme Court held that Vermont's data gathering law on health plans was preempted by ERISA. The Supreme Court concluded, "Either way, the uniform rule design of ERISA makes it clear that these decisions are for federal authorities, not for the separate States." *Id.*, at 945.

NRS 608.012 defines wages as commissions owed an employee. NAC 608.120(3) provides that 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. Western Cab does **not** require its employees to rebate, refund or return any part of the wage, salary or compensation earned by and paid to its drivers. Thus, NRS 608.100(2) is not applicable to Western Cab.

HEJMANOWSKI & McCREA, LLC



MALANI L. KOTCHKA

Nevada Bar No. 283

520 South Fourth Street, Suite 320

Las Vegas, Nevada, 89101

Telephone: (702) 834-8777

Facsimile: (702) 834-5262

Email: mlk@hmlawlv.com

*Attorneys for Petitioner
Western Cab*

CERTIFICATE OF SERVICE

The undersigned does hereby certify that pursuant to NRAP 25(c), a true and correct copy of the foregoing **PETITIONER'S REPLY TO AMICUS CURIAE BRIEF OF THE NEVADA AFFILIATE CHAPTER OF THE NATIONAL EMPLOYMENT LAWYERS ASSOCIATION IN SUPPORT OF RESPONDENTS AND THE REAL PARTIES IN INTEREST** was filed electronically with the Nevada Supreme Court Electronic Filing System, and a copy was served electronically on this 6th day of June, 2016, to the following:


Leon Greenberg, Esq.
GREENBERG, P.C.
2965 S. Jones Blvd., Suite E4
Las Vegas, NV 89146
Telephone: (702) 383-6085
Facsimile: (702) 385-1827
Email: leongreenberg@overtimelaw.com

Mark R. Thierman
NEVADA NELA
7287 Lakeside Drive
Reno, NV 89511
Telephone: (775) 284-1500
Facsimile: (775) 703-5027

Bradley Schrager
WOLF, RIFKIN, SHAPIRO,
SCHULMAN & RABKIN, LLP
3556 E. Russell Road, 2nd Floor
Las Vegas, NV 89120-2234
Telephone: (702) 341-5200
Facsimile: (702) 341-5300

And a true and correct copy of the foregoing **PETITIONER'S REPLY TO AMICUS CURIAE BRIEF OF THE NEVADA AFFILIATE CHAPTER OF THE NATIONAL EMPLOYMENT LAWYERS ASSOCIATION IN SUPPORT OF RESPONDENTS AND THE REAL PARTIES IN INTEREST** was served via first class, postage-paid U.S. Mail on this 6th day of June 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


An Employee of Hejmanowski & McCrea LLC