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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

ROBERT GREENE, THOMAS SCHEMKES, and GREGORY GREEN on behalf of themselves and all others similarly situated, Plaintiffs, v. JACOB TRANSPORTATION SERVICES, LLC, a Nevada Corporation, doing business as Executive Las Vegas; JAMES JIMMERSON, an individual, CAROL JIMMERSON, an individual, and Does 1-50, Inclusive Defendants.	Lead Case No. 2:09-CV-00466-GMN-CWH *Consolidated with:* Member Case No. 2:11-CV-00355-JAD-NJK **FIRST AMENDED CONSOLIDATED CLASS AND COLLECTIVE ACTION COMPLAINT FOR:** 1) Failure to Pay Minimum Wages; 2) Failure to Pay Overtime; 3) Failure to Pay for Each Hour Worked; 4) Improper Wage Deductions; 5) Waiting Time Penalties; and 6) Liquidated Damages;

Comes now ROBERT GREENE and THOMAS SCHEMKES, and GREGORY GREEN (collectively "Plaintiffs") on behalf of themselves and all others similarly situated and allege:

JURISDICTION/VENUE

1. This Court has original jurisdiction over Plaintiffs' federal wage claims under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. 216(b), which states "An action to recover the liability prescribed in either of the preceding sentences may be maintained against any employer (including a public agency) in any Federal or State court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated."

2. Because Plaintiffs' claims under the FLSA arise under federal law, the Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331. In addition, this Court has supplemental jurisdiction under 28 U.S.C. § 1367 over Plaintiffs' Nevada state law claims because those claims derive from a common nucleus of operative fact regarding Defendants' unlawful treatment of Plaintiffs and similarly situated employees, and form part of the same case and controversy.

3. This Court has jurisdiction under Nevada Revised Statutes, NRS § 608.050(1) and (2), which state:

> Whenever an employer of labor shall discharge or lay off his or its employees without first paying them the amount of any wages or salary then due them, in cash and lawful money of the United States, or its equivalent, or shall fail, or refuse on demand, to pay them in like money, or its equivalent, the amount of any wages or salary at the time the same becomes due and owing to them under their contract of employment, whether employed by the hour, day, week or month, each of his or its employees may charge and collect wages in the sum agreed upon in the contract of employment for each day his employer is in default, until he is paid in full, without rendering any service therefor; but he shall cease to draw such wages or salary 30 days after such default. Every employee shall have a lien as provided in NRS 108.221 to 108.246, inclusive, and all other rights and remedies for the protection and enforcement of such salary or wages as he would have been entitled to had he rendered services therefor in the manner as last employed.

4. The State of Nevada has created a cause of action for such wages and attorneys fees pursuant to NRS 608.140, entitled "Assessment of attorney's fees in action for recovery of wages," which states "Whenever a mechanic, artisan, miner, laborer, servant or employee shall

have cause to bring suit for wages earned and due according to the terms of his employment, and shall establish by decision of the court or verdict of the jury that the amount for which he has brought suit is justly due, and that a demand has been made, in writing, at least 5 days before suit was brought, for a sum not to exceed the amount so found due, the court before which the case shall be tried shall allow to the plaintiff a reasonable attorney fee, in addition to the amount found due for wages and penalties, to be taxed as costs of suit." Plaintiffs have sent such a demand.

5. The State of Nevada has also created a cause of action for minimum wages and attorneys fees pursuant to the Nevada State Constitution, Article 15 Section 16C, which states "An employee claiming violation of this section may bring an action against his or her employer in the courts of this State to enforce the provisions of this section [Section 16 of the Nevada State Constitution] and shall be entitled to all remedies available under the law or in equity appropriate to remedy any violation of this section, including but not limited to back pay, damages, reinstatement or injunctive relief. An employee who prevails in any action to enforce this section shall be awarded his or her reasonable attorney's fees and costs."

6. Venue is proper in this Court because Defendants' principal place of business is located within this judicial district, the individual Defendants reside in Clark County, Nevada, and Plaintiffs worked and earned less than all wages due in Clark County, Nevada.

PARTIES

7. Defendant JACOB TRANSPORTATION SERVICES, LLC ("Jacob") is a Nevada Corporation certified by the Nevada Transportation Service Authority under license Number CPCN 1062 to be and is engaged in the business of providing limousine services, with its principal place of business at 3950 W. Tompkins Avenue, Las Vegas, Nevada 89103. At all relevant times, Jacob was an employer of Plaintiffs engaged in commerce under the Fair Labor Standards Act, 29 U.S.C. 201 *et. seq*. Defendant is also an employer under NRS 608.011 for all employees employed in Nevada.

8. The individual Defendants JAMES JIMMERSON and CAROL JIMMERSON (collectively "the Jimmersons") are the sole officers and owners of Jacob. Mr. Jimmerson is

the owner and managing member of Jacob while Mrs. Jimmerson is the CEO of Jacob. At all relevant times, the Jimmersons exercised direct and indirect control over all operational decisions, company policies, wages, and working conditions of Plaintiff and other Jacob employees. The Jimmersons are "person[s] acting directly or indirectly in the interest of an employer in relation to" Plaintiffs and other drivers, and are therefore proper Defendants for purposes of Plaintiffs' FLSA claims. *See* 29 U.S.C. § 203(d). The Jimmersons exert sufficient control over Jacob's pay and employment policies to be held individually liable under the FLSA. Furthermore, the Jimmersons are "persons" for purposes of Plaintiff's claims under 29 U.S.C. § 215(a)(3). The Jimmersons and Jacob are collectively referred to herein as "Defendants."

9. The identity of Does 1 through 50 is unknown at this time, and the complaint will be amended at such time when Plaintiffs learn their identities. Plaintiffs are informed and believe that each of the Defendants sued herein as "Doe" is responsible in some manner for the acts, omissions, or representations alleged herein and any reference to "Defendant," "Defendants," "Doe," "Does," "Jacob," or "the Jimmersons" herein shall mean "Defendants and each of them."

10. To the extent Jacob and Does 1 through 50 are business entities separate from the Jimmersons, there exists such a unity of interest and commonality of control, including commingling of funds, lack of adequate capitalization, failure to maintain proper books and records, and additional omissions, that there truly is no separation or distinction between the Jimmersons and those business entities. As such, the business entities are and were mere instrumentalities, shells, and alter egos of the Jimmersons such that adherence to the fiction of a separate business entity should be ignored and the entities treated as though they were one and the same as the Jimmersons and vice versa.

11. At all relevant times, each Defendant was an agent, employee, joint-venturer, shareholder, director, member, co-conspirator, alter ego, master, or partner of each of the other Defendants, and at all times mentioned herein were acting within the scope and course and in

pursuance of his, her, or its agency, joint venture, partnership, employment, common enterprise, or actual or apparent authority in concert with each other and the other Defendants.

12. At all relevant times, the acts and omissions of Defendants concurred and contributed to the various acts and omissions of each and every one of the other Defendants in proximately causing the complaints, injuries, and damages alleged herein. At all relevant times herein, Defendants approved of, condoned and/or otherwise ratified each and every one of the acts or omissions complained of herein. At all relevant times herein, Defendants aided and abetted the acts and omissions of each and every one of the other Defendants thereby proximately causing the damages as herein alleged.

13. Plaintiff ROBERT GREENE worked as a limousine driver for Defendants in and around Clark County, Nevada in 2008. At all relevant times, Plaintiff Greene was an "employee" as that term is defined in NRS 608.010, and his wage-and-hour claims are typical for all such claims by other limousine drivers employed by Defendants.

14. Plaintiff THOMAS SCHEMKES worked as a limousine driver for Defendants from on or about October 2008 to July 2009. At all relevant times, Plaintiff Schemkes was an "employee" as that term is defined in NRS 608.010, and his wage-and-hour claims are typical for all such claims by other limousine drivers employed by Defendants.

15. Plaintiff GREGORY GREEN worked as a limousine driver for Defendants from on or about August 2007 to January 2009. At all relevant times, Plaintiff Green was an "employee" as that term is defined in NRS 608.010, and his wage-and-hour claims are typical for all such claims by other limousine drivers employed by Defendants.

INTRODUCTION

16. This is a class and collective action brought on behalf of all persons who worked for the Defendants as limousine drivers within the applicable limitations periods for Plaintiffs' claims from the original filing date of Lead Case No. 2:09-CV-00466-GMN-CWH on March 10, 2009, and from the original filing date of Member Case No. 2:11-CV-00355-JAD-NJK on June 19, 2009 (originally filed as Case No. 2:09-CV-1100-GMN-PAL).

17. While taxicab drivers are exempt from the minimum wage and overtime compensation provisions of the federal Fair Labor Standards Act, limousine drivers are not. Plaintiffs and other similarly-situated limousine drivers drive vehicles that are not taxicabs as that term is defined by Nevada Revised Statutes (NRS) 706.8816(1), which says ""Taxicab" means a motor vehicle or vehicles which is designed or constructed to accommodate and transport not more than six passengers, including the driver, and is: (a) Fitted with a taximeter or other device to indicate and determine the passenger fare charged; (b) Used in the transportation of passengers or light express or both for which a charge or fee is received; or (c) Operated in any service which is held out to the public as being available for the transportation of passengers from place to place in the State of Nevada."

18. Rather, Plaintiffs and other similarly-situated limousine drivers operate either traditional or livery limousines, as that term is defined in either Nevada Administrative Code (NAC) 706.080 or NAC 706.124. Under NAC 606.080, a ""Livery limousine" means a motor vehicle engaged in the general transportation of persons for compensation that: 1. Was a light truck, as that term is defined in 49 C.F.R. § 523.5, at the time of its manufacture; or 2. Was originally manufactured as having a capacity of 9 or more persons but less than 16 persons, including the driver." NAC 706.124, says ""Traditional limousine" means a motor vehicle that is engaged in the general transportation of persons for compensation and not operated on a regular schedule or over regular routes and: 1. Was a passenger automobile, as that term is defined in 49 C.F.R. § 523.4, at the time of its manufacture and was later modified to increase its length; or 2. Has a capacity of less than nine persons, including the driver."

19. Because Plaintiffs and other similarly-situated limousine drivers do not drive passengers with "through tickets" from airlines for travel interstate, they are not exempt from overtime under Section 13(b)(1) of the Fair Labor Standards Act. See Section 24c04 of the United States Department Field Operations Handbook, which states with original emphasis "Therefore, Sec 13(b)(1) will not apply except in the case of a through-ticketing or other common arrangements for continuous passage or interchange between the motor carrier and the air carrier."

20. In addition, Plaintiff and other similarly-situated limousine drivers are not exempt from overtime compensation under Section 13(b)(1) of the Fair Labor Standards Act, because under recent amendments to the Motor Carrier Act, the Secretary of Transportation does not have the power to establish qualifications and maximum hours of service pursuant to the provisions of Section 204 of the Motor Carrier Act of 1935 for these Plaintiffs and Plaintiff class members. On August 10, 2005, Congress enacted Section 4142 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users ("SAFETEA-LU"). Pub. L. No. 109-59, 119 Stat. 1144 (2005). SAFETEA-LU amended 49 U.S.C. § 13102 defined a motor carrier as "a person providing commercial motor vehicle (as defined in [49 U.S.C.] § 31132) transportation for compensation." Id. (emphasis added). In turn, a commercial motor vehicle was defined as: "[A] self-propelled or towed vehicle used on the highways in interstate commerce to transport passengers or property, if the vehicle--(A) has a gross vehicle weight rating or gross vehicle weight of at least 10,001 pounds, whichever is greater; (B) is designed or used to transport more than 8 passengers (including the driver) for compensation; (C) is used in transporting material found by the Secretary of Transportation to be hazardous under section 5103 of this title [49 U.S.C. § 5103] and transported in a quantity requiring placarding under regulations prescribed by the Secretary under [49 U.S.C.] section 5103."

21. On June 6, 2008, Congress passed the SAFETEA-LU Technical Corrections Act of 2008. Pub. L. No. 110-244, 122 Stat. 1572 (2008) ("Technical Corrections Act"), which defines the phrase "covered employee" in § 306(c) of SAFETEA-LU as an individual: (1) who is employed by a motor carrier or motor private carrier (as such terms are defined by section 13102 of title 49, United States Code, as amended by section 305); (2) whose work, in whole or in part, is defined--(A) as that of a driver, driver's helper, loader, or mechanic; and (B) as affecting the safety of operation of motor vehicles weighing 10,000 pounds or less in transportation on public highways in interstate or foreign commerce, except vehicles--(i) designed or used to transport more than 8 passengers (including the driver) for compensation; (ii) designed or used to transport more than 15 passengers (including the driver) and not used to transport passengers for compensation; or (iii) used in transporting material found by the

Secretary of Transportation to be hazardous under section 5103 of title 49, United States Code, and transported in a quantity requiring placarding under regulations prescribed by the Secretary under section 5103 of title 49, United States Code; and (3) who performs duties on motor vehicles weighing 10,000 pounds or less.

22. Upon information and belief, there are no collective bargaining agreements applicable to the Plaintiff or putative class members.

CLASS AND COLLECTIVE ACTION ALLEGATIONS

23. Plaintiffs reallege and incorporate by this reference all the paragraphs above in this Complaint as though fully set forth herein.

24. Plaintiffs bring this action on behalf of themselves and a class of all limousine drivers employed by Defendants (collectively "the Class" or "Class Members") at anytime during the relevant limitation periods alleged herein as measured from the date of filing Lead Case No. 2:09-CV-00466-GMN-CWH and continuing until the time of judgment ("the Class Period").

25. Plaintiffs' federal claims are brought as an opt-in collective action pursuant to the FLSA, 29 U.S.C. § 216(b), whereas Plaintiff Greene's Nevada state law claims are brought as an opt-out class action pursuant to Fed. R. Civ. P. 23. Plaintiff seeks to have potential FLSA opt-ins notified of the pendency of this action and invited to join this action as party plaintiffs pursuant to 29 U.S.C. § 216(b) by filing written consents to join with the Court.

26. Upon information and belief, the number of "limousine driver" class members employed by Defendants within the last two years alone exceeds 200. Thus, the class is so numerous that joinder is impracticable. Because Defendants are legally obligated to keep accurate payroll records, Defendants' records will establish the members of the Class as well as their numerosity.

27. The named Plaintiffs claims are typical of Class claims because all were harmed by the common practice of Defendants in failing to pay wages, minimum wages, and overtime wages correctly – if at all. At all relevant times, Defendants' actions were company policy applicable to Plaintiffs and all employees in the Class described above. Plaintiffs, like other

Class members, were subjected to Defendants' policies and practices failing to pay all wages due and owing. Proof of a common or a single set of facts will thus establish the right of each Class member to recover.

28. The named Plaintiffs will fully and adequately represent the interests of the class. The named Plaintiff has retained counsel that is familiar with employment and class action wage hour law. The named Plaintiff has no interests that are contrary to or in conflict with those of the class.

29. A class action is superior to other available means for the efficient adjudication of this lawsuit. Individual litigation could be prohibitively expensive against a large business entity like the Defendants and would be unduly burdensome to the justice system. Concentrating this litigation in one forum will promote judicial consistency and economy. Notice of this action can be provided to class members since their identities and last known addresses are contained within Defendants' records and files.

30. This type of action is especially well-suited for class action treatment because the burden is on the employer to prove any exemption from minimum wages or overtime, and because the employer's practices were uniform.

31. Common questions of law and fact exist and predominate as to Plaintiff and Class members, including, without limitation:

a) Whether Defendants compensated Plaintiffs and Class members for "each hour the employee works" under NRS § 608.016;

b) Whether Defendants compensated Plaintiffs and Class members for "all time worked by the employee at the direction of the employer, including time worked by the employee that is outside the scheduled hours of work of the employee" pursuant to the Nevada Administrative Code, N.A.C. 608.115(1);

c) Whether Defendants compensated Plaintiffs and Class members the required minimum wage pursuant to the FLSA and Article 15, Section 16(A) of the Nevada Constitution;

d) Whether Plaintiffs and Class members are exempt from overtime under the FLSA and pursuant to NRS 608.100(1)(b);

e) Whether Defendants compensated Plaintiffs and Class members all earned and unpaid wages or compensation in accordance with NRS §§ 608.020-050; and

f) Whether Defendants' conduct is sufficient under 29 U.S.C.§ 260 to eliminate the liquidated (double) damages required under the FLSA.

FIRST CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGES UNDER THE FLSA

32. Plaintiffs incorporate by reference all the allegations contained above as if fully set forth herein.

33. Section 6 of the Fair Labor Standards Act, 29 U.S.C. § 206 requires the payment of minimum wages for all hours worked of $5.15 an hour prior to July 25, 2007, $5.85 an hour thereafter until July 25, 2008, and at least $6.55 thereafter with no exceptions relevant herein.

34. Plaintiffs and Class members are currently and/or were previously employed as limousine drivers by the Defendants. At all times relevant to this Complaint, Defendants have consistently practiced and continue to practice a policy of failing to pay minimum wages for all hours worked to limousine drivers employed by Defendants, as set forth in the following paragraphs.

35. Plaintiffs and other similarly-situated limousine drivers were regularly scheduled to work a set shift each day and a fixed number of hours per shift, usually between eight to 12 hours per day. They were required to be on-duty during the entire scheduled shift.

36. Instead of paying an hourly wage to the limousine drivers, Defendants paid them a fixed dollar amount per trip during which a person or group was transported (e.g., $14.00 per trip).

37. Regularly, because of slow business and/or other reasons, Plaintiffs and other limousine drivers undertook such a small number of trips per week that their total hourly pay (i.e., the number of trips per week multiplied by the fixed rate per trip, and then divided by the total number of hours worked in a week) equaled less than the minimum hourly wage mandated by the FLSA.

38. For example, if a driver worked five eight-hour shifts in a week, and undertook three trips each day at $14.00 per trip, this equaled $42.00 per day, for a total of $210.00 per week. Yet, 40 hours at the required minimum wage of $6.55 per hour should have been compensated at the rate of $262.00 per week after July 25, 2008.

39. In addition, Defendants required Plaintiffs and other limousine drivers to take a 4-day (8 hours each day) training class without any pay before beginning employment.

40. Plaintiffs and other limousine drivers were required to show up to work 15 minutes before their shift because they needed to wait in line at the dispatch office in order to pick up their trip sheets and keys.

41. Defendants did not pay Plaintiffs and limousine drivers for attending mandatory company meetings.

42. Defendants did not pay Plaintiffs and limousine drivers for times under the control of the employer they were required to fix or maintain or clean their vehicles.

43. Defendants did not pay Plaintiffs and limousine drivers for times under the control of the employer the employee was engaged to wait by being required to be present at the dispatch offices or at another specified location until a customer retained Defendants' services.

44. Defendants did not pay Plaintiffs and limousine drivers for non-driving times even though it suffered and permitted the employees to work during such times.

45. In addition, as set forth in the following paragraphs, Defendants have consistently practiced and continue to practice a policy of making improper deductions from the wages of their limousine drivers with the effect of reducing the wages below the required minimum wage.

46. The FLSA and Department of Labor's (DOL) enforcing regulations (29 C.F.R. § 531.35) prohibit improper deductions from reducing the wages of a worker below the minimum wage. The FLSA and DOL regulations require that employees must receive the minimum wage "free and clear" of improper deductions.

47. The wage requirements of the FLSA are not met where Defendants' employees were and/or are required to "kick-back" directly or indirectly to the Defendants or to other persons for the Defendants' benefit the whole or part of the wage delivered to the employees.

48. Here, Defendants required Plaintiffs and similarly-situated drivers to purchase from their wages supplies such as water, glasses, napkins, etc., for limousine customers for the benefit of the Defendants.

49. Additionally, Defendants required Plaintiffs and similarly-situated drivers to pay from their wages the costs of repairs of any damages to the limousines in the regular course of operation.

50. These payments (or "kick-backs") required by Defendants, and made by the Plaintiffs and similarly-situated limousine drivers, had the effect of lowering their pay below the required minimum wage by the Defendants and were improper deductions in violation of the FLSA and DOL regulations.

51. Defendants' failure to pay minimum wages as alleged above was a willful violation of the FLSA, within the meaning of 29 U.S.C. § 255(a).

52. Therefore, Plaintiffs demand payment of compensation at the appropriate minimum wages for all hours worked by themselves and all Class members (who file written consents to join) within the relevant statutory period together with interest, costs, interest, and attorneys' fees as provided by statute.

SECOND CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGES UNDER THE NEVADA CONSTITUTION

53. Plaintiffs incorporate by reference all the allegations contained above as if fully set forth herein.

54. Defendants did not pay Plaintiffs or Class members the minimum wages required by Nevada state law either.

55. Upon information and belief, Defendants did not provide health benefits to Plaintiffs and Class members during most of the time of their employment.

56. Pursuant to Section 16 of Article 15 of the Constitution of the State of Nevada, Defendants must pay Plaintiff and all class members for whom the employer failed to provide the requisite health insurance, at least $6.15 an hour for all hours worked from 2006 until July 1, 2008 and $6.85 per hour all hours worked thereafter, and for those few, if any, employees whom the employer did pay health insurance sufficient under Section 16A of Article 15 of the Constitution of the State of Nevada, then $5.15 per hour for each hour worked.

57. Section 16 of Article 15 of the Nevada Constitution sets forth the minimum wage requirements in the State of Nevada and further provides that "[t]he provisions of this section may not be waived by agreement between an individual employee and an employer. . . . An employee claiming violation of this section may bring an action against his or her employer in the courts of this State to enforce the provisions of this section and shall be entitled to all remedies available under the law or in equity appropriate to remedy any violation of this section, including but not limited to back pay, damages, reinstatement or injunctive relief. An employee who prevails in any action to enforce this section shall be awarded his or her reasonable attorney's fees and costs." *See also* NRS 608.260 (granting employees private right of action to recover unpaid minimum wages prescribed by NRS 608.250).

58. Defendants' constitutional violations carry a six (6) year statute of limitations. *See* NRS 11.190(1)(b) ("An action upon a contract, obligation or liability founded upon an instrument in writing, except those mentioned in the preceding sections of this chapter.").

59. Therefore, Plaintiffs demand payment of compensation at the appropriate minimum wages for all hours worked by themselves and all Class members within the relevant statutory period together with interest, costs, interest, and attorneys' fees as provided by statute.

THIRD CAUSE OF ACTION

FAILURE TO PAY OVERTIME WAGES UNDER THE FLSA

60. Plaintiffs incorporate by reference all the allegations contained above as if fully set forth herein.

61. Section 7(a)(1) of the Fair Labor Standards Act, 29 U.S.C. 207(a)(1) states that "no employer shall employ any of his employees . . . for a workweek longer than forty hours

unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed."

62. Plaintiffs and other similarly-situated limousine drivers were often required to work in excess of 40 hours per week (e.g., five or six shifts of ten hours each in a single workweek). Because Defendants only paid their limousine drivers a percentage of the amount of the fare (and when driving only), Defendants did not pay any premium pay for hours worked in excess of 40 hours per week.

63. Based on this pay system (a fixed rate per trip, rather than an hourly wage), Plaintiffs and other limousine drivers were not paid overtime compensation for hours worked in excess of 40 each week.

64. No exception or exemptions to the provisions of Section 7(a)(1) of the Fair Labor Standards Act, 29 U.S.C. 207(a)(1) apply to Plaintiffs or other members of the class of limousine drivers.

65. Specifically, 29 U.S.C. 213(b)(1) and (17) do not apply because Plaintiff and members of the limousine driver class (1) are not employees with respect to whom the Secretary of Transportation has the power to establish qualifications and maximum hours of service pursuant to the provisions of section 204 of the Motor Carrier Act, 1935 [49 USCS § 31502] and (2) are not drivers employed by an employer engaged in the business of operating taxicabs.

66. Defendant's failure to pay overtime compensation was a willful violation of the FLSA, within the meaning of 29 U.S.C. § 255(a).

67. Therefore, Plaintiffs demand payment of premium overtime compensation for all hours worked in excess of 40 per week for themselves and all Class members (who file written consents to join within the relevant statutory period together with interest, costs, interest, and attorneys' fees as provided by statute.

FOURTH CAUSE OF ACTION

FAILURE TO PAY OVERTIME WAGES UNDER NEVADA LAW

68. Plaintiffs incorporate by reference all the allegations contained above as if fully set forth herein.

69. NRS 608.100(1)(b) provides that "It is unlawful for any employer to: Pay a lower wage, salary or compensation to an employee than the amount that the employer is required to pay to the employee by virtue of any statute or regulation or by contract between the employer and the employee."

70. Therefore, each member of the Class has a claim under both Nevada law (NRS 608.100(1) (b)) for failure to pay overtime compensation required by statute (the FLSA) as well as a claim directly for overtime (and liquidated) damages under federal law. While the claim for wages under NRS 608.100(1)(b) is subject to class certification under Rule 23 (an opt-out class), the claims for relief under the FLSA, which includes liquidated damages, must be brought as a collective action (opt-in class).

71. Therefore, Plaintiffs demand payment of premium overtime compensation for all hours worked in excess of 40 per week for themselves and all Class members within the relevant statutory period together with interest, costs, interest, and attorneys' fees as provided by statute.

FIFTH CAUSE OF ACTION

FAILURE TO PAY FOR EACH HOUR WORKED UNDER NEVADA LAW

72. Plaintiffs incorporate by reference all the allegations contained above as if fully set forth herein.

73. NRS 608.016 states "An employer shall pay to the employee wages ***for each hour the employee works***." (Emphasis added.) Hours worked means anytime the employer exercises "control or custody" over an employee. *See* NRS 608.011 (defining an "employer" as "every person having control or custody of any employment, place of employment or any employee."). Pursuant to the Nevada Administrative Code, hours worked includes "all time worked by the employee at the direction of the employer, including time worked by the employee that is outside the scheduled hours of work of the employee." N.A.C. 608.115(1).

74. Defendants paid Plaintiffs and limousine drivers a percentage of the amount of the fare, and only when driving clients or customers.

75. Therefore, Defendants did not pay their limousine drivers hourly nor did they pay limousine drivers for each hour worked.

76. As previously set forth, Defendants required Plaintiffs and other limousine drivers to take a 4-day (8 hours each day) training class without any pay before beginning employment.

77. Plaintiffs and other limousine drivers were required to show up to work 15 minutes before their shift because they needed to wait in line at the dispatch office in order to pick up their trip sheets and keys.

78. Defendants did not pay Plaintiffs and limousine drivers for attending mandatory company meetings.

79. Defendants did not pay Plaintiffs and limousine drivers for times under the control of the employer they were required to fix or maintain or clean their vehicles.

80. Defendants did not pay Plaintiffs and limousine drivers for times under the control of the employer the employee was engaged to wait by being required to be present at the dispatch offices or at another specified location until a customer retained Defendants' services.

81. Defendants did not pay Plaintiffs and limousine drivers for non-driving times even though it suffered and permitted the employees to work during such times.

82. Therefore, Plaintiffs demand payment of compensation at the appropriate regular wage rate for each hour worked by themselves and Class members within the relevant statutory period together with interest, costs, interest, and attorneys' fees as provided by statute.

SIXTH CAUSE OF ACTION

IMPROPER WAGE DEDUCTIONS UNDER NEVADA LAW

83. Plaintiffs incorporate by reference all paragraphs above as though fully set forth herein.

84. NRS 608.100(2) states that "2. It is unlawful for any employer to require an employee to rebate, refund or return any part of the wage, salary or compensation earned by and paid to the employee."

85. Upon information and belief, each time the employee drove a vehicle for a client or customer of the employer, Defendants deducted a "leasing fee" of five dollars or more from Plaintiffs and each Class member's wages.

86. Pursuant to NRS 608.100(2), Plaintiffs seek restitution to themselves and all Class members of all unlawful wage deductions such as fictitious leasing fees, buy-ins and all other payments from wages paid by the employees as a condition of working for Defendants.

SEVENTH CAUSE OF ACTION

WAITING PENALTIES UNDER NEVADA LAW

87. Plaintiffs incorporate by reference all paragraphs above as though fully set forth herein.

88. NRS 608.020 states "Whenever an employer discharges an employee, the wages and compensation earned and unpaid at the time of such discharge shall become due and payable immediately."

89. NRS 608.030 states "Whenever an employee resigns or quits his or her employment," the employee must be paid no later than the earlier of: (1) seven days after the employee resigns or quits; or (2) the employee's regular payday.

90. The consequence of violation of NRS 608.020 and NRS 608.030 is contained in NRS 608.040(1) which states: "If an employer fails to pay: (a) Within 3 days after the wages or compensation of a discharged employee becomes due; or (b) On the day the wages or compensation is due to an employee who resigns or quits, the wages or compensation of the employee continues at the same rate from the day the employee resigned, quit or was discharged until paid or for 30 days, whichever is less."

91. NRS 608.050 expressly gives the terminated employees a private cause of action to collect these sums when it states: "Whenever an employer of labor shall discharge or lay off employees without first paying them the amount of any wages or salary then due them, in cash and lawful money of the United States, or its equivalent, or shall fail, or refuse on demand, to pay them in like money, or its equivalent, the amount of any wages or salary at the time the same becomes due and owing to them under their contract of employment, whether employed

by the hour, day, week or month, each of the employees may charge and collect wages in the sum agreed upon in the contract of employment for each day the employer is in default, until the employee is paid in full, without rendering any service therefore; but the employee shall cease to draw such wages or salary 30 days after such default. 2. Every employee shall have a lien as provided in NRS 108.221 to 108.246, inclusive, and all other rights and remedies for the protection and enforcement of such salary or wages as the employee would have been entitled to had the employee rendered services therefore in the manner as last employed."

92. Here, Defendants failed to pay Plaintiffs and Class members all the wages and compensation due and owing upon their separation from employment.

93. Because there is no express statute of limitations for violations of NRS 608.020-050, the three-year statute contained in NRS 11.190(3) for statutory violations applies.

94. Wherefore, Plaintiffs demand for themselves and for each Class member up to thirty (30) days of pay for each and every day during the Class Period that Defendants failed to pay wages or compensation due or owing upon their separation from employment, together with attorneys' fees, costs, and interest provided by law.

EIGHTH CAUSE OF ACTION

LIQUIDATED DAMAGES UNDER THE FLSA

95. Plaintiffs incorporate by reference all paragraphs above as though fully set forth herein.

96. 29 U.S.C. §216(b) provides "Any employer who violates the provisions of section 6 or section 7 of this Act [29 USCS §§ 206 or 207] shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages."

97. Liquidated damages are required unless "the employer shows to the satisfaction of the court that the act or omission giving rise to such action was in good faith and that he had reasonable grounds for believing that his act or omission was not a violation of the Fair Labor Standards Act of 1938, as amended."

98. At the time they decided not to pay their limousine drivers minimum wages and overtime, and continuing until at least the filing of this lawsuit, Defendants did not act in good faith and had no reasonable grounds for believing their act or omission was other than a violation of the Fair Labor Standards Act. Furthermore, because the acts complained of herein were willful, the statute of limitations under the Fair Labor Standards Act is three years preceding the original filing date of this complaint.

99. As a result of the foregoing, Plaintiffs seek judgment against Defendants on behalf of themselves and on behalf of those similarly situated who file written consents to join in this action, monetary damages in the amount of all unpaid minimum wages and overtime wages owed by the Defendants to Plaintiffs and such other persons similarly situated pursuant to 29 U.S.C. §§ 206-07, together with an award of an additional equal amount as liquidated damages, costs, interest, and attorneys fees, as provided for under 29 U.S.C. § 216(b).

PRAYER FOR RELIEF

1. Plaintiffs, on behalf of themselves and all others similarly situated, pray for relief as follows:

a. An Order directing the Defendants to pay Plaintiff and all members of the Class regular wages for each hour worked;

b. An Order directing the Defendants to pay Plaintiff and all members of the Class minimum wages required by both state and federal laws;

c. An Order directing that the Defendants compensate Plaintiffs and members of the Class according to state and federal laws for overtime hours worked;

d. An Order directing Defendants to pay liquidated damages to Plaintiffs and all members of the Class who have submitted a consent to sue form pursuant to 29 U.S.C. § 216(b);

e. An order directing that Defendants pay prejudgment interest, reasonable attorneys fees, and costs;

f. Waiting penalties pursuant to NRS 608.040;

g. Restitution of all unlawful wage deductions pursuant to NRS 608.100(2);

h. For all other statutory damages according to proof;

i. For restitution of all money due to Plaintiff and Class members from the unjust enrichment of Defendants;

j. Attorneys fees, costs and interest, and the foreclosure of any lien created pursuant to NRS 608.050, as provided in NRS 108.221 to 108.246, inclusive; and

k. Such further relief as this court may deem just and proper.

Dated this 16th day of November, 2015.

THIERMAN BUCK LLP
KULLER LAW PC

By: /s/ Jason Kuller

Attorney for Plaintiff