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COURT OF APPEALS DIV I  
STATE OF WASHINGTON

2014 APR -2 PM 2:22

IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

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SUPREME COURT NO. \_\_\_\_\_

COURT OF APPEALS NO.69278-0-I

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SHUMET MEKONEN, et al,

Appellants,

v.

DESSIE ZEWDU, et al.

Respondents.

**FILED**

APR 14 2014

CLERK OF THE SUPREME COURT  
STATE OF WASHINGTON

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PETITION FOR REVIEW

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## **I. THE IDENTITY OF THE PETITIONERS**

This petition is brought by ShumetMekonen, WondwossenMersha, TigabuLakew, HabtamuAboye, YirgaBelete, and SelamnehAmbaw,

## **II. CITATION TO COURT OF APPEALS DECISION**

Petitioner requests the Washington Supreme Court review the Washington State Court of Appeals Opinion in *ShumetMekonen, WondwossenMersha, TigabuLakew, HabtamuAboye, YirgaBelete, and SelamnehAmbaw, Appellants/Cross-Respondents, v. DessieZewdu, WorkuAsmare, WorkuMelese, BazazewBirhan, MotbaynerTebeje, EndaleAndeno, MelakuKebede, NegaWondimagegn, KassaDerar, Green Cab Taxi & Disabled Service Association LLC, Respondents/Cross-Appellants*, No. 69278-0-I, Washington Court of Appeals, Division One (March 3, 2014), herein the "Opinion." A copy of the Opinion is included in the Appendix as Ex. A.

## **III. ISSUES PRESENTED FOR REVIEW**

1. Washington Court Rules of Evidence 801 and 802 make hearsay testimony inadmissible. Washington Supreme Court and Court of Appeals decisions confirm that hearsay evidence that does not fall in the scope of an exception must be excluded. Did the trial court err in failing to strike from the record a post-trial, hearsay declaration of an

undisclosed expert witness that was never offered or admitted into evidence, was not even generated until after trial, and where appellants had no opportunity for discovery or cross-examination?

2. Washington Supreme Court case law establishes that expert testimony without an adequate foundation must be excluded from evidence. Did the trial court err in basing its determination of value of appellants' membership interests in their company on a hearsay declaration that simply stated a number and which did not provide any supporting evidence or even explanation as to how the value was arrived at, and where appellants had no opportunity for discovery or cross-examination concerning the witness and his declaration?
3. Washington case law holds that juries must be presumed to have followed the instructions provided by the court. Did the Court of Appeals err in reversing, *suasponete*, the verdicts and judgments in favor of appellants on their tortious interference claims, based on an alleged error in the *breach of contract* instruction, where there could have been no confusion presuming the jury followed the trial court's tortious interference instructions?
4. Washington Courts have a substantial public interest in the proper running of the judiciary and respect for the jury system. Did the Court of Appeals err in allowing the trial court to grant injunctive relief that

was contrary to the findings of the jury, and contrary to the determination by the parties that the court would grant injunctive relief based on the jury's findings?

#### **IV. STATEMENT OF THE CASE**

##### **A. Facts Giving Rise to the Dispute.**

Green Cab is an LLC formed in 2007 to bid for a contract to be awarded under a King County Request for Proposal (RFP). The RFP was meant to establish an innovative taxi company in which the drivers would be employees governed by collective bargaining and receiving workers' compensation insurance, among other innovations. King County planned to issue 50 taxicab licenses to the successful bidder. The RFP was issued in part because of reports that existing licenses were being sold in the range of \$150,000 to \$300,000. **Ex. 2, Request for Proposal.** The parties refer to the contract between Green Cab and King County under which Green Cab operates as the RFP.

Each of Green Cab's founding members contributed \$75,000 in capital to start the company. In exchange, each founding member received two "units" in the company, meaning each would get two taxi licenses.

King County announced the award of the contract to Green Cab, but competitors brought a lawsuit against King County, delaying its implementation. The RFP was awarded to Green Cab in 2008, with Green Cab commencing business in August 2008, but with fewer than the originally promised 50 licenses. The delay caused serious financial trouble for Green Cab, and it was never operated in the manner envisioned in the RFP. Instead the drivers worked as owner/operators, owning the vehicles and keeping their own fares. The company instituted dues payments from the drivers to help with finances.

Green Cab is governed by a June 2008 operating agreement entered into by each of its members. The Operating Agreement provided a method for calling for additional capital contributions from members, which contributions could be voluntary or mandatory, **Ex. 1, Article 8.1(b)(ii)**. Any such request was required to be in writing. There was no evidence in the record of any writing establishing mandatory capital contributions.

The operating agreement distinguishes between defaults and a “Defaulting Member”. See Op. Agr. Article 8.1(c). If a member fails to make required capital contributions under Article 8.1, or payments to lenders, the member is in default, but is not a “Defaulting Member” as that term is defined under the Agreement. A member may be in default indefinitely without becoming a Defaulting Member. The

Agreement provides a formal procedure that the Board could follow designating the member a Defaulting Member, and providing time to take action to remedy that status, and providing remedies if the Member does not cure the default. **Ex. 1, Article 8.1(c)**

One of the remedies available to the Company is a forced sale of a Defaulting Member's interests entitled the company to buy the member interests back at book value, as determined by the company accountant. The company was required to keep its books under a permissible manner of accounting, consistently applied. **Ex. 1, Article 11.1.** Green Cab never provided any notices or took any other action to designate any of the Plaintiffs as Defaulting Members, as that term is defined under the Agreement.

In 2010 there were a series of disputed elections for the Green Cab Board of Directors that that led to conflict between members of the Plaintiffs' group and members of Defendants' group. On September 4, 2010 Shumet Mekonen was elected to the board, along with several other new board members, including other members of Plaintiffs' group. Other members disputed the election, because some of the persons elected to the board were not current with their dues. Those members called a new election for September 25, with members of the existing board refusing to recognize or participate in that

election. A competing board was elected at that meeting. In October 2010 the parties sued each other in King County Superior Court.

In December 2010 Defendants took control of the Green Cab offices with the help of the police. The police turned control over to Defendants because the lease had been taken out in the name of Dessie Belete, a member of Respondent's group. **RP 7/30/12** p.55-56. Defendants came into possession of all the records of the company as a result. **RP 7/24/12**, p.153:9-11.

Following the takeover of the Green Cab offices, the Defendants changed Green Cab's insurance company and insisted that Plaintiffs change as well. **RP 7/25/13** p.142:7-10.<sup>1</sup> In January 2011, Defendants took over the Green Cab dispatching account ("DDS") and excluded Plaintiffs from the service. **RP 7/31/13**, p.93:11-16.

Defendants worked to get Plaintiffs excluded from the most lucrative taxi stand in King County, which serviced the hotels and malls of downtown Bellevue. **RP 7/24/12** pp.27-29. They had been picking up fares out of that location since 2008. **Id.** Because the Green Cab licenses did not allow for pick-up in Seattle or the airport, access to the Bellevue stand was critical.

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<sup>1</sup> Although both parties commenced their own lawsuits in King County, the parties have throughout referred to the Appellants as Plaintiffs and Respondents as Defendants.

Following a meeting in March 2011 between Respondent KasaDerar, Appellant Mekonen and managers of the taxi stand, Plaintiffs were excluded from the Bellevue location. **Id.**, p.36:16-20. In June 2011, Mr. Derar wrote a letter to the manager of the parking area, attaching a list of the Plaintiffs' group, referring to them as irresponsible and inactive, and telling the manager that they had been terminated from Green Cab. **RP 7/24/12**, p.155; **Ex. 109**. Being excluded from the Bellevue location was crippling to Plaintiffs. **RP 7/24/12**, p.39.

#### B. Proceedings Below.

In October 2010, Plaintiffs then Defendants initiated litigation in King County, seeking damages and to have the court determine who had the right to manage Green Cab. **CP 1 – 17, CP 876-883**. The cases were consolidated. Plaintiffs ultimately advanced five claims, alleging: (1) breach of fiduciary duty; (2) tortious interference; (3) breach of contract; (4) unjust enrichment; and (5) permanent injunction. **RP 7/18/12 pp.19-20**. Defendants advanced claims alleging: (1) breach of contract; (2) breach of fiduciary duties; (3) tortious interference; (4) unjust enrichment; (5) conversion; and (6) injunctive relief. **RP 7/18/12, pp.21-24**. The parties' requests for injunctive relief all had to do with the elections and the right to

manage the company, there was no request for the transfer of licenses or the sale of membership interests. **CP 16, 882,932-4.**

During the proceedings, Plaintiffs failed to respond to requests for admission served by Defendants. The court deemed the requests admitted and those admissions were included as undisputed facts in the instructions provided to the jury. **RP 7/31/12, pp. 109-112.**<sup>2</sup>

Following 8 days of trial, on July 31, 2012 the Plaintiffs and Defendants rested their cases. **RP 7/31 and 8/24/12 p.99.** On August 2, 2012, the jury returned special verdict forms A – J. **CP 211-233.** The jury found that Plaintiffs had not breached any terms of the Operating Agreement, and owed neither Green Cab nor any of the Defendants anything for breach of contract.

The jury found in Plaintiffs' favor on the breach of contract, tortious interference, and breach of fiduciary duty claims, although they did not award damages to all Plaintiffs. The jury found that every one of the Defendants had breached their contract with Plaintiffs, but awarded damages only to Mekonen, awarding him \$95,000. The jury awarded damages on the tortious interference claim to Mekonen (\$38,000), Belete (\$26,000), and Mersha(\$8,500), and awarded Mersha\$14,000 on the breach of fiduciary duty claim. The jury also

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<sup>2</sup>Due to their significance with multiple issues, a copy of the transcript of the jury instructions is included in the Appendix as Ex. C.

found in Defendants' favor on their tortious interference claim, awarding them \$18,600 in damages. The jury also reported, in Special Verdict Form A, that the September 4 election was not valid, the September 25 election was, and that Defendants' group had the right to manage Green Cab.

Following the jury's verdicts, the court had still to fashion appropriate injunctive relief. The parties submitted briefing on the injunctive relief they sought from the court. The jury acted as fact-finder on all claims, but the fashioning of relief for permanent injunction based on those facts was for the court. **RP 7/18/12 p. 20.** The parties had agreed that the court was to determine who managed and operated Green Cab based on the jury's responses on Special Verdict Form A. **CP 421; RP 7/18/12 p.8; 7/31/12 p.73.**

As their submission to the court on injunctive relief, Defendants submitted a 3 page brief, plus a 2 page declaration from a Tesfaye Temesgen, identified as Green Cab's accountant. **CP 282-287.**<sup>3</sup> In this briefing, Defendants requested that the court make conclusions of law that Plaintiffs had forfeited all rights associated with their membership interests, had offered their membership units for sale pursuant to the operating agreement, and that the value of the membership units was \$5,078.57.

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<sup>3</sup> A copy of the declaration is included in the Appendix as Ex. B.

None of this requested relief had been pleaded. **CP 876-883, 920-934.** The only injunctive relief sought by Defendants had to do with keeping Plaintiffs from acting on behalf of the company or interfering with Defendants' running of the company. **CP 882, CP 932-4.** Plaintiffs had requested similar injunctive relief with respect to Defendants. **CP 16.** Defendants never sought leave to amend their pleadings to include claims for the transfer of licenses and forced sale of membership interests.

The court provided its memorandum decision on August 24, 2012, addressing the requested injunctive relief, preventing Plaintiffs from interfering with the management of the company. **CP 421.** The court also went further, ruling that Plaintiffs must surrender their licenses to Green Cab, and sell Green Cab their membership shares pursuant to paragraph 8.1 of the Operating Agreement. Finally, the court determined the value of Plaintiffs' membership interests at \$5,078.57, based on the post-trial declaration. **CP 425; CP 287.**

No party offered evidence of the book value of the company in the trial, or addressed the issue with the court or in any other fashion. It simply was not at issue in the litigation. Defendants did not request any questions on the special verdict forms addressing the issue, nor did they request that the issue be tried to the court.

## V. ARGUMENT WHY THIS COURT SHOULD ACCEPT REVIEW

### A. The Failure to Exclude the Post-Trial Declaration Raises Serious Constitutional Issues, Implicates Serious Public Policy Issues, and Conflicts with the Decisions of this Court and the Rules of Evidence.

#### 1. *The Declaration is Inadmissible Hearsay.*

Every attorney is familiar with the hearsay rule. ER 801(c) defines hearsay as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." ER 802 makes hearsay evidence inadmissible in evidence. The post-trial Declaration offered by Defendants as to the value of member interests is classic hearsay.

Where no exception applies, it is error to admit hearsay evidence. *Thomas v. French*, 99 Wn.2d 95, 104, 659 P.2d 1097 (Wash. 1983). Error will not be considered prejudicial unless it affects, or presumptively affects, the outcome of the trial. *Id.*, citing *James S. Black & Co. v. P & R Co.*, 12 Wn.App.533, 537, 530 P.2d 722 (1975). The trial court accepted the precise value--\$5,078.57--identified in the post-trial declaration as the amount Plaintiffs were entitled to for their membership interests.

The prejudice from this error is plain.<sup>4</sup> Mr. Temesgen was not disclosed prior to trial, his purportedly expert opinions had not been disclosed (in fact the declaration was drafted after both sides had rested their cases), and he was testifying on a matter which had not been pleaded. Plaintiffs had no opportunity for discovery, and as is addressed below, the declaration was entirely conclusory and not based on evidence in the record.

Admission of the post-trial hearsay declaration also deprived Plaintiffs of the right to cross-examination, an integral part of all cases, civil and criminal, by the due process clause. *Baxter v. Jones*, 34 Wn.App. 1, 658 P.2d 1274 (1983). Even curtailing cross-examination can constitute reversible error. *Id.*, 34 Wn.App. at p.3. It is simply unacceptable to have a matter of such importance determined in such a manner.

The Court of Appeals did not dispute that the declaration was hearsay. Nevertheless it did not address the issue of why a hearsay declaration would be admissible and simply denied the appeal. Without the hearsay declaration there was no evidence of book value of the membership interests in the record, no evidence of the

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<sup>4</sup>The Court of Appeals tries to excuse this error by pointing to evidence they believe corroborates the testimony. This ignores both the decisive impact of the declaration, and that the sale of Plaintiffs' membership interests was not at issue in the trial. Finally, as the Court of Appeals points out, the issue is the book value of the membership interests-- none of the evidence cited addresses that.

accounting methods employed by the company, and no evidence as to who Green Cab's accountant was—in short, no basis for the court to make a determination of value of those interests whatsoever.<sup>5</sup>

Admitting the post-trial declaration in this manner is not consistent with fundamental principles of American law, including the rules of evidence, due process and the right to cross-examine. Considering the declaration, much less base the court's determination of value upon it, was clear error. The action was contrary to decisions of this Court, the rules of evidence and important constitutional values. The Court should grant this petition.

*2. The Declaration was Wholly Conclusory and Not Based on Evidence in the Record.*

The decision of the Court of Appeals is contrary to established case law. “It is well established that conclusory or speculative expert opinions lacking an adequate foundation will not be admitted.” Safeco Insurance Co. v. McGrath, 63 Wn.App.170, 177, 817 P.2d 861 (1991).

The Post-Trial Declaration is the very definition of conclusory. It simply posits a number out of thin air as representing “current net book value of Defaulting Member's Percentage interest”, See Appendix,

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<sup>5</sup>The Operating Agreement provided that in the event of a forced sale of a Defaulting Member's membership interest, the company shall pay book values for those interests, as determined by the company accountant. Ex. 1, Article 8.1(c)(v). The company was required to keep the books by a permissible accounting method, consistently applied. Id., Article 11.1.

Ex. B. It provides no description of how the number was arrived at, and no underlying documentation to support it. It is not based on evidence on the record, because there is no evidence on the record of the book value of the company.

Plaintiffs vigorously objected to the newly proposed evidence on hearsay, foundation (expert opinion), relevance and other grounds, and moved to strike. *See Plaintiff's Response to Defendants' Brief in Support of Equitable Relief, CP 309-310*. Considering the hearsay affidavit and giving it weight in the determination of the value of the membership interest in the company was an abuse of discretion.

There are additional public policy considerations for the court to consider in granting this petition. For individual participants, cases that come before the Court of Appeals are certainly some of the most important matters in their lives. When the Court of Appeals not only ignores established law, but entirely fails to address central issues raised on appeal, faith in the courts is shaken.

**B. The Reversal of the Tortious Interference Awards to Plaintiffs Based on an Alleged Erroneous Breach of Contract Instruction is Contrary to Decisions of this Court and Implicates Serious Public Policy Issues.**

This Court has made clear that the determinations of juries are to be treated with a presumption of respect. "We presume that juries

follow the instructions and consider only evidence that is properly before them." State v. Perez-Valdez, 172 Wn.2d 808,818-19,265 P.3d 853 (2011).

The Court of Appeals reversed the judgments for tortious interference in favor of the 3 Plaintiffs the jury had awarded damages. This was not based on any alleged mistake in the instructions or evidence for tortious interference, but on the premise that the breach of contract instruction "invited the jury to consider tortious interference claims as part of the breach of contract claim."Opinion, p.21.<sup>6</sup>This is curious reasoning given that Mersha and Belete were not awarded damages on the contract claim. How can it be argued that the alleged erroneous jury instruction on breach of contract confused the jury into NOT awarding breach of contract damages, but into awarding tortious interference damages in a manner contrary to the instructions?

The Court of Appeals pointed to a conversation between counsel and the court as support for the idea that the jury must have been confused by the erroneous instruction on breach of contract. The conversation does not demonstrate any basis to believe the jury was confused on the grounds for a tortious interference claim. More to the

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<sup>6</sup>The Court raised this issue on its own, in its Opinion, saying it was necessary to reach a proper decision. Opinion, p.21.

point, the conversation was not conducted in the presence of the jury.

**RP 7/16/12 at 54-55.**

The alleged error in the breach of contract instruction was that it allowed the jury to find a breach of contract by Defendants based on breaches of the contract between Green Cab and King County. Opinion, p.20. However, the instructions on the tortious interference claims were completely clear and allow for no confusion: the claims were based on alleged interference by Defendants with Plaintiffs' relationship with potential customers:

5. Tortious interference with a business relationship. Plaintiffs allege that the Defendants wrongfully interfered with their prospective business relationship with taxi customers by failing to dispatch calls for taxi services to them. They contend that as a result of the Defendants tortious conduct they personally sustained monetary damages. The Defendants deny these allegations.

**RP 7/31/12 at 106-07, Appendix, Ex. C.**

The Court of Appeal's decision is at odds with decisions of this Court holding that there must be some showing of prejudice based on alleged error in order to justify reversal. *See Thomas v. French, supra*. If the jury followed the court's instructions, which the Court of Appeals was obligated to presume it did, the jury would never have considered the contract between Green Cab and King County in

determining whether Defendants wrongfully interfered with Plaintiffs' prospective business relationships *with customers*.

The Court of Appeals decision is contrary to decisions of this Court. There is a substantial public policy interest in the respect for jury verdicts and the judgments based on those verdicts, and they should not be set aside lightly—in this case, without a showing of an erroneous instruction and a probability of prejudice.

C. The Court Should Review the Forced Sale of the Plaintiffs' Membership Interests, Because it Involves Matters of Substantial Public Interest and is Contrary to Decisions of this Court.

This Court should accept review because the decision of the trial court was contrary to the determinations of the jury, which the court was bound to follow in this proceeding. There is no dispute that the trial court was bound to make injunctive rulings based on the jury's findings. This is indisputable on the record<sup>7</sup>:

MR. KOGUT [Counsel for Defendants]: Yes. And this has been a question that I've had throughout, Your Honor, which is basically the Court's equitable role for injunctive relief versus what the jury can decide. And so I've been trying to craft these instructions to elicit the

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<sup>7</sup>The Court of Appeals made much of the comment by the trial court that it “understood that all parties to this lawsuit submitted the issue of the valuation of the membership to the resolution to the Court for resolution based on the evidence presented prior to the August 24, 2012 hearing.” Order Denying Plaintiffs' Motion for Reconsideration, CP 447. But the record reflects absolutely no mention of such an issue at trial, and Plaintiffs objected to the only evidence of valuation offered by Defendants after trial. CP 309-310. Wherever the trial court obtained its understanding, there's no support for it in the record.

facts that the Court would then need to make an injunctive ruling.

JUDGE ANDRUS: Yeah, but because the Plaintiffs have a right to a jury trial they have the right to in factual issues to be presented to the jury.

MR. KOGUT: Yes.

**RP 7/31/12 p.72:12-21**

This arrangement, agreed to by the parties and the trial court is consistent with the law in other courts. *See Kolstad v. American Dental Ass'n*, 108 F.3d 1431, 1440 (D.C. Cir. 1997) (Where a trial court makes equitable determinations following a jury trial, the court is bound by the jury's rulings). Plaintiffs were not able to find any Washington law on this point, and the court should accept review to establish that Washington law is in accord that the determinations of the jury must be respected by the trial court when making equitable determinations following a jury trial.

The jury had been informed of the undisputed facts, including the admissions of failure to make capital contributions (the admission does not designate that they were mandatory capital contributions) and the admission of withdrawal. But not only does the contract forbid withdrawal, making a bare admission of withdrawal meaningless, the facts established, and the jury clearly found, that it was Defendants who were excluding Plaintiffs from the company, by

withholding dispatches, and acting to get them barred from the Bellevue stand.

The jury found that Plaintiffs had not breached the Operating Agreement, had not breached their fiduciary duties and did not owe Green Cab anything, capital contribution or otherwise. **CP 221, 216.**The jury necessarily determined that Plaintiffs were NOT in material breach of the contract, and had performed or offered to perform their obligations under the contract. **RP 7/31/12**, pp. 114:5-116:3, Appendix, Ex. C. The Defendants, to the contrary, were each found to be in material breach of the Operating Agreement.

The Court of Appeals argues that a default sufficient to cause Plaintiffs to lose all their interest in the company could exist even though there were not sufficient facts to establish a claim for breach of contract. This stands the law on its head. Equity abhors a forfeiture, and conditions of forfeiture must be substantial before they are enforced in equity. Esmesiu v. Hseieh, 20 Wn.App. 455, 460, 580 P.2d 1105(1978).The Court of Appeals determination that failure to make capital contributions justified the forced sale of Plaintiffs membership interests wholly ignores that the jury determined that the Plaintiffs had no obligation to make those payments---how could it then be the basis for Plaintiffs to lose their interest in the company?

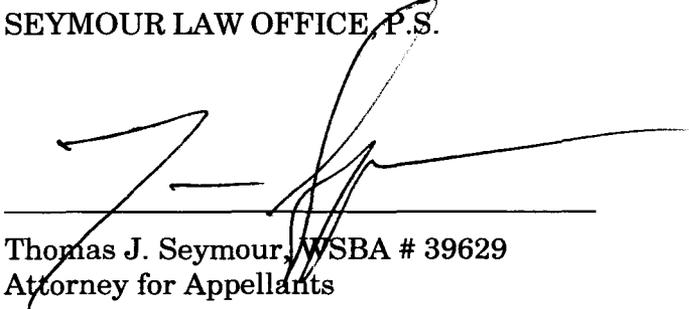
An injunction should not be more onerous than is necessary. State ex rel. Tollefson v. Mitchell, 25 Wn.2d 476, 481 171 P.2d 245 (1946). The court ordered several injunctive steps to insure Plaintiffs would no longer attempt to manage Green Cab. **CP 341-42**. These restraints were sufficient to prevent Plaintiffs from taking actions inconsistent with the jury's determination that they were not the proper management of Green Cab. If for some reason those steps were not sufficient, Defendants had an adequate remedy at law—again making equitable relief improper. Kucera v. State Department of Transportation, 140 Wn.2d 200, 210, 995 P.2d 63 (2000).

## VI. CONCLUSION

For the reasons stated above, this Court should grant this petition, and after full briefing and argument, reinstate the judgments reversed by the Court of Appeals, and remand to the trial court for proceedings consistent with the Court's decision.

Respectfully submitted,

SEYMOUR LAW OFFICE, P.S.



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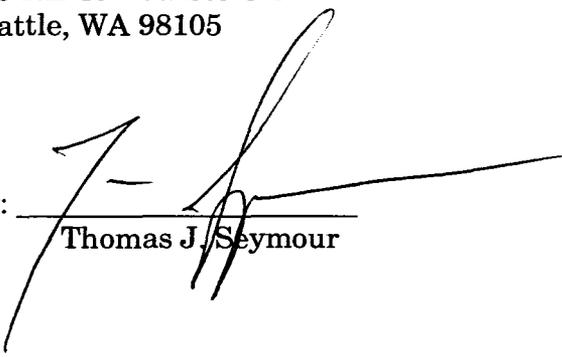
Thomas J. Seymour, WSBA # 39629  
Attorney for Appellants

**CERTIFICATE OF SERVICE**

I certify that on the 2<sup>nd</sup> day of April 2014, I caused a true and correct copy of this Petition for Review to be served on the following by electronic transmission and U.S. Mail:

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By:   
Thomas J. Seymour

# APPENDIX

Decision of the Court of Appeals.....	Ex. A
Declaration of Tesfaye Temesgen.....	Ex. B
Transcript of Jury Instructions.....	Ex. C

**EXHIBIT A**

2014 MAR -3 AM 10:44

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

SHUMET MEKONEN, WONDWOSSEN )  
MERSHA; TIGABU LAKEW; TEKEBA )  
TIGABIE; HABTAMU ABOYE; YIRGA )  
BELETE; SELAMNEH AMBAW; and )

Appellants/Cross Respondents, )

GREEN CAB TAXI AND DISABLED )  
SERVICE ASSOCIATION, LLC, a )  
Washington limited liability company, )

Plaintiffs, )

v. )

DESSIE ZEWDU, JANE DOE ZEWDU, )  
husband and wife, and the marital )  
community comprised thereof; WORKU )  
ASMARE, JANE DOE ASMARE, )  
husband and wife, and the marital )  
community comprised thereof; WORKU )  
MELESE; BAZEZEW BIRHAN; )  
MOTBAYNER TEBEJE; ENDALE )  
ANDENO; MELAKU KEBEDE; NEGA )  
WONDIMAGEGN; KASSA DERAR; )  
ALBA ANDREA MIRELES-FLORES, )  
JOHN DOE MIRELES-FLORES, )  
husband and wife, and the marital )  
community comprised thereof; and )

Respondents/Cross Appellants. )

NO. 69278-0-1

DIVISION ONE

UNPUBLISHED OPINION

FILED: March 3, 2014

LAU, J. — This case involves a dispute between two member groups over control of Green Cab Taxi and Disabled Service Association LLC (Green Cab), a taxicab transportation company. Plaintiffs appeal aspects of the trial court's injunctive relief order, including the court's buyout remedy and valuation of their membership interests.<sup>1</sup> Defendants cross appeal the jury's award of damages to individual plaintiffs on their breach of contract and tortious interference claims. We affirm the trial court's injunctive relief determination as well within the court's discretion. We reverse the breach of contract and tortious interference verdicts and judgments in favor of plaintiffs because plaintiffs lacked standing to sue on the King County contract and the court's erroneous breach of contract instruction adversely affected the jury's tortious interference verdict. We remand for a new trial on liability and damages and without prejudice to the parties to conduct further discovery.

### FACTS

Green Cab is a taxi service formed in 2007 in response to a contract awarded under a King County Request for Proposal (RFP) entitled "Alternative Way to Structure a Taxicab Association—Test." Ex. 2. The RFP envisioned a taxicab association in which the drivers would be employees governed by collective bargaining and workers' compensation insurance, all vehicles would be hybrid electric vehicles covered by one liability insurance policy, and 10 percent of vehicles would be wheelchair accessible. King County planned to issue 50 taxicab licenses to the successful bidder. The licenses remained the property of King County and were nontransferable except under special

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<sup>1</sup> Plaintiffs do not appeal the tortious interference damages award in favor of defendants.

circumstances authorized by the county.<sup>2</sup> Each of Green Cab's founding members,<sup>3</sup> including Shumet Mekonen, contributed \$75,000 in capital to start the company. In exchange, each founding member received two "units" in the company, meaning each would get two taxi licenses.

The contract was awarded in the name of Green Cab Taxi and Disabled Services Association by letter dated September 21, 2007, addressed to its president, Tigabie Tekeba.<sup>4</sup> Green Cab is governed by the June 2008 operating agreement. Under the operating agreement, Green Cab's board of directors was responsible for, among other things, "ensuring compliance with King County and other governmental rules, regulations and requirements applicable to the Company or its business." Ex. 1 at 6.

A lawsuit filed against King County by competing taxicab companies delayed issuance of the 50 licenses Green Cab expected to receive. The delay also prevented Green Cab from doing business until August 2008. Green Cab suffered great financial strain and hardship during this time. To help keep Green Cab afloat, in 2008 the board of directors instituted a requirement that members pay weekly dues.

After the competitors' lawsuit settled in 2008, King County awarded the RFP contract to Green Cab by letter to Green Cab's board chairman, Worku Asmare. However, the county issued Green Cab only 20 licenses. The county issued Green Cab additional licenses in 2009 or 2010, but never 50 licenses as was originally planned.

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<sup>2</sup> The licenses were only for King County pick up, not the more lucrative city of Seattle or Sea-Tac airport pick up.

<sup>3</sup> Testimony and exhibits established there were originally 23 founding members, later possibly expanded to 25.

<sup>4</sup> Tekeba, deceased at the time of trial, was plaintiff Shumet Mekonen's brother.

King County retained ownership and had the power to revoke the licenses if Green Cab violated any provisions of its agreement with the county. Because of the financial strain resulting from the delays, Green Cab operated its business on a traditional taxicab model where drivers owned the vehicles and retained the fares earned rather than the business model envisioned under the King County RFP contract. By 2009, lingering financial problems caused many Green Cab drivers to default on their car payments and/or their dues owed to Green Cab. In 2009, Green Cab's membership unanimously approved a policy prohibiting a member from serving on the board of directors if dues remained unpaid.

In 2010, Shumet Mekonen, an original LLC member and a plaintiff in this case, grew dissatisfied with Green Cab's management for various reasons, including perceived violations of the RFP. At that time, defendant Dessie Zewdu was board chairman and several other defendants were board members. Mekonen felt that Zewdu and others were running the company improperly. Mekonen called for an election held September 4, 2010, to elect a new board of directors. Mekonen was elected to the board and named chairman, and several others elected to the board on September 4 were not current in their dues owed to Green Cab.<sup>5</sup>

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<sup>5</sup> The candidates receiving the most votes at the September 4 election were Worku Melese, Bazezew Birhan, Wondwossen Mersha, Tebeje Motbayner, Shumet Mekonen, Endalkachew Lakew, Yirga Belete, and Yonathan Worku. Mersha, Lakew, Belete, and Worku were not current in the payment of weekly fees on the date of this election. According to unchallenged findings in special verdict form A, only members current in the payment of capital contributions, including weekly fees and insurance premiums, were eligible to vote in a board election. However, this requirement was waived by the members, and members who were not current in their weekly fee payments voted for directors. Only members who were current in the payment of capital contributions were eligible to serve as members of the board of directors. This

On September 13, a majority of members petitioned to dissolve the board elected on September 4 and to conduct a new election because “defaulting” members (those who owed weekly fees to Green Cab) were inappropriately elected to the board. Three of the seven board members—Motbayner, Birhan, and Melese—resigned in protest on September 20.

A members’ meeting was called to conduct a new board election on September 25. At this meeting, the board members elected were defendants Worku Melese (chairman), Nega Wondimagegn, Bazezew Birhan, Montbankdore Tebede, Melaku Kebede, Endale Andeno, and Kassa Derar. Plaintiffs Mekonen group<sup>6</sup> refused to participate in the September 25 election and disputed the results.

In October 2010, members of the two sides each initiated litigation seeking damages and asking the court to determine who had the right to manage Green Cab. Plaintiffs filed a complaint, amended complaint, and an answer with counterclaims in the two suits. Defendants filed a complaint and an answer and counterclaims. The two cases were consolidated for trial.

Plaintiffs advanced five claims to verdict, including breach of fiduciary duty, tortious interference, breach of contract, unjust enrichment, and permanent injunction. Defendants advanced six claims, including breach of contract, breach of fiduciary duty, tortious interference, unjust enrichment, conversion, and injunctive relief. Through the

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requirement was not waived by the membership, and ineligible members were elected to the board at the September 4 election.

<sup>6</sup> As discussed below, each side sued the other in separate lawsuits, meaning each was both a plaintiff and a defendant. The cases were consolidated for trial, but the court and parties continued to call Mekonen’s group “plaintiffs” and Zewdu’s group “defendants” for clarity. We adopt those references here.

date of trial, Green Cab existed under two separate management groups, each competing for the right to call itself Green Cab Taxi and Disabled Service Association LLC and to claim the rights under the taxi licenses and King County RFP award. The record demonstrates conflicts between the two groups indicating they are unable or unwilling to work together.

Plaintiffs failed to answer requests for admission served on them in discovery, resulting in the deemed admission of two key defaults under the operating agreement.

The trial court instructed the jury on these admissions:

3. Under article 8.1(b)(i), (b)(ii), and [(c)(5)] of the Green Cab operating agreement and the laws relating to limited liability companies all the plaintiffs and defendants must pay capital contributions in a timely manner including but not limited to weekly fees and insurance premiums. A failure to make these contributions constitutes a default and any defaulting party is subject to the relevant defaulting provisions of the operating agreement.

4. Each plaintiff has not paid their capital contributions in a timely manner including but not limited to weekly fees and insurance premiums.

5. Under article 5.6 of the Green Cab operating agreement no member may disassociate or withdraw from the LLC because a dissociation or withdrawal would violate the terms of the taxi license program.

6. Each plaintiff has disassociated or withdrawn from the Green Cab LLC.

RP (July 31, 2012) at 109-10. Plaintiffs did not object to these instructions other than to ask for a minor change in wording, which the court granted prior to reading the above instructions.

The jury found in plaintiffs Mekonen, Mersha, Aboye, and Belete's favor on the breach of contract, tortious interference, and breach of fiduciary duty claims. The jury awarded damages as follows: (1) to Mekonen, \$95,000 on the breach of contract claim and \$38,000 on the tortious interference claim; (2) to Mersha, \$8,500 on the tortious interference claim and \$14,000 on the breach of fiduciary duty claim; and (3) to Belete,

\$26,600 on the tortious interference claim. The jury also found in defendants' favor on their tortious interference claim, awarding them \$18,600 in damages.<sup>7</sup>

Based on the jury's answers on special verdict form A discussed below, the court issued a memorandum decision on August 24, 2012. The court found in defendants' favor regarding the board election's validity and the right of management and control over Green Cab. It found plaintiffs had no right to represent themselves as part of Green Cab's management or to operate under Green Cab's name. Regarding plaintiffs' taxicab licenses, the court explained:

According to Paragraph 6.4 of the LLC Operating Agreement, "[t]he Company shall hold all rights to any taxi and other licenses and permits necessary to operate its vehicles." The Plaintiffs have no right to use the taxi cab licenses unless they are members of Green Cab LLC in good standing and are making any contributions toward the company's operating expenses that the board of directors deems necessary. Plaintiffs admit that they withdrew their membership from Green Cab LLC and that they have paid no weekly fees since January 2011. As a result, the Plaintiffs have no legal right to retain the King County taxi cab licenses currently in their possession. Plaintiffs are hereby ordered to return to Green Cab LLC any King County taxi cab licenses in their possession within 5 days of this decision.

The court found that under article 8.1(c)(v) of the operating agreement, Green Cab must pay the plaintiffs the net book value of their percentage interest in the company, as calculated by the company accountant at \$5,078.57 per unit.<sup>8</sup>

The court entered a permanent injunction against plaintiffs enjoining them from representing themselves as part of Green Cab's management or operating under Green

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<sup>7</sup> The jury rejected defendants' breach of fiduciary duty and conversion claims and rejected both parties' unjust enrichment claims. As noted above, plaintiffs do not appeal the tortious interference damages award in defendants' favor.

<sup>8</sup> As discussed below, Green Cab's accountant Tesfaye Temesgen testified in his declaration that the current net book value of a defaulting member's percentage interest in Green Cab was \$5,078.57.

Cab's name. The injunction also required plaintiffs to return their taxi licenses to Green Cab.

Both parties moved unsuccessfully for reconsideration. Both parties appeal.

### ANALYSIS

#### Plaintiffs' Appeal: Injunctive Relief

Plaintiffs do not contest any of the jury verdicts, judgments, or the trial court's determination that defendants are entitled to manage and operate Green Cab.

Plaintiffs' appeal pertains to the court's injunctive relief.

#### Relevant Facts

Both parties requested injunctive relief in their complaints. The defendants' complaint specifically asked for an injunction enjoining plaintiffs from conducting business on behalf of Green Cab or taking any of Green Cab's property from its offices or premises other than a taxi vehicle. The parties agreed the jury would decide by special interrogatories the facts related to injunctive relief and leave for the court to decide the proper injunctive relief. In response to the court's question whether any claims would be "tried to the Court as opposed to the jury," plaintiffs' counsel stated, "I would just say the equitable claim of the permanent injunction." RP (July 18, 2012) at 20-21. Control over Green Cab depended on the validity of the September 4 election. The parties and the court drafted a set of special interrogatories to submit to the jury to answer disputed factual questions about the election. Neither party objected to the final verdict forms submitted to the jury. The jury returned the following special verdict form A in relevant part:

1. In September 2010, was there a requirement that only members current in the payment of capital contributions, including weekly fees and insurance premiums, could vote in a board election? YES

2. If the answer to Question No. 1 is "YES," were any of [the] members who voted in the September 4, 2010 election not current in the payment of capital contributions, including weekly fees and insurance premiums? YES

3. Did the Members of Green Cab LLC agree to waive the requirement that voting Members be current on the payment of capital contributions, including weekly fees and insurance premiums, in order to vote in the September 4, 2010 election? YES

4. In September 2010, was there a requirement that only members current in the payment of capital contributions, including weekly fees and insurance premiums, could serve as a member of the board of directors? YES

5. If your answer to Question No. 4 was "Yes," in the September 4, 2010 election, were members not current in the payment of capital contributions, including weekly fees and insurance premiums, elected to the board of directors? YES

6. For the September 4, 2010 election, did the Members of Green Cab LLC agree to waive the requirement that Members be current on the payment of capital contributions, including weekly fees and insurance premiums, in order to serve on the board of directors? NO

(Formatting omitted.) The court concluded, based on the special verdicts and its own independent review of the evidence, that the September 4 election was invalid and the September 25 election was valid. Accordingly, defendants prevailed on the key issue of control over Green Cab. Plaintiffs do not dispute that ruling on appeal.

After trial and before the court issued its memorandum opinion, defendants submitted a "brief in support of equitable relief" requesting the court to find that plaintiffs "automatically forfeited all rights associated with their Membership interests, and have offered for sale their Membership units Per § 8.1(c)(v)(ii) of the Operating Agreement." Defendants also requested the court to order plaintiffs to cease operations as Green Cab and return their King County license plates to Green Cab. Defendants submitted the declaration of Green Cab accountant Tesfaye Temesgen, who stated, among other things, that the current net book value of a defaulting member's percentage interest in

Green Cab was \$5,078.57. This declaration was never offered or admitted into evidence at trial, and Temesgen was not identified as a witness on the defendants' witness list.

Plaintiffs submitted a brief on injunctive relief. They argued that defendants failed to meet the legal requirements for a permanent injunction. Plaintiffs requested the court to order the parties to operate Green Cab "as one Company within which two groups of drivers, Group A and Group B drive the taxi cabs." Plaintiffs also filed a response and objections to defendants' request for injunctive relief. While they did not specifically dispute Temesgen's valuation of the current net book value of a defaulting member's percentage interest in Green Cab, plaintiffs moved to strike Temesgen's declaration on hearsay and relevancy grounds, arguing, "This witness never testified at the trial and the jury already found the facts in the case." Plaintiffs also claimed special verdict form A did not support defendants' request for a permanent injunction.

The court entered a permanent injunction enjoining plaintiffs from representing themselves as part of Green Cab. As part of its injunction, the court ordered plaintiffs to return their King County taxicab licenses to Green Cab. The court also required Green Cab to "pay to each person within the Plaintiffs Group the current net book value of their membership interests, set out above, sum within 30 days of this decision."

Plaintiffs moved for reconsideration, arguing that "the taxi license value is anywhere from \$37,500.00 to \$300,000.00" and "[t]he amount now being entered in the final judgment, \$5,087.00, is simply not an accurate estimate of the true value of a taxi license." Plaintiffs submitted Mekonen's declaration that claimed a license was worth \$37,500 when Green Cab was formed (\$75,000 initial capital contribution divided into

two units) and claimed the licenses had increased in value since that time. However, Mekonen phrased his objection in terms of market value and provided no competing book value valuation.

In denying plaintiffs' motion for reconsideration, the court explained:

No party has suggested that any dispute regarding the valuation of a membership interest should be decided by the jury and this Court understood that all parties to this lawsuit submitted the issue of the valuation of the membership to the Court for resolution based on the evidence presented prior to the August 24, 2012 hearing.

The Court considered the terms of the Operating Agreement, which calls for the net book membership valuation to be determined by the company accountant and the accountant's declaration as to this valuation. But the Court also considered other evidence, including the business interruption that this lawsuit and the activities of all the parties have caused to the company (which impacts its overall value) and the evidence submitted by Plaintiffs at trial as to the amount of money invested into the company and the amount of revenue they generated as cab drivers. Although the taxi cab licenses may have a market value greater than the net book value of a membership interest in the company, it is the membership interest that is at issue and not the fair market value of a King County taxi cab license. Based on the Court's evaluation of all the evidence, the Court concludes that the valuation provided by the Defendants is the most reasonable based on a review of all the evidence presented during and after trial.

(Emphasis added.)

### Analysis

#### Buyout Remedy and License Surrender

The trial court has discretion to provide injunctive relief if a party demonstrates that (1) it has a clear legal or equitable right, (2) it has a well grounded fear of immediate invasion of that right, and (3) the acts it complains of are either resulting in or will result in actual and substantial injury. Kucera v. Dep't of Transp., 140 Wn.2d 200, 209, 995 P.2d 63 (2000). We review a trial court's decision to grant an injunction and

the terms contained in the injunction for abuse of discretion.<sup>9</sup> Kucera, 140 Wn.2d at 209. The trial court has broad discretionary power to fashion injunctive relief to fit the particular facts, circumstances, and equities of the case before it. Brown v. Voss, 105 Wn.2d 366, 372, 715 P.2d 514 (1986); Rupert v. Gunter, 31 Wn. App. 27, 30, 640 P.2d 36 (1982). "Appellate courts give great weight to the trial court's exercise of that discretion." Brown, 105 Wn.2d at 372. A trial court abuses its discretion only when its decision is manifestly unreasonable or based on untenable grounds or reasons. State ex rel. Carroll v. Junker, 79 Wn.2d 12, 26, 482 P.2d 775 (1971).

Plaintiffs first contend the trial court erred "in deciding issues other than those pleaded and submitted to the court for determination." Appellants' Br. at 2. Plaintiffs present no argument regarding failure to plead the buyout remedy, mentioning it only in their statement of the case. See Appellants' Br. at 7-8. An issue not briefed is deemed waived. Kadoranian by Peach v. Bellingham Police Dep't, 119 Wn.2d 178, 191, 829 P.2d 1061 (1992). Regardless, defendants requested injunctive relief in their complaint as noted above. "Washington is a notice pleading state and merely requires a simple, concise statement of the claim and the relief sought." Pacific Nw. Shooting Park Ass'n. v. City of Sequim, 158 Wn.2d 342, 352, 144 P.3d 276 (2006); CR 8(a). Plaintiffs cite no authority requiring claimants to plead every form of injunctive relief possible under the circumstances. Further, in their brief supporting equitable relief, defendants specifically

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<sup>9</sup> Citing several distinguishable cases, plaintiffs contend that because "[t]he trial court did not act as a finder of fact on any of the claims, including the requested injunctive relief" and "simply ruled based on the jury's findings and the undisputed facts," we should "review the trial court's decision to force the sale of [their] membership interests de novo." Appellants' Br. at 10; Appellants' Reply Br. at 6. Plaintiffs' cited authorities do not control. Under well-settled law discussed above, the standard is abuse of discretion.

requested the court to find that plaintiffs had offered their interests for sale under the operating agreement. The issue was properly before the trial court.

The operating agreement specifies the remedies for default in payment of monetary obligations under article 8.1(c), and for "other defaults" under article 5.8(b). Ex. 1 at 5, 12-13. Article 5.8(b)'s provisions merge into article 8.1(c) because article 5.8(b)(iii) permits, as a remedy for "other defaults," that "the Company may . . . Remove the defaulting Member upon a purchase of his or her Membership Interest pursuant to Section 8.1(c)(v)." Ex. 1 at 5. Article 8.1(c)(v) provides the following remedy against a defaulting member:

If a Defaulting Member fails to make a Capital Contribution for more than 30 days from the due date, then cause the Defaulting Member to: . . . (ii) be deemed to have offered for sale to the Company all of the Units and any other associated rights then held by the Defaulting Member for a purchase price determined by the Company's accountant to be the net book value of the Defaulting Member's Percentage Interest in the Company represented by the Units. . . .

Ex. 1 at 13. The trial court ordered the remedy provided for in this provision governing a defaulting member.<sup>10</sup>

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<sup>10</sup> Plaintiffs contend, "None of the remedies in the Operating Agreement implement themselves; they all require written notice from the Chairman, then pursuit of one or more of the 6 remedies as determined by the Board." Appellants' Br. at 13. Plaintiffs contend that no written notice of default ever occurred and claim "the court was not tasked with making [the decision to designate plaintiffs as defaulting members] for Green Cab." Appellants' Br. at 13. Plaintiffs failed to raise their notice argument below. An appellate court "may refuse to review any claim of error which was not raised in the trial court. . . ." RAP 2.5(a); Roberson v. Perez, 156 Wn.2d 33, 39, 123 P.3d 844 (2005). Further, plaintiffs cite no authority limiting the trial court's broad discretion to the exact remedies set forth in the parties' contractual agreement. Their argument fails.

Throughout their briefing and below, plaintiffs confuse the surrender of their taxi licenses with the buyout of their membership interests. The operating agreement addresses taxi licenses as distinguished from membership interests. Article 6.4 of the operating agreement provides, "The Company [Green Cab] shall hold all rights to any taxi and other licenses and permits necessary to operate its vehicles. . . ." The court referenced that article when it required plaintiffs to return the licenses:

Plaintiffs repeatedly contend, “By finding the [plaintiffs] to be in breach (or default) under the contract, determining the appropriate remedy, and making a determination of fact about the value of the [plaintiffs’] units to be awarded to plaintiffs, the court was adjudicating a contract claim, not fashioning injunctive relief.” Appellants’ Reply Br. at 6. Separate from the various breach of contract claims, the undisputed record shows the jury was instructed to decide the facts that the court relied on to determine which competing group had the right to control the company. See CP 764 (defendants’ trial brief stating “The core dispute here is which group has the right to control Green Cab”); RP (July 31, 2012) at 70 (court’s question to the parties while discussing the special verdict forms: “What findings of fact need to be made in order to determine who has the right to run this company?”). Plaintiffs do not challenge the court’s conclusion, based on unchallenged jury findings regarding the validity of various elections, that defendants are entitled to control Green Cab. Given the parties’ contentious multiyear history—amply demonstrated in the record—the court acted well within its broad discretion to treat the plaintiffs as defaulting members under the

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Plaintiffs seek to retain the taxi cab licenses affixed to the cars they own. According to Paragraph 6.4 of the LLC Operating Agreement, “[t]he Company shall hold all rights to any taxi and other licenses and permits necessary to operate its vehicles.” The Plaintiffs have no right to use the taxi cab licenses unless they are members of Green Cab LLC in good standing and are making any contributions toward the company’s operating expenses that the board of directors deems necessary. Plaintiffs admit that they withdrew their membership from Green Cab LLC and that they have paid no weekly fees since January 2011. As a result, the Plaintiffs have no legal right to retain the King County taxi cab licenses currently in their possession.

Given that the court deemed the members “defaulting members” who had offered their membership interests for sale, it did not abuse its discretion in requiring them to return the licenses—which are actually the property of King County and the use of which is governed by Green Cab’s agreement with the county—to Green Cab. See Ex. 67 (King County’s award letter to Green Cab describing license issuance and allowing county to revoke licenses for a number of reasons).

operating agreement. Defaulting members under the agreement are deemed to have offered their interests for sale as described above.<sup>11</sup>

Plaintiffs acknowledge that “a member can lose his interest in Green Cab . . . pursuant to the remedies under paragraph 8.1(c) [of the operating agreement], if he is a Defaulting Member.” Appellants’ Br. at 12. As noted above, the jury was instructed regarding admitted defaults by the plaintiffs. Plaintiffs admitted to default both in failing to make weekly payments and in withdrawing from the company in violation of article 5.6 of the operating agreement. That article states, “A Member may not withdraw as a Member prior to dissolution and commencement of winding up of the Company pursuant to Article 14 without the written consent of all the other Members.” Ex. 1 at 3. The trial court imposed relief that was reasonably calculated to install defendants as the proper group to manage Green Cab and to preserve their interests in operating the company according to their agreement with King County. Given the

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<sup>11</sup> Regarding the operating agreement, plaintiffs claim that the agreement does not support the court’s injunctive relief because “[t]he jury found that [plaintiffs] had not breached the Operating Agreement . . . .” Appellants’ Br. at 12. Plaintiffs claim that the buyout remedy is thus inconsistent with the jury verdict on breach of contract. However, the jury merely found plaintiffs were not liable for breach of contract under instruction 15. Instruction 15 allowed the jury to reject defendants’ breach of contract claim against the plaintiffs in ways that are not necessarily inconsistent with the trial court’s grant of injunctive relief. See RP (July 31, 2012) at 116-17 (jury instruction). The court instructed the jury regarding admitted defaults by the plaintiffs. RP (July 31, 2012) at 109-10. Further, special verdict form A contains two specific findings of default: (1) weekly fees were required, but some members who voted on September 4 were not current in payment of weekly fees and (2) members elected to the board on September 4 were not current in the required payments. In addition to the jury findings, the admissions and record evidence indicated that weekly fees were required, that plaintiffs defaulted on their payments, and that plaintiffs further defaulted by withdrawing from Green Cab, moving to a new office, purchasing separate insurance, and ceasing or cutting back on driving the licensed vehicles. These defaults did not necessarily require the jury to find a breach of contract, but they were enough for the trial court, acting in equity, to grant the injunction.

relative interests of the parties and the LLC, the trial court acted well within its discretion to order plaintiffs to return their taxi licenses and sell their membership interests back to Green Cab.

#### Membership Interest Valuation

As noted above, the parties agreed to reserve the issue of injunctive relief to the trial court for determination after the jury rendered verdicts on damages. The court addressed the injunction issue on August 24 based on the parties' written briefs and the trial record. As the court stated in its order denying plaintiffs' motion for reconsideration:

No party has suggested that any dispute regarding the valuation of a membership interest should be decided by the jury and this Court understood that all parties to this lawsuit submitted the issue of the valuation of the membership to the Court for resolution based on the evidence presented prior to the August 24, 2012 hearing.

Plaintiffs object to the trial court's reliance on Green Cab accountant Tesfaye Temesgen's declaration in determining the net value of their membership interests. They challenge the declaration on various grounds, including lack of disclosure, hearsay, foundation, and conclusory opinion. They argue, "By making a determination after the close of trial based on material that was never admitted into evidence, on a hearsay, conclusory declaration by an undisclosed witness, the court violated basic rights of due process." Appellants' Br. at 15.

"In cases involving both legal and equitable issues, as this one does, the trial court has a broad discretion in allowing a jury to determine some, none or all of the factual issues presented." Rao v. Auburn Gen. Hosp., 19 Wn. App. 124, 129, 573 P.2d 834 (1978). Here, the parties agreed to submit the question of the appropriate injunctive relief to the trial court for determination. The court can hardly be faulted for

resolving both the factual and legal issues relevant to the appropriate injunctive relief given the parties' undisputed agreement. Determining the proper relief required the court to determine the value of the plaintiffs' membership interests. Plaintiffs do not dispute that they signed the operating agreement, which provides for sale of a member's membership interest "for a purchase price determined by the Company's accountant to be the net book value of the Defaulting Member's Percentage Interest in the Company represented by the Units." Ex. 1 at 13. The agreement governs who determines membership value—Green Cab's accountant.

The court considered the operating agreement, the accountant's opinion regarding book value, and other evidence, including the substantial evidence of business interruption due to the ongoing management conflict and litigation. The trial record testimony indicates that in March 2011, Yirgalem Gebremichael purchased one unit in Green Cab for \$6,000. That taxicab licenses may trade in the open market at a higher value is irrelevant. As the court properly noted in its order denying reconsideration, "[I]t is the membership interest that is at issue and not the fair market value of a King County taxi cab license." The relevant valuation question is the membership interests' unit value. Plaintiffs never questioned the authenticity of the accountant's declaration. Record evidence also showed that the membership interests in question were of diminished value. Green Cab's accountant provided a book value number and plaintiffs failed to rebut that number. The court's valuation is consistent with the trial evidence.

We find no abuse of discretion in the court's membership value determination.

Defendants' Cross Appeal

Lack of Standing

Analysis

Over defendants' repeated standing objections, the trial court permitted individual plaintiffs to assert a breach of contract claim premised on the Green Cab–King County RFP contract and grounded in an alleged oral agreement among Green Cab members to comply with the RFP.<sup>12</sup> Defendants argued that plaintiffs lacked standing to assert a breach of the RFP contract because it was a contract between Green Cab and King County, not between the plaintiffs and defendants. The court nonetheless instructed the jury that it could find that defendants breached a contract if it found that the terms of the contract included obligations (1) to implement an employer-employee relationship with member drivers, (2) to pay a salary or wage for work performed, (3) to comply with workers' compensation, and (4) to provide health insurance benefits. It is the RFP agreement that imposes these duties on Green Cab. Defendants contend the trial court erred by allowing plaintiffs to assert a breach of the RFP contract claim.

Plaintiffs' response consists of one paragraph of unsupported conclusory arguments. They argue: (1) defendants orally promised plaintiffs to comply with the RFP and the Green Cab board is responsible to ensure contract compliance, (2) the King County RFP imposed obligations on Green Cab, (3) unjustified noncompliance

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<sup>12</sup> The record shows this oral agreement claim first surfaced on July 31, 2012, the same day the parties lodged objections and exceptions to the court's proposed jury instructions and made closing arguments.

with any provision constitutes a breach, (4) plaintiffs asserted no derivative claim,<sup>13</sup> (5) defendants misunderstood plaintiffs' breach of contract claim, and (6) defendants failed to appeal the oral agreement or the related jury instruction.<sup>14</sup>

Plaintiffs fail to cite any authority to support their arguments and make only minimal reference to the record. Assignments of error unsupported by reference to the record or argument will not be considered on appeal. RAP 10.3(a)(6); Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 809, 828 P.2d 549 (1992). "Where no authorities are cited in support of a proposition, the court is not required to search out authorities, but may assume that counsel, after diligent search, has found none." State v. Logan, 102 Wn. App. 907, 911 n.1, 10 P.3d 504 (2000) (quoting DeHeer v. Seattle Post-Intelligencer, 60 Wn.2d 122, 126, 372 P.2d 193 (1962)). Nonetheless, our review shows no authority exists to support plaintiffs' assertions.

It is well settled that "[a] party to a contract is entitled to enforce it and to sue in his own name." Kim v. Moffett, 156 Wn. App. 689, 700, 234 P.3d 279 (2010). Standing is a common law doctrine that prohibits a plaintiff from asserting the legal rights of another. Grant County Fire Prot. Dist. No. 5 v. City of Moses Lake, 150 Wn.2d 791, 802, 83 P.3d 419 (2004). Generally, "a stockholder cannot sue as an individual, as distinguished from a representative of the corporation, where the basis of the cause of action is a contract between the corporation and a third person, even though he personally negotiated and executed the contract on behalf of the corporation." Hunter v. Knight, Vale & Gregory, 18 Wn. App. 640, 644-45, 571 P.2d 212 (1977) (citing

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<sup>13</sup> Plaintiffs do not contend this was a derivative action.

<sup>14</sup> Defendants' repeated lack of standing objections are obvious in our record. Defendants properly and timely preserved this claim.

13 William Meade Fletcher, Cyclopedia of the Law of Private Corporations § 5927 (perm. ed. rev. 1970)).

Under this well-settled case authority, we conclude plaintiffs lack standing to enforce Green Cab's contract with King County. We conclude the trial court erred by allowing plaintiffs to pursue their breach of contract claim against defendants premised on the Green Cab–King County RFP contract and grounded on an unproven oral agreement.<sup>15</sup> Plaintiffs' alleged oral agreement is unsupported by the record, the law, and logic.

#### Remedy

As noted above, the court's breach of contract instruction 14 misinformed the jury that an essential element of plaintiffs' claim required proof "[t]hat the defendants entered into a contract or contracts with the plaintiffs." RP (July 31, 2012) at 114.

Compounding this error, the court also gave an erroneous "summary of the claims" instruction:

Breach of contract. Plaintiffs allege that the defendants entered into contracts with them to form Green Cab LLC. One of the contracts is called the operating agreement. Plaintiffs also allege that the defendants orally promised the plaintiffs that they would comply with the terms of the King County RFP and award letter. Plaintiffs contend that the operating agreement and the RFP award letter set forth requirements that Green Cab LLC was to follow. Plaintiffs claim that the defendants breached these contracts and as a result of this breach of contract they personally sustained monetary damages.

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<sup>15</sup> The oral agreement theory also fails on multiple grounds. It is unclear how the oral agreement among Green Cab members creates an individual or collective right to sue on the Green Cab—King County RFP agreement. Plaintiffs never alleged an oral agreement and presented no evidence at trial to establish an oral agreement. The alleged agreement fails for lack of consideration because the agreement, if it exists, binds plaintiffs to do what they were already obligated to do. "An agreement to do that which one is already obligated to do does not constitute consideration to support a contract." Crown Plaza Corp. v. Synapse Software Sys, Inc., 87 Wn. App. 495, 501, 962 P.2d 824 (1997).

RP (July 31, 2012) at 106. Because we are unable to determine from the jury instructions, special verdicts, and the trial record the contracts on which the jury relied to reach its breach of contract verdict, we reverse the breach of contract verdict and judgment and remand for new trial on liability and damages and without prejudice to conduct further discovery.

#### Plaintiffs' Tortious Interference Claims

Defendants also challenge plaintiffs' tortious interference awards, arguing insufficient evidence to support the damages awarded. We conclude that the court's error in allowing the jury to consider the RPF contract also warrants reversal of plaintiffs' tortious interference awards. See Falk v. Keene Corp., 113 Wn.2d 645, 659, 782 P.2d 974 (1989) ("An appellate court has inherent authority to consider issues which the parties have not raised if doing so is necessary to a proper decision."); Wills v. Kirkpatrick, 56 Wn. App. 757, 758 n.1, 785 P.2d 834 (1990) (same).

The trial court's erroneous breach of contract instruction discussed above casts doubt on the jury's tortious interference finding and damages awards. This instruction invited the jury to consider tortious interference claims as part of the breach of contract claim. For example, the instruction permitted the jury to find breach of the RFP contract if it determined the defendants excluded plaintiffs from the dispatch system, excluded them from the company offices, or prevented them from picking up fares at the lucrative Bellevue location—the identical theories on which plaintiffs based their tortious interference claims. Indeed, the court questioned plaintiffs' counsel about the improper purpose and improper means element of their tortious interference claim:

[THE COURT]: What was the evidence of improper purpose and improper means?

[PLAINTIFFS' COUNSEL]: The evidence of improper purpose and improper means was these defendants are - -

[THE COURT]: - - weren't sent dispatches?

[PLAINTIFFS' COUNSEL]: Well, there's a couple. Everything [defendants] seemed to do was improper, starting with the way the company was never really gotten off to what the agreements were between the county and the members, and then how it was in this period of disarray. The operating agreements, the multiple operating agreements; the not operating the operating agreements or following them when you want to follow them; and then saying we can interfere with your business relationships because we're following some unagreed operating agreement. That's one improper purpose.

The other improper purpose is, essentially after the lawsuit, they would not give dispatches to the other side. There was testimony to that.

The other improper purpose is [plaintiffs] were locked out of the Bellevue--locked out of the Bellevue lucrative taxi location. There was testimony about that. There was testimony that [plaintiffs] were locked out of their own offices and denied access to the dispatch system. They were denied access to the phone numbers.

And so the improper purpose was to put [plaintiffs] out of business so then [defendants] would just get the business by default.

RP (July 26, 2012) at 54-55 (emphasis added).

The comments of plaintiffs' counsel and the erroneous breach of contract instruction make clear that the jury likely relied on the RFP contract to determine both claims—breach of contract and tortious interference. Given the magnitude of this error, we conclude the error adversely affected the tortious interference verdicts. See Herring v. Dep't of Soc. & Health Servs., 81 Wn. App. 1, 23, 914 P.2d 67 (1996) (an error is prejudicial if it presumably affects the outcome of trial); O'Neill v. Dep't of Licensing, 62 Wn. App. 112, 120, 813 P.2d 166 (1991) ("Erroneous instructions given on behalf of a party in whose favor the verdict is returned are presumed prejudicial unless it is affirmatively shown that they are harmless."). We also note that the trial evidence supporting tortious interference liability was scant at best. Our review of Mersha's testimony indicates he never testified about facts supporting his tortious interference

claim. See RP (July 25, 2012) at 73-139; RP (July 26, 2012) at 8-26. Belete testified that the defendants made a “false criminal accusation” against him that resulted in his arrest but testified about no other facts supporting his claim. RP (July 26, 2012) at 35.

We reverse the tortious interference verdicts and judgments and remand for new trial on liability and damages and without prejudice to conduct further discovery.

### Discovery

Finally, we are troubled by the contentious discovery history in this case that resulted in a complete failure of meaningful discovery production as this record amply demonstrates. Although we refrain from assigning blame, unjustified and unreasonable resistance to production of any documents supporting damages is only one such example in this record.

Washington courts have repeatedly addressed the need for parties to cooperate in the discovery phase of litigation:

The concept that a spirit of cooperation and forthrightness during the discovery process is necessary for the proper functioning of modern trials is reflected in decisions of our Court of Appeals. In Gammon v. Clark Equip. Co., 38 Wn. App. 274, 686 P.2d 1102 (1984), aff'd, 104 Wn.2d 613, 707 P.2d 685 (1985), the Court of Appeals held that a new trial should have been ordered because of discovery abuse by the defendant. Then Court of Appeals Judge Barbara Durham wrote for the court:

The Supreme Court has noted that the aim of the liberal federal discovery rules is to “make a trial less a game of blindman's bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent.” The availability of liberal discovery means that civil trials

no longer need be carried on in the dark. The way is now clear . . . for the parties to obtain the fullest possible knowledge of the issues and facts before trial.

This system obviously cannot succeed without the full cooperation of the parties. Accordingly, the drafters wisely included a provision authorizing the trial court to impose sanctions for unjustified or unexplained resistance to discovery.

(Citations omitted.) Gammon, 38 Wn. App. at 280.

Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp., 122 Wn.2d 299, 342, 858 P.2d 1054 (1993). The discovery missteps here arguably denied the parties a fair contest and undermined the truth seeking process.

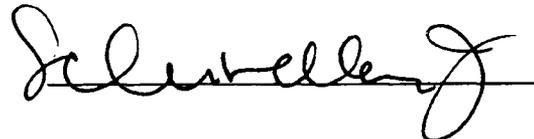
Fees and Costs

In their conclusion, defendants request "an award of their costs" on appeal. Resp't's Br. at 50. RAP 18.1(b) requires a party to devote a section of its brief to the request for fees or expenses. Defendants failed to do so. Nor do they cite any authority as a basis for fees and costs on appeal. See RAP 18.1(a); In re Marriage of Hoseth, 115 Wn. App. 563, 575, 63 P.3d 164 (2003) (party citing no authority for appellate attorney fees not entitled to fees). We deny their request.

CONCLUSION<sup>16</sup>

For the reasons discussed, we reverse the breach of contract and tortious interference verdicts and judgments in favor of plaintiffs and remand for a new trial on liability and damages and without prejudice to the parties to conduct further discovery. We otherwise affirm the trial court's injunctive relief order.

WE CONCUR:



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<sup>16</sup> Given our disposition, we do not address the parties' remaining contentions.

## **EXHIBIT B**

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IN THE KING COUNTY SUPERIOR COURT  
FOR THE STATE OF WASHINGTON - KENT DIVISION

SHUMET MEKONEN, ET. AL.,	)	NO. 10-2-36451-0KNT
	)	
Plaintiff,	)	DECLARATION OF
vs.	)	DEFENDANT GREEN CAB
	)	LLC'S ACCOUNTANT,
	)	MR. TESFAYE TEMESGEN
DESSIE ZEWDU, ET. AL.,	)	
Defendants.	)	(Clerk's Action Req'd)

**DECLARATION:**

The undersigned hereby declares under penalty of perjury, under the laws of the state of Washington, that the following is true and correct:

1. I am the Accountant for Defendant, Green Cab Taxi & Disabled Service Association, LLC (hereinafter known as "Green Cab").
2. I have worked as Green Cab's accountant since March 2012.
3. As Accountant for Green Cab, I have access to past and current accounting data.
4. I was recently asked to provide accounting information for moneys owed by the Plaintiff's group based on records made in the regular course of business.
5. Specifically, I was asked to produce an accounting for the fees, costs, and contributions owed by the Plaintiff's group from 2010 onward.
6. That accounting, attached as Exhibit I, was provided to Yirgalem Gebremichael and was used as a basis for his testimony at trial.
7. I was also recently asked to produce a current net book value of a Defaulting Member's Percentage Interest in Green Cab LLC,

DECLARATION . . .

PAGE 1 OF 2.

**B. BRADFORD KOGUT LAW, INC.**

*Attorney at Law*

215 NE 40<sup>th</sup> Street, Suite C-3

Seattle, Washington 98105-6567

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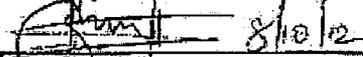
offset by amounts with interest, otherwise owed to Green Cab LLC.

8. Per § 8.1(c)(v)(ii) of the Operating Agreement, Defaulting Members who fail to make their Capital Contribution, after thirty days notice, have been deemed to have offered for sale to Green Cab LLC all of their Units and rights, for a purchase price determined by Green Cab LLC's Accountant - to be the net book value of the Defaulting Member's Percentage Interest in Green Cab LLC, represented by the Units, offset by amounts with interest, otherwise owed to Green Cab LLC.

9. The following shows the Membership Percentage interest net book value that I calculated based on Membership units recently transferred at Green Cab LLC, offset by amounts otherwise owed with interest:

Name:	License #:	Owing:	Member value:	Net value:
Shumet Mekonen	508	\$14,139.29	\$5,078.57	-\$9,060.72
Selamneh Ambaw	521	\$16,341.15	\$5,078.57	-\$11,262.58
Tigabu Lakew	515, 530	\$24,545.92	\$5,078.57 X 2	-\$14,388.78
Habtamu Aboye	577, 578	\$35,983.75	\$5,078.57 X 2	-\$25,826.61
Yirga Belete	587, 588	\$33,021.25	\$5,078.57 X 2	-\$22,864.11
Wondwosen Mersha	593	\$26,702.49	\$5,078.57	-\$21,623.92
Tigabie Tekeba	520	\$14,139.29	\$5,078.57	-\$9,060.72
Abebe Adugna	596	\$14,139.29	\$5,078.57	-\$9,060.72
Yonas Shumet	513	\$14,139.29	\$5,078.57	-\$9,060.72
Endalkachew Lakew	511, 533	\$25,325.70	\$5,078.57 X 2	-\$15,168.56
Tigist Tedla	512	\$14,139.29	\$5,078.57	-\$9,060.72
Michael Kidanie	571, 572	\$33,498.99	\$5,078.57 X 2	-\$23,341.85
Yonathan Worku	582	\$39,691.28	\$5,078.57	-\$34,612.71
Nigus Mekonen	512	\$14,139.29	\$5,078.57	-\$9,060.72

Dated August 10<sup>th</sup>, 2012 @ Kent, Washington

  
Mr. Tesfaye Temesgen,  
Accountant for Green Cab LLC,  
23830 Pacific Highway South  
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(206) 575-4040

DECLARATION ...

PAGE 2 OF 2.

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**EXHIBIT C**

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IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

SHUMET MEKONEN, WONDWOSSEN	)
MERSHA; TIGABU LAKEW; HABTAMU	) Cause No: 10-2-36451-0 KNT
ABOYE; YIRGA BELETE; SELAMNEH	)
AMBAW,	)
Appellants/Cross-Respondents,	) COA: 69278-0-I
vs.	)
DESSIE ZEWDU; WORKU ASMARE;	)
WORKU MELESE; BAZAZEW BIRHAN;	)
MOTBAYNER TEBEJE; ENDALE	)
ANDENO; MELAKU KEBEDE; NEGA	)
WONDIMAGEGN; KASSA DERAR; and	)
GREEN CAB TAXI & DISABLED	)
SERVICE ASSOCIATION, LLC,	)
Respondents/Cross-Appellants.	)

Official record of proceedings  
Held before The Honorable  
Judge Beth M. Andrus  
On July 31, 2012, and August 24, 2012  
In Kent, Washington

Jane Wilkinson, Transcriptionist  
Flygare & Associates, Inc.  
1715 South 324th Place, Suite 250  
Federal Way, WA 98003

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APPEARANCES

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1 the evidentiary portion of this trial. At this time Mr.  
2 Anderson will hand out to each of you a copy of the jury  
3 instructions for you to follow along as I read them. They  
4 are somewhat lengthy so you may see me from time to time  
5 stand while I read these to you, and I apologize for needing  
6 to do that.

7 All right. I will begin reading the jury instructions at  
8 this time.

9 Number 1. It is your duty to decide the facts in this case  
10 based upon the evidence presented to you during this trial.  
11 It's also your duty to accept the law as I explain it,  
12 regardless of what you personally believe the law is or what  
13 you personally believe it should be. You must apply the law  
14 from my instructions to the facts you decide have been proved  
15 and in this way decide the case.

16 The evidence that you are to consider during your  
17 deliberations consists of the testimony that you have heard  
18 from the witnesses and the exhibits that I have admitted  
19 during the trial. If evidence was not admitted or was  
20 stricken from the record then you are not to consider it in  
21 reaching your verdict.

22 Exhibits may have been marked by the court clerk and given  
23 a number but they do not go with you to the jury room during  
24 your deliberations unless they have been admitted into  
25 evidence. The evidence that has been -- excuse me -- the

1 exhibits that have been admitted will be available to you in  
2 the jury room.

3 In order to decide whether any party's claim has been  
4 proved you must consider all of the evidence that I have  
5 admitted that relates to that claim. Each party is entitled  
6 to the benefit of all of the evidence whether or not that  
7 party introduced it.

8 You are the sole judges of the credibility of the  
9 witnesses. You are also the sole judges of the value or  
10 weight to be given to the testimony of each witness. In  
11 considering a witness's testimony you may consider these  
12 things: The opportunity of the witness to observe or know  
13 the things they testify about; the ability of the witness to  
14 observe accurately; the quality of a witness's memory while  
15 testifying; the manner of the witness while testifying; any  
16 personal interest that the witness may have in the outcome or  
17 the issues; any bias or prejudice that the witness they have  
18 shown; the reasonableness of the witness's statements in the  
19 context of all of the other evidence and any other factors  
20 that affect your evaluation or belief of a witness or your  
21 evaluation of his or her testimony.

22 One of my duties has been to rule on the admissibility of  
23 the evidence. Do not be concerned during your deliberations  
24 about the reasons for my rulings on the evidence. If I have  
25 ruled that any evidence is inadmissible or if I have asked

1 you to disregard any evidence then you must not discuss that  
2 evidence during your deliberations or consider it in reaching  
3 your verdict.

4 The law does not permit me to comment on the evidence in  
5 any way. I would be commenting on the evidence if I  
6 indicated my personal opinion about the value of testimony or  
7 other evidence. Although I have not intentionally done so,  
8 if it appears to you that I have indicated in any way my  
9 personal opinion during the trial or in the reading of these  
10 instructions, you must disregard it entirely.

11 As to the comments of the lawyers during the trial, they  
12 are intended to help you understand the evidence and apply  
13 the law. However it is important for you to remember that  
14 the lawyers' remarks, statements, and arguments are not  
15 evidence. You should disregard any remark, statement, or  
16 argument that is not supported by the evidence or the law as  
17 I have explained to you.

18 You may have heard objections made by the lawyers during  
19 trial. Each party has the right to object to questions asked  
20 by the other lawyer and may have a duty to do so. These  
21 objections should not influence you. Do not make any  
22 assumptions or draw any conclusions based on a lawyers'  
23 objections.

24 As jurors you have the duty to consult with one another and  
25 to deliberate with the intention of reaching a verdict. Each

1 of you must decide the case for yourself but only after an  
2 impartial consideration of all of the evidence with your  
3 fellow jurors. Listen to one another carefully. In the  
4 course of your deliberations you should not hesitate to  
5 re-examine your own views and to change your opinion based on  
6 the evidence. You should not surrender your honest  
7 convictions about value or significance of evidence solely  
8 because of the opinions of your fellow jurors. Nor should  
9 you change your mind just for the purpose of obtaining enough  
10 votes for a verdict.

11 As jurors you are officer of this court. You must not let  
12 your emotions overcome your rational thought process. You  
13 must reach your decision based on the facts proved to you and  
14 on the law given to you, not on sympathy, bias or personal  
15 preference. To assure that all parties receive a fair trial  
16 you must act impartially with an earnest desire to reach a  
17 proper verdict.

18 Finally, the order of these instructions has no  
19 significance as to their relative importance. They're all  
20 equally important. In closing arguments the lawyers may  
21 properly discuss specific instructions but you must not  
22 attach any special significance to a particular instruction  
23 that they may discuss. During your deliberations you must  
24 consider the instructions as a whole.

25 Number 2. There are several individuals who are parties to

1 this lawsuit. This lawsuit is a consolidation of two  
2 separate lawsuits where the opposing parties are listed as  
3 both plaintiffs and defendants. For ease of reference here  
4 the Court has denominated one group as plaintiffs and one  
5 group as defendants.

6 The plaintiffs include Green Cab Taxi and Disabled  
7 Association LLC, referred to hereafter as Green Cab LLC;  
8 Shumet Mekonen, Wondwossen Merasha, Tigabu Lakew, Habtamu  
9 Aboye, Yirga Belete, and Selamneh Ambaw.

10 The defendants are Green Cab LLC, Dessie Zewdu, Worku  
11 Asmare, Worku Melese, Bazazew Birhan, Motbayner Kebede,  
12 Endale Andeno, Melaku Kebede, Nega Wondimagegn and Kassa  
13 Derar.

14 There are other individuals who are or were members of  
15 Green Cab LLC and who have decided to align themselves with  
16 the plaintiffs or the defendants. If these individuals are  
17 not listed as a plaintiff or a defendant here they may be  
18 members of Green Cab LLC but they are not a party to the  
19 lawsuit and are not seeking any monetary recovery in this  
20 lawsuit.

21 Number 3. Green Cab Taxi and Disabled Service Association  
22 LLC is a business entity formed as a "limited liability  
23 company," also called an LLC under Washington law. A limited  
24 liability company is a legal hybrid with some characteristics  
25 of a corporation and some characteristics of a partnership.

1 People holding an ownership interest in an LLC are members of  
2 that LLC. The Court will refer to Green Cab Taxi and  
3 Disabled Service Association LLC hereafter as Green Cab LLC.

4 Number 4. The plaintiffs and defendants agree that there  
5 is an operating agreement that governs their rights in and  
6 responsibilities to the Green Cab LLC.

7 Number 5. Summary of plaintiffs' claims. The following is  
8 a summary of the plaintiffs' claims provided to help you  
9 understand the issues in this case. You are not to take this  
10 instruction as proof of the matters claimed. It is for you  
11 to decide based upon the evidence presented whether a claim  
12 has been proved.

13 1. Validity of the election. Plaintiffs allege that a  
14 September 4, 2010, board of directors election was valid and  
15 the directors elected to the board at this election had and  
16 still have the authority to manage and operate the Green Cab  
17 LLC.

18 They allege that a September 25, 2010, election and  
19 subsequent elections in January 2011 and January 2012  
20 conducted by the defendants were invalid and that the members  
21 who claimed to have been voted on to the board at that  
22 election had no authority to manage and operate Green Cab  
23 LLC.

24 Plaintiffs seek the authority to manage and operate Green  
25 Cab LLC.

1           2. Breach of contract. Plaintiffs allege that the  
2 defendants entered into contracts with them to form Green Cab  
3 LLC. One of the contracts is called the operating agreement.  
4 Plaintiffs also allege that the defendants orally promised  
5 the plaintiffs that they would comply with the terms of the  
6 King County RFP and award letter. Plaintiffs contend that  
7 the operating agreement and the RFP award letter set forth  
8 requirements that Green Cab LLC was to follow. Plaintiffs  
9 claim that the defendants breached these contracts and as a  
10 result of this breach of contract they personally sustained  
11 monetary damages.

12           3. Breach of fiduciary duty. Plaintiffs allege that the  
13 defendants breached a fiduciary duty they owed to the  
14 plaintiffs. They contend that as a result of this breach  
15 they personally sustained monetary damages.

16           4. Unjust enrichment. Plaintiffs allege that the  
17 defendants have been unjustly enriched by the  
18 misappropriation of taxi licenses and taxi service calls and  
19 they contend should have been shared with the plaintiffs.  
20 They contend that as a result of this misappropriation  
21 they're entitled to restitution equal to the value of the  
22 property that was appropriated by the defendants.

23           5. Tortious interference with a business relationship.  
24 Plaintiffs allege that the defendants wrongfully interfered  
25 with their prospective business relationship with taxi

1 customers by failing to dispatch calls for taxi services to  
2 them. They contend that as a result of the defendants  
3 tortious conduct they personally sustained monetary damages.  
4 The defendants deny these allegations.

5 6. Summary of defendants claims. The following is a claim  
6 of the defendants claims provided to help you understand the  
7 issues in this case. You are not to take this instruction as  
8 proof of the matters claimed. It is for you to decide based  
9 on the evidence presented whether a claim has been proved.

10 1. Validity of election. Defendants allege that on  
11 September 25 -- that the September 25, 2010, election of the  
12 board of directors was valid and that the members elected to  
13 the board at this election and not those elected at the  
14 September 4, 2010, election were authorized to manage and  
15 operate Green Cab LLC.

16 They further contend that they conducted two subsequent  
17 valid board election s in January 2011 and January 2012 and  
18 that the members elected to the board of directors in each of  
19 these two elections had and currently -- I think I missed --  
20 am missing the word have H-A-V-E -- the authority to manage  
21 and operate Green Cab LLC. Defendants seek the authority to  
22 manage and operate Green Cab LLC.

23 2. Breach of contract. Defendants allege that the  
24 plaintiffs breached the operating agreement. They contend  
25 that as a result of the breach of contract they sustained

1 monetary damages.

2 3. Breach of fiduciary duty. Defendants allege that the  
3 plaintiffs breached their duties of loyalty and care owed to  
4 the defendants under the contract Green Cab LLC board  
5 decisions and the law. Defendants allege that the plaintiffs  
6 violated laws related to limited liability companies and that  
7 these violations constitute a breach of fiduciary duty. They  
8 contend that as a result of the plaintiffs' breaches they  
9 sustained monetary damages.

10 4. Tortious interference with a business relationship.  
11 Defendants allege that plaintiffs wrongfully interfered with  
12 their business relationship with King County and with Qwest  
13 by violating King County rules and by bringing lawsuits  
14 against King County and Qwest. They contend that as a result  
15 of the plaintiffs' tortious conduct they sustained monetary  
16 damages.

17 4. Unjust enrichment against plaintiff Shumet Mekonen.  
18 Defendants allege that plaintiff Shumet Mekonen cashed a  
19 check made payable to Green Cab in the amount of \$10,988.95  
20 and kept the proceeds for his personal use. They contend  
21 they are entitled to recover this sum from plaintiff Shumet  
22 Mekonen.

23 5. Conversion. Defendants allege that without lawful  
24 justification plaintiffs willfully interfered with and  
25 thereby deprived the defendants of their right to control the

1 King County licenses and that the defendants have a  
2 possessory or property interest in the King County licenses.  
3 Plaintiffs deny these allegations.

4 7. The parties have admitted certain facts. You must  
5 accept the follow facts as true:

6 1. All of the parties to this lawsuit are bound by the  
7 terms of the Green Cab LLC operating agreement.

8 2. The Green Cab LLC operating agreement may only be  
9 amended by strictly following the provisions of article 7 of  
10 that agreement.

11 3. Under article 8.1(b)(i), (b)(ii) and C(5) of the Green  
12 Cab operating agreement and the laws relating to limited  
13 liability companies all the plaintiffs and defendants must  
14 pay capital contributions in a timely manner including but  
15 not limited to weekly fees and insurance premiums. A failure  
16 to make these contributions constitutes a default and any  
17 defaulting party is subject to the relevant defaulting  
18 provisions of the operating agreement.

19 4. Each plaintiff has not paid their capital contributions  
20 in a timely manner including but not limited to weekly fees  
21 and insurance premiums.

22 5. Under article 5.6 of the Green Cab operating agreement  
23 no member may disassociate or withdraw from the LLC because a  
24 disassociation or withdrawal would violate the terms of the  
25 taxi license program.

1           6. Each plaintiff has disassociated or withdrawn from the  
2 Green Cab LLC.

3           I'm just fixing my typos.

4           7. Under Washington law and Green Cab's agreement with  
5 King County, any change in ownership of Green Cab will result  
6 in the revocation of its taxi licenses and the reversion of  
7 the licenses to King County.

8           8. The members of Green Cab agreed with King County that  
9 1) Green Cab shall operate the only business entity  
10 administered under Green Cab management; 2) Green Cab shall  
11 operate from one principal business location; 3) Green Cab  
12 shall have only one insurance provider and policy; and 4)  
13 Green Cab shall be dispatched only from its principal place  
14 of business and not by cell or home phone.

15           9. Each plaintiff is operating from a principal business  
16 location separate from the defendants.

17           10. Each plaintiff is operating under an insurance  
18 provider and policy separate from the defendants.

19           11. Each plaintiff is being dispatched from a dispatcher  
20 separate from the defendants.

21           12. The number of defendants is greater than the number of  
22 plaintiffs.

23           13. The plaintiffs brought claims against defendant Qwest  
24 without the permission of the defendants.

25           14. Qwest retains the discretion to assign telephone

1 numbers to customers.

2 15. Qwest customers have no proprietary rights to any  
3 telephone number assigned by Qwest.

4 16. Qwest owns the telephone number (206) 575-4040.

5 17. Plaintiffs have no ownership interest in telephone  
6 number (206) 575-4040.

7 18. Qwest retains the authority to restrict the use of  
8 telephone number (206) 575-4040.

9 19. In the lawsuit against Qwest plaintiffs claim  
10 entitlement to the use of telephone number (206) 575-4040.

11 20. There are no documents to support plaintiffs'  
12 allegation that Qwest transferred telephone service from the  
13 Green Cab offices in Seattle without authorization from Green  
14 Cab.

15 21. There is no contract between Qwest and plaintiffs  
16 providing any ownership of telephone number (206) 575-4040.

17 22. Before filing a lawsuit against Qwest plaintiffs did  
18 not present Qwest with an agreement or any court order  
19 designating which party should be assigned telephone number  
20 (206) 575-4040.

21 23. On January 20, 2011, Qwest requested that Mr. Kannin,  
22 counsel for plaintiffs, provide proof of the federal tax  
23 identification number of Green Cab and a corporate  
24 secretarial certificate verifying and identifying  
25 individual's authorized to act on behalf of Green Cab.

1           24. The information requested by Qwest was never provided  
2 by plaintiffs.

3           Instruction number 8. The evidence that has been presented  
4 to you may be either direct or circumstantial. The term  
5 "direct evidence" refers to evidence that is given by a  
6 witness who has directly perceived something at issue in this  
7 case. The term "circumstantial evidence" refers to evidence  
8 from which based on your common sense and experience you may  
9 reasonably infer something that is at issue in this case.

10          The law does not distinguish between direct and  
11 circumstantial evidence in terms of their weight or value in  
12 finding the facts in this case. One is not necessarily more  
13 or less valuable than the other.

14          Number 9. A witness who has special training, education,  
15 or experience may be allowed to express an opinion in  
16 addition to giving testimony as to facts. You are not,  
17 however, required to accept his opinion. To determine the  
18 credibility or weight to be given to this type of evidence  
19 you may consider among other things the education, training,  
20 experience, knowledge, and ability of the witness. You may  
21 also consider the reasons given for the opinion and the  
22 sources of his or her information, as well as considering the  
23 factors already given to you for evaluating the testimony of  
24 any other witness.

25          Number 10. When it is said that a party has the burden of

1 proof on any proposition or that any proposition must be  
2 proved by a preponderance of the evidence or the expression  
3 "if you find" is used, it means that you must be persuaded,  
4 considering all of the evidence in this case, that the  
5 proposition on which that party has the burden of proof is  
6 more probably true than not true. The burden of proof in  
7 this case is by a preponderance of the evidence.

8 Number 11. The law treats all parties equally whether they  
9 are limited liability companies or individuals. This means  
10 that companies and individuals are to be treated in the same  
11 fair and unprejudiced manner.

12 Number 12. Plaintiffs have the burden of proving each of  
13 the elements of their claims. Defendants have the burden of  
14 proving each of the elements of their claims.

15 Number 13. Under Washington law a limited liability  
16 company agreement may provide that the interest of a member  
17 who fails to make a contribution that the member is obligated  
18 to make shall be subject to specified penalties for such  
19 failure. Such penalties may take the form of reducing or  
20 eliminating the defaulting member's proportional interest in  
21 the limited liability company; subordinating the member's  
22 limited liability company interest to that of non-defaulting  
23 members; a forced sale of a limited member's limited  
24 liability company interest; forfeiture of the member's  
25 limited liability company interest; lending by other members

1 of the amount necessary to meet that member's commitment; a  
2 fixing of the value of the member's limited liability  
3 interest by appraisal or formula; and redemption or sale of  
4 the member's limited liability interest at this value.

5 Number 14. Plaintiffs breach of contract claim.

6 Plaintiffs have the burden of proving each of the following  
7 propositions on their claim of breach of contract against the  
8 defendants:

9 1. That the defendants entered into a contract or  
10 contracts with the plaintiffs.

11 2. That the terms of the contract or contracts included  
12 the following obligations:

13 (A) to act in the interest of Green Cab LLC.

14 (B) to implement an employer-employee relationship with all  
15 member cab drivers.

16 (B) (2) to pay member drivers a salary or wage for their  
17 work performed.

18 (C) to comply with the State Industrial Insurance Act to  
19 cover the company's employees under workmen's compensation  
20 insurance.

21 (D) to provide health insurance to employee drivers.

22 (E) not to sell or transfer the plaintiffs' membership  
23 units without the required approvals.

24 (F) failing to concede the board members Zewdu and Asmare  
25 were removed from office in the August 14, 2010, election.

1 (G) not abiding by the vote of the members in the September  
2 4, 2010, election.

3 (H) not to exclude plaintiffs from the company office and  
4 business.

5 (J) not to admit new members without the required  
6 approvals.

7 (K) to provide dispatch calls to any plaintiff driving a  
8 cab.

9 (L) to refrain from causing the plaintiffs and other  
10 members to pay money to belong to Green Cab LLC after the  
11 plaintiffs disputed the payments.

12 (M) not to hold a new election in which people who were not  
13 members were allowed to vote in disregard of the previous  
14 vote of lawful members.

15 (N) not to cause the plaintiffs to be barred from picking  
16 up fares in Bellevue at the Kemper Freeman properties managed  
17 by Mr. Ted Williams.

18 (O) not to keep the plaintiffs' credit card receipts from  
19 fares.

20 (P) not to close Green Cab LLC bank accounts in 2010.

21 Number 3. That the defendants breached a contract in one  
22 or more ways complained of by the plaintiffs.

23 4. That the plaintiffs were not in material breach of the  
24 contract and had performed or offered to perform their  
25 obligations under the contract.

1           5. That the defendants' material breached the contract.

2           6. That the plaintiffs were damaged as a result of the  
3 defendants' material breach or breaches.

4           If you find from your consideration of all the evidence  
5 that each of these proposition has been proved by a  
6 preponderance of the evidence your verdict should be for the  
7 plaintiffs on this claim. On the other hand, if any of these  
8 proposition has not been proved your verdict should be for  
9 the defendants on this claim.

10           Number 15. Defendants breach of contract claim against  
11 plaintiffs. Defendants allege that the plaintiffs breached  
12 the operating agreement. The defendants have the burden of  
13 proving each of the following proposition on this claim of  
14 breach of contract against the plaintiffs:

15           1. That the plaintiffs entered into a contract with  
16 defendants.

17           2. That the terms of the contracts including the following  
18 obligations:

19           (A) all the plaintiffs and defendants must pay capital  
20 contributions in a timely manner including weekly fees and  
21 insurance premiums.

22           (B) defaulting members who fail to make capital  
23 contributions for 30 days automatically forfeit all rights  
24 including the right to vote on, consent to or otherwise  
25 participate in any decision of the members.

1 (C) upon election by the members each director shall serve  
2 for one year or by his or her resignation or removal  
3 whichever is sooner.

4 (D) no member shall disassociate or withdraw from Green Cab  
5 LLC.

6 3. That the plaintiffs breached the contract in one or  
7 more ways complained of by the defendants.

8 4. That the defendants were not in material breach of  
9 contract and had performed or offered to perform their  
10 obligations under the contract.

11 5. That the plaintiffs materially breached the contract.

12 6. That the defendants were damaged as a result of the  
13 plaintiffs' breach or breaches.

14 If you find from your consideration of all the evidence  
15 that each of these proposition has been proved by a  
16 preponderance of the evidence your verdict should be for  
17 defendants on this claim. On the other hand if any of these  
18 proposition has not been proved your verdict should be for  
19 the plaintiffs on this claim.

20 Number 16. A contract is a legally enforceable promise or  
21 a set of promises.

22 17. A promise is an expression that justifies the person  
23 to whom it is made and reasonably believing that a commitment  
24 has been made that something specific will happen or not  
25 happen in the future. A promise may be expressed orally, in

1 writing, or by conduct.

2 18. In order for there to be mutual assent the parties  
3 must agree on the essential terms of the contract and must  
4 express to each other their agreement to the same essential  
5 terms.

6 Number 19. A contract is to be interpreted to give effect  
7 to the intent of the parties at the time they entered into  
8 the contract. You are to take into consideration all of the  
9 language used in the contract, giving to the words their  
10 ordinary meaning unless their party's intended a different  
11 meaning. You are to determine the intent of the contracting  
12 party's by viewing the contract as a whole considering the  
13 subject matter and apparent purpose of the contract; all of  
14 the facts and circumstances leading up to and surrounding  
15 making of the contract; subsequent acts and conduct of the  
16 parties to the contract and the reasonableness of the  
17 respective interpretations offered by the parties.

18 Number 20. If you find that all of the provisions orphan  
19 agreement between the plaintiffs and defendants are contained  
20 in a single written document and that the document was  
21 intended by the parties as their final agreement on the  
22 subject addressed in it, then you may not consider evidence  
23 outside the written document to add to, subtract from, or  
24 vary, or contradict that written document.

25 However if you find that such written document was not

1 intended to be a complete expression of all of the terms  
2 agreed upon by the parties, that it is that the document does  
3 not contain all the terms of their agreement, then you may  
4 also consider evidence of the circumstances surrounding the  
5 making of the agreement to supply additional terms of the  
6 agreement between the parties, but only if they are not  
7 inconsistent with the provisions of the written document.

8 Number 21. The failure to perform fully a contractual duty  
9 when it is due is a breach of contract.

10 Number 22. A material breach is a breach that is serious  
11 enough to justify the other party in abandoning the contract.  
12 A material breach is one that substantially defeats the  
13 purpose of the contract or relates to an essential element of  
14 the contract and deprives the injured party of a benefit that  
15 he or she reasonably expected.

16 23. A duty of good faith and fair dealing is implied in  
17 every contract. This duty requires the parties to cooperate  
18 with each other so that each may obtain the full benefit of  
19 performance. However this duty does not require a party to  
20 accept a material change in the terms of their contract.

21 Number 24. Unless otherwise provided for in a limited  
22 liability company agreement a member of a limited liability  
23 company is obligated to the limited liability company to  
24 perform any promise or contribute any cash or property or to  
25 perform services even if the member is unable to perform

1 because of death, disability, or other reason.

2 Number 25. If one party enters into a contract with  
3 another there is an implied agreement by each to do nothing  
4 that will hinder, prevent, or interfere with the performance  
5 of the contract terms by the other. If plaintiffs prove by a  
6 preponderance of the evidence that defendants interfered with  
7 or prevented plaintiffs from complying with a duty under the  
8 Green Cab LLC operating agreement then plaintiffs were  
9 excused from performing that duty under the operating  
10 agreement.

11 Number 26. A party who sustains damage as a result of  
12 another party's breach of contract has a duty to minimize his  
13 loss. No party is entitled to recover for any part of a loss  
14 that he could have avoided with reasonable efforts.

15 Defendants have the burden to prove plaintiffs' failure to  
16 use reasonable efforts to minimize their losses and the  
17 amount of damages which could have been minimized or avoided  
18 by plaintiffs.

19 Similarly, plaintiffs have the burden to prove defendants'  
20 failure to use reasonable efforts to minimize their losses  
21 and the amount of damages that could have been minimized or  
22 avoided by defendants.

23 Number 27. A party's remaining duties of performance under  
24 contract or excused if the party's principal purpose is  
25 substantial frustrated without that party's fault by the

1 occurrence of an unforeseen event when the nonoccurrence of  
2 such an event was a basic assumption on which the contract  
3 was made.

4 In this case defendants are relieved of the duty to follow  
5 all contractual terms if defendants prove by the  
6 preponderance of the evidence that their principal purpose in  
7 entering into the contract was substantially frustrated,  
8 without defendants' fault, by the occurrence of the  
9 unforeseen event and that the lack or absence of such  
10 occurrence was a basic assumption by all contracting parties  
11 on which the contract was made.

12 In this case plaintiffs are relieved of the duty to follow  
13 all contractual terms if the plaintiffs prove by a  
14 preponderance of the evidence that their principal purpose in  
15 entering into the contract was substantially frustrated,  
16 without plaintiffs' fault, by the occurrence of an unforeseen  
17 event and that the lack or absence of such occurrence was a  
18 basic assumption by all contracting parties on which the  
19 contract was made.

20 28. A party's excused from performing a promise if the  
21 promise has been made impossible or impracticable as a result  
22 of a fortuitous event that was unexpected and unavoidable by  
23 that party.

24 Fortuitous means by chance or accident.

25 Impossible or impracticable means that the promise could

1 not be performed or could be -- only be performed with  
2 extreme and unreasonable difficulty, expense, or risk of  
3 injury or loss.

4 The mere fact that the performance became more difficult or  
5 expensive than originally anticipated does not in itself  
6 establish that the promise was impossible or impracticable to  
7 perform.

8 In this case defendants are relieved of their duty to  
9 follow all contractual terms if defendants prove by a  
10 preponderance of the evidence that performance of their  
11 promise was impossible or impracticable as defined in this  
12 instruction.

13 In this case plaintiffs were relieved of their duty to  
14 follow all contractual terms if plaintiffs prove by a  
15 preponderance of the evidence that performance of their  
16 promise was impossible or impracticable as defined in this  
17 instruction.

18 It is the duty of the Court to instruct you as -- sorry --  
19 29. It is the duty of the Court to instruct you as to the  
20 measure of damages for any breach of contract claim. In this  
21 case plaintiff and defendants each claim that -- to have  
22 suffered damages as a result of the breach of contract of the  
23 other.

24 In order for any party to recover actual damages that party  
25 has the burden of proving that the other party breached a

1 contract with them, that the party incurred actual economic  
2 damages as a result of the other party's breach and the  
3 amount of those damages.

4 If your verdict is for plaintiffs on plaintiffs' breach of  
5 contract claim and if you find that plaintiffs have proved  
6 that they incurred actual damages and the amount of those  
7 actual damages, then you shall award actual damages to  
8 plaintiffs.

9 If your verdict is for defendants on defendants' breach of  
10 contract claim, and if you find the defendants have proved  
11 that they incurred actual damages and the amount of those  
12 actual damages then you shall award actual damages to  
13 defendants.

14 Actual damages are those losses that were reasonably  
15 foreseeable at the time the contract was made. A loss may be  
16 foreseeable as a probable result of a breach because it  
17 follows from the breach either a) in the ordinary course of  
18 events or b) as a result of special circumstances beyond the  
19 ordinary course of events that the party in breach had reason  
20 to know.

21 In calculating a party's actual damages you should  
22 determine the sum of money that will put that party in as  
23 good a position as that party would have been in if both  
24 parties had performed all of their promises under the  
25 contract.

1           The burden of proving damages rests with the party claiming  
2 them and it is for you to determine based upon the evidence  
3 whether any particular element has been proved by a  
4 preponderance of the evidence.

5           In determining an award of damages to either party for  
6 breach of contract you must be governed by your own judgment,  
7 by the evidence in this case and by these instructions rather  
8 than by speculation, guess, or conjecture.

9           Number 30. To recover on a claim of tortious interference  
10 with business relationship plaintiffs have the burden of  
11 proving each of the following proposition:

12           1. That at the time of the conduct about which plaintiffs  
13 complain plaintiffs had a business relationship with the  
14 probability of future economic benefit for the plaintiffs.

15           2. That the defendants knew of the existence of that  
16 business relationship.

17           3. That the defendants intentionally induced or caused the  
18 termination of the business relationship.

19           4. That the defendants interference was for an improper  
20 purpose or by improper means.

21           5. That the defendants conduct was a proximate cause of  
22 damage to plaintiffs.

23           If you find from your consideration of all the evidence  
24 that each of these propositions has been proved by a  
25 preponderance of the evidence then your verdict should be for

1 the plaintiffs on this claim. On the other hand, if you find  
2 that any of these proposition has not been proved by a  
3 preponderance of the evidence then your verdict should be for  
4 the defendants on this claim.

5 Number 31. Defendant Green Cab's claim of tortious  
6 interference against plaintiffs. To recover on a claim of  
7 tortious interference with business relationships defendants  
8 have the burden of proving each of the following  
9 propositions:

10 1. That at the time of the conduct about which defendants  
11 complain defendant Green Cab LLC had a business relationship  
12 or expectancy with the probability of future economic benefit  
13 for the defendant Green Cab LLC.

14 2. That plaintiffs knew of the existence of that business  
15 relationship.

16 3. That plaintiffs intentionally induced or caused the  
17 termination of that business relationship.

18 4. That the plaintiffs interference was for an improper  
19 purpose or by improper means.

20 5. That the plaintiffs conduct was a proximate cause of  
21 damage to defendant Green Cab LLC.

22 If you find from your consideration of all the evidence  
23 that each of these proposition has been proved by a  
24 preponderance of the evidence then your verdict should be for  
25 defendant Green Cab LLC on this claim. On the other hand, if

1 you find that any of these proposition has not been proved by  
2 a preponderance of the evidence then your verdict should be  
3 for the plaintiffs on this claim.

4 32. Interference for improper purpose means interference  
5 by one party done with the intent to harm the other party.

6 Interference by improper means is interference that  
7 violates a statute, a regulation, a recognized rule of common  
8 law, or an established standard of the trade or profession.

9 33. The term "proximate cause" means a cause which in a  
10 direct sequence unbroken by any new independent cause  
11 produces the injury or event complained of and without which  
12 such injury or event would not have happened. There they be  
13 more than one proximate cause of the injury or event.

14 Number 34. A member or manager of an LLC shall not be  
15 liable, responsible, or accountable in damages or otherwise  
16 to the limited liable company or to the members of the  
17 limited liability company for any action taken or failure to  
18 act on behalf of a limited liability company unless such act  
19 or omission constitutes gross negligence, intentional  
20 misconduct, or a knowing violation of the law.

21 Number 35. Gross negligence is negligence substantially or  
22 appreciably less than the quantum of care in hearing in  
23 ordinary negligence.

24 Ordinary negligence is the act or omission which a person  
25 of ordinary prudence would do or fail to do under like

1 circumstances or conditions. There is no gross negligence  
2 without evidence of serious negligence.

3 36. It is the duty of the Court to instruct you as to the  
4 damages -- the measure of damages to the tortious  
5 interference claims. By instructing you on damages the Court  
6 does not mean to suggest for which party your verdict should  
7 be rendered.

8 If your verdict is for plaintiffs on their claim of  
9 tortious interference with business relations then you must  
10 determine the amount of money that will reasonably and fairly  
11 compensate plaintiffs for such damages as you find were  
12 proximately caused by the defendants.

13 The burden of proving damages rests on the plaintiffs. It  
14 is for you to determine based on the evidence whether any  
15 particular element has been proved by a preponderance of the  
16 evidence.

17 If your verdict is for defendant Green Cab LLC on its claim  
18 of tortious interference with business relations then you  
19 must determine the amount of money that will reasonably and  
20 fairly compensate defendant Green Cab LLC for such damages as  
21 you find were proximately caused by the plaintiffs.

22 The burden of proving damages rests upon the defendants.  
23 It is for you to determine based on the evidence whether any  
24 particular element has been proved by a preponderance of the  
25 evidence. Your award must be based on evidence and not on

1 speculation, guess, or conjecture.

2 Number 37. Unjust enrichment means that one person should  
3 not be permitted unjustly to enrich himself at expense of  
4 another but should be required to make restitution of or for  
5 property or benefits received, retained, or appropriated when  
6 it is fair that such restitution be made.

7 Unjust enrichment of another person occurs when he has and  
8 retains money or benefits which in fairness belong to  
9 another.

10 Number 38. Plaintiffs' claim of unjust enrichment. To  
11 prove a claim of unjust enrichment plaintiffs must prove each  
12 of the following elements:

13 1. A benefit was conferred on the defendants by the  
14 plaintiffs.

15 2. The defendants appreciated or knew of the benefits.

16 3. The defendants accepted or retained the benefit under  
17 circumstances that make it inequitable for the defendants to  
18 retain the benefit without paying its value to plaintiffs.

19 39. Defendant Green Cab LLC's claim of unjust enrichment  
20 against plaintiff Shumet Mekonen. Defendants contain that  
21 Shumet Mekonen was unjustly enriched to the detriment of  
22 Green Cab LLC. To prove its claim of unjust enrichment  
23 defendants move prove each of the following elements:

24 1. A benefit was conferred on the plaintiff Shumet Mekonen  
25 by defendant Green Cab LLC.

1           2. Plaintiff Shumet Mekonen appreciated or knew of the  
2 benefit.

3           3. Plaintiff Shumet Mekonen accepted or retained the  
4 benefit under circumstances that make it inequitable for Mr.  
5 Mekonen to retain the benefit without paying its value to  
6 defendant Green Cab LLC.

7           40. If you find for plaintiffs on their claim of unjust  
8 enrichment against the defendants then plaintiffs are  
9 entitled to restitution or the restoration of any benefit  
10 conferred on the defendants. This means that the plaintiffs  
11 are entitled to the reasonable value to the defendants of the  
12 services rendered, goods delivered, or property conveyed to  
13 the defendants. You may consider but are not bound by the  
14 contract price as evidence of the value of the services,  
15 goods, or property.

16           41. If you find for defendant Green Cab LLC on its claim  
17 of unjust enrichment against plaintiff Shumet Mekonen than  
18 defendant Green Cab LLC is entitled to restitution or the  
19 restoration of any benefit conferred on plaintiff Shumet  
20 Mekonen. This means that defendant Green Cab LLC is entitled  
21 to the reasonable value to plaintiff Shumet Mekonen of the  
22 property conveyed to plaintiff Shumet Mekonen.

23           Number 42. Defendant Green Cab LLC's claim of conversion.  
24 To prove its claim of conversion defendant Green Cab LLC must  
25 prove that 1) without lawful justification, 2) plaintiffs

1 willfully interfered with defendant Green Cab LLC's right to  
2 possess and use King County taxicab licenses, and 3)  
3 defendant Green Cab LLC had a possessory or other property  
4 interest in these taxicab licenses.

5 Number 43. If you find for defendant Green Cab LLC on its  
6 claim of conversion against plaintiffs then defendant Green  
7 Cab LLC is entitled to restitution or the restoration of any  
8 benefit conferred on the plaintiffs. This means that  
9 defendant Green Cab LLC is entitled to the reasonable value  
10 to plaintiffs of the property allegedly converted.

11 Number 44. A member of a limited liability company owes  
12 fiduciary duty to the company and to the other members of  
13 loyalty and care. Including the duty to avoid secret  
14 profits, self-dealing, and conflicts of interest.

15 Number 45. Plaintiffs' breach of fiduciary claim --  
16 fiduciary duty claim. To prove their claim of breach of  
17 fiduciary duty against defendants plaintiffs must prove 1)  
18 that defendants breached a fiduciary duty owed to the  
19 plaintiffs, 2) that the breach or breaches constitute gross  
20 negligence, intentional misconduct, or a knowing violation of  
21 the law, 3) that plaintiffs incurred monetary damages, and 4)  
22 that plaintiffs' damages were proximately caused by the  
23 defendants' breach or breaches.

24 Number 46. Defendant Green Cab LLC's breach of fiduciary  
25 duty claim. To prove the claim of breach of fiduciary duty

1 against plaintiffs defendant Green Cab LLC must prove 1) that  
2 plaintiffs breached a fiduciary duty owed to the defendants,  
3 2) that the breach or breaches constitute gross negligence,  
4 intentional misconduct, or a knowing violation of the law, 3)  
5 that defendant Green Cab LLC incurred monetary damages, and  
6 4) defendant Green Cab LLC's damages were proximately caused  
7 by the it plaintiffs' breach or breaches.

8 Number 47 -- we're close -- it is the duty of the Court to  
9 instruct you as to had the measure of damages for the  
10 fiduciary duty claims. By instructing you on damages the  
11 Court does not mean to suggest for which party your verdict  
12 should be rendered.

13 If your verdict is for plaintiffs on their claim of breach  
14 of fiduciary duty then you must determine the amount that  
15 will reasonably and fairly compensate plaintiffs for such  
16 damages as you find were proximately caused by the  
17 defendants. The burden of proving damages rests upon the  
18 plaintiffs.

19 It is for you to determine based upon the evidence whether  
20 any particular element has been proved by a preponderance of  
21 the evidence.

22 If your verdict is for defendant Green Cab LLC on its claim  
23 of breach of fiduciary duty against plaintiffs then you must  
24 determine the amount of money that will reasonably and fairly  
25 compensate defendant Green Cab LLC for such damages as you

1 find were proximately caused by the plaintiffs. The burden  
2 of proving damages rests upon the defendants.

3 It is for you to determine based upon the evidence whether  
4 any particular element has been proved by a preponderance of  
5 the evidence.

6 Your award must be based upon evidence and not upon  
7 speculation, guess, or conjecture.

8 Number 48. When you begin to deliberate your first duty is  
9 to select a presiding juror. The presiding juror's  
10 responsibility is to see that you discuss the issues in this  
11 case in an orderly manner -- orderly and reasonable manner,  
12 that you discuss each issue submitted for your decision fully  
13 and fairly, and that each of you has a chance to be heard on  
14 every question before you.

15 You will be given the exhibits admitted in evidence these  
16 instructions and verdict forms for recording your verdict.  
17 Exhibits may have been marked by the court clerk and given a  
18 number but they do not go with you to the jury room during  
19 your deliberations unless they have been admitted into  
20 evidence.

21 The exhibits that have been admitted will be available to  
22 you in the jury room.

23 During your deliberations you may discuss any notes that  
24 you've taken during trial if you wish. You've been allowed  
25 to take notes to assist you in remembering clearly not to

1 substitute for your memory or the memories or notes of other  
2 jurors. Do not assume, however, that your notes are any more  
3 or less accurate than your memory. You will need to rely on  
4 your notes and your memory as to testimony presented in this  
5 case. Testimony will rarely if ever be repeated for you  
6 during the deliberations.

7 If after carefully reviewing the evidence and instructions  
8 you feel a need to ask the Court a legal or procedural  
9 question that you have been unable to answer, write the  
10 question out simply and clearly. In your question do not  
11 state how the jury has voted or in any other way indicate how  
12 your deliberations or proceeding. The presiding juror should  
13 sign and date the question and give it to the bailiff. I  
14 will confer with the lawyers to determine what response, if  
15 any, can be given.

16 In order to reach a verdict on any verdict form and to  
17 reach an answer to any question contained within any verdict  
18 form 10 of you must agree. The same 10 need not agree on  
19 every question within a verdict form. When 10 of you have  
20 agreed then the presiding juror will fill in the appropriate  
21 verdict forms. The presiding juror must sign the verdict  
22 whether or not the presiding juror agrees with it. The  
23 presiding juror will then inform the bailiff that you have  
24 reached a verdict and the bailiff will conduct you back into  
25 this courtroom where the verdict will be announced.

1 Now attached to your jury instructions are special verdict  
2 forms A through J. I am not reading those to you this  
3 afternoon. But they correspond to the claims that I  
4 described for you in the jury instructions.

5 Now are jurors wanting to take a recess before we begin  
6 closing arguments or are you ready to proceed with closing  
7 arguments? What's the general feeling of the group? 10  
8 minute break?

9 All right. Let's take a 10 minute recess. Thank you very  
10 much for your attention during the reading of the jury  
11 instructions.

12 (Jury is not present.)

13 JUDGE ANDRUS: Please be seated, everybody.

14 All right. We'll take a 10 minute break. Everybody shake,  
15 get the blood flowing in your legs again.

16 Closing arguments, I think we're going to have to limit 30  
17 and 30. I don't think we're going to be able to do more than  
18 that.

19 So, Mr. Kannin, if you want any rebuttal you need to  
20 reserve that out of the 30. All right?

21 MR. KANNIN: Yes, Your Honor.

22 JUDGE ANDRUS: Okay.

23 MR. KANNIN: I will do that.

24 JUDGE ANDRUS: Okay. Thank you very much.

25 MS. GORMLEY: Thank you, Your Honor.