

JOSE GARCIA,  
Plaintiff,

CASE NO. 03-22963-CIV-UNGARO-BENAGÉS  
/KLEIN

FILED  
2018-11-17  
EX-118  
C.C.

vs.

CAREY INTERNATIONAL, INC.,  
CAREY LIMOUSINE FLORIDA, INC.,  
CLUB LIMOUSINE SERVICE, INC.,  
and VINCE WOLFINGTON,

Defendants.

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MARTIN BOSNIAK and ROBERT  
SHAPIRO,

CASE NO. 03-23211-CIV-UNGARO-BENAGÉS  
/KLEIN

Plaintiffs,

vs.

CAREY INTERNATIONAL, INC.,  
CAREY LIMOUSINE FLORIDA, INC.,  
CLUB LIMOUSINE SERVICE, INC.,  
and VINCE WOLFINGTON,

Defendants.

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RICHARD CARTUN, and all others  
similarly situated,

CASE NO. 04-21074-CIV-UNGARO-BENAGÉS  
/KLEIN

Plaintiff,

vs.

 **TO BE FILED  
IN THIS CASE**

CAREY INTERNATIONAL, INC.,  
CAREY LIMOUSINE FLORIDA, INC.,  
CLUB LIMOUSINE SERVICE, INC.,  
and VINCE WOLFINGTON,

Defendants.

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04-71074-W-UMB

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

ANTHONY RODRIGUEZ, MARIA  
FERNANDEZ, JOHN McKNIGHT, and  
RODNEY WALKER,

CASE NO. 03-22442-CIV-UNGARO-BENAGES  
/KLEIN

Plaintiffs,

vs.

CAREY INTERNATIONAL, INC.,  
CAREY LIMOUSINE FLORIDA, INC.,  
CLUB LIMOUSINE SERVICE, INC.,  
and VINCE WOLFINGTON,

Defendants.

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MYRON LIEBERMAN,

CASE NO. 03-22752-CIV-UNGARO-BENAGES  
/KLEIN

Plaintiff,

vs.

CAREY INTERNATIONAL, INC.,  
CAREY LIMOUSINE FLORIDA, INC.,  
CLUB LIMOUSINE SERVICE, INC.,  
and VINCE WOLFINGTON,

Defendants.

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ALONZO BADIE,

CASE NO. 03-22962-CIV-UNGARO-BENAGES  
/KLEIN

Plaintiff,

vs.

CAREY INTERNATIONAL, INC.,  
CAREY LIMOUSINE FLORIDA, INC.,  
CLUB LIMOUSINE SERVICE, INC.,  
and VINCE WOLFINGTON,

Defendants.

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CARLTON FIELDS, P. A.

4000 International Place - 100 Southeast Second Street - Miami - Florida 33131-9101 - 305.530.0050

**DEFENDANTS' EMERGENCY MOTION TO STRIKE PLAINTIFFS' UNTIMELY  
FILED APPEAL OF THE MAGISTRATE'S REPORT AND RECOMMENDATION AND  
NOTICE OF DEPARTMENT OF LABOR REGULATION,  
OR ALTERNATIVELY, MOTION FOR EXTENSION OF TIME TO RESPOND**

Defendants, CAREY INTERNATIONAL, INC. ("Carey International"), CAREY LIMOUSINE FLORIDA, INC. ("Carey Florida"), CLUB LIMOUSINE SERVICE, INC. ("Club Limousine"), and VINCENT WOLFINGTON<sup>1</sup> ("Wolfington") (collectively, "Defendants"), by and through undersigned counsel and pursuant to this Court's September 20, 2004 Order Granting Defendants' Emergency Motion for Extension of Time File Written Objections to Magistrate Judge Klein's Report and Recommendation ("the September 20th Order") (DE #259 in *Rodriguez*), hereby files this Emergency Motion to Strike Plaintiffs' Untimely Filed Appeal of the Magistrate Judge's Order on Parties Partial Motion for Summary Judgment Concerning Damages Calculations and Plaintiffs' Notice of Department of Labor Regulation. Alternatively, Defendants request an extension to respond to these untimely filings. In support of this motion, Defendants states as follows:

On September 10, 2004, the Magistrate Judge issued a Report and Recommendation Granting in Part and Denying in Part Plaintiffs' and Defendants' Motions for Summary Judgment ("the Report"), in which the Magistrate Judge, perhaps inadvertently, shortened the time for the parties to file their objections to the Report, setting a deadline of September 20, 2004. (DE #245 in *Rodriguez*) The Report was first served on Defendants' counsel via facsimile on September 15, 2004.

On September 17, 2004, Defendants' filed an Emergency Motion for Extension of Time to Extension of Time File Written Objections to the Report. (DE #255 in *Rodriguez*) The Court granted such motion on September 17, 2004, as to the Defendants. (DE #259 in *Rodriguez*)

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<sup>1</sup> Wolfington files this Motion only as to those actions in which he has been served individually or in which he has voluntarily filed an Answer.

However, as to the Plaintiffs, the Court stated that Plaintiffs may have an extension to file objections only if they provide "documentary proof [when] they were first served with the report. Plaintiffs are advised that this enlargement of time is granted in the interest of fairness, and the Court shall require Plaintiffs to satisfy the above requirement with respect to any objections filed after September 20, 2004. Objections after this date which do not conform with this requirement shall be stricken without further notice and shall not be considered." (DE #259 at 2 in *Rodriguez*)

On September 24, 2004, Plaintiffs apparently filed objections to the Report. (DE #276 in *Rodriguez*). Although Plaintiffs claim that such objections were served on September 27, 2004, Defendants have no record of receiving them. Defendants' response to the objections would due on October 12, 2004.

On October 6, 2004, Defendants received Plaintiffs' Notice of Department of Labor Regulation (DE #336 in *Rodriguez*), which was allegedly served by mail on Saturday, October 2, 2004.<sup>2</sup> It was upon receipt of the notice that Defendants first realized that Plaintiffs had actually filed any objections. Defendants obtained a copy of these objections from the Court's electronic docket on October 6, 2004.

First and foremost, Plaintiffs' objections should be stricken as untimely, because they were not filed by September 20, 2004. Plaintiffs were not entitled to an extension because they failed to comply with the Court's September 20<sup>th</sup> Order, which specifically required them to provide documentary proof to the Court in order to justify an extension. Instead, Plaintiffs

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<sup>2</sup> Although Plaintiffs' certificate of service and postage meter printout are both dated October 2, 2004, the envelope used by Plaintiffs was actually stamped by the U.S. Postal Service on October 4, 2004. See Copy of Mailing Envelope, attached hereto as Exhibit "A." The Notice was not received by undersigned counsel until mid-morning on October 6, 2004. Undersigned counsel have long suspected that the regular practice of Plaintiffs' counsel is to print postmarks from a postage meter in advance, on the date that papers are required to be served, but in reality place them in the mail at a later date. The envelope attached hereto is irrefutable proof that, at least on this occasion, Plaintiffs have done precisely that, thereby violating this Court's deadlines.

simply assert that they “did not receive the Order by facsimile any sooner than the Defendants. (DE #276 at 4 in *Rodriguez*) However, such statement is not documentary proof, because Plaintiffs failed to provide the Court with a copy of the dated facsimile transmittal to prove that the Plaintiffs received the Court’s September 17<sup>th</sup> Order no sooner than the Defendants. As no such documentary proof was produced by Plaintiffs, Plaintiffs were not entitled to an extension and their objections should be stricken from the record in these cases.

In addition, the untimely filed Notice of Department of Labor Regulation (DE #336 in *Rodriguez*) served on October 2, 2004, should also be stricken, because it was served well after both September 20 and 24, 2004.

Alternatively, Defendants request an extension until October 18, 2004, in order to respond to the objections, because they were never served with the objections and did not receive a copy of the of them until October 6, 2004.

### CONCLUSION

Defendants respectfully request that the Court enforce its September 20<sup>th</sup> Order, and strike Plaintiffs’ Untimely Filed Appeal of the Magistrate Judge’s Order on Parties Partial Motion for Summary Judgment Concerning Damages Calculations and Notice of Department of Labor Regulation from the record in these cases. Alternatively, Defendants request the Court grant Defendants an extension until October 18, 2004, in order to respond to the objections.

**CERTIFICATE OF CONFERRAL**

Pursuant to Local Rule 7.1, undersigned counsel certifies that Plaintiffs' counsel was contacted via facsimile with respect to the relief sought herein, but failed to respond to such conferral as of the filing of this motion.

**CERTIFICATE OF EMERGENCY**

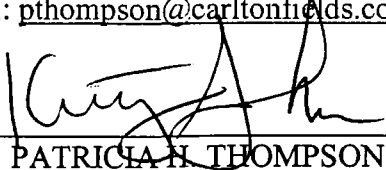
Pursuant to Local Rule 7.1(E), Defendants submit that the instant motion is filed on an emergency basis due to the short period of time available to Defendants to prepare their response memorandum, should the Court deny this motion. Specifically, Defendants' response memorandum would currently be due on October 12, 2004.

**CERTIFICATE OF SERVICE**

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via Facsimile and U.S. Mail this 11<sup>th</sup> day of October, 2004, to **Chris Kleppin, Esquire**, Glasser, Boreth Ceasar & Kleppin, Counsel for Plaintiffs, 8751 W. Broward Boulevard, Suite 105, Plantation, Florida 33324.

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By: \_\_\_\_\_

  
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