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8 Counsel for Plaintiffs
FRIAS HOLDING COMPANY and
ACE CAB, INC.
9

10 UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

11
12 FRIAS HOLDING COMPANY, a Nevada
corporation, ACE CAB, INCORPORATED,
13 a Nevada corporation,

14 Plaintiff,

15 v.

16 REGIONAL TRANSPORTATION
COMMISSION OF SOUTHERN NEVADA,

17 Defendant.
18
19
20
21
22

Case No.

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF**

- (1) Trademark Infringement under 15 U.S.C. § 1114
- (2) Unfair Competition under 15 U.S.C. § 1125(a)
- (3) Common Law Trademark Infringement
- (4) Deceptive Trade Practices under N.R.S. 598.0903, et seq.
- (5) State Trademark Dilution under NRS 600.435
- (6) Intentional Interference with Prospective Economic Advantage

23 For their complaint against Defendant, FRIAS HOLDING COMPANY and ACE CAB
24 INCORPORATED ("Plaintiffs," "Frias" or "Ace Cab") complain and allege as follows:

NATURE OF ACTION

25
26 1. This is an action for trademark infringement and unfair competition under
27 federal statutes, with pendent claims for common law trademark infringement, state
28 deceptive trade practices, and intentional interference with prospective economic

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1 advantage. FRIAS HOLDING COMPANY and ACE CAB, INC., seek damages, attorneys'
2 fees, costs, and preliminary and permanent injunctive relief.

3 **JURISDICTION**

4 2. This Court has subject matter jurisdiction over this case pursuant to 28 U.S.C.
5 §§1331 and 1338(a). This Court has supplemental jurisdiction over Defendant's state law
6 claims pursuant to 28 U.S.C. § 1367(a). This Court has personal jurisdiction over
7 Defendant based upon the following: (a) it is the transportation-planning agency for
8 Southern Nevada and is based in Las Vegas, Nevada; (b) it was created by Nevada State
9 Statute; and (c) it is responsible for maintaining a transportation system in Southern
10 Nevada.

11 3. Venue is proper in the United States District Court for the District of Nevada
12 under 28 U.S.C. § 1391(b) and (c). Venue lies in the unofficial Southern Division of this
13 Court.

14 **PARTIES**

15 4. FRIAS HOLDING COMPANY is a Nevada corporation with its principal place
16 of business in Las Vegas, Nevada.

17 5. ACE CAB, INC., is a Nevada corporation with its principal place of business in
18 Las Vegas, Nevada.

19 6. Defendant The REGIONAL TRANSPORTATION COMMISSION OF
20 SOUTHERN NEVADA (the "RTC"), is a agency organized under the laws of the State of
21 Nevada.

22 **ALLEGATIONS COMMON TO ALL COUNTS**

23 **STANDARD FACTS REGARDING PLAINTIFFS**

24 7. In or around 1962, Plaintiffs' founder, Charlie Frias, purchased ABC Union
25 Cab Company which at that time operated in and around Las Vegas, Nevada.

26 8. Within a short period of time, Charlie Frias purchased additional companies
27 including Ace Cab, Vegas-Western Cab and A-North Las Vegas Cab companies, and later
28 founded Virgin Valley Cab.

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1 9. In or around 1975, Charlie Frias, entered into the luxury limousine
2 transportation market by establishing Las Vegas Limousines to meet the demands created
3 by the increasing number of resorts being built in Las Vegas.

4 10. Charlie Frias, and the Frias name have become well-known in the Nevada
5 transportation market as the source of reputable and reliable public transportation services
6 for almost fifty (50) years.

7 11. Plaintiff, FRIAS HOLDING COMPANY is the holding company for five (5) of
8 the Frias cab companies including ACE CAB, INC.

9 12. ACE CAB, INC., was incorporated in Nevada in November 1963, and since
10 that time has been continuously using the ACE name and mark between the public in
11 relation to transportation services in Nevada, serving both tourists and local in the Las
12 Vegas valley.

13 13. The ACE name and mark is among the most widely recognized names in the
14 cab and transportation industries in Las Vegas, and throughout the region. Almost two
15 hundred cabs in a day travel on the streets, highways, and throughways of Clark County
16 using the ACE brand name. Ace Cab offers high quality services and has served millions
17 of people in the region in the almost fifty (50) years since its creation.

18 14. Frias and its affiliates have spent substantial sums of money to advertise and
19 promote the ACE Marks in print, broadcast media and on the Internet through the Frias
20 web sites, accessible at <lvocab.com>. In addition, consumers order a substantial numbers
21 of Ace Cab's transportation services through the Frias websites, from the telephone
22 directory and yellow pages, and from seeking cab services on the streets, and at all the
23 hotels, casinos, airport and at other businesses in and around Las Vegas, and beyond.

24 15. Frias has made extensive use of the ACE Marks on, among other things,
25 signage, sales and promotional materials, including displayed on the cabs themselves as
26 they drive around, Las Vegas, and elsewhere in Nevada and has made the ACE name
27 famous for cab service in Southern Nevada.

28 16. Frias is the owner of a federal registration for the ACE CAB Mark, Reg. No.

1 3,666,230 for "Hired Car Transport; Taxi Transportation services, in International Class 39)
2 (The "ACE" mark).

3 17. The federal registration claims a date of first use of the ACE mark as January
4 29, 1964.

5 **FACTS REGARDING DEFENDANT**

6 18. Upon information and belief, RTC is a state of Nevada agency charged with
7 providing public transportation services, including bus services, throughout Nevada.

8 19. Upon information and belief, the RCT has been offering its transportation
9 services under various names and marks including the Deuce, which services the Las
10 Vegas Strip, the Max and the Silver Star line. Executives at the RTC were award of ACE
11 branded cabs by at least 2009.

12 20. Upon information and belief, on or about March 28, 2010, RTC launched two
13 new rapid transit services in Las Vegas under the ACE Gold Line and ACEExpress brands.

14 21. On or about, April 8, 2010, RTC issued a press release celebrating the
15 ground breaking for a new rapid transit line, the ACE Green Line, which is expected to
16 begin service in 2011.

17 22. By using a name containing ACE trademarks, Defendant was attempting to
18 trade on the reputation and goodwill of Ace Cab which has been offering transportations
19 services to the public in Nevada for almost fifty years.

20 23. By using a name containing ACE trademarks, Defendant was and is
21 attempting to create an association between their infringing ACE names and the ACE
22 trademarks.

23 24. The ACE mark at issue in this case was famous and distinctive in Las Vegas
24 at the time Defendant began using the ACE name in March 2010, because it had been
25 used for almost fifty years and had gained a reputation in the region as the source of
26 reliable, public transportation services.

27 25. Upon information and belief, the Defendant began using the infringing name
28 with the bad faith intent to profit from the well-known ACE marks.

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1 26. Upon information and belief, the Defendant has no trademark or other
2 intellectual property rights in the infringing name.

3 27. Upon information and belief, the Defendant had no prior use of the infringing
4 ACE name in connection with the bona fide offering of any goods or services in public
5 transportation or otherwise in Southern Nevada.

6 28. Upon information and belief, the Defendant intended to divert customers from
7 the Plaintiffs' transportation services to its own services under the ACE name in manner
8 that could harm the goodwill represented by the ACE marks.

9 29. ACE marks incorporated in Defendant's marks are distinctive and well-known
10 having been using in this region for almost fifty years and have acquired a degree of fame
11 amongst the members of the public that use public transporters such as cabs.

12 30. Upon information and belief, the Defendant did not believe or have
13 reasonable grounds to believe that the use of the ACE mark was a fair use or otherwise
14 lawful.

15 **FIRST CLAIM FOR RELIEF**
16 (Trademark Infringement under
the Lanham Act, 15 U.S.C. § 1114)

17 31. Plaintiffs incorporate the allegations in the preceding paragraphs as if fully set
18 forth herein.

19 32. Defendant has used and/or is using in commerce a name which contains the
20 ACE trademark, and, thus is confusingly similar to the ACE names and trademarks.

21 33. Defendant's use in commerce of Defendant's marks and/or a mark
22 confusingly similar to Plaintiffs' trademarks for Defendant's services, and Defendant's use
23 of the ACE name on its transportation services and associated web site identified in the
24 Allegations Common to All Counts section above, constitutes a reproduction, copying,
25 counterfeiting, and colorable imitation of ACE trademarks in a manner that is likely to cause
26 confusion or mistake or is likely to deceive consumers.

27 34. By using ACE marks and/or marks confusingly similar to Plaintiffs' trademarks
28 with the knowledge that Plaintiffs own and have used, and continue to use, their trademark

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1 in Las Vegas, and beyond, Defendant has intended to cause confusion, cause mistake, or
2 deceive consumers.

3 35. Defendant is using a mark substantially identical to and/or confusingly similar
4 to ACE trademarks in connection with the sale, offering for sale or advertising of
5 transportation services in a manner that is likely to cause confusion, or to cause mistake, or
6 to deceive consumers as to an affiliation, connection, or association with Ace Cab or as to
7 the origin, sponsorship, or approval of Defendant's services or commercial activities by Ace
8 Cab.

9 36. Defendant's use of ACE marks and/or marks confusingly similar to Plaintiffs'
10 trademarks has created a likelihood of confusion among consumers who may falsely
11 believe that Defendant's transportation services are associated with Plaintiffs'
12 transportation services, or Plaintiffs sponsor or approve of Defendant's services or
13 commercial activities.

14 37. As a direct and proximate result of Defendant's infringement, Plaintiffs have
15 suffered, and will continue to suffer, monetary loss and irreparable confusion injury to their
16 business, reputation, and goodwill.

17 **SECOND CLAIM FOR RELIEF**
18 (Unfair Competition under the
Lanham Act, 15 U.S.C. § 1125(a))

19 38. Plaintiffs incorporate the allegations in the preceding paragraphs as if fully set
20 forth herein.

21 39. Defendant's use in commerce of marks identical and/or confusingly similar to
22 Plaintiffs' trademarks in connection with Defendant's transportation services, constitutes a
23 false designation of origin and/or a false or misleading description or representation of fact,
24 which is likely to cause confusion, cause mistake, or deceive as to affiliation, connection, or
25 association with Plaintiffs, or as to the origin, sponsorship, or approval of Defendant's
26 services or commercial activities.

27 40. Defendant's use in commerce of ACE marks and/or marks confusingly similar
28 to ACE trademarks with the knowledge that Plaintiffs own and have used, and continue to

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1 use, their trademarks constitutes intentional conduct by Defendant to make false
2 designations of origin and false descriptions about Defendant's services and commercial
3 activities.

4 41. As a direct and proximate result of such unfair competition, Plaintiffs have
5 suffered, and will continue to suffer, monetary loss and irreparable injury to their business,
6 reputation, and goodwill.

7 **THIRD CLAIM FOR RELIEF**
8 (Common Law Trademark Infringement)

9 42. Plaintiffs incorporate the allegations in the preceding paragraphs as if fully set
10 forth herein.

11 43. By virtue of having used and continuing to use the ACE trademarks for almost
12 fifty years, Plaintiffs have acquired common law rights in those marks.

13 44. Defendant's use of marks identical and/or confusingly similar to ACE
14 trademarks infringes Plaintiffs' common law rights in their trademarks, and this use is likely
15 to cause confusion, mistake, or deception among consumers, who will believe that
16 Defendant's transportation services, originate from, or are affiliated with, or endorsed by
17 Ace Cab and Frias when, in fact, they are not.

18 45. As a direct and proximate result of Defendant's infringement of Plaintiffs'
19 common law trademark rights under Nevada and other common law, Plaintiffs have
20 suffered, and will continue to suffer, monetary damages and irreparable injury to their
21 business, reputation, and goodwill.

22 **FOURTH CLAIM FOR RELIEF**
23 (Deceptive Trade Practices
under N.R.S. § 598.0915)

24 46. Plaintiffs incorporate the allegations in the preceding paragraphs as if fully set
25 forth herein.

26 47. Upon information and belief, in the course of conducting Defendant's
27 business, Defendant knowingly made false representations as to affiliation, connection
28 and/or association with Plaintiffs by using a mark confusingly similar to the ACE trademarks

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1 and otherwise engaged in deceptive trade practices.

2 48. As the direct and proximate result of Defendant's conduct, Plaintiffs have
3 suffered, and will continue to suffer, monetary damages and irreparable injury to their
4 business, reputation, and goodwill.

5 **FIFTH CLAIM FOR RELIEF**
6 (Trademark Dilution under NRS 600.435)

7 49. Plaintiffs incorporate the allegations in the preceding paragraphs as if fully set
8 forth herein.

9 50. The ACE mark for cabs has become famous in Southern Nevada as a result
10 of its wide public use in servicing both local residents and visiting tourist to the region.

11 51. Ace Cabs have regular and repeat customers who rely upon the
12 transportation services provided to them by the company under the ACE brand.

13 52. Defendant adopted the ACE mark for its business after the ACE mark had
14 become famous for transportation services in the state of Nevada.

15 53. Defendant's use of the ACE mark is causing the ACE mark to be diluted and
16 become less distinctive in Southern Nevada for transportation services provided by the
17 Plaintiff, Ace Cab, Incorporated.

18 **SIXTH CLAIM FOR RELIEF**
19 (Intentional Interference with
Prospective Economic Advantage)

20 54. Plaintiffs incorporate the allegations in the preceding paragraphs as if fully set
21 forth herein.

22 55. Upon information and belief, at the time Defendant adopted and began using
23 the ACE name and marks and since that time, Defendant knew and has known that Ace
24 Cab is in the business of providing public transportation services in Las Vegas, and in the
25 surrounding region, and that Plaintiffs have been providing these services for almost fifty
26 years.

27 56. Upon information and belief, Defendant committed acts intended or designed
28 to disrupt Plaintiffs' prospective economic advantage arising from advertising and/or

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1 providing these services.

2 57. Defendant's actions have disrupted or are intended to disrupt Plaintiffs'
3 business by, among other things, diverting the public away from Plaintiffs' transportation
4 services to its own.

5 58. Defendant has no legal right, privilege or justification for its conduct.

6 59. As a direct and proximate result of Defendant's intentional interference with
7 Plaintiffs' prospective economic advantage, Plaintiffs have suffered, and will continue to
8 suffer, monetary damages and irreparable injury.

9 60. Based on the intentional, willful and malicious nature of Defendant's actions,
10 Plaintiffs are entitled to recover exemplary damages and reasonable attorneys' fees and
11 costs incurred in connection with this action.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiffs, FRIAS HOLDING COMPANY and ACE CAB, INC.,
14 respectfully pray that the Court grant the following relief:

15 A. A preliminary and permanent injunction prohibiting Defendant, its respective
16 officers, agents, servants, employees and/or all persons acting in concert or participation
17 with it, from: (1) using ACE trademarks or confusingly similar variations thereof, alone or in
18 combination with any other letters, words, letter strings, phrases or designs, in commerce
19 or in connection with any business or for any other purpose (including, but not limited to, for
20 transportation services); and (2) registering, owning, leasing, selling, or trafficking in any
21 names, including but not limited to domain names, containing ACE trademarks or
22 confusingly similar variations thereof, alone or in combination with any other letters, words,
23 phrases or designs;

24 B. An award of compensatory, consequential, statutory, and punitive damages to
25 Plaintiffs in an amount to be determined at trial;

26 C. An award of interest, costs and attorneys' fees incurred by Plaintiffs in
27 prosecuting this action; and

28 . . .

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D. All other relief to which Plaintiffs are entitled.

DATED this 5th day of May, 2010.

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