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17 **UNITED STATES DISTRICT COURT**  
18 **DISTRICT OF NEVADA**

19 DONALD WALDEN, JR., et al., etc.,

20 Plaintiffs,

21 v.

22 THE STATE OF NEVADA, EX REL. NEVADA  
23 DEPARTMENT OF CORRECTIONS, and  
24 DOES 1-50,

25 Defendants.

Case No.: 3:14-cv-00320-MMD-CSD

**PLAINTIFFS' MOTION FOR  
PRELIMINARY APPROVAL OF THE  
COLLECTIVE AND CLASS ACTION  
SETTLEMENT**

DATE: December 1, 2022  
TIME: 2:30 p.m.  
DEPT: Remote (Zoom)  
JUDGE: Hon. Miranda M. Du

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COME NOW Plaintiffs DONALD WALDEN JR., NATHAN ECHEVERRIA, AARON DICUS, BRENT EVERIST, TRAVIS ZUFELT, TIMOTHY RIDENOUR, and DANIEL TRACY, on behalf of themselves and all other similarly situated employees, and hereby move this honorable Court pursuant to Rule 23 of the Federal Rules of Civil Procedure and the Fair Labor Standards Act (FLSA) for an order:

- (1) Preliminarily approving the collective and class action settlement with Defendant The State of Nevada, Ex Rel. Nevada Department of Corrections;
- (2) Preliminarily certifying the Rule 23 Class for purposes of settlement;
- (3) Scheduling a hearing on the question of whether the proposed settlement should be finally approved as fair, reasonable, and adequate as to the class members; and
- (4) Approving the manner and form of Notice and proposed distribution plan to class members.

This motion is based on this Motion, the following Memorandum of Points and Authorities in support thereof, the settlement agreement filed herewith, the declarations submitted in support of this Motion, all pleadings and papers on file in this action, and such other matters as the Court may consider.

Dated: November 11, 2022

*/s/Joshua D. Buck*  
\_\_\_\_\_  
JOSHUA BUCK  
THIERMAN BUCK LLP  
Attorneys for Plaintiffs

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Plaintiffs Donald Walden Jr., Nathan Echeverria, Aaron Dicus, Brent Everist, Travis Zufelt, Timothy Ridenour, and Daniel Tracy (“Plaintiffs”) seek preliminary approval of this non-reversionary \$55 million collective and class action settlement pursuant to Rule 23 of the Federal Rules of Civil Procedure and the Fair Labor Standards Act (FLSA). This settlement is the product of over eight (8) years of hard-fought litigation, complete with two separate appellate proceedings, a failed writ petition to the United States Supreme Court, and numerous dispositive motions. Needless to say, Plaintiffs and Defendant The State of Nevada, Ex Rel. Nevada Department of Corrections (“Defendant” or “NDOC”) (collectively, Plaintiffs and Defendant are referred to as “the Parties”) were armed with sufficient facts and legal precedent to adequately assess the relative strengths and weaknesses of the few remaining contested issues involved in the action. The Parties were sufficiently informed of the risks and rewards of settlement and were only able to reach a resolution in this action with the assistance of United States District Court Magistrate Judge Craig S. Denney.

The total settlement amount of \$55 million (“Maximum Settlement Amount”) represents a recovery of approximately 41% of the total potential wage-related exposure in this action, including penalties and interest, assuming 45 minutes of uncompensated overtime per shift worked.<sup>1</sup> See Exhibit 2 at ¶ 11, Joint Stipulation of Collective and Class Action Settlement and Release, hereinafter “Settlement”, attached to the Declaration of Joshua D. Buck (“Buck Dec.”) at ¶ 3; see also Buck Dec. at ¶ 32. The estimated settlement amount that will be made available for distribution to all collective and class members (“Net Settlement Amount”) will be

---

<sup>1</sup> If the Court were to deny Plaintiffs’ pending motion to amend the complaint to include unpaid time passing through security screening, the settlement amount would represent almost 76% of the total wage-related exposure. Likewise, the settlement provides relief to putative class members who did not opt in to the FLSA class but who would be included within the putative Rule 23 state law claims that Plaintiffs seek to reassert through their motion to amend. Absent a favorable ruling on Plaintiffs’ motion to amend or the relief provided in this settlement, such putative class members would receive no compensation from this action and many would be time-barred from pursuing relief in a separate action of their own.

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1 approximately \$36,276,666.67. The Net Settlement Amount represents the Maximum  
 2 Settlement Amount minus (i) \$20,000 in class representative service awards (“Service Awards”)  
 3 to each Named Plaintiff (or \$140,000 in total) for the risk they undertook in initiating this action  
 4 and the work they performed on behalf of similarly situated employees; (ii) \$18,333,333.33 in  
 5 attorneys’ fees, which represents 1/3 of the common settlement fund, for all the unpaid hours  
 6 invested in prosecuting this action and the extreme risk counsel took in litigating this action on a  
 7 contingency fee basis for the last eight-plus years; (iii) reimbursement of actual out-of-pocket  
 8 expenses of up to \$200,000 incurred by counsel in litigating this action; and (iv) an estimated  
 9 amount of up to \$50,000 in third-party settlement administrator fees and costs for administering  
 10 the settlement notification process and distribution of settlement funds. Settlement at ¶ 11(d).

11 For all the reasons set forth below, Plaintiffs submit that the Settlement should be  
 12 preliminarily adjudged to be a fair, adequate, and reasonable resolution of the litigation.  
 13 Accordingly, the Settlement should be preliminarily approved, the Rule 23 class should be  
 14 certified for settlement purposes, a final approval hearing should be set, and the Notice and  
 15 distribution plan should be approved for mailing.

## 16 **II. LITIGATION HISTORY**

17 This action has been heavily litigated over the past eight (8) years. There have been  
 18 multiple challenges to the pleadings, exhaustive discovery, two (2) separate appellate  
 19 proceedings (one to the Ninth Circuit and one to the Nevada Supreme Court), and various  
 20 dispositive motions.

### 21 **A. The Pleadings**

22 On May 12, 2014, Plaintiffs filed the original complaint against Defendant in the First  
 23 Judicial District for the State of Nevada for alleged unpaid wages on behalf of themselves and  
 24 similarly situated individuals under the FLSA and Nevada law, including four causes of action:  
 25 (1) Failure to pay wages for all hours worked in violation of 29 U.S.C. § 201, et seq.; (2) Failure  
 26 to pay overtime in violation of 29 U.S.C. § 207; (3) Failure to pay minimum wages in violation  
 27 of the Nevada Constitution; and, (4) Failure to comply with the terms of its contract with  
 28 Plaintiffs to pay an agreed upon hourly wage for all hours worked. (ECF No. 1 at 7-21.)

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1 Defendant removed this action to federal court and filed its Answer on June 24, 2014. (ECF  
 2 Nos. 1, 3). Plaintiffs filed the operative First Amended Collective and Class Action Complaint  
 3 (“FAC”) on April 19, 2017, alleging five (5) causes of action: (1) Failure to Pay Wages for All  
 4 Hours Worked in Violation of 29 U.S.C. § 201, et. seq; (2) Failure to Pay Overtime in Violation  
 5 of 29 U.S.C. § 207; (3) Failure to Pay Minimum Wages in Violation of the Nevada  
 6 Constitution; (4) Failure to Pay Overtime in Violation of NRS 284.180; and (5) Breach of  
 7 Contract. (*Id.*) Following the District Court’s resolution of Defendant’s motion to dismiss  
 8 (discussed below), Defendant filed its operative Answer on April 19, 2018. (ECF No. 175).  
 9 Defendant moved to dismiss and strike Plaintiffs’ FAC on numerous grounds. The District  
 10 Court granted, in part, and denied, in part, Defendant’s motions. (ECF No. 166.) The Court: (a)  
 11 rejected Defendant’s argument that the pre- and post-shift activities at issue in this case were  
 12 non-compensable, (b) deferred on the question of whether Plaintiffs had asserted a valid claim  
 13 under the Nevada Constitution, (c) dismissed Plaintiffs’ NRS 284.180 claim without prejudice  
 14 for failing to exhaust administrative remedies, and (d) dismissed Plaintiffs’ breach of contract  
 15 claim. *Id.*<sup>2</sup> At the time of settlement, Plaintiffs had filed a motion for leave to amend the FAC  
 16 to: (1) reassert their claims under Nevada state law following administrative exhaustion, (2)  
 17 update their claims and legal allegations to reflect the current procedural posture of the case and  
 18 to add a claim for compensation for the security screening activities, and (3) update their factual  
 19 allegations to reflect changes in the Named Plaintiffs’ employment information and status since  
 20 the filing of the FAC. (ECF No. 408). That motion was fully briefed and a hearing was set for  
 21 September 22, 2022. (ECF No. 420). The hearing on Plaintiffs’ motion to for leave to amend  
 22 the FAC was vacated as a result of the Settlement reached by the Parties. (ECF No. 422).

### 23 **B. Conditional Certification**

24 Plaintiffs filed their motion for conditional certification under § 216(b) of the FLSA on  
 25 August 6, 2014, (ECF No. 7). The District Court granted FLSA certification on March 16, 2015,  
 26

---

27 <sup>2</sup> The parties stipulated to dismiss Plaintiffs’ minimum wage claim without prejudice  
 28 shortly after the District Court’s decision to defer ruling on that claim. (ECF No. 168).

1 on behalf of the following collective group: “all current and former non-exempt hourly paid  
 2 employees, including sergeants and lieutenants, who were employed by NDOC as correctional  
 3 officers at any time from May 12, 2011, to the present.” (ECF No. 45). The District Court also  
 4 granted Plaintiffs’ request to toll the statute of limitations during the pendency of the motion for  
 5 conditional certification, which was 212 days. Accordingly, any correctional officer (“CO”) who  
 6 filed a consent to join with the Court within three years of their last shift worked, plus the 212  
 7 days for tolling, was entitled to join in this action and seek damages for that time period up until  
 8 the present or the last shift the CO worked for Defendant if the CO is no longer employed with  
 9 NDOC. Defendant provided Plaintiffs with an initial FLSA Class list of 3,075 potential opt-in  
 10 plaintiffs. Plaintiffs caused to have these COs notified of this action, and 546 COs decided to join  
 11 in this action after the initial mailing.<sup>3</sup> Since the initial mailing of the FLSA Notice, an additional  
 12 218 COs have filed consents to join. (ECF Nos. 217, 225, 226, 228, 229, 231-239, 244-246, 248,  
 13 250, 252, 262, 263, 267, 268, 322, 323, 325, 326, 332, 333, 341, 342, 358, 359, 383, 390, 391,  
 14 393, 398, 399, 401, 403 and 405). There are currently 748 opt-in plaintiffs involved in this  
 15 action.<sup>4</sup>

### 16 C. Discovery

17 The Parties have taken nearly 40 depositions, produced 24,000-plus pages of documents,  
 18 inspected seven correctional facilities, distributed notification to 3,075 COs, and exchanged  
 19

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20 <sup>3</sup> There were two separate Notices sent out in this case because NDOC failed to  
 21 provide a complete class list for the original mailing of April 13, 2015, which had a due date  
 22 of June 30, 2015. The first mailing on April 13, 2015, included 2,944 persons. The Court  
 23 ordered that a supplemental class list and second Notice should be provided on October 6,  
 24 2015. *See* ECF No. 75. That second mailing list included an additional 131 persons, for a  
 total of 3,075. The second Notice was mailed on October 16, 2015, with a deadline of  
 November 30, 2015.

25 <sup>4</sup> Three COs who signed consent to join forms have since withdrawn their consents (C.  
 26 Trautman and J. Baumgras, ECF No. 69, and K. Beaver, ECF No. 123). Thirteen COs were  
 27 dismissed on May 24, 2022, when the Court granted NDOC’s motion to dismiss non-  
 28 participating Plaintiffs (R. Ahmed, J. Baros, T. Berry, D. Boone-Sharpe, A. Bronk, J. Hurt, A.  
 Matta, T. McCastle, J. Okivelas, M. Poland, S. Sommervold, P. Bellinger, and T. Maguire). *See*  
 ECF No. 407.

1 expert reports. Specifically, in addition to the 400 plus separate docket entries (many including  
2 multiple Exhibits) the following discovery has taken place:

3 **Depositions:** Plaintiffs took the depositions of four (4) wardens between April 2015 and  
4 September 2015; Plaintiffs also took the deposition of NDOC’s PMK on payroll policies in  
5 September of 2015. NDOC took the depositions of the seven (7) named Plaintiffs—four of  
6 whom were deposed twice—first in September 2015 and again in September 2017. NDOC also  
7 took two rounds of opt-in Plaintiff depositions, nineteen (19) in November/December 2015 and  
8 an additional three (3) in 2017, with four (4) of the opt-ins also being deposed for the second  
9 time in 2017. The depositions of the three (3) experts in this litigation were taken in December  
10 2017.

11 **Written Discovery:** Each of the seven (7) Named Plaintiffs have responded to written  
12 Requests for Production (45 distinct requests not including subparts), Requests for Admissions  
13 (38 distinct requests) and Interrogatories (24 distinct requests not including sub-parts).  
14 Eighteen (18) opt-in Plaintiffs have each responded to Interrogatories (10 distinct requests).

15 **Disclosure Documents:** The Parties have exchanged some 24,000-plus pages of  
16 documents including but not limited to the following NDOC written policies, procedures, and  
17 operational directives: forty-six (46) separate Administrative Regulations (job requirements);  
18 “Posting Charts” (indicating how many COs are need at each post) for each of the correctional  
19 facilities located in the State of Nevada; “Post Orders” (additional specific job requirements,  
20 staffing requirements, and standard responsibilities for each post, *i.e.*, gun tower, culinary,  
21 gymnasium, search and escort, etc.); “Operating Procedures” (additional job requirements  
22 including but not limited to “Reporting for Duty”, “Posting of Shifts/Overtime”, “Use of  
23 Restraints” “Keys”, “Armory and Weapons”, “Perimeter and Gate Control”, etc.). In addition,  
24 timesheets, payroll history, and personnel files for each of the seven (7) named Plaintiffs have  
25 been produced and reviewed; time and payroll data for the deposed opt-in Plaintiffs, as well as  
26 portions of their personnel files have been produced and used in deposition questioning.

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1           **Prison Site Visits:** The Parties participated in seven (7) prison facility site visits that  
2 were videotaped over the course of October 17 through 19, 2017 and used in the various  
3 motions and expert reports.

4           **Expert Discovery:** NDOC has deposed Plaintiffs’ two experts and Plaintiffs have  
5 deposed NDOC’s expert, all taking place in December 2017. Each expert has provided a  
6 written report and a rebuttal report.

7           **D. Appellate Proceedings**

8           Throughout the course of this litigation, there have been two (2) separate appellate  
9 proceedings, including a writ petition to the United States Supreme Court. First, Defendant  
10 appealed the District Court’s decision with respect to its waiver of sovereign immunity from suit  
11 by removal to federal court. Plaintiffs prevailed in the appeal. The Ninth Circuit held that that  
12 Defendant had waived its immunity from being sued in federal court by removing the case from  
13 state court. *Walden v. Nevada*, 945 F.3d 1088, 1095 (9th Cir. 2019) (“holding that Nevada  
14 waived its Eleventh Amendment immunity as to Plaintiffs’ FLSA claims when it removed this  
15 case to federal court.”). Defendant petitioned the Ninth Circuit for a panel rehearing and for *en*  
16 *banc* reconsideration of the decision. Both were denied. Defendant also sought review of the  
17 Ninth Circuit’s decision by the United States Supreme Court, for which Plaintiffs were required to  
18 respond. The petition for a writ of certiorari was also denied.

19           Second, the Parties appeared before the Nevada Supreme Court to address the certified  
20 question from this Court as to whether Defendant had waived its sovereign immunity from  
21 liability and damages under the FLSA. Again, Plaintiffs prevailed. The Nevada Supreme Court  
22 held that “the plain text of NRS 41.031(1) leaves no room for construction: Nevada has waived  
23 the defense of sovereign immunity to liability under the FLSA.” *Echeverria v. State*, 495 P.3d  
24 471, 473 (Nev., 2021).

25           **E. Dispositive Motions**

26           Numerous dispositive motions were filed and resolved by this Court prior to settlement.  
27 This Court granted Plaintiffs’ motion for partial summary judgment on liability, concluding that  
28 the pre- and post-shift activities at issue in this case are compensable under the FLSA. (ECF

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1 No. 407). This Court concluded that “muster”, “collecting mail and gear”, and “pass down”,  
 2 were all compensable work activities. (*Id.* at pp. 19-26). The Court further concluded that  
 3 muster marks the beginning of the continuous workday, thereby identifying the start time when  
 4 COs should have received compensation. (*Id.* at 23). The Court also concluded that the post-  
 5 shift “pass down” and “returning gear” was likewise compensable. (*Id.* at p. 26).

6 The Court also denied all of Defendant’s motions: (1) denying Defendant’s motion for  
 7 summary judgment, (2) denying Defendant’s motion to decertify collective action, (3) denying  
 8 Defendant’s motion to exclude evidence from Plaintiffs’ experts; and (4) denying Defendant’s  
 9 motion to exclude “late-filed” opt-in plaintiffs. The only issues that remained for trial were  
 10 related to damages (e.g., the applicable statute of limitations and whether liquidated damages  
 11 are recoverable). (ECF No. 407).

### 12 **III. SETTLEMENT NEGOTIATION BACKGROUND**

13 The Parties attended three (3) formal mediations and/or settlement conferences prior to  
 14 reaching a resolution in this action. The Parties first attended a mediation on March 14, 2016,  
 15 with Carol Zucker, a Partner at Kamer Zucker Abbott who focuses on representing employers in  
 16 employment and labor law matters. The mediation was unsuccessful. Shortly after this  
 17 mediation, Defendant’s insurer appointed the attorneys at Wilson Elser to defend the action.

18 Six years later, on May 22, 2022, the Parties next attended a mediation with retired state  
 19 court judge Jennifer Togliatti. Representatives from Defendant’s insurer attended the mediation  
 20 via video conference. The Parties exchanged multiple offers and counteroffers of settlement but  
 21 were again unable to reach a resolution. The day after this unsuccessful mediation, this Court  
 22 entered its order resolving the outstanding dispositive motions. (ECF No. 407).

23 Pursuant to this Court’s order, the Parties attended a mandatory in-person settlement  
 24 conference with Magistrate Judge Denney on September 15, 2022. (ECF No. 409.) All seven  
 25 (7) Named Plaintiffs appeared in person and participated in the settlement conference.  
 26 Representatives for Defendant, including a representative from Defendant’s insurer, also  
 27 appeared in person. After a full day of discussions, with the helpful assistance of Magistrate  
 28 Judge Denney, the Parties ultimately reached a resolution of this action, the basic terms of which

1 were placed on the record and subsequently reduced to a long-form agreement. (ECF No. 421;  
2 Settlement.)

3 **IV. SUMMARY OF KEY SETTLEMENT TERMS**

4 **A. Approval of Board of Examiners (BOE) and Interim Finance Committee**  
5 **(IFC)**

6 Defendant has represented that all settlements of this size with the state of Nevada, and  
7 its political subdivisions and agencies, must be separately approved by the BOE and IFC. Buck  
8 Dec. at ¶ 30. Defendant promised to seek approval from the BOE on or before November 15,  
9 2022, and to seek approval of the IFC at the earliest IFC meeting following BOE approval.  
10 Settlement at ¶ 21.

11 **B. The Certified FLSA Collective and the Proposed Settlement Class**

12 This Court has certified (and refused to decertify) the FLSA collective. (ECF Nos. 45,  
13 407). Pursuant to the Settlement, the Parties seek to certify the following class for settlement  
14 purposes under Rule 23 of the Federal Rules of Civil Procedure and the FLSA (“Settlement  
15 Class”):

16 All current and former non-exempt hourly paid employees,  
17 including sergeants and lieutenants, who were employed by NDOC  
18 as correctional officers at any time during the Class Period.

19 Settlement at ¶ 1(y); *see also* Settlement at ¶ 1(f) (defining the “Class Period” as “May 21,  
20 2011, through the date of preliminary approval of this Settlement”). The proposed Settlement  
21 Class is comprised of the exact same individuals as the certified FLSA collective.

22 **C. The Settlement Consideration**

23 The Settlement provides a Maximum Settlement Amount of \$55 million. Settlement at ¶  
24 11(c). The Net Settlement Amount will be approximately \$36,276,666.67. The Net Settlement  
25 Amount represents the Maximum Settlement Amount minus: (i) \$20,000 in class representative  
26 service awards (“Service Awards”) to each Named Plaintiff (or \$140,000 in total) for the risk  
27 they undertook in initiating this action and the work they performed on behalf of the all  
28 similarly situated employees; (ii) \$18,333,333.33 in attorneys’ fees, which represents 1/3 of the

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1 common settlement fund, for all the unpaid hours invested in prosecuting this action and the  
2 extreme risk counsel took in litigating this action on a contingency fee basis for the last eight-  
3 plus years; (iii) reimbursement of the actual-out-of-pocket expenses of up to \$200,000 incurred  
4 by counsel in litigating this action; and (iv) an estimated amount of up to \$50,000 in third-party  
5 settlement administrator fees and costs for administering the settlement notification process and  
6 distribution of settlement funds. Settlement at ¶ 11(d).

7 **D. Release of Claims**

8 The release of claims only covers the causes of action that were or could have been  
9 asserted in this action based on the factual allegations asserted in the FAC. The release of  
10 claims specifically states as follows:

11 Upon final approval by the Court of this Settlement, and except as  
12 to such rights or claims as may be created by this Settlement, each  
13 Class Member who has not submitted a timely and valid Request  
14 for Exclusion and without the need to manually sign a release  
15 document, in exchange for the consideration recited in this  
16 Agreement, on behalf of himself/herself and on behalf of his/her  
17 current, former, and future heirs, executors, administrators,  
18 attorneys, agents, and assigns, shall and does hereby fully and  
19 finally release the Defendant and Released Parties from any and all  
20 state, federal and local claims arising from his/her employment  
21 including statutory claims, whether known or unknown, in law or  
22 in equity, including but not limited to claims under any legal  
23 theory for failure to pay minimum wage, failure to pay overtime  
24 compensation, failure to properly calculate overtime compensation,  
25 failure to pay for all hours worked, failure to provide meals and  
26 rest periods, failure to timely pay wages or compensation or final  
27 wages or compensation, failure to reimburse for business expenses,  
28 making illegal deductions from wages or compensation, failure to  
furnish accurate wage statements or other notices, failure to keep  
accurate records, and any and all claims for recovery of  
compensation, overtime pay, minimum wage, premium pay,  
interest and/or penalties of any kind whatsoever, whether known or  
unknown, whether based on common law, regulations, statute, or a  
constitutional provision, under state, federal or local law, arising  
out of the allegations made in the Action and that reasonably arise  
or could have arisen out of the facts alleged in the Action.  
Notwithstanding the foregoing, nothing in this Agreement releases  
any claims that cannot be released as a matter of law. The Notice

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1 mailed to the Settlement Class will specifically set forth the claims  
2 being released.

3 Settlement at ¶ 20.<sup>5</sup> The released parties are Defendant and its present and former officers,  
4 political subdivisions, employees, agents, attorneys, experts, affiliates, successors and/or  
5 assigns, insurers or reinsurers, employee benefit plans (and the trustees, administrators,  
6 fiduciaries, agents, representatives, insurers and reinsurers of such plans), and any individual or  
7 entity that could be jointly liable with any of them. Settlement at ¶ 1(u).

### 8 **E. Form and Procedure of Settlement Notice**

9 The form of notice of settlement (“Notice”) is attached to the Settlement at Exhibit A.<sup>6</sup>  
10 The Notice is written in plain English and easily understandable to the lay person. The Notice  
11 clearly and prominently notifies class members of their options with respect to the Settlement.  
12 The Notice informs class members that they do not need to do anything in order to participate in  
13 the Settlement to receive their settlement payment in exchange for them releasing their claims  
14 against Defendant. *See* Notice at pp. 1, 5. It also informs class members that they have the  
15 option of excluding themselves from the Settlement (opting-out) and retaining their legal claims  
16 but that they will not receive any settlement payment if they opt out. *Id.* at pp. 1, 5. The Notice  
17 invites class members to object to the Settlement should they believe that the Settlement is not  
18 fair, adequate, or reasonable. *Id.* at pp. 1, 5-6.

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19  
20  
21 <sup>5</sup> All Settlement class members who do not opt out of the Settlement will release  
22 Defendant and all Released Parties from all Released Claims, including claims arising under  
23 the FLSA, in accordance with *Rangel v. PLS Check Cashers of Cal., Inc.*, 899 F.3d 1106,  
24 1110-11 (9th Cir. 2018) (holding opt-out release of California state law claims was res judicata  
25 against FLSA claims “which were direct federal law counterparts to the state law claims  
26 settled”); *Accord, Richardson v. Wells Fargo Bank, N.A.*, 839 F.3d 442, 451-52 (5th Cir. 2016)  
27 (plaintiff who became party to the opt-out Rule 23 settlement was bound by all settlement  
28 terms, including release of FLSA claims). In addition, the Claims Administrator will include  
language on the back of each Settlement Award check, to be mutually agreed upon by the  
Parties, stating that by cashing the check the Class Member agrees to opt in to the Action and  
to be bound by the FLSA settlement and release of claims stated herein. Settlement at ¶ 11(e).

<sup>6</sup> Plaintiffs have also contemporaneously emailed a word version of the Notice to the  
Court in the event that the Court desires to make any changes to the Notice.

1 The Notice includes: (i) the contact information for class counsel to answer questions;  
 2 (ii) the address for the website maintained by the Settlement Administrator that will have a link  
 3 to the Notice and all preliminary approval documents, including Class Counsel’s motion for  
 4 attorneys’ fees and costs, and (iii) provides instructions on how to access the case docket via  
 5 PACER and in person at the court’s physical location. *Id.* at p. 3. The Notice states the date,  
 6 time, and location for hearing the motion for final approval and that the date may change  
 7 without further notice to the class and cautions class members to check the date for final  
 8 approval on class counsel’s website. *Id.* at p. 6. The procedure for distributing the Notice is  
 9 specifically designed to be as effective as possible in notifying all class members about the  
 10 existence of the Settlement, pursuant to Rule 23(c). The Notice will be mailed via first-class  
 11 mail with address skip tracing. Settlement at ¶ 15.

12 **F. Settlement Allocation Plan**

13 The Settlement is non-reversionary, meaning that all of the Net Settlement Amount will  
 14 be paid to each and every class member who does not exclude themselves from the Settlement.  
 15 There is no claim form or claim process. Individual class member payments (“Settlement  
 16 Awards”) will be calculated pro rata based upon the number of workweeks worked by each  
 17 individual participating settlement class member in comparison with the total number of  
 18 workweeks worked by all class members from May 12, 2011, up to the date this Court enters  
 19 preliminary approval (“Class Period”). Settlement at ¶ 11(e). Class members who had  
 20 previously filed consents to join in this action (“Opt-In Class Members”) will received two (2)  
 21 times as much on a per-class-member basis than class members who had not filed a consent to  
 22 join prior to May 23, 2022. *Id.* Payments for class members who exclude themselves from the  
 23 Settlement will be re-distributed to participating class members. Individual class member  
 24 settlement payments that remain uncashed 180 days after mailing of the payments will be  
 25 transmitted to the State of Nevada’s unclaimed property fund. Settlement at ¶ 11(d).  
 26 Ultimately, Defendant will not retain any funds from the Settlement and no funds will revert to  
 27 Defendant.  
 28

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1           **G. Settlement Administration**

2           The Settlement provides for fees and costs of up to \$50,000 to retain the services of a  
3 third-party settlement administrator (“Settlement Administrator”). The Parties have selected  
4 Phoenix Class Action Administration Solutions (“Phoenix”) as the Settlement Administrator in  
5 this case. Phoenix has provided the Parties with a quote that the settlement administration will  
6 not exceed the \$50,000 amount.

7           Pursuant to the Settlement, Phoenix will be required to format and print the Notice for  
8 distribution to all class members, mail the Notices via first-class mail, perform skip tracing, and  
9 take all necessary steps to make sure class members receive the Notice. Settlement at ¶ 15.  
10 Class members will have 30 days from the date of the mailing to postmark any opt-out or  
11 objection. Settlement at ¶¶ 17-19. Phoenix will also be the arbiter of any dispute with respect  
12 to the settlement payments made to class members. To the extent a class member disputes any  
13 of the information listed on his or her Notice (for example, the calculation of workweeks  
14 worked), the Class Member may produce evidence to Phoenix showing such information the  
15 class member contends should be reflected in the Notice. Defendant’s records are presumed to  
16 be correct in the absence of contrary documentation submitted by the class member. However,  
17 Phoenix’s decision on such disputes will be final. Settlement at ¶ 11(e). Phoenix will provide a  
18 declaration of due diligence describing in detail the mailing and response-tracking process and  
19 the class-member response to the Settlement. Settlement at ¶ 15(d).

20           **H. Service Awards to Named-Plaintiffs/Class Representatives**

21           The Settlement provides for a service award of up to \$20,000 to each Named  
22 Plaintiff/Class Representative for the risk that they undertook in commencing this action and for  
23 the work that they performed on behalf of all similarly situated persons. Settlement at ¶ 11(h).  
24 The service awards are well within the range of what other courts have awarded and are well  
25 deserved in consideration of the risks the Named Plaintiffs undertook and the amount of time  
26 they invested in this lengthy litigation. *See supra* at pp. 18-19. The amount of the service  
27 awards requested is prominently displayed on the Notice so that any class member who  
28 disagrees with the amount requested may voice their opinion by filing an objection.

1           **I.       Class Counsel Fees and Costs**

2           The Settlement provides for the allocation of attorneys’ fees of up to one third of the  
3 Maximum Settlement Amount (i.e., common settlement fund) and for the reimbursement of  
4 actual costs that were incurred by counsel for Plaintiffs (“Class Counsel”). The requested fee  
5 and cost amount is well within the range of reasonableness for this type of common-fund  
6 collective and class-action case. *See supra* at pp. 25-27.

7           Class Counsel will file a detailed motion for attorneys’ fees and costs (“Class Counsel  
8 Payment Motion”) no later than 21 days following the Court’s order granting preliminary  
9 approval of the settlement so as to allow sufficient time for class members to review the motion  
10 and lodge any objections. *See In re Mercury Interactive Corp. Securities Litigation*, 618 F.3d  
11 988, 993 (9th Cir.2010) (holding that Federal Rule of Civil Procedure 23(h) requires a district  
12 court “to set the deadline for objections to counsel’s fee request on a date after the motion and  
13 documents supporting it have been filed”). The Class Counsel Payment Motion will be posted  
14 on the Settlement Administrator’s settlement website for class members to view and any class  
15 member who disagrees with the amount requested may file an objection.

16           **V.       ARGUMENT**

17           **A.       The Proposed Settlement Should be Preliminarily Approved.**

18           In the Ninth Circuit, settlements of complex class-action lawsuits are strongly favored.  
19 *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992); *Speed Shore Corp., v.*  
20 *Denda*, 605 F.2d 469, 473 (9th Cir. 1979) (“It is well recognized that settlement agreements are  
21 judicially favored as a matter of sound public policy. Settlement agreements conserve judicial  
22 time and limit expensive litigation.”). It is within the broad discretion of the trial court to  
23 approve a class-action settlement. *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 625  
24 (9th Cir. 1982). The approval of a class-action settlement takes place in two stages: preliminary  
25 approval and final approval. *West v. Circle K Stores, Inc.*, No. 04-0438, 2006 WL 1652598, at  
26 \*2 (E.D. Cal. June 13, 2006). Preliminary approval of a class-action settlement and notice to  
27 the class is appropriate if proposed settlement: (1) appears to be the product of serious,  
28 informed, non-collusive negotiations; (2) has no obvious deficiencies; (3) does not improperly

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1 grant preferential treatment to class representatives or segments of the class; and (4) falls within  
 2 the range of possible approval. Fed. R. Civ. P. 23(e)(2); *Bellinghausen v. Tractor Supply Co.*,  
 3 303 F.R.D. 611, 619 (N.D. Cal. 2014) (citing *Cruz v. Sky Chefs, Inc.*, No. C-12-02705 DMR,  
 4 2014 WL 2089938, at \*7 (N.D. Cal. May 19, 2014) (quoting *In re Tableware Antitrust Litig.*,  
 5 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007)). At the preliminary approval stage, the Court  
 6 “must make a preliminary determination on the fairness, reasonableness, and adequacy of the  
 7 settlement terms and must direct the preparation of the notice of the certification, proposed  
 8 settlement, and date of the final fairness hearing.” See *In re M.L. Stern Overtime Litigation*, No.  
 9 07-CV-01118-BTM (JMA), 2009 WL 995864 at \*3 (S.D. Cal. April 13, 2009) (quoting Manual  
 10 on Complex Litigation Fourth § 21.632 (2004)). During the preliminary process, the Court  
 11 simply determines “whether there is any reason to notify the class members of the proposed  
 12 class settlement and to proceed with the fairness hearing.” *Gatreaux v. Pierce*, 690 F.2d 616,  
 13 621 n.3 (7th Cir. 1982). The Court’s review is “limited to the extent necessary to reach a  
 14 reasoned judgment that the agreement is not the product of fraud or overreaching by, or  
 15 collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair,  
 16 reasonable, and adequate to all concerned.” *Officers for Justice*, 688 F.2d at 625. If there are  
 17 no obvious deficiencies, and the settlement falls into the range of possible approval, it should be  
 18 preliminarily approved. See *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1057 (9th Cir. 2008);  
 19 *Alaniz v. California Processing, Inc.*, 73 F.R.D. 269, 273 (C.D. Cal. 1976). As set forth below,  
 20 the proposed Settlement in this case satisfies the standard for preliminary approval.

21 **1. The Settlement is the Result of Non-Collusive, Informed, Arm’s-**  
 22 **Length Negotiations.**

23 The first factor of the *Bellinghausen* test for preliminary approval of a class-action  
 24 settlement and notice to the class is met here because the Settlement Agreement is the product  
 25 of serious, informed, non-collusive negotiations. *Bellinghausen*, 303 F.R.D. at 619. In  
 26 *Bellinghausen*, the court noted that “the first factor concerns ‘the means by which the parties  
 27 arrived at settlement. *Id.* at 620 (citing *Harris v. Vector Mktg. Corp.*, No. C-08-5198 EMC,  
 28 2011 WL 1627973, at \*8 (N.D. Cal. Apr. 29, 2011). The court explained, “[f]or the parties to

1 have brokered a fair settlement, they must have been able to reasonably assess its strengths and  
 2 value.” *Id.* (internal citation omitted.) The requirement that the proposed Settlement be  
 3 conducted by arm’s-length and non-collusive negotiations protects the proposed Class  
 4 Members. Generally, “[t]here is a presumption of fairness when a proposed class settlement,  
 5 which was negotiated at arm’s-length by counsel for the class, is presented for Court approval.”  
 6 *Newberg on Class Action* § 11.41 (4th ed. 2008); *see also Ellis v. Naval Air Rework Facility*, 87  
 7 F.R.D. 15, 18 (N.D. Cal. 1980) (“considerable weight” given to settlement reached after hard-  
 8 fought negotiations).

9 The proposed Settlement in this case is presumptively fair. The Parties arrived at the  
 10 Settlement only after years of heavily-contested litigation, including numerous appellate  
 11 proceedings, wherein the Parties exchanged thousands of documents and vetted numerous  
 12 witnesses through the adversarial process. Both Plaintiffs and Defendant were sufficiently  
 13 armed with the facts and law to be able to assess the full potential exposure of the claims and  
 14 the likelihood of success on the remaining issues set to be determined at trial. Furthermore, the  
 15 Settlement was only achieved with the assistance of a sitting federal court judge after an all-day  
 16 settlement conference. The fact that a neutral was involved in the settlement strongly evidences  
 17 the non-collusiveness of the settlement. *See Harris*, 2011 WL 1627973, at \*8 (noting that the  
 18 parties’ use of a mediator “further suggests that the parties reached the settlement in a  
 19 procedurally sound manner that was not the result of collusion or bad faith by the parties or  
 20 counsel.”); *Adams v. Inter-Con Security Sys., Inc.*, No. C-06-5428 MHP, 2007 WL 3225466  
 21 (N.D. Cal. Oct. 30, 2007).

## 22 2. The Settlement Does Not Suffer from Any Obvious Deficiencies.

23 The proposed Settlement is the product of hard-fought negotiations that were driven by  
 24 the procedural posture of the case, the undisputed material facts, and the employment  
 25 compensation data available to the Parties. It is a total payout, non-reversionary settlement,  
 26 meaning that all the settlement funds will be paid out to all participating class members.  
 27 Indeed, there are no obvious deficiencies, inadequacies, or “red flags” of collusion. *See In re*  
 28

1 *Bluetooth Headset Products Liab. Litig.*, 654 F.3d 935, 938 (9th Cir. 2011) (identifying three  
2 potential signs of collusion, none of which are present here).

3 **3. The Settlement Does Not Provide Unjustified Preferential Treatment**  
4 **for Segments of the Class or the Class Representatives.**

5 The third factor of the *Bellinghausen* test is a requirement that the “[c]ourt examine[]  
6 whether the Settlement provides preferential treatment to any class member.” *Bellinghausen*,  
7 303 F.R.D. at 622 (citing *Villegas v. J.P. Morgan Chase & Co.*, No. CV 09-00261 SBA (EMC),  
8 2012 WL 5878390 at \* 7 (N.D. Cal. Nov. 21, 2012). Here, while the Settlement provides for a  
9 two-tier settlement allocation, the treatment of class members who had opted in prior to the  
10 Settlement in this case (“Opt-In Class Members”) and the class members who had not opted in  
11 prior to the Settlement (“Non Opt-In Class members”), is both reasonable and justifiable under  
12 the law since only FLSA opt-ins can claim liquidated damages. Indeed, the Settlement provides  
13 a reasonable and fair distribution mechanism for the Named Plaintiffs/Class Representative, the  
14 Opt-In Class Members, and the Non Opt-In Class Members.

15 **a. Eligible Class Members Will Recover Their Fair Share of the**  
16 **Settlement Based Upon their Workweeks Worked During the**  
17 **Class Period.**

18 A plan of distribution of class settlement funds must meet the “fair, reasonable and  
19 adequate” standard that applies to approval of class settlements. *In re Cathode Ray Tube (CRT)*  
20 *Antitrust Litig.*, No. 1917, 2016 WL 3648478, at \*11 (N.D. Cal. July 7, 2016) (on appeal on  
21 other grounds) (citing *In re Citric Acid Antitrust Litig.*, 145 F. Supp. 2d 1152, 1154 (N.D. Cal.  
22 2001)); *In re Zynga Inc. Secs. Litig.*, 2015 WL 6471171, at \*12 (N.D. Cal. Oct. 27, 2015)  
23 (stating same). A plan of distribution that compensates class members based on the type and  
24 extent of their injuries is generally considered reasonable. *Gaudin v. Saxon Mortg. Servs., Inc.*,  
25 No. 11-cv-01663, 2015 WL 7454183, at \*8 (N.D. Cal. Nov. 23, 2015) (“Such a plan ‘fairly  
26 treats class members by awarding a pro rata share’ to the class members based on the extent of  
27 their injuries.”) (Internal citation omitted.)  
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Here, all Class Members will receive a proportionate share of the Settlement fund based upon the total number of workweeks that they worked for Defendant. Plaintiffs were able to calculate the average amount of time spent performing pre- and post-shift activities through their expert’s use of a random survey and a review of the discovery information attained throughout the course of the litigation. Plaintiffs’ economic expert was then able to extract the time estimates on a per-person basis and use the payroll information to determine the average number of shifts worked per workweek to determine the amount of overtime allegedly owed on a per-workweek basis. Since most COs earn approximately the same pay rate per hour, the amount of unpaid overtime compensation is relatively equal across the members of the Class. Therefore, the most equitable manner of distribution of settlement funds is on a per-workweek basis.

**b. The Opt-In Versus Non Opt-In Allocation Is Reasonable Based Upon The Availability of Liquidated Damages to Opt-In Plaintiffs.**

The Settlement provides for a two-tier settlement payment structure depending on whether the class member had previously opted in to the action. Only opt-in plaintiffs are covered by the FLSA and only the FLSA provides for liquidated (double) damages. Nevada law does not have a liquidated damages provision. Although this is a global settlement so that all potential claims, FLSA and Nevada state wage-hour claims, are covered and will be settled and released, the individuals who had previously opted in can reasonably claim additional settlement allocations. Furthermore, individuals who opted in took an additional risk by actively participating in this action and subjected themselves to potential (and actual) discovery obligations in the form of written discovery and sitting for depositions. Accordingly, the Settlement provides that the Opt-In Class Members receive two times the amount of settlement allocation paid to Non Opt-In Class Members.

///  
///



**c. The Service Awards for Named Plaintiffs/Class Representatives Reflects the Work and Risk they Undertook on Behalf of the Class.**

“[I]ncentive awards that are intended to compensate class representatives for work undertaken on behalf of a class ‘are fairly typical in class action cases.’” *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 943 (9th Cir. 2015). Here, the Settlement provides for \$20,000 service payments to the Named Plaintiffs, which is not excessive. “Incentive awards [as opposed to agreements] are fairly typical in class action cases.” *Rodriguez v. W. Publ’g Corp.*, 563 F. 3d 948, 958 (9th Cir. 2009). This \$20,000 award is in line with what is generally awarded in class-action settlements in the Ninth Circuit. *See, e.g., Van Vranken v. Atl. Richfield Co.*, 901 F.Supp. 294, 299 (N.D. Cal. 1995) (approving \$50,000 participation award to one named plaintiff for 10 years of active litigation ); *Glass v. UBS Financial Services, Inc.*, 2007 WL 221862, at \*17 (N.D. Cal. Jan. 26, 2007) (approving \$25,000 enhancement to each of four named plaintiffs for seven months of litigation.).

Here, Named Plaintiffs have been active participants in the litigation. They have expended numerous hours on behalf of the Class, conferring with counsel, responding to discovery, sitting for depositions, participating in mediation, and attending court proceedings. *See* Declarations of Donald Walden Jr., Nathan Echeverria, Aaron Dicus, Brent Everist, Travis Zufelt, Timothy Ridenour, and Daniel Tracy, attached hereto. Named Plaintiffs have dedicated over 8 years to the case and have consistently demonstrated a selfless desire to always look out for the interest of the Class above their own. *Id.* Their involvement has not been without risk. *Id.* The Named Plaintiffs have been and will be publicly associated with this lawsuit, for better or for worse. *Id.* They took a great risk on behalf of themselves and the Class to come forward with this lawsuit. Accordingly, the service awards should thus be preliminarily adjudged to be fair, adequate, and reasonable.

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**4. The Settlement Falls Within the Range of Possible Approval Given the Strengths and Weaknesses of the Claims and Defenses.**

To grant preliminary approval, this Court must decide that the Settlement falls within the approved range for preliminary approval. *Zepeda v. Paypal, Inc.*, 2015 WL 6746913, at \*4 (N.D. Cal., November 5, 2015); *Fraley v. Facebook, Inc.*, 2012 WL 5838198, at \*1 n.1 (N.D. Cal., August 17, 2012); *Tableware*, 484 F. Supp. 2d at 1079. To determine whether a settlement “falls within the range of possible approval,” courts consider “substantive fairness and adequacy” and “plaintiffs’ expected recovery balanced against the value of the settlement[.]” *Tableware*, 484 F.Supp.2d at 1080. In making a determination of whether the Settlement is adequate and reasonable, the Court must ultimately balance the following factors: “the strength of the plaintiff’s case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status throughout the trial; the amount offered in settlement; the extent of discovery completed, and the stage of the proceedings; the experience and views of counsel ...” *Hanlon*, 150 F.3d at 1026.

Here, the Settlement represents a compromise between experienced counsel for Plaintiffs and Defendant based upon each Party’s honest assessment of the legal and factual strengths and weaknesses of their respective position. The Maximum Settlement Amount represents at 41% recovery of the total overtime and penalty exposure that Defendant faced if Plaintiffs successfully proved that Plaintiffs and all class members were owed an average of 45-minutes of unpaid overtime per shift. *See* Buck Dec. at ¶ 32. While the compensability of the pre- and post-shift activities had already been decided by the Court by the time the Parties reached a resolution in this action, damage issues remained. Defendant’s total potential exposure was calculated to be \$132,954,289.15. This exposure model amount included the following assumptions: (i) 45-minutes of unpaid overtime; (ii) a full 3-year liability period; (iii) full liquidated damages for all current opt-in plaintiffs; (iv) the amendment of the complaint to assert a claim for security screening activities and to re-assert the Nevada state-law class claims; (v) and pre-judgment interest on behalf of all class members. *Id.* at ¶ 32-33.

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1 Certainly, the exposure models depended upon many factors that had yet to be resolved,  
 2 such as: the amendment to the complaint, the applicable statute of limitations; the availability of  
 3 liquidated damages; and the amount of proven overtime at trial. For instance, if Plaintiffs were  
 4 not allowed to amend their complaint (and thus could not assert a claim for security screening  
 5 compensation or a Nevada Rule 23 class claim in this action), the resulting exposure would be  
 6 closer to \$72,500,000.<sup>7</sup> The Maximum Settlement Amount of that reduced-exposure model  
 7 would represent a settlement recovery rate of approximately 76%. *Id.* at ¶ 32. Ultimately, there  
 8 were significant remaining risks for both Parties with respect to the amount of recoverable  
 9 damages, and the Parties' settlement represents an adequate and reasonable compromise that  
 10 falls within the range necessary to support preliminary approval.

11 **B. The Proposed Settlement Class Satisfies Rule 23 and Should be Certified.**

12 **1. Rule 23(a)(1): Numerosity Is Met.**

13 Rule 23(a)(1) requires that “the class be so numerous that joinder of all members is  
 14 impracticable.” The numerosity requirement is met when it would be difficult or inconvenient  
 15 to join all members of the class. *Wiener v. Dannon Co., Inc.*, 255 F.R.D. 658, 664 (C.D. Cal.  
 16 2009). Although there is no numerical requirement, a class of one thousand members “clearly  
 17 satisfies the numerosity requirement.” *Sullivan v. Chase Inv. Servs., Inc.*, 79 F.R.D. 246, 257  
 18 (N.D. Cal. 1979).

19 Here, the FLSA group has already been certified and the Court denied Defendant's  
 20 motion to decertify. The Rule 23 proposed class (“Class”) is comprised of the same group of  
 21 employees as the FLSA collective. The FLSA collective and Rule 23 Class are defined  
 22 identically in the FAC as “[a]ll persons who were employed by Defendant as correctional  
 23 officers at any time during the applicable statute of limitations time period.” (ECF No. 95 at ¶  
 24 57.) The Class consists of approximately 5,395 class members. Since a class of forty is  
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26 <sup>7</sup> Even if Plaintiffs were not permitted to amend their complaint in this action, all  
 27 persons who had not yet opted-in to this action could have initiated a new action for unpaid  
 28 wages in state court (“Potential Ancillary Litigation”). Since Defendant had not changed its pay  
 practices, overtime wage exposure has been ongoing. Plaintiffs' calculated that Defendant's  
 exposure in the Potential Ancillary Litigation to be approximately \$39,000,000.

1 sufficient to satisfy the numerosity requirement, surely the Class Members in this case have  
 2 satisfied the numerosity requirement. *Int'l Molders' & Allied Workers' Local 164 v. Nelson*,  
 3 102 F.R.D. 457, 461 (N.D. Cal. 1983).

4 **2. Rule 23(a)(2): The Case Involves Questions of Law or Fact Common**  
 5 **to the Class.**

6 Rule 23(a)(2) requires that “there are questions of law or fact common to the class.”  
 7 Fed. R. Civ. Pro. 23(a)(2). “[I]t is not necessary that all questions of law and fact be common.”  
 8 *West*, 2006 WL 1652598, at \*3 (citing *Hanlon*, 150 F.3d at 1019). “The existence of shared  
 9 legal issues with divergent factual predicates is sufficient, as is a common core of salient facts  
 10 coupled with disparate legal remedies within the class.” *Hanlon*, 150 F.3d at 1019.

11 The Court has already held that there are enough common questions of fact and law to  
 12 certify the FLSA collective. (ECF Nos. 45, 407). The commonality that the Court found in the  
 13 FLSA context is substantially similar to the commonality required under a Rule 23 analysis.  
 14 Common questions of law and fact exist among class members in this case. If there is at least  
 15 one issue whose resolution will affect all or a significant number of class members, then  
 16 commonality exists. *Lightbourn v. County of El Paso*, 118 F.3d 421, 426 (5th Cir. 1997). Some  
 17 of the common questions of fact and law that affect the Settlement Class include: (1) Whether  
 18 Nevada public employee wage law follows the FLSA compensability rules in certain  
 19 circumstances; (2) Whether Nevada public employee wage law contains a Portal-to-Portal  
 20 exemption from compensability; (3) The amount of overtime allegedly worked pre- and post-  
 21 shift without compensation; (2) Whether prejudgment interest is allowable for unpaid overtime  
 22 claims under Nevada public employee wage law. For all these reasons, the commonality  
 23 element is satisfied.

24 **3. Rule 23(a)(3): Named Plaintiffs' Claims Are Typical of the Claims of**  
 25 **the Class.**

26 Rule 23(a)(3) requires that the “claims or defenses of the representative parties [be]  
 27 typical of the claims or defenses of the class.” For typicality to exist, class representative  
 28 plaintiffs must have claims “reasonably co-extensive with those of absent class members,” but

1 those claims need not be “substantially identical.” *Hanlon*, 150 F.3d at 1020. The test is  
 2 “whether other members have the same or similar injury, whether the action is based on  
 3 conduct, which is not unique to the named plaintiffs, and whether other class members have  
 4 been injured by the same course of conduct.” *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508  
 5 (9th Cir. 1992).

6 Here, all class members, including Plaintiffs, worked for Defendant during the Class  
 7 Period. Plaintiffs and the members of the class were subject to the same improper pay policies  
 8 and practices of not compensating COs for the pre- and post-shift activities at issue in this case.

9 **4. Rule 23(a)(4): Plaintiffs and Class Counsel Will Fairly and**  
 10 **Adequately Represent the Interests of the Class.**

11 Finally, Rule 23(a) requires that the “representative parties will fairly and adequately  
 12 protect the interests of the class.” *See* Fed. R. Civ. P. 23(a)(4). The adequacy factor contains  
 13 two requirements: “(1) that the representative’s party’s attorney be qualified, experienced and  
 14 generally be able to conduct the litigation; and (2) that the suit is not collusive, and plaintiff’s  
 15 interests are not antagonistic to those of the remainder of the class.” *In re United Energy Corp.*  
 16 *Solar Power Modules Tax Shelter Investments Securities Litigation*, 122 F.R.D. 251, 257 (N.D.  
 17 Cal. 1988). Both of the adequacy factors are satisfied in this case.

18 First, Plaintiffs have retained counsel who are extremely experienced in employment  
 19 wage-hour class-action cases. *See, e.g.*, Buck Dec. at ¶ 2 (Exhibit 1). Class Counsel has  
 20 successfully pursued this litigation for the last eight years by, on the one hand, seeking to  
 21 engage Defendant in potential settlement discussion and, on the other hand, relentlessly  
 22 litigating the action by: (i) conducting exhaustive discovery (written discovery, depositions,  
 23 prison site visits); (ii) aggressively pursuing dispositive rulings; (iii) obtaining precedent-setting  
 24 appellate rulings; and (iv) proactively establishing a representative trial plan complete with  
 25 survey evidence and the use of economic experts. The result obtained—a high mid-eight figure  
 26 non-reversionary total payout settlement—is an excellent result given the hurdles presented.

27 Second, the settlement is not collusive and does not contain any “red flags” of self-  
 28 interest. *See, e.g.*, *Allen v. Bedolla*, 787 F.3d 1218, 1224 (9th Cir. 2015). Plaintiffs’ interests

1 are not antagonistic or conflicting with the interests of other Class Members. Plaintiffs suffered  
 2 the same injury as other Class Members when they were not compensated for time spent  
 3 performing the pre- and post-shift activities at issue here. *See Amchem Products, Inc. v.*  
 4 *Windsor*, 521 U.S. 591, 625-26 (1997) (“[A] class representative must be part of the class and  
 5 ‘possess the same interest and will suffer the same injury’ as the class members.”). Plaintiffs  
 6 have dedicated their time and energy towards obtaining relief for the Class. Accordingly,  
 7 Plaintiffs are adequate class representatives.

8 **5. Rule 23(b)(3)’s Requirements Are Met.**

9 **a. Common Questions of Fact or Law Predominate.**

10 Rule 23(b)(3) requires that “questions of law or fact predominate over any questions  
 11 affecting only individual members.” “The Rule 23(b)(3) predominance inquiry tests whether  
 12 proposed classes are sufficiently cohesive to warrant adjudication by representation.” *Amchem*,  
 13 521 U.S. at 623. “When common questions present a significant aspect of the case and they can  
 14 be resolved for all members of the class in a single adjudication, there is a clear justification for  
 15 handling the dispute on a representative rather than on an individual basis.” *Hanlon*, 150 F.3d  
 16 at 1022. As discussed with respect to the commonality requirement, questions of law and fact  
 17 predominate over questions affecting only individual Class Members.

18 **b. The Class Action Mechanism is Superior to Any Other**  
 19 **Method of Adjudication.**

20 Finally, Rule 23(b)(3) also provides that “a class action [must be] superior to other  
 21 available methods for fairly and efficiently adjudicating the controversy.” *See Fed. R. Civ. P.*  
 22 *23(b)(3)*. The factors to be considered are: (1) the class members’ interests in controlling the  
 23 prosecution or defense of separate actions; (2) the extent and nature of any litigation concerning  
 24 the controversy already begun by or against class members; (3) the desirability or undesirability  
 25 of concentrating the litigation of the claims in the particular forum; and (4) the likely difficulties  
 26 of managing a class action. *Fed. R. Civ. P. 23(b)(3)*. “[C]onsideration of these factors requires  
 27 the court to focus on the efficiency and economy elements of the class action so that cases  
 28 allowed under subdivision (b)(3) are those that can be adjudicated most profitably on a

1 representative basis.” *Zinser v. Accufix Research Inst., Inc.*, 253 F.3d 1180, 1190-92 (9th Cir.  
2 2001).

3 Prosecuting this action as a class action is a superior method to all other available  
4 methods of adjudication. If not for this collective and class settlement, a large majority of  
5 Settlement Class Members will never have their claims determined on the merits or recover any  
6 funds. Or, if not for this collective and class settlement, hundreds if not thousands of  
7 individuals would file separate legal claims for compensation, which would be a highly  
8 inefficient way of resolving substantially similar legal claims. Finally, since the parties wish to  
9 certify the case for settlement purposes only, the Court need not determine whether there will be  
10 “intractable management problems.” *Amchem*, 521 U.S. at 620. In light of these findings, a  
11 class action is a superior method for adjudicating this controversy.

12 **C. The Court Should Confirm Thierman Buck, LLP, As Class Counsel And**  
13 **The Proposed Attorneys’ Fees And Costs Should Be Preliminarily**  
14 **Approved.**

15 Counsel for Plaintiffs have already been confirmed counsel on behalf of the FLSA  
16 collective. Counsel for Plaintiffs therefore seek to be re-appointed Class Counsel on behalf of  
17 Plaintiffs, and all opt-in plaintiffs, and further seek to be appointed Class Counsel on behalf of  
18 the Settlement Class. Counsel, through their actions throughout this litigation, have  
19 demonstrated a relentless commitment to the case and to pursuing the action on behalf of all  
20 COs, not just the Named-Plaintiffs. Accordingly, counsel for Plaintiffs should be re-affirmed  
21 and re-appointed as Class Counsel.

22 Furthermore, the Settlement provides for Plaintiffs’ counsel to seek one third of the  
23 Maximum Settlement Amount in fees. Class Counsel will file their full and detailed Motion for  
24 Approval of Class Counsel Fees and Costs, together with their lodestar hours and the amount of  
25 costs actually incurred in this action, no later than 21 days following preliminary approval of the  
26 Settlement, which is consistent with the due process requirements in this circuit. *See In re*  
27 *Mercury Interactive Corp. Securities Litigation*, 618 F.3d 988, 993 (9th Cir.2010) (holding that  
28 that Federal Rule of Civil Procedure 23(h) requires a district court “to set the deadline for

1 objections to counsel’s fee request on a date after the motion and documents supporting it have  
2 been filed.”).

3 In preview of Class Counsel’s Payment Motion, the requested fees are fair compensation  
4 for undertaking complex, risky, expensive, and time-consuming litigation solely on a  
5 contingency basis. Plaintiffs’ attorney-fee agreements provide that Class Counsel can seek up  
6 to 35% of the common fund but Class Counsel is actually requesting slightly less than the  
7 available amount under the attorney-fee agreements. *See* Buck Dec. at ¶ 9. Further, the fee  
8 request is in line with other attorneys’ fees awards for similar actions, particularly given that the  
9 class members here will each be entitled to receive a substantial claim payment (the average per  
10 class member amount of recovery is approximately \$6,700). Indeed, courts have recognized  
11 that an appropriate method for awarding attorneys’ fees in class actions is to award a percentage  
12 of the “common fund” created as a result of the settlement. *Vincent v. Hughes Air West, Inc.*,  
13 557 F.2d 759, 769 (9th Cir. 1977). The purpose of the common-fund/percentage approach is to  
14 “spread litigation costs proportionally among all the beneficiaries so that the active beneficiary  
15 does not bear the entire burden alone.” *Id.*

16 Moreover, several courts have expressed frustration with the alternative “lodestar”  
17 approach for deciding fee awards, which usually involves wading through voluminous and often  
18 indecipherable time records. Commenting on the lodestar approach, Chief Judge Marilyn Hall  
19 Patel wrote in *In re Activision Securities Litigation*, 723 F.Supp. 1373, 1375 (N.D. Cal. 1989):

20 This court is compelled to ask, “Is this process necessary?”  
21 Under a cost-benefit analysis, the answer would be a resounding,  
22 “No!” Not only does the *Lindy Kerr-Johnson* analysis consume  
23 an undue amount of court time with little resulting advantage to  
24 anyone, but in fact, it may be in the detriment of the class  
25 members. They are forced to wait until the court has done a  
26 thorough, conscientious analysis of the attorneys’ fees petition.  
27 Or, class members may suffer a further diminution of their fund  
28 when a special master is retained and paid from the fund. Most  
important, however, is the effect the process has on the litigation  
and the timing of settlement. Where attorneys must depend on a  
lodestar approach, there is little incentive to arrive at an early  
settlement.



1 Indeed, the percentage approach is preferable to the lodestar because: (1) it aligns the interests  
 2 of class counsel and absent class members; (2) it encourages efficient resolution of the litigation  
 3 by providing an incentive for early, yet reasonable, settlement; and (3) it reduces the demands  
 4 on judicial resources. *In re Activision Securities Litigation*, 723 F. Supp. at 1378-79. Courts  
 5 now routinely use the percentage of the common fund approach to determine the award of  
 6 attorneys' fees. (See, e.g., *In re Pacific Enterprises Securities Litigation*, 47 F.3d 373, 378-79  
 7 (9th Cir. 1994) (approving attorneys' fees of 33 1/3% of settlement fund).

8 Class counsel's application for one third of the Maximum Settlement Amount is within  
 9 the range of reasonableness. Historically, courts have awarded percentage fees in the range of  
 10 20% to 50% of the common fund, depending on the circumstances of the case. *Newberg* § 14:6;  
 11 see also *In re Activision Securities Litigation*, 723 F.Supp. 1373, 1378 (N.D. Cal. 1989).  
 12 According to *Newberg*: "No general rule can be articulated on what is a reasonable percentage  
 13 of a common fund. Usually, 50% of the fund is the upper limit on a reasonable fee award from  
 14 a common fund in order to assure that the fees do not consume a disproportionate part of the  
 15 recovery obtained for the class, although somewhat larger percentages are not unprecedented."  
 16 *Newberg*, § 14:6.

17 Class counsel will also seek recovery of the actual litigation costs that have been  
 18 expended in prosecuting this action. Class Counsel has had to incur necessary costs in the form  
 19 of fees for filing, discovery, experts, and appellate practice. To date, Class Counsel has  
 20 incurred \$165,217.71. Class Counsel expects to incur additional expenses through final  
 21 approval. The Settlement provides for a maximum amount of \$200,000 in expense  
 22 reimbursement. In the event that Class Counsel's costs do not exceed that amount, the  
 23 difference between the maximum amount allowable under the Settlement and the amount  
 24 actually incurred by Class Counsel will be included in the Net Settlement Amount for  
 25 distribution. See Settlement at ¶ 13.

26 In conclusion, Class Counsel's fees and costs are prominently displayed on the Notice so  
 27 that Class Members can opine as to whether they believe the fees should be finally adjudged to  
 28 be fair, adequate and reasonable. Class Counsel will be filing the Class Counsel Payment

1 Motion shortly after preliminary approval is granted. This Motion will be available online for  
2 class members to review. Accordingly, the fees and costs should be preliminarily adjudged to  
3 be fair, adequate, and reasonable.

4 **D. Approval and Appointment of Phoenix as Settlement Administrator**

5 Phoenix Class Action Administration Solutions should be appointed as the Settlement  
6 Administrator in this case and instructed to carry out the terms of the Settlement. Phoenix has  
7 committed to effectuate the administration of the Settlement within the costs allocated under the  
8 Settlement. Accordingly, Phoenix should be appointed as Settlement Administrator and their  
9 fees and costs of \$50,000 should be preliminarily approved.

10 **VI. CONCLUSION**

11 For all the reasons set forth above, Plaintiffs respectfully request that the Parties'  
12 Collective and Class Action Settlement be preliminarily approved.

13  
14 Dated: November 11, 2022

15 /s/ Joshua D. Buck  
16 JOSHUA BUCK  
17 THIERMAN BUCK LLP  
18 Attorneys for Plaintiffs

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**CERTIFICATE OF SERVICE**

Pursuant to FRCP 5(b), I certify that I am an employee of THIERMAN BUCK, LLP and that on the 11<sup>th</sup> day of November, 2022, I electronically filed and served a true and correct copy of the forgoing **PLAINTIFFS’ MOTION FOR PRELIMINARY APPROVAL OF THE COLLECTIVE AND CLASS ACTION SETTLEMENT** on the following parties through the CM/ECF filing system:

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By: /s/ Brittany Manning  
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18 *Attorneys for Plaintiffs*

**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEVADA**

19 DONALD WALDEN, JR., et al., etc.,

20 Plaintiffs,

21 v.

22 THE STATE OF NEVADA, EX REL. NEVADA  
23 DEPARTMENT OF CORRECTIONS, and  
24 DOES 1-50,

25 Defendants.

Case No.: 3:14-cv-00320-MMD-CSD

**DECLARATION OF JOSHUA D.  
BUCK IN SUPPORT OF PLAINTIFFS'  
MOTION FOR PRELIMINARY  
APPROVAL OF THE COLLECTIVE  
AND CLASS ACTION SETTLEMENT**

[Filed contemporaneously with the Motion  
for Preliminary Approval of the Collective  
and Class Action Settlement]

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1 I, Joshua D. Buck, hereby declare and state as follows:

2 1. The following declaration is based upon my own personal experience,  
3 observation, and knowledge. I could competently testify to the statements contained herein if  
4 called to do so.

5 2. I am an attorney at law and partner with the law firm of Thierman Buck, LLP. I  
6 am admitted to practice law in the states of California and Nevada, and the United States District  
7 Courts for the District of Nevada, Northern District of California, Southern District of California,  
8 Central District of California, the Eastern District of California, the Sixth Circuit Court of  
9 Appeals, the Ninth Circuit Court of Appeals, the Eleventh Circuit Court of Appeals, and the  
10 United States Supreme Court. Attached hereto as Exhibit 1 is a current CV which lists my  
11 qualifications and a summary of my prior case experience and results. I have dedicated my  
12 practice to representing employees in wage-hour collective and class actions for the last twelve  
13 (12) years.

14 3. I have been the lead attorney of record for Plaintiffs Donald Walden Jr., Nathan  
15 Echeverria, Aaron Dicus, Brent Everist, Travis Zufelt, Timothy Ridenour, and Daniel Tracy, and  
16 all other similarly situated persons who have joined in this action against Defendant The State  
17 of Nevada, Ex Rel. Nevada Department of Corrections (“Defendant” or “NDOC”). I have  
18 handled all aspects of this litigation from the initial client intake up to and including the execution  
19 of the proposed collective and class action settlement. I have attached a true and correct copy of  
20 the fully executed Joint Stipulation of Collective and Class Action Settlement and Release  
21 (“Settlement”), together with exhibits to the Settlement, as Exhibit 2 to this declaration.

22 4. This declaration is submitted in support of Plaintiffs’ motion for preliminary  
23 approval of the collective and class action settlement (“Motion for Preliminary Approval”) and  
24 to provide the Court with additional information with respect to (I) how the litigation came about  
25 (“Pre-Litigation Background”), (II) the complexities of the litigation (“The Litigation”), and (III)  
26 the work that was performed by Plaintiffs and counsel in ultimately reaching a resolution of this  
27 action (“The Settlement”).

28

I. PRE-LITIGATION BACKGROUND

5. Plaintiff Echeverria first reached out to my co-counsel Christian Gabroy at Gabroy Messer Law Firm in September 2013, complaining that he and other correctional officers (COs) were required to engage in muster activities without compensation.

6. Mr. Gabroy referred the inquiry to my firm because we specialize in wage-hour collective and class action cases under the Fair Labor Standards Act (FLSA) and Nevada state wage-hour laws. Mr. Gabroy and his firm have been active co-counsel throughout this litigation.

7. I researched the facts and law with respect to the compensability of unpaid overtime hours for Nevada public employees. Most of my prior litigation experience has been representing employees in the private sector. There are unique challenges with respect to wage-hour claims for public sector employees. For instance, Nevada’s wage-hour statutes in NRS Chapter 608 do not apply to public employees. Nevada public employees are governed by separate statutes, such as NRS Chapter 284. Moreover, although the FLSA applies to public sector employers, a suit for damages cannot be sustained against a state sovereign under the FLSA unless the state sovereign has waived its immunity from liability.

8. During my case investigation, I was made aware that another Nevada law firm that specializes in representing Nevada public employees in claims and grievances against the state did not believe that the State of Nevada could be held liable for damages under the FLSA. Although I ultimately disagreed with the legal assessment of the other law firm, I certainly understood that there was significant risk that the state of Nevada would be deemed to be immune from liability for the payment of any damages under the FLSA. I further understood that even if the State of Nevada had waived its sovereign immunity on liability, it had not waived the requirement that any lawsuit against the state of Nevada must be originally filed in a Nevada State Court of proper venue. Both these issues presented significant challenges to a successful resolution to the proposed litigation.

9. My firm ultimately agreed to accept the case and represent the Plaintiff Echeverria and the other originating named-Plaintiffs Donald Walden Jr., Aaron Dicus, Brent Everist, Travis Zufelt, Timothy Ridenour, and Daniel Tracy. We agreed to represent Plaintiffs

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1 on a contingency fee basis; Plaintiffs have never paid my firm for any of the attorney or staff  
2 time that we have invested in this case or for any of the out-of-pocket costs that we have  
3 expended. The attorney-client retainer agreement (“Retainer Agreement”) that my firm has with  
4 Plaintiffs sets forth the contingent nature of my firm’s representation in this action. The Retainer  
5 Agreement states that my firm will take full responsibility for all the necessary hours and costs  
6 to litigate the case to the fullest extent possible without any costs to the Plaintiffs or members of  
7 any potential collective or class. The Retainer Agreement specifically states that my firm can  
8 seek up to 35% of any monetary recovery, regardless of if the case proceeds to judgment or is  
9 resolved prior to judgement. The Retainer Agreement also specifies that my firm shall be  
10 reimbursed for all of our out-of-pocket costs that we have incurred in litigating the case.<sup>1</sup>

11 **II. THE LITIGATION**

12 10. I will not repeat the procedural history of this case that is by now well-known to  
13 the Court. Indeed, the court’s docket entries demonstrate that this case has a long and complex  
14 history. However, this Court may be unaware of some of the behind the scenes work that was  
15 performed over the last eight (8) years.

16 11. After filing the initial complaint back on May 12, 2014, my office became  
17 inundated with inquiries from other COs requesting information about the case. Many of these  
18 COs subsequently filed consents to join in the action even before this Court ordered a mailing  
19 be sent to similarly situated individuals informing them about this action (“Notice”). My office  
20 was also contacted by several public employee organizations to discuss the implication of this  
21 legal action.

22 12. The case was originally filed in the First Judicial District Court of the State of  
23 Nevada. The State of Nevada removed the case to this Court. My firm moved promptly in  
24 litigating this case after it was removed to federal court. We first moved for conditional  
25 certification, which was granted, and paid out of pocket to have Court-approved Notice of the  
26 pendency of this action sent to 3,075 similarly situated persons. Like everything in this case,

27 \_\_\_\_\_  
28 <sup>1</sup> I can provide the Court with a copy of one of the Retainer Agreements for in camera review should the Court so desire.

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1 getting the list of potential opt-in plaintiffs (i.e., those COs that had worked for Defendant at any  
2 time from May 12, 2014 to the date the court granted conditional certification) proved  
3 exhausting. My office had to repeatedly follow up with Defendant to get the list and, once the  
4 list was produced, had to follow up again to receive corrected versions with all the potential opt-  
5 ins. Defendant blamed the delays on state bureaucracy, which was probably correct, but it  
6 nonetheless required my office to expend additional time and effort in pushing this litigation  
7 forward.

8 13. Once the Notice had been distributed and additional COs joined in the federal  
9 portion of this case, intensive discovery commenced. This included the depositions of all Named  
10 Plaintiffs, a sample of opt-in plaintiffs, prison wardens, and payroll administrators.

11 14. Armed with sufficient discovery information, I believed that the case was  
12 appropriate for resolution and reached out to Defendant's lead attorneys at the time (there have  
13 been numerous changes to Defendant's lead legal counsel over the years), Ketan Bhirud and  
14 Jennifer Hostetler. We agreed to mediate this case with Carol Zucker, a labor and employment  
15 law attorney at Kamer, Zucker, Abbott, in Las Vegas. I requested payroll information from  
16 Defendant and made a settlement demand at the mediation with Ms. Zucker. The mediation was  
17 a complete failure. It lasted all day but the mediator was only successful in soliciting one offer  
18 from Plaintiffs and one offer from Defendant. Ultimately, the Zucker mediation represented the  
19 beginning of the main battle in the case.

20 15. Defendant apparently referred the case to its insurer shortly after the failed Zucker  
21 mediation because private attorneys from the law firm of Wilson Elser were appointed to provide  
22 defense to Defendant. Defendant promptly filed a motion for judgment on the pleadings and  
23 sought to re-open discovery in all aspects, much of which was duplicative of the discovery that  
24 had already been conducted. Indeed, new counsel for Defendant successfully convinced  
25 Magistrate Judge Cobb to allow it to re-depose some of the Named Plaintiffs and opt-ins.

26 16. The Court ultimately granted Defendant's motion for judgment on the pleadings  
27 but allowed Plaintiffs an opportunity to cure the perceived defects by filing an amended  
28 complaint. Plaintiffs filed the operative First Amended Complaint and then Defendant



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1 proceeded to attack the pleadings once again in the form of a motion to dismiss and a motion to  
2 strike. This was in May of 2017. The case had already been pending for 3 years and had gone  
3 through the first round of written discovery and deposition at the time of Defendant’s renewed  
4 attack on the pleadings.

5 17. While Defendant’s dispositive motions on the pleadings remained pending before  
6 the Court, the Parties continued to engage in significant discovery. I personally visited all of the  
7 prisons in the state of Nevada. I retained the services of a videographer to record the pre- and  
8 post-shift activities that were at issue in this case at each of the prison facilities in the State.

9 18. My firm also retained the services of two (2) experts: (1) Malcolm Cohen and  
10 Laura Steiner were retained to create and analyze a random survey of all putative class members  
11 with respect to their experiences relating to the pre- and post-shift issues in this case and (2)  
12 James Toney was retained as an economic expert to review the number of minutes allegedly  
13 worked off-the-clock and to calculate the total amount of damages resulting therefrom. Cohen-  
14 Steiner generated an expert report wherein they reviewed all the survey responses, the written  
15 discovery responses, the deposition testimony, and the video prison site inspections. They  
16 concluded that, on average, COs spend approximately 28-minutes performing pre- and post-shift  
17 non-compensable activities (not including the security screening). Both Plaintiffs’ experts were  
18 deposed. My office also took the deposition of Defendant’s expert Robert Crandall.

19 19. On March 1, 2018, this Court raised, *sua sponte*, the issue of sovereign immunity.  
20 All of the above-mentioned litigation occurred prior to immunity ever being raised. While the  
21 Court ultimately agreed with our position that Defendant had waived its Eleventh Amendment  
22 immunity from suit (and also rejected Defendant’s main argument that the pre- and post-shift  
23 activities were not compensable as pled in the FAC), Defendant proceeded to litigate the  
24 immunity issue for the next three (3) years.

25 20. Defendant first appealed the sovereign immunity issue to the Ninth Circuit. I  
26 wrote the appellate briefs and argued the case. The case represented a novel issue in the circuit.  
27 Plaintiffs ultimately prevailed and the Ninth Circuit issued a published opinion clarifying that  
28 when the state voluntarily removes a case to the federal forum it waives its Eleventh Amendment

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1 immunity from suit. *Walden v. Nevada*, 945 F.3d 1088, 1095 (9th Cir. 2019) (“holding that  
2 Nevada waived its Eleventh Amendment immunity as to Plaintiffs’ FLSA claims when it  
3 removed this case to federal court.”). I refer to this as jurisdictional or procedural immunity.  
4 The Ninth Circuit issued a revised decision to clarify that the issue of wavier of liability, which  
5 I refer to as substantive immunity, was not before the Court of Appeals, and therefore was not  
6 addressed in the decision.

7 21. Shortly after the decision was issued by the Ninth Circuit, I received a letter in  
8 the mail from Ninth Circuit Court Judge Margaret McKeown, one of the Judges on the panel in  
9 *Walden*. Judge McKeown wrote:

10 Dear Mr. Buck:

11 I wish to commend you on your excellent advocacy during your  
12 appearance before the Ninth Circuit Court of Appeals in *Donald*  
13 *Walden, Jr.; et al. v. State of Nevada and Nevada Department of*  
14 *Corrections*, No. 18-15691 (mandate issued December 31, 2019).  
15 The art of advocacy is an integral part of the appellate process and I  
16 feel that it is important to acknowledge attorneys who make a special  
17 contribution in assisting the court.

18 Kind regards,

19 M. Margaret McKeown  
20 U.S. Circuit Judge

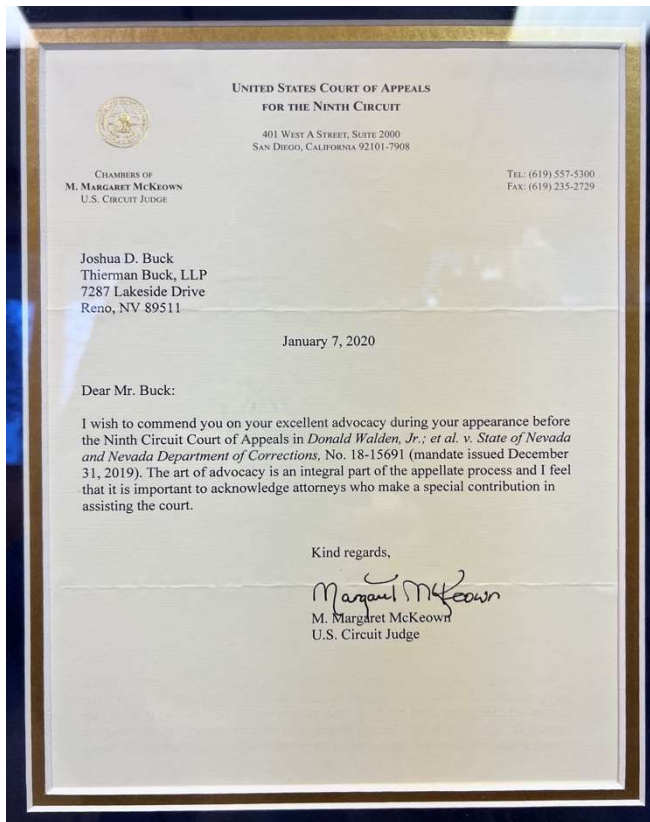
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1 I was very honored to have received recognition for my work on this appeal and had the letter  
2 framed with the published opinion. Here is an image of the framed letter from Judge McKeown:



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22. Unhappy with the Ninth Circuit’s decision, Defendant filed a petition for rehearing and en banc reconsideration, which were denied. Defendant then sought review from the United States Supreme Court. The United States Supreme Court requested Plaintiffs to respond to Defendant’s writ, which is discretionary with the Court. Ultimately, the Supreme Court denied review.

23. On remand from the Ninth Circuit, Plaintiffs and Defendant again filed numerous dispositive motions (motions for summary judgment, motion to decertify the collective group, motion to exclude evidence, etc.). Rather than rule on any of the pending motions, the Court appropriately certified the novel and case dispositive question to the Nevada Supreme Court of whether the State of Nevada had waived its immunity from liability under the FLSA and Nevada state law.

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1           24. I again wrote the appellate briefing to the Nevada Supreme Court with respect to  
2 the certified question presented. In a unanimous opinion (and without oral argument) the Nevada  
3 Supreme Court held that the State of Nevada had waived its immunity from liability under the  
4 FLSA. *Echeverria v. State*, 495 P.3d 471, 473 (Nev., 2021) (“[W]e hold that the plain text of  
5 NRS 41.031(1) leaves no room for construction: Nevada has waived the defense of sovereign  
6 immunity to liability under the FLSA.”). Approximately 7 years after the start of this case, and  
7 after thousands of hours invested in litigating the action (and hundreds of thousands of dollars  
8 of expenses) my firm’s interpretation of the sovereign immunity issue had finally been resolved.  
9 I believe this result was a great benefit for future COs employed by Defendant as well as a great  
10 many other state workers who might have claims under the FLSA in the future.

11           25. Plaintiffs and Defendant filed numerous dispositive motions following the  
12 Nevada Supreme Court’s decision. (Interestingly, Defendant still argued that it was immune  
13 from liability even after the Nevada Supreme Court’s decision). While these motions were  
14 pending, my office sent another settlement demand to Defendant and specifically sought  
15 coverage under Defendant’s insurance policies. Following the demand, Plaintiffs and  
16 Defendant, together with their insurer, agreed to mediate the case with Jennifer Togliatti, a  
17 former Judge in the Eighth Judicial District Court of Nevada. Plaintiffs prepared a detailed  
18 mediation brief, with numerous exhibits and video evidence from the prison site visits, and sent  
19 a courtesy copy to counsel for Defendant. I had my damage expert prepare numerous exposure  
20 estimates depending upon varying assumptions, such as the unpaid minutes Plaintiffs could  
21 prove at trial, the applicable statute of limitations, the recovery of liquidated damages, the  
22 availability of class wide relief, and the feasibility and likely opt-in rate of subsequent ancillary  
23 litigation. Although more promising than the failed Zucker mediation, the Togliatti mediation  
24 was also unsuccessful.

25           26. This Court issued its order with respect to all the pending motions the morning  
26 after the unsuccessful Togliatti mediation. Most notably, the Court held that the pre- and post-  
27 shift time at issue in this case was compensable under the FLSA and the continuous workday  
28 doctrine applies once the first compensable activity is performed. The Court also ordered

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1 Plaintiffs and Defendant to attend a mandatory settlement conference with Magistrate Judge  
2 Denney. I immediately reached out to counsel for Defendant to solicit mutually agreeable dates  
3 for the settlement conference and to request that the conference be in-person, as opposed to a  
4 remote appearance. Counsel for Defendant agreed and Magistrate Judge Denney set the  
5 mandatory settlement conference for in-person, and all parties, including Defendant’s insurer,  
6 were required to attend.

7 27. I, along with the attorneys in my office and the attorneys from Gabroy Messer,  
8 and all named-Plaintiffs, traveled to Reno to appear in person for the in-person settlement  
9 conference on September 15, 2022. Counsel for Defendant, both private counsel appointed by  
10 Defendant’s insurer and the attorneys for the Attorney General’s Office, a representative from  
11 Defendant’s insurer, and the director of the Nevada Department of Corrections, were all present.  
12 After a full day of presentation, argument, and the exchange of settlement offers, Plaintiffs and  
13 Defendant reached this Settlement.

14 **III. THE SETTLEMENT**

15 28. This Settlement was the culmination of one of the most difficult negotiations of  
16 my career. Unlike the private sector, trying to resolve a case against a public entity with  
17 insurance coverage added complexities that are not usually present. Two such hurdles were  
18 particularly challenging.

19 29. The first main hurdle was the existence of an insurance policy and an insurance  
20 carrier that agreed to defend the action but withheld its determination of whether coverage was  
21 even applicable. Defendant maintained insurance coverage throughout the course of this  
22 litigation and dating back to the beginning of the class period of May 12, 2011. I believed that  
23 Defendant’s insurance policy provided coverage for the claims asserted in this action because  
24 there was no express exclusion of wage-hour claims from the policies until the insurance  
25 company expressly carved out the claims in this lawsuit in September 2017, moving forward.  
26 Despite my belief that there was insurance coverage, Defendant’s insurance carrier refused to  
27 negotiate a resolution of this action. The insurance carrier only agreed to provide a defense to  
28

1 the claims. The insurance company's recalcitrance made it extremely difficult to even begin to  
2 negotiate a settlement with Defendant.

3 30. The second major hurdle was the accessibility of funds to cover any potential  
4 settlement. Because Defendant is a public entity, funds sufficient to cover any reasonable  
5 settlement in this action were not readily accessible. The State bureaucracy requires that any  
6 settlement over a certain dollar amount proceed through an approval process. As a result, the  
7 Settlement requires that Defendant seek approval of the Board of Examiners (BOE) and the  
8 Interim Finance Committee (IFC) to fund the Settlement.

9 31. My firm actively fought to overcome these hurdles and reach a reasonable  
10 settlement on behalf of Plaintiffs, opt-in plaintiffs, and the putative class, by engaging in extreme  
11 preparation prior to the Togliatti mediation and the subsequent mandatory settlement conference  
12 with Judge Denney.

13 32. Prior to both the mediation and the settlement conference, I instructed my  
14 economic damages expert, Mr. Toney, to prepare numerous alternative damage calculations so  
15 that we could rapidly respond during the settlement sessions. For instance, I instructed Mr.  
16 Toney to prepare high and low brackets of expected damages depending on the following  
17 assumptions and variations:

- 18 • **Minutes of unpaid overtime:** My survey experts, Mr. Cohen and Ms. Steiner,  
19 had calculated that COs spent on average 28-minutes performing the unpaid pre-  
20 and post-shift activities at issue in this case. Plaintiffs sought to include the  
21 security screening activity as another activity for which compensation was owed  
22 and assigned it a value of an additional 17 minutes. Accordingly, it was my  
23 assumption that Plaintiffs' best outcome would be the recovery of 45-minutes of  
24 unpaid overtime per shift. If Plaintiffs were unable to amend their complaint to  
25 add the security screening claim, Plaintiffs' best outcome would likely be the  
26 recovery of 28-minutes from the survey results. It is worth noting that Defendant  
27 believed Plaintiffs' best case scenario would only be 20 minutes.

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- **Statute of limitations:** I instructed Mr. Toney to calculate damages both on the 2-year general statute of limitation and the 3-year statute of limitations for willfulness under the FLSA.
- **Liquidated damages:** I instructed Mr. Toney to calculate damages based on the recovery of full liquidated damages for both the 2-year and 3-year statute of limitations periods and, in the alternative, interest for the full liability period should Defendant prevail on a good faith defense to the imposition of liquidated damages.
- **Insurance coverage:** I instructed Mr. Toney to calculate damages for two separate periods of time to account for insurance coverage: (1) prior to the express wage-hour policy exclusion (before September 1, 2017) and (2) insurance coverage after the express wage-hour policy exclusion (after September 1, 2017). Defendant’s insurance carrier was stronger for the pre-September 1, 2017, period although there was an argument that because of potential insurance bad faith, liability would continue even after wage-hour claims were expressly excluded from coverage after September 1, 2017.
- **Collective and class size issues:** One main variable in the recovery of damages was the issue of collective and class size. 747 COs had opted-in to the action as of May 23, 2022. These COs were undeniably part of this case and would be included in any judgment. Mr. Toney estimated that their damages alone, based on 30-minutes of unpaid overtime for the full liability period plus liquidated damages was approximately \$33 million. The main issue involved whether Plaintiffs would be able to assert a Nevada state claim and whether the Court would certify a Rule 23 class for that claim. Plaintiffs alleged that even if the Court did not allow a Rule 23 class to come in, COs who had not opted-in to this action would still be able to file another separate action (“ancillary litigation”). I instructed Mr. Toney to calculate damages assuming that a separate action would need to be filed and that there would be a 100% opt-in rate in the ancillary

1 litigation. He calculated those damages at 45-minutes of unpaid overtime (the  
2 ancillary would include the security screening time) for the full liability period  
3 (dating back to the anticipated date of filing the ancillary litigation) plus  
4 liquidated damages to be approximately \$39 million. Therefore, in total, one of  
5 Plaintiffs' reasonable damages models calculated Defendant's exposure to be \$72  
6 million based upon the varying class size hypotheticals. If Plaintiffs were  
7 successful in convincing the Court to grant their motion to reassert their Nevada  
8 state law claims and prevail on a Rule 23 motion, the total exposure would be  
9 approximately \$132 million.

10 33. Even though the Court had resolved most liability issues in favor of Plaintiffs by  
11 granting their motion for partial summary judgment on liability under the FLSA, many damage-  
12 related issues remained, as well as the scope of the collective and class. As evidenced by my  
13 instruction to calculate multiple exposure scenarios, while Plaintiffs were confident that they  
14 would prevail in recovering money damages from Defendant, the amount of the potential  
15 recovery varied significantly. For example, if Plaintiffs were only able to prove damages for  
16 20-minutes a day (Defendant believed that this was Plaintiffs' best case scenario) and were  
17 unable to re-assert the Nevada claims and pursue a Rule 23 class, the amount of recovery would  
18 only be approximately \$22 million for the full 3-year statute of limitations together with  
19 liquidated damages. Assuming the same recovery was available for the ancillary litigation, the  
20 amount of recovery would only be approximately \$17 million. Therefore, at 20-minutes per  
21 day, the total potential recovery for the current opt-in litigation and ancillary litigation would  
22 total approximately \$39 million. The Maximum Settlement Amount of \$55 million thus would  
23 represent a recovery of 140% of the estimated recovery at 20-minutes per shift. Indeed, even  
24 when comparing the Net Settlement Amount of approximately \$36 million (i.e., the Maximum  
25 Settlement Amount minus the Class Representative Service Awards, Class Counsel Payment,  
26 and the Settlement Administrator fees and costs), the recovery to all members of the Settlement  
27 Class is 92% of the 20-minute per shift exposure. In my opinion, having litigated hundreds of  
28



1 collective and class action cases, class recovery of 92% of the total realistic damage exposure  
2 is an outstanding result.

3 34. In sum, I am of the opinion that the Settlement should be preliminarily approved  
4 as a fair, adequate, and reasonable resolution of this lengthy and hard-fought litigation. I am of  
5 the further opinion that the following items should also be preliminarily approved so that Notice  
6 can be distributed to all Settlement class members and their opinions can be voiced about the  
7 reasonableness of the Settlement:

- 8 • Proposed settlement administrator Phoenix should be appointed Settlement  
9 Administrator and their estimated fees and costs should be approved. The  
10 approval of the final fees and costs actually incurred should be deferred until the  
11 date of final approval.
- 12 • Named Plaintiffs and Class Representatives Donald Walden Jr., Nathan  
13 Echeverria, Aaron Dicus, Brent Everist, Travis Zufelt, Timothy Ridenour, and  
14 Daniel Tracy should be re-appointed (they were already appointed as lead  
15 representatives of the FLSA collective) as Class Representatives and their  
16 proposed service awards should be preliminarily approved. The reasonableness  
17 of the service awards should be deferred until the date of final approval.
- 18 • I, along with all the attorneys at Thierman Buck LLP and the attorneys at Gabroy  
19 Messer, should be re-appointed (we were already appointed as lead counsel of the  
20 FLSA collective) as Class Counsel and our fees and costs should be preliminarily  
21 approved. I, along with the attorneys in my firm and my co-counsel, will be  
22 submitting a detailed motion for approval of Class Counsels' fees and costs,  
23 together with a calculation of the hours expended throughout this litigation and  
24 an itemization of the costs incurred, no later than 21 days following preliminary  
25 approval of the Settlement. A final determination on the reasonableness of the  
26 Class Counsel's fees and costs should be deferred until the date of final approval.

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1 I have read the forgoing declaration consisting of this page and thirteen (13) others and  
2 declare under penalty of perjury under the laws of the United States of America and the State of  
3 Nevada that the foregoing is true and correct.

4 Executed on November 11, 2022, in Zephyr Cove, Nevada.

5  
6 /s/ Joshua D. Buck

Joshua D. Buck

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# **EXHIBIT 1**

Joshua D. Buck's CV

**EXHIBIT 1**



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**Partner, Thierman Buck LLP**

**Relevant Case Experience**

*Cadena, et al. v Customer Connexx, LLC, et al.*, 51 F.4th 831 (9th Cir. 2022) (reversing the District Court and holding that computer boot-up/down time was compensable under the Fair Labor Standards Act and was not exempted under the Portal-to-Portal Act)

*Walden, et al. v. State of Nevada; Nevada Department of Corrections*, 137 Nev. Adv. Op. 49 (Sept. 16, 2021) (agreeing with plaintiff-employees and holding that the state of Nevada had waived the defense of sovereign immunity to liability under the Fair Labor Standards Act).

*Walden, et al. v. State of Nevada; Nevada Department of Corrections*, 941 F.3d 350 (9th Cir. 2019) (affirming lower court decision and holding that the State of Nevada has waived its sovereign immunity from a suit for wages under the FLSA)

*In re: Amazon.Com, Inc. Fulfillment Ctr. Fair Labor Standards Act (FLSA) & Wage & Hour Litig.*, 905 F.3d 387 (6th Cir. 2018) (reversing lower court decision and holding that Nevada wage-hour statutes do not follow federal Portal-to-Portal Act and ultimately resolving the Nevada portion of the action for \$13.5 million)

*Neville v. Eighth Judicial Dist. Court in & for Cty. of Clark*, 406 P.3d 499 (Nev. 2017) (successfully arguing in the Nevada Supreme Court that Nevada employees had a private right of action to sue for unpaid wages in court and ultimately resolving the action for \$3.2 million)

*Cesarz, et al. v. Wynn Las Vegas, LLC, et al.*, 816 F.3d 1080 (9th Cir. 2016) consolidated on appeal with *Oregon Rest. & Lodging Ass'n v. Perez* (successfully arguing on appeal that the 2011 Department of Labor tip pooling Regulations were valid, and the district court erred in dismissing the action and ultimately resolving the action for \$5.6 million)

*Evans v. Wal-Mart Stores, Inc.*, No. 14-16566, 2016 WL 4269904, at \*1 (9th Cir. Aug. 15, 2016) (reversing lower court decision and holding that waiting time penalties were recoverable for overtime pay violations and ultimately resolving the action for \$8.7 million)

*Busk v. Integrity Staffing Solutions, Inc.*, 713 F.3d 525 (9th Cir. Nev. Apr. 12, 2013) (holding that plaintiffs could bring hybrid FLSA collective actions and Rule 23 class action in the same action), rev'd on other grounds by *Integrity Staffing Sols., Inc. v. Busk*, 135 S.

Ct. 513, 190 L. Ed. 2d 410 (2014) (wherein the Supreme Court held that the time spent undergoing mandatory anti-theft screenings at the end of the workday was a non-compensable postliminary activity pursuant to the Portal to Portal Act)

*Lee v. Bank of America*, Case No. BCV-21-100770 (Kern County, California Superior Court) (\$1.9 million resolution on behalf of mortgage loan officers for alleged rest break violations under California law)

*Boswell v. Bank of America*, Case No. 2:17-cv-06120-MWF-RAO (C.D. Cal.) (\$23.5 million global resolution for wage and penalty claims brought on behalf of mortgage lending officers)

*Martinez v. John Muir Health*, Case No. 4:17-cv-05779-CW (N.D. Cal.) (\$9.5 million collective and class action settlement on behalf of patient care employees who worked off the clock)

*Ochinero v. Ladera Lending Inc., et al.*, Case No. 8:19-cv-01136-JVS-ADS (C.D. Cal.) (\$485,000 collective and class settlement for wage and penalty claims brought on behalf of loan officers)

*Ramirez v. PR Restaurant Management, LLC*, Case No. A-19-801650-C (Clark County, Nevada, District Court) (\$375,000 class settlement for shift jamming and failure to pay daily overtime)

*Porteous v. Capital One*, Case No. 2:17-cv-02866-JCM-DJA (D. Nev.) (\$500,000 class settlement on behalf of hourly paid call center employees who did not receive compensation for pre and post shift work activities)

*Smith v. 24-7 In Touch*, Case No. A-20-811554-C (Clark County, Nevada, District Court) (\$800,000 tentative class settlement for shift jamming and failure to pay daily overtime)

*Noguez v. Towne Parke, LLC*, Case No. A-20-813315-C (Clark County, Nevada, District Court) (\$535,000 tentative class settlement for shift jamming and failure to pay daily overtime)

*Aaron v. Wendy's, et al.*, Case No. A-18-774902-C (Clark County, Nevada, District Court) (\$425,000 class settlement for shift jamming and failure to pay daily overtime)

*Vozza v. The Marshal Retail Group, LLC*, Case No. A-19-788823-C (Clark County, Nevada, District Court) (\$650,000 class settlement for shift jamming and failure to pay daily overtime)

*Planas v. Silver Legacy, et al.*, Case No. CV18-01565 (Washoe County, Nevada, District Court) (\$800,000 class settlement for Nevada minimum wage and overtime violations)

*Reed v. Boyd Gaming Corporation, et al.*, Case No. A-18-780612-C (Clark County, Nevada, District Court) (\$240,000 class settlement for Nevada minimum wage and overtime violations)

*Boschini v. White House Black Market, et al.*, Case No. A-19-803613-C (Clark County, Nevada District Court) (\$285,000 class settlement for shift jamming and failure to pay daily overtime)

*Barnett v. McDonald's*, Case No. A-18-777786-C (Clark County, Nevada, District Court) (\$6 million class settlement for shift jamming and failure to pay daily overtime)

*Baltimore v. Lifetime Fitness*, Case No. A-18-782512-C (Clark County, Nevada, District Court) (\$500,000 class settlement on behalf of hourly-paid employees for off the clock work and improper overtime rate calculations)

*Hernandez v. Rabobank*, Case No. S-1500-cv-284159LHB (Kern County, California Superior Court) (\$1,050,000 class settlement for failure for pay minimum wage and overtime pay to Mortgage Loan Officers, Loan Officers and other commissioned employees)

*Deweese, et al v. ITS National LLC*, Case No. 3:18-cv-00375-MMD-WGC (D. Nev.) (\$675,000 collective and class settlement on behalf of employees who were misclassified as exempt and were not paid the proper overtime premium under the federal Fair Labor Standards Act and Nevada wage and hour law)

*Dimizio v. Blazin Wings*, Case No. A-18-771424-C (Clark County, Nevada, District Court) (\$1,921,327.57 class settlement for shift jamming and failure to pay daily overtime)

*Jolly, et al v. XPO Logistics Inc*, Case No. 4:17-cv-00186-FJG (United States District Court, Western District of Missouri) (\$5,900,000 collective and class settlement on behalf of misclassified sales and carrier representatives for unpaid wages, including straight time, and overtime)

*Zimmerman v. Buddha Entertainment*, Case No. 2:18-v-01460-JAD-CWH (D. Nev.) (\$500,000 class settlement for Nevada minimum wage and overtime violations)

*Williams v. WG Stateline LLC; Paragon Gaming, Inc.; Neva One LLC; Hard Rock Hotel & Casino LLC*, Case No. A-18-769883-C (Clark County, Nevada, District Court) (\$520,000 class settlement on behalf of employees at various hotel/resort/ casino properties for unpaid wages, overtime wages, and breach of contract for failure to pay employees for pre-shift work)

*Pierce v. Encore Health Resources, LLC*; Case No. 3:18-cv-04097-WHO (United States District Court, Northern California District) (\$2,378,000 collective and class settlement on behalf of non-exempt consultants for failure to pay wages due, overtime wages, and

to provide accurate wage statements)

*Saldana, et al. v. SMX, LLC*, Master File No. 14-MC-2504 (W.D. Ky.) (\$3,773,002.50 class action settlement on behalf of persons who worked at Amazon.com fulfillment warehouses in California for the time spent going through the anti-theft security screening at the beginning of the meal period and at the end of the shift)

*Robert Mina, et al. v. Amazon.com, Inc., et al.*, Case No 15-2-23879-5-SEA (King County, Wash.) (\$2.5 million settlement on behalf of Amazon fulfillment warehouse workers for being required to undergo security screenings before their lunch breaks and at the end of the shift)

*Mesa Zeleke v. Ike Gaming, Inc., et al.*, Case No. A-18-769220-C (Clark County, Nevada, District Court) (\$700,000 class settlement for Nevada minimum wage violations)

*Mustafa Yousif, et al. v. The Venetian Resort, LLC, et al.*, Case No. 2:16-cv-02941-RFB-NJK (D. Nev.) (\$1.225 million class settlement for Fair Credit Reporting Act (FCRA) violations)

*Monique Woods v. American Homes 4 Rent, LP*, Case No. A-18-777456-C (Clark County, Nevada, District Court) (\$500,000 class settlement on behalf of call center employees for off the clock work and improper overtime rate calculations)

*London Aaron v. Wenevada, LLC*, Case No. A-18-777457-C (Clark County, Nevada, District Court) (\$600,000 class settlement for shift jamming and failure to pay daily overtime)

*Anthony Hernandez v. PJ Las Vegas, LLC, et al.*, Case No. A-17-762477-C (Clark County, Nevada, District Court) (\$600,000 class settlement for shift jamming and failure to pay daily overtime)

*Christy McSwiggin, et al. v. Omni Limousine*, Case No. 2:14-cv-02172-JCM-NJK (D. Nev.) (\$200,000 settlement on behalf of 15 opt-in plaintiffs for unpaid minimum and overtime wages)

*Robert Greene, et al. v. Jacob Transportation Services, LLC, et al.*, Case No. 2:09-cv-00466-GMN-CWH (D. Nev.) (\$1.4 class settlement on behalf of limo drivers who were denied their minimum and overtime wages)

*Emil Botezatu v. Las Vegas Limousines, LLC*, Case No. 2:16-cv-00397-RFB-PAL (D. Nev.) (\$718,416.10 class settlement on behalf of limousine drivers where were not compensated weekly overtime)

*Woodrow Tompkins, et al. v. Farmers Group Inc., et al.*, Case No. 14-cv-03737-JFL (E.D. Pa.) (\$775,000 class settlement on behalf of insurance adjusters for pre and post shift work)

*Jeremy Ortiz, et al. v. American Casino & Entertainment Properties, LLC*, Case No. A-17-756093-C (Clark County, Nevada, District Court) (\$1.075 million class settlement for unlawful rounding of employee hours)

*Steven James v. WG-Harmon, LLC, et al.*, Case No. A-17-761091-C (Clark County, Nevada, District Court) (\$900,000 class settlement for unlawful rounding of employee hours)

*Anthony Windom, et al. v. K-Kel, Inc.*, Case No. A-17-765720-C (Clark County, Nevada, District Court) (\$1 million class settlement for Nevada minimum wage violations)

*Afrouz Nikmanesh, et al. v. Wal-Mart Stores, Inc.*, Case No. 8:15-cv-00202-AG-JCG (C.D. Cal.) (\$800,000 class and collective action settlement on behalf of Pharmacists who were required to attend immunization trainings and certifications without compensation)

*Kwesi Jones, et al. v. Farmers Insurance Exchange*, Case No. BC412413 (Los Angeles County Superior Court) (\$3,900,000 class action settlement for unpaid wages resulting from pre-shift work on behalf of insurance claims adjusters)

*Richard Balint v. Paris LV Operating Co., LLC*, Case No. A-16-731891-C (Clark County, Nevada, District Court) (\$525,000 class and collective action settlement on behalf of employees who were classified as exempt from overtime)

*Christina John, et al. v. Caesars Enterprise Services*, Case No. A-16-743972-C (Clark County, Nevada, District Court) (\$1 million class and collective action settlement on behalf of call center employees who did not receive compensation for pre and post shift work activities)

*Randy Clayton, et al. v. On Demand Sedan Services, Inc.*, Case No. A-16-734923-C (Clark County, Nevada, District Court) (\$424,500 class and collective action settlement on behalf of limousine drivers were not incorrectly classified as exempt from overtime)

*Markus Levert, et al. v. Trump Ruffin Tower I, LLC d/b/a Trump International Hotel Las Vegas*, Case No. A-14-700559-C (Clark County, Nevada, District Court) (\$130,000 class and collective action settlement for off-the-clock violations)

*Brandy Welch, et al. v. Golden Gate Casino, LLC d/b/a Golden Gate Hotel & Casino*, Case No. 2:13-cv-01089-RFB-GWF (D. Nev.) (\$750,000 class and collective action settlement on behalf of casino employees who were not paid for training time, pre-shift activities, and who were not paid the correct overtime rate of pay)

*Jamye Berry v. Aria Resort & Casino, LLC*, Case No. 2:14-cv-01321-APG-VCF (D. Nev.) (\$860,000 class and collective action settlement on behalf of table games supervisors who were not paid overtime)

*Judith Smith v. Mandalay Corporation d/b/a Mandalay Bay Resort and Casino*, Case No.



2:14-cv-02158-APG-VCF (D. Nev.) (\$100,000 settlement on behalf of poker room employees who were required to perform work activities without compensation)

*Nicole McDonagh, et al. v. Harrah's Las Vegas, Inc.*, Case No. 2:13-cv-01744-CWH (D. Nev.) (\$850,000 class and collective action settlement on behalf of casino dealers who were required to attend pre-shift meetings off-the-clock)

*Darlene Lewis v. Nevada Property 1, LLC*, Case No. 2:12-cv-01564-RFB-GWF (D. Nev.) (\$9.75 million settlement on behalf of employees for pre-shift work activities)

*Raymond Sullivan, et al. v. Desert Palace, Inc. d/b/a Caesars Palace*, Case No. A-14-710505-C (Clark County, Nevada, District Court) (\$1.3 million collective and class action settlement on behalf of employees who picked up a cash bank off-the-clock)

*Raymond Sullivan, et al. v. Riviera Holdings Corp. dba Riviera Hotel and Casino*, Case No. 2:14-cv-00165-APG-VCF (D. Nev.) (\$690,000 collective and class action case on behalf of employees who used a cash bank)

*Tiffany Sargant, et al. v. HG Staffing, LLC, MEI-GSR Holdings LLC dba Grand Sierra Resort*, Case No. 3:13-cv-453-LRH-WGC (D. Nev.) (conditionally certified class of employees who worked off-the-clock, including employees who use a cash bank)

*Danielle Ficken, et al. v. New Castle Corp. dba Excalibur Hotel and Casino*, Case No. 2:13-cv-00600-APG-GWF (D. Nev.) (\$1.1 million collective and class settlement on behalf of employees who use a cash bank)

*Tenisha Martin, et al. v. Ramparts, Inc. dba Luxor Hotel and Casino*, 2:13-cv-00736-APG-VCF (D. Nev.) (\$1.3 million collective and class settlement on behalf of employees who use a cash bank)

*Dorothy Turk-Mayfield v. Wynn Las Vegas, LLC*, Case No. A-13-683389-C (Clark County, Nevada, District Court) (\$1.8 million class action settlement for off-the-clock banking activities)

*Darlene Lewis v. ARIA Resort & Casino, LLC*, Case No. A-12-663812-C (Clark County, Nevada, District Court) (\$1.39 million class action settlement for off-the-clock banking activities)

*Natalie Antionett Garcia, et al. v. American General Finance Management Corporation, et al.*, Case No. 09-CV-1916-DMG (OPx) (C.D. Cal.) (\$1.7 million class settlement improper payment of wages)

*Jeffrey Clewell v. Heavenly Valley Ltd*, Case No. 12-CV-00282-DC (Douglas County, Nevada, District Court) (\$625,000 class settlement for unpaid overtime and waiting time penalties)

*Salvador Duarte, et al. v. General Parts, Inc., et al.*, Case No. RG-13-670382 (Alameda County, California, Superior Court) (\$650,000 class action settlement for alleged off-the-clock violations)

*Victor Zapata v. M.C. Gill Corporation*, Case No. BC409066 (Los Angeles County, California, Superior Court) (reaching a \$1 million class settlement for improper rounding)

*Clarence Edwards v. Circus Circus Casinos, Inc.*, Case No. A-14-701172-C (Clark County, Nevada, District Court) (\$500,000 class action settlement for alleged off-the-clock violations)

*Pablo C. Martinez, et al. v. Victoria Partners, dba Monte Carlo Resort and Casino*, Case No. 2:14-cv-00144-APG-NJK (\$481,224 class action settlement for off-the clock banking violations and pre and post-shift meeting activities)

*Dominique Whitaker, et al. v. Countrywide Home Loans, Inc., et al.*, Case No. CV09-5898-CAS (PJWx) (C.D. Cal.) (\$7.5 million class action settlement for alleged off-the-clock violations).

### **Speaking Engagements**

Speaker, National Business Institute, *Human Resource Law Boot Camp* (2021)

Speaker, National Employment Lawyers Association (NELA) Wage and Hour Conference, *Navigating the Challenges in Representing Service Industry or “Tipped” Employees* (2017)

Speaker, South Lake Tahoe Family Resource Center, *Forum on Immigrant Rights in the Workplace* (2017)

Speaker, National Business Institute, *Human Resource Law* (2013)

### **Selected Publications**

Contributor, *Wage and Hour Laws: A State-by-State Survey* (3<sup>rd</sup> Ed.), Nevada Section (2016, 2018, 2020, 2022)

Co-Author, *Employer-Sponsored Wellness Programs: Should Your Employer Be The Boss of More Than Your Work Life?*, 38 Sw. L. Rev. 465 (2009)

### **Past Experience**

Associate, Thierman Law Firm (2010-2015)

Judicial Clerk, Nevada Supreme Court for the Honorable Ron D. Parraguirre (2008-2010)

Law Student Extern, Schonbrun DeSimone Seplow Harris & Hoffman LLP (2008)

Volunteer, Neighborhood Legal Services (NLS) Workers’ Rights Clinic

## **Admissions**

California (2008)  
Nevada (2011)  
USDC Northern District of California  
USDC Southern District of California  
USDC Central District of California  
USDC Eastern District of California  
USDC District of Nevada  
Sixth Circuit Court of Appeals  
Ninth Circuit Court of Appeals  
Eleventh Circuit Court of Appeals  
United States Supreme Court

## **Education**

Southwestern School of Law, J.D., *cum laude* (2008)  
University of Iowa, B.A., with honors in History (2001)

# EXHIBIT

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# EXHIBIT

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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

DONALD WALDEN, JR., et al., etc.,  
  
Plaintiffs,  
  
v.  
  
THE STATE OF NEVADA, EX REL. NEVADA  
DEPARTMENT OF CORRECTIONS, and  
DOES 1-50,  
  
Defendants.

Case No.: 3:14-cv-00320-MMD-CSD

**JOINT STIPULATION OF COLLECTIVE  
AND CLASS ACTION SETTLEMENT  
AND RELEASE BETWEEN PLAINTIFFS  
AND DEFENDANT**

1 This Joint Stipulation of Collective and Class Action Settlement and Release (the  
2 "Settlement") is made and entered into by and between Plaintiffs DONALD WALDEN JR.,  
3 NATHAN ECHEVERRIA, AARON DICUS, BRENT EVERIST, TRAVIS ZUFELT, TIMOTHY  
4 RIDENOUR, and DANIEL TRACY on behalf of themselves and all other similarly situated  
5 individuals ("Plaintiffs"), and Defendant STATE OF NEVADA, *EX REL.* ITS DEPARTMENT  
6 OF CORRECTIONS ("Defendant" or "NDOC") (collectively referred to as "the Parties").

7 THE PARTIES STIPULATE AND AGREE as follows:

8 1. The following terms shall have the meanings ascribed to them below:

9 a. "Action" means the lawsuit captioned as DONALD WALDEN, JR., ET AL.  
10 *v. THE STATE OF NEVADA, EX REL. NEVADA DEPARTMENT OF CORRECTIONS*, originally  
11 filed on May 12, 2014, in the First Judicial District Court of Nevada, Carson City, Case No.  
12 140C000891B, Dept. 2, and removed on June 17, 2014, to the United States District Court for the  
13 District of Nevada, Case No. 3:14-cv-00320-MMD-CSD.

14 b. "Claims Administrator" means Phoenix Class Action Administration  
15 Solutions, or such other claims administrator as may be mutually agreeable to the Parties.

16 c. "Class Counsel" means Thierman Buck, LLP of Reno, Nevada, and Gabroy  
17 Messer of Henderson, Nevada.

18 d. "Class Counsel Payment" shall have the meaning ascribed to it in Paragraph  
19 13 below.

20 e. "Class Members" means those individuals that are within the Settlement  
21 Class, each of whom is a "Class Member."

22 f. "Class Period" means May 12, 2011, through the date of preliminary  
23 approval of this Settlement.

24 g. "Class Representatives" mean Plaintiffs DONALD WALDEN JR.,  
25 NATHAN ECHEVERRIA, AARON DICUS, BRENT EVERIST, TRAVIS ZUFELT, TIMOTHY  
26 RIDENOUR, and DANIEL TRACY.

27 h. "Complaint" means the operative First Amended Class Action Complaint on  
28 file in the Action that was filed on April 19, 2017.

i. "Court" means the United States District Court for the District of Nevada.

1           j.       “Effective Date” shall have the meaning ascribed to it in Paragraph 11(b)  
2 below.

3           k.       “Final Order and Judgment” means the Final Order Approving Class Action  
4 Settlement and Judgment, as more fully described in Paragraph 26 below, in substantially the form  
5 attached hereto as Exhibit C, and as approved by the Court.

6           l.       “Maximum Settlement Amount” shall be as defined in Paragraph 11(c)  
7 below.

8           m.       “Net Settlement Amount” shall be as defined in Paragraph 11(d) below.

9           n.       “Notice” means the Notice of Collective and Class Action Settlement in  
10 substantially the form attached hereto as Exhibit A, and as approved by the Court.

11           o.       “Objection Deadline” means the date that is thirty (30) calendar days  
12 following the initial mailing of the Notice by the Claims Administrator to Class Members.

13           p.       “Opt-In Plaintiffs” means all persons who filed consents to join in the FLSA  
14 portion of this Action as of May 23, 2022, a list of whom is attached hereto as Exhibit D.

15           q.       “Participating Class Members” means all Class Members who do not file a  
16 request to be excluded from the Settlement.

17           r.       “Parties” means collectively the Plaintiffs and Defendant, each of whom is a  
18 “Party.”

19           s.       “Preliminary Approval Order” means the preliminary order approving the  
20 Settlement, as more fully described in Paragraph 22 below, and in substantially the form attached  
21 hereto as Exhibit B, and approved by the Court.

22           t.       “Released Claims” means the claims to be released by the Settlement Class  
23 as fully set forth in Paragraph 20 of this Agreement.

24           u.       “Released Parties” means Defendant THE STATE OF NEVADA, EX REL.  
25 NEVADA DEPARTMENT OF CORRECTIONS, its present and former officers, political  
26 subdivisions, employees, agents, attorneys, experts, affiliates, successors and/or assigns, insurers or  
27 reinsurers, employee benefit plans (and the trustees, administrators, fiduciaries, agents,  
28 representatives, insurers and reinsurers of such plans), and any individual or entity that could be  
jointly liable with any of them

1 v. "Service Award" means, subject to approval by the Court, a maximum  
2 payment of \$20,000.00 to each Class Representative from the "Maximum Settlement Amount"  
3 (defined below), which is in addition to the Class Representative's individual "Settlement Award"  
4 (defined below) pursuant to this Settlement.

5 w. "Settlement" or "Agreement" means this Collective and Class Action  
6 Settlement and Release between Plaintiffs and Defendant.

7 x. "Settlement Awards" means Settlement amounts to be paid to eligible Class  
8 Members according to a specified formula as further described herein.

9 y. "Settlement Class" means "All current and former non-exempt hourly paid  
10 employees, including sergeants and lieutenants, who have been employed by Defendant as  
11 correctional officers at any time during the Class Period."

12 2. Plaintiffs initiated this Action on May 12, 2014. (ECF No. 1.) Plaintiff filed the  
13 operative First Amended Complaint on April 19, 2017, asserting that Defendants failed to (1) pay  
14 wages for all hours worked in violation of the Fair Labor Standards Act (FLSA), 29 U.S.C. § 201,  
15 et seq.; (2) pay overtime in violation of 29 U.S.C. § 207; (3) pay minimum wages in violation of the  
16 Nevada Constitution; (4) pay overtime in violation of NRS 284.180; and (5) comply with the terms  
17 of its contract with Plaintiffs to pay an agreed upon hourly wage for all hours worked. (ECF No.  
18 95.) Defendant filed its operative Answer on April 19, 2018. (ECF No. 175.)

19 3. The Parties have heavily litigated this Action for more than eight (8) years with  
20 intense discovery, two separate appellate proceedings (including a writ petition to the United States  
21 Supreme Court), and numerous dispositive motions. The Parties had previously engaged in two (2)  
22 failed prior private mediation sessions and were only able to finally resolve this Action after an all-  
23 day mandatory settlement conference with the Honorable Magistrate Judge Craig S. Denney.

24 4. The Parties now enter into this Settlement for preliminary and final Court approval.

25 5. This Action has already been conditionally certified pursuant to the FLSA on behalf  
26 of the following collective group: "[A]ll current and former non-exempt hourly paid employees,  
27 including sergeants and lieutenants, who were employed by NDOC as correctional officers at any  
28 time from May 12, 2011, to the present." (ECF No. 45.) Seven hundred and forty-eight (748)  
individuals have affirmatively opted-in to this Action as of the date of the Court's May 23, 2022,



1 Order. (ECF No. 407.) For the purposes of this Settlement only, the Parties stipulate and agree to  
2 class certification pursuant to Rule 23 of the Federal Rules of Civil Procedure (FRCP) for the same  
3 group of persons: All current and former non-exempt hourly paid employees, including sergeants  
4 and lieutenants, who were employed by NDOC as correctional officers during the Class Period.  
5 Excluded from the Class are all persons who elect to exclude themselves timely and properly per  
6 the provisions of this Agreement. If for any reason the Court does not approve this Settlement, or  
7 does not enter a Final Order and Judgment, or if this Settlement is terminated pursuant to the terms  
8 this agreement, the class certification shall become null and void, and the fact of certification shall  
9 not be used, cited to or admissible in any other proceeding.

10 6. Nothing related to this Agreement, or any communications, papers or orders related  
11 to the Settlement, shall be cited to as, construed to be, admissible as, or deemed an admission by  
12 Defendant or Released Parties of any liability, culpability, negligence, or wrongdoing toward  
13 Plaintiffs, the Class Members, or any other person, or that class or collective action certification is  
14 appropriate in this matter. Furthermore, nothing in this Agreement shall be cited to as, construed to  
15 be admissible as, or considered any form of waiver of any exhaustion of administrative remedies  
16 requirement and/or argument under Nevada law, including any argument that NRS chapter 284  
does not contain a private right of action.

17 7. It is the desire of the Parties to fully, finally and forever settle, compromise, and  
18 discharge all Released Claims. To achieve a full and complete release of all Released Claims in  
19 favor of Defendant, each Class Member acknowledges that this Settlement is intended to include in  
20 its effect all claims reasonably arising out of the allegations made in the Action and all Released  
21 Claims against Defendant as of the date of the Court's Final Order and Judgment.

22 8. It is the intention of the Parties that this Settlement shall constitute a full, final, and  
23 complete settlement and release of Defendant and the Released Parties with respect to all Released  
24 Claims.

25 9. Class Counsel has conducted a thorough investigation into the facts of the Action,  
26 including a review of relevant documents and data, and have diligently pursued an investigation of  
27 Class Members' claims against Defendant. Based on their independent investigation and evaluation,  
28 Class Counsel are of the opinion that the Settlement is fair, reasonable and adequate and is in the

1 best interest of the Settlement Class in light of all known facts and circumstances. Defendant and  
2 Defendant's counsel also agree that the Settlement is fair and in the best interest of the Settlement  
3 Class.

4 10. The Parties agree to cooperate and take all steps necessary and appropriate to  
5 consummate this Settlement and to have a final order entered and judgment issued after all  
6 Settlement sums have been paid out in accordance with this Settlement.

7 TERMS OF SETTLEMENT

8 11. NOW THEREFORE, in consideration of the mutual covenants, promises and  
9 agreements set forth herein, the Parties agree, subject to the Court's approval, as follows:

10 a. Settlement All-Inclusive: It is agreed by and among Plaintiffs and Defendant  
11 that the Action and all Released Claims, damages or causes of action of any kind arising out of the  
12 disputes that reasonably arise or could have arisen out of the facts alleged in the Action, be settled  
13 and compromised as between the Settlement Class on the one hand and Defendant on the other  
14 hand, subject to the terms and conditions set forth in this Settlement and the approval of the Court.  
15 This Settlement shall bind the Class Members, Defendant, and their respective counsel, subject to  
16 the terms and conditions hereof and the Court's approval.

17 b. Effective Date: The Settlement embodied in this Settlement shall become  
18 effective when all of the following events have occurred ("Effective Date"): (i) this Settlement has  
19 been executed by all Parties, Class Counsel and Defendant's counsel; (ii) the Maximum Settlement  
20 Amount (defined below) required under this Settlement has been approved by the Board of  
21 Examiners ("BOE") and the Interim Finance Committee ("IFC"); (iii) the Court has given  
22 preliminary approval to the Settlement; (iv) the Notice has been sent to the Settlement Class,  
23 providing them with an opportunity to opt out of the Settlement, or to object to the Settlement; (v)  
24 the Court has held a formal fairness hearing and entered the Court's Final Order and Judgment  
25 Dismissing this Action; and (iv) in the event there are written objections filed prior to the formal  
26 fairness hearing which are not later withdrawn, the later of the following events: (A) when the  
27 period for filing any appeal, writ or other appellate proceeding opposing the Settlement has elapsed  
28 without any appeal, writ or other appellate proceeding having been filed; (B) when any appeal, writ  
or other appellate proceeding opposing the Settlement has been dismissed finally and conclusively

1 with no right to pursue further remedies or relief; or (C) when any appeal, writ or other appellate  
2 proceeding has upheld the Court's Final Order and Judgment with no right to pursue further  
3 remedies or relief. In this regard, it is the intention of the Parties that the Settlement shall not  
4 become effective until the Court's Final Order and Judgment is completely final, and there is no  
5 further recourse by any appellant or objector who seeks to contest the Settlement.

6 c. Maximum Settlement Amount: Defendant agrees to pay a maximum  
7 settlement amount of Fifty-Five Million Dollars and Zero Cents (\$55,000,000.00) ("Maximum  
8 Settlement Amount"), which includes all Settlement Awards to Class Members, the Service Awards  
9 to the Class Representatives, the attorneys' fees and costs to Class Counsel, the claims  
10 administration costs and expenses, and the employer share of employment taxes. Under no scenario  
11 shall Defendant be required to pay any monies in excess of this Maximum Settlement Amount.

12 d. Net Settlement Amount: The net settlement amount ("Net Settlement  
13 Amount") for distribution to Class Members pursuant to the distribution formula set for in  
14 Paragraph 11(e) will be calculated by deducting from the Maximum Settlement Amount the  
15 following: (a) Service Awards to the Class Representatives approved by the Court; (b) Class  
16 Counsel Payment (for Class Counsel's attorneys' fees and expenses) approved by the Court; (c)  
17 Claims Administrator's reasonable fees and expenses approved by the Court; and (d) Defendant's  
18 share of employer taxes. If any portion of the Net Settlement Amount remains unpaid and/or  
19 unused after the expiration of the check cashing period set forth in Paragraph 19 of this Agreement,  
20 the Claims Administrator shall submit the uncashed funds to the State of Nevada's unclaimed  
property fund.

21 e. Settlement Awards to Class Members: Subject to the terms and conditions of this  
22 Settlement, the Claims Administrator will distribute a payment from the Net Settlement Amount to  
23 each Class Member, according to a calculation of Settlement Awards to Class Members. Settlement  
24 Awards to Class Members will be determined by the Claims Administrator based upon a pro rata  
25 share of the number of workweeks worked by each Class Member in comparison to the total  
26 number of workweeks worked by all Class Members. The number of workweeks worked by Class  
27 Members during the Class Period will be determined by reference to Defendants' records, which  
28 will be presumed to be correct unless credible written evidence to the contrary is timely submitted

1 to the Claims Administrator. Defendants will provide the Claims Administrator with an excel  
2 spreadsheet calculation of the total number of workweeks worked. The Claims Administrator shall  
3 assign to each Class Member a "Settlement Ratio," which shall be a percentage of the total amount  
4 owed to all Class Members and the total amount to be recovered by each individual Class Member  
5 based upon the number of workweeks worked. The Claims Administrator shall then assign to each  
6 Class Member a "Settlement Award" which shall be calculated by multiplying that Class Member's  
7 Settlement Ratio by the Net Settlement Amount, adjusted as follows:

8 **Opt-In Class Members:** Settlement Awards for Class Members who had opted-in  
9 to this Action as of May 23, 2022. These Class Members will receive two (2) times  
10 as much on a per-class member basis than Non Opt-In Class Members.

11 **Non Opt-In Class Members:** Settlement Awards for Class Members who had not  
12 opted-in to this Action as of May 23, 2022. These Class Members will receive half  
13 (1/2) as much on a per-class member basis than Opt-In Class Members.

14 The Claims Administrator will distribute a payment of a Settlement Award to each Class Member  
15 who does not file a timely request to be excluded from the Settlement. The Claims Administrator  
16 will include language on the back of each Settlement Award check, to be mutually agreed upon by  
17 the Parties, which states that that by cashing the check the Class Member agrees to opt-in to the  
18 Action and to be bound by the FLSA settlement and release of claims stated herein.

19 f. **Taxes, Withholdings, and Allocation:** Settlement Awards for each Class Member  
20 will be allocated from the Net Settlement Amount and paid as follows: one-half (1/2) to alleged  
21 unpaid wages for which IRS Forms W-2 will issue; and one-half (1/2) will be allocated to alleged  
22 unpaid interest and penalties for which IRS Forms 1099-MISC will issue. The Claims  
23 Administrator will calculate, withhold, remit and report each Class Member's share of applicable  
24 payroll taxes (including, without limitation, federal income tax withholding, FICA, Medicare and  
25 any local taxes) based on the wage portions of each person's Settlement Award. Payments treated  
26 as unpaid wages shall be made net of all applicable employment taxes, and shall be reported to the  
27 IRS and the payee under the payee's name and social security number on an IRS Form W-2.  
28 Defendant shall cooperate with the Claims Administrator to timely arrive at an amount equal to the

1 employer's share of the FICA tax and any federal and/or state unemployment tax due by employers,  
2 with respect to the amounts treated as wages, which amounts shall be paid from the Maximum  
3 Settlement Amount. The Claims Administrator shall be responsible for making all reporting,  
4 deposits, and withholdings with respect to all amounts payable to Class Members. In the event any  
5 taxing agency or authority takes the position that some or all of the monies paid are taxable or  
6 taxable in a different manner than set forth in this Agreement, Class Members shall be solely  
7 responsible for any and all tax obligations that arise and this Agreement shall remain in full force  
8 and effect. Class Members agree to indemnify, secure, and hold Defendant and Released Parties  
9 harmless from any costs, penalties, damages, or any other sums arising from any tax obligations  
10 imposed by any taxing authority as a result of the monies paid pursuant to this Agreement.

11 g. Settlement Awards Do Not Trigger Additional Benefits: It is expressly  
12 understood and agreed that the receipt of a Settlement Award will not entitle any Class Member to  
13 additional compensation or benefits under any company bonus, contest or other compensation or  
14 benefit plan or agreement in place during the period covered by the Settlement, nor will it entitle  
15 any Class Member to any increased retirement benefits or matching benefits, or deferred  
16 compensation benefits. It is the intent of this Settlement that the Settlement Awards provided for in  
17 this Agreement are the sole payments to be made by Defendant to the Class Members in connection  
18 with this Settlement, and that the Class Members are not entitled to any new or additional  
19 compensation or benefits as a result of having received the Settlement Awards (notwithstanding any  
20 contrary language or agreement in any benefit or compensation plan document that might have been  
21 in effect during the period covered by this Settlement).

22 h. Class Representatives: Subject to Court approval, lead Named-Plaintiffs will  
23 receive Class Representative Service Awards of \$20,000.00 each (\$140,000.00, total) for their  
24 dedication and service as lead Named-Plaintiffs and Class Representatives on behalf of Class  
25 Members. The Service Awards shall be part of the Maximum Settlement Amount. Plaintiffs will  
26 file a motion for approval of the Class Representative Service Awards no later than twenty-one (21)  
27 days following the Court's order granting preliminary approval of this Settlement, to which  
28 Defendant will not object. The outcome of the Court's ruling on the application for a Service

1 Award shall not terminate this Agreement or otherwise affect the Court's ruling on the Motion for  
2 Final Order and Judgment. It is understood the Service Awards are in addition to any claimed  
3 individual Settlement Award to which Plaintiffs are entitled along with other claiming Class  
4 Members. The Claims Administrator will issue to Class Representatives an IRS Form 1099 for the  
5 Service Awards, and the Class Representatives will be solely responsible for correctly  
6 characterizing the Service Awards for tax purposes and for paying any taxes on the amounts  
7 received, if any. The Service Awards approved by the Court shall be distributed to Class  
8 Representatives by the Claims Administrator within ten (10) calendar days of receipt of all  
9 settlement amounts in the Settlement Account pursuant to Paragraph 11(i).

10 i. Establishment of Settlement Account: The Claims Administrator shall  
11 establish a settlement account for the purpose of safeguarding the Maximum Settlement Amount  
12 and paying all payment amounts identified by this Settlement and approved by the Court  
13 ("Settlement Account"). The Maximum Settlement Amount will be paid in two installments, the  
14 first being a good faith deposit following preliminary Court approval and the second being the  
15 remaining settlement funds following final Court approval. For the first payment, the good faith  
16 deposit, Defendant shall deposit a total of Twenty-Five Million Dollars (\$25,000,000.00) in the  
17 Settlement Account, by wire or check. Defendant shall deposit its portion of the \$25,000,000.00 no  
18 later than ~~twentythree-one~~ (2130) days from the later of (i) the date that preliminary approval is  
19 entered, or (ii) the date that the Maximum Settlement Amount is approved by the BOE and IFC.  
20 Defendant's insurer, AIG, shall deposit its portion of the \$25,000,000.00 no later than forty-five  
21 (45) days from the date that preliminary approval is entered. For the second payment, the  
22 remaining settlement funds deposit, Defendant shall deposit a total of Thirty Million Dollars  
23 (\$30,000,000.00) in the Settlement Account, by wire or check, no later than ninety (90) days from  
24 the Effective Date of the Settlement, as set forth in Paragraph 11(b).

#### 24 CLAIMS ADMINISTRATION

25 12. The Claims Administrator will send out to the Class Members the Notice by first  
26 class United States mail. The Claims Administrator will calculate the Settlement Awards to Class  
27 Members in accordance with this Settlement. The Claims Administrator shall report in writing the  
28 substance of its findings to the Parties. The Claims Administrator shall be granted reasonable access

1 to Defendant's records to perform its duties. The Claims Administrator shall issue and mail the  
2 Settlement Award checks to the Class Members within ten (10) calendar days of receipt of all  
3 settlement amounts in the Settlement Account pursuant to Paragraph 11(i). Tax treatment of the  
4 Settlement Awards will be as set forth herein, and in accordance with state and federal tax laws;  
5 provided, however, Plaintiffs and other Class Members herein acknowledge that neither the  
6 Released Parties nor Defendant's counsel has or is providing any tax advice. The Claims  
7 Administrator shall provide periodic reports to counsel for the Parties with respect to the numbers  
8 of individuals submitting Requests for Exclusion and Objections, and will respond to reasonable  
9 requests for information concerning the status of the administration of the Settlement. All disputes  
10 relating to the Claims Administrator's performance of its duties shall be referred to the Court, if  
11 necessary, which will have continuing jurisdiction over the terms and conditions of this Settlement  
12 until all payments and obligations contemplated by this Settlement have been fully carried out.

#### ATTORNEYS' FEES AND COSTS

13 13. Subject to approval of the Court, Class Counsel will receive a payment of up to 1/3  
14 of the Maximum Settlement Amount for all current and future attorneys' fees and for up to  
15 \$200,000.00 in actual costs incurred in litigating this Action, defined as the "Class Counsel  
16 Payment." The Class Counsel Payment will cover all work performed and all fees and costs  
17 incurred prior to the enactment of this Settlement, and all work to be performed and all fees and  
18 costs to be incurred in connection with the approval by the Court of this Settlement, administration  
19 of the Settlement, obtaining judgment in the Action, and any challenges, writs or appeals to the  
20 Settlement. Should Class Counsel request a lesser amount, or the Court approve a lesser amount for  
21 the Class Counsel Payment, the difference between the lesser amount and the requested amount set  
22 forth above shall be added to the Net Settlement Amount. The Class Counsel Payment approved by  
23 the Court shall be distributed to Class Counsel by the Claims Administrator within ten (10) calendar  
24 days of receipt of all settlement amounts in the Settlement Account pursuant to Paragraph 11(i).

25 14. Class Counsel shall file a motion for approval of the Class Counsel Payment no later  
26 than twenty-one (21) days following the Court's order granting preliminary approval of this  
27 Settlement.

#### NOTICE TO THE SETTLEMENT CLASS

1           15.     Notice of this Settlement shall be sent via U.S. Mail. The Notice shall be sent by the  
2 Claims Administrator to the Class Members by first class mail based on the following procedure.  
3 Any returned envelopes from this mailing with forwarding addresses will be used by the Claims  
4 Administrator to forward the Notice to Class Members.

5           a.     Within seven (7) calendar days of preliminary approval of this Settlement by  
6 the Court, Defendant shall provide to the Claims Administrator a spreadsheet, which will list for  
7 each Class Member the Class Member's name, last-known address, social security number, and  
8 number of qualifying hours worked during the Class Period. The spreadsheet shall be based on  
9 payroll records and/or personnel records provided by Defendant and in a format reasonably  
10 acceptable to the Claims Administrator.

11           b.     The Claims Administrator will run a check of the Class Members' last-  
12 known addresses against those on file with the U.S. Postal Service's National Change of Address  
13 List. Within fourteen (14) calendar days of preliminary approval of this Settlement by the Court, the  
14 Claims Administrator will mail the Notice to the Class Members. The Class Members will have  
15 thirty (30) calendar days from the date of the Claims Administrator's initial mailing of the Notice in  
16 which to postmark requests for exclusion, or to file objections to the Settlement.

17           c.     Notices returned to the Claims Administrator as non-delivered shall be resent  
18 to the forwarding address, if any, on the returned envelope. If there is no forwarding address, the  
19 Claims Administrator will do a computer search for a new address using the Class Member's social  
20 security number. Said search will be performed by the Claims Administrator one time per Class  
21 Member for each Notice returned without a forwarding address. Upon completion of these steps by  
22 the Claims Administrator, Defendant, Class Counsel, and the Claims Administrator shall be deemed  
23 to have satisfied their obligations to provide the Notice to the affected Class Member and,  
24 regardless of whether the affected Class Member actually receives the Notice, the affected Class  
25 Member shall remain a member of the Settlement Class and shall be bound by all the terms of the  
26 Settlement and the Court's Final Order and Judgment.

27           d.     Class Counsel shall provide to the Court, at least seven (7) calendar days  
28 before the final fairness hearing, a declaration by the Claims Administrator of due diligence and  
proof of mailing with regarding to the mailing of the Notice.





1 Exclusion is ambiguous, and may mutually agree to accept such Request for Exclusion for good  
2 cause shown; ambiguous does not mean untimely Requests for Exclusion.

3 18. Defendant has the right in its sole and exclusive discretion to terminate and withdraw  
4 from the Settlement at any time prior to a Final Order and Judgment of the Court if ten percent  
5 (10%) or more of all Class Members timely and validly opt out of the Settlement.

6 OBJECTION PROCESS

7 19. A Class Member may object to this Settlement. For a Class Member to object to the  
8 Settlement, a Class Member must file with the Court no later than the Objection Deadline a notice  
9 of objection, signed by the Class Member or his or her counsel, stating the Class Member's: (i)  
10 name; (ii) current address; (iii) telephone number; (iv) last 4-digits of his or her social security  
11 number; and (v) basis of the objection. The Objection Deadline applies notwithstanding any  
12 argument regarding non-receipt of the Notice. The Class Member objecting to the settlement must  
13 also serve a copy of his or her notice of objection on counsel for the Parties and the Claims  
14 Administrator by the Objection Deadline. The postmark date of the filing and service shall be  
15 deemed the exclusive means for determining that the notice of objection is timely. The Claims  
16 Administrator will not send any reminder notices to Class Members about the objection process.  
17 Class Members who fail to make objections in the manner specified above shall be deemed to have  
18 waived any objections, and shall be foreclosed from making any objections (whether by appeal or  
19 otherwise) to the Settlement. Class Members who file and serve timely notices of objection will  
20 have a right to appear at the Court's hearing to provide final approval of the Settlement in order to  
21 have their objections heard by the Court. At no time shall any of the Parties or their counsel seek to  
22 solicit or otherwise encourage Class Members to submit written objections to the Settlement or  
23 appeal from the Court's Final Order and Judgment. Class Counsel shall not represent any Class  
24 Members with respect to any such objections to this Settlement. If the Court rejects the Class  
25 Member's objection, the Class Member will still be bound by the terms of this Agreement.

26 RELEASE OF CLAIMS

27 20. Upon final approval by the Court of this Settlement, and except as to such rights or  
28 claims as may be created by this Settlement, each Class Member who has not submitted a timely  
and valid Request for Exclusion and without the need to manually sign a release document, in

1 exchange for the consideration recited in this Agreement, on behalf of himself/herself and on behalf  
2 of his/her current, former, and future heirs, executors, administrators, attorneys, agents, and assigns,  
3 shall and does hereby fully and finally release the Defendant and Released Parties from any and all  
4 state, federal and local claims arising from his/her employment including statutory claims, whether  
5 known or unknown, in law or in equity, including but not limited to claims under any legal theory  
6 for failure to pay minimum wage, failure to pay overtime compensation, failure to properly  
7 calculate overtime compensation, failure to pay for all hours worked, failure to provide meals and  
8 rest periods, failure to timely pay wages or compensation or final wages or compensation, failure to  
9 reimburse for business expenses, making illegal deductions from wages or compensation, failure to  
10 furnish accurate wage statements or other notices, failure to keep accurate records, and any and all  
11 claims for recovery of compensation, overtime pay, minimum wage, premium pay, interest and/or  
12 penalties of any kind whatsoever, whether known or unknown, whether based on common law,  
13 regulations, statute, or a constitutional provision, under state, federal or local law, arising out of the  
14 allegations made in the Action and that reasonably arise or could have arisen out of the facts alleged  
15 in the Action. Notwithstanding the foregoing, nothing in this Agreement releases any claims that  
16 cannot be released as a matter of law. The Notice mailed to the Settlement Class will specifically  
set forth the claims being released.

17 DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL

18 21. Defendant shall promptly seek approval from the BOE and the IFC for approval of  
19 this Settlement. Defendant shall present this Settlement to the BOE for approval on or before the  
20 November 15, 2022, meeting. Defendant shall present this Settlement to the IFC at the earliest IFC  
21 meeting following BOE approval. Defendant shall promptly notify Class Counsel of all  
22 developments from the BOE and IFC meetings.

23 22. On or before November 11, 2022, Plaintiff's Counsel shall file a Motion for  
24 Preliminary Approval of Collective and Class Action Settlement, submit this Settlement, and  
25 request a determination by the Court as to the Settlement's fairness, adequacy, and reasonableness.  
26 In so doing, Class Counsel shall apply to the Court for the entry of the Preliminary Approval Order  
27 substantially in the following form and as attached hereto as Exhibit B:  
28

1 a. Scheduling a fairness hearing on the question of whether the proposed  
2 Settlement, including payment of attorneys' fees and costs, costs of administration, and the Service  
3 Awards, should be finally approved as fair, reasonable, and adequate as to the members of the  
4 Settlement Class;

5 b. Certifying the Settlement Class under Rule 23 of the FRCP, affirming  
6 Named-Plaintiffs as Class Representatives, and affirming Thierman Buck, LLP and Gabroy Messer  
7 Law Offices as Class Counsel;

8 c. Approving as to form and content the proposed Notice attached hereto as  
9 Exhibit A;

10 d. Directing the mailing of the Notice by first class mail to the Class Members;

11 e. Preliminarily approving the Settlement subject only to the objections of Class  
12 Members and final review by the Court; and

13 23. To effectuate the Settlement, the Parties agree that all Court deadlines be continued  
14 pending approval of the Settlement.

15 24. If for any reason the Settlement is not approved by the governmental bodies as set  
16 forth in Paragraph 21 or the Court as set forth in Paragraph 22, or if Defendant terminates and  
17 withdraws from the Settlement pursuant to this Paragraph 18, this Settlement Agreement and any  
18 related settlement documents shall be null and void. In such an event, neither the Settlement  
19 Agreement, nor the settlement documents, nor the negotiations leading to the Settlement may be  
20 used as evidence for any purpose. The Parties will promptly notify the Court in the event that the  
21 Settlement is not approved or is terminated and will seek to reinstate all pending case deadlines.

22 DUTIES OF THE PARTIES FOLLOWING FINAL COURT APPROVAL

23 25. Following final approval by the Court of the Settlement provided for in this  
24 Settlement, Class Counsel will submit a proposed Court's Final Order and Judgment in  
25 substantially the form attached hereto as Exhibit C:

26 a. Approving the Settlement, adjusting the terms thereof to be fair, reasonable  
27 and adequate, and directing consummation of its terms and provisions;



1 any Defendant. Each of the Parties hereto has entered into this Settlement solely with the intention  
2 to avoid further disputes and litigation with the attendant inconvenience and expenses.

3 ENFORCEMENT ACTIONS

4 30. In the event one or more of the Parties to this Settlement institutes any legal action or  
5 other proceeding against any other Party or Parties to enforce the provisions of this Settlement or to  
6 declare rights or obligations under this Settlement, the successful Party or Parties shall be entitled to  
7 recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert  
8 witness fees incurred in connection with any enforcement actions.

9 NOTICES

10 31. Unless otherwise specifically provided herein, all notices, demands or other  
11 communications given hereunder shall be in writing and shall be deemed to have been duly given as  
12 of the first business day after mailing by overnight courier with confirmed delivery, addressed as  
13 follows:

14 To Plaintiff and the Settlement Class:

15 Mark R. Thierman, Esq.  
[mark@thiermanbuck.com](mailto:mark@thiermanbuck.com)  
16 Joshua D. Buck, Esq.  
[josh@thiermanbuck.com](mailto:josh@thiermanbuck.com)  
17 Leah L. Jones, Esq.  
[leah@thiermanbuck.com](mailto:leah@thiermanbuck.com)  
18 Joshua R. Hendrickson, Esq.  
[joshh@thiermanbuck.com](mailto:joshh@thiermanbuck.com)  
19 THIERMAN BUCK LLP  
20 7287 Lakeside Drive  
Reno, Nevada 89511

21 To Defendant:

22 Sheri M. Thome, Esq.  
[Sheri.Thome@wilsonelser.com](mailto:Sheri.Thome@wilsonelser.com)  
23 WILSON ELSER MOSKOWITZ EDELMAN & DICKER LLP  
24 6689 Las Vegas Blvd. South, Suite 200  
25 Las Vegas, NV 89119

26 CONSTRUCTION



1 38. This Settlement may be executed in counterparts and by facsimile and digital  
2 signatures, and when each party has signed and delivered at least one such counterpart, each  
3 counterpart, including email and PDF versions, shall be deemed an original and, when taken  
4 together with other signed counterparts, shall constitute one Settlement binding upon and effective  
5 as to all Parties.

6 NO ADVERSE OR RETALIATORY ACTION

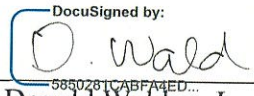
7 39. Defendant will not take any adverse or retaliatory action against the Class  
8 Representative.

9 IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this  
10 Settlement as of the date(s) set forth below:

11 Plaintiff and Class Representative

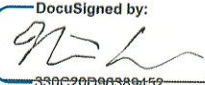
12  
13 DATED: 10/14/2022 \_\_\_\_\_

PLAINTIFF DONALD WALDEN JR.

14 By:  \_\_\_\_\_  
15 Donald Walden, Jr.

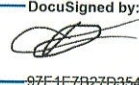
16 DATED: 10/16/2022 \_\_\_\_\_

PLAINTIFF NATHAN ECHEVERRIA

17 By:  \_\_\_\_\_  
18 Nathan Echeverria

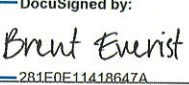
19 DATED: 10/13/2022 \_\_\_\_\_

PLAINTIFF AARON DICUS

20 By:  \_\_\_\_\_  
21 Aaron Dicus

22 DATED: 10/15/2022 \_\_\_\_\_

PLAINTIFF BRENT EVERIST

23 By:  \_\_\_\_\_  
24 Brent Everist

25 DATED: 10/14/2022 \_\_\_\_\_


PLAINTIFF TRAVIS ZUFELT

26  
27  
28



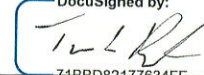
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DATED: 10/14/2022

DocuSigned by:  
  
By: FF4611A348BA458...  
Travis Zufelt

PLAINTIFF TIMOTHY RIDENOUR

DATED: 10/17/2022

DocuSigned by:  
  
By: 74BBD82177634FE...  
Timothy Ridenour

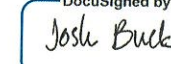
PLAINTIFF DANIEL TRACY

DocuSigned by:  
**Daniel Tracy**  
By: 4D9AC86AC7BC40E...  
Daniel Tracy

**Class Counsel**

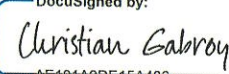
DATED: 10/13/2022

THIERMAN BUCK, LLP

DocuSigned by:  
  
By: C20E777BC5444AC...  
Mark R. Thierman  
Joshua D. Buck  
Leah L. Jones  
Joshua R. Hendrickson

DATED: 10/13/2022


GABROY MESSER

DocuSigned by:  
  
By: AE101A9DE15A106...  
Christian Gabroy  
Kaine Messer

**Defendant**

DATED: 10.17.2022

THE STATE OF NEVADA, EX REL. NEVADA  
DEPARTMENT OF CORRECTIONS

By: 

Print: W. A. "Bill" Gittere

Title: Acting Director

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**Defendant's Counsel**

DATED: 10/14/2022

STATE OF NEVADA,  
OFFICE OF THE ATTORNEY GENERAL

DocuSigned by:  
By: Steve Shevovski  
Steve Shevovski

DATED: 10/13/2022

WILSON ELSER MOSKOWITZ EDELMAN  
& DICKER LLP

DocuSigned by:  
By: Sheri Thome  
Sheri Thome

# **EXHIBIT A**

Class Notice

**EXHIBIT A**

**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEVADA**

DONALD WALDEN, JR., et al., etc.,

Case No.: 3:14-cv-00320-MMD-CSD

Plaintiffs,

v.

THE STATE OF NEVADA, EX REL. NEVADA  
DEPARTMENT OF CORRECTIONS, and DOES  
1-50,

Defendants.

**NOTICE OF PENDENCY OF COLLECTIVE AND CLASS ACTION SETTLEMENT  
AND FINAL HEARING DATE**

**YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR DO NOT ACT.  
PLEASE READ THIS NOTICE CAREFULLY.**

**SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:**

<p>Do Nothing and Remain Eligible to Receive a Payment</p>	<p>To be eligible to receive a cash payment from the Settlement, you do not have to do anything.</p> <p>Your potential Settlement Share is based upon the number of workweeks that you worked for as a correctional officer with Defendant the State of Nevada, ex rel. Nevada Department of Corrections, from May 12, 2011 to [insert date of preliminary approval].</p> <p><b>Your estimated Settlement Share is [insert Settlement Share].</b></p> <p>In exchange for participating in the Settlement, you will release your claims against the Defendant, as detailed below.</p>
<p>Exclude Yourself</p>	<p>If you wish to exclude yourself from the Settlement and <i>not</i> release your claims, you must send a written request for exclusion to the Settlement Administrator, as provided below. If you request exclusion, you will not be eligible to receive any cash payment from the Settlement, but you will retain all your legal claims.</p> <p>If you have previously filed a consent to join in this action and decide to exclude yourself from this action, you will be required to retain your own legal counsel or proceed on your own behalf.</p>
<p>Object</p>	<p>You may write to the Court about why you do not like the Settlement.</p>

1 **I. WHY DID I GET THIS NOTICE?**

2 A proposed collective and class action settlement (the “Settlement”) of this lawsuit pending in the United  
3 States District Court, District of Nevada (the “Court”), has been reached between Plaintiffs Donald Walden  
4 Jr., Nathan Echeverria, Aaron Dicus, Brent Everist, Travis Zufelt, Timothy Ridenour, and Daniel Tracy  
5 (“Plaintiffs”) and Defendant the State of Nevada, Ex. Rel. Department of Nevada Corrections  
6 (“Defendant” or “NDOC”). The Court granted preliminary approval of this Settlement on [insert date].

7 **You have received this Class Notice because you have been identified as a member of the Class,  
8 which is defined as:**

9 All current and former non-exempt hourly paid employees, including  
10 sergeants and lieutenants, who have been employed by Defendant as  
11 correctional officers at any time from May 12, 2011 to [insert date of  
12 preliminary approval] (“Class Period”).

13 This Class Notice explains the lawsuit, the Settlement, and your legal rights. It is important that you read  
14 this Notice carefully as your rights may be affected by the Settlement.

15 **II. WHAT IS THIS COLLECTIVE AND CLASS ACTION LAWSUIT ABOUT?**

16 On May 12, 2014, a collective and class action lawsuit was filed by Plaintiffs, on behalf of themselves and  
17 all other similarly situated employees, for the recovery of unpaid wages under federal and state law (the  
18 “Action”). The Action alleged that Defendant violated federal and state wage-hour laws by failing to  
19 compensate correctional officers (COs) for time spent performing pre and post shift work activities. The  
20 Action asserted five (5) separate causes of action: (1) Failure to pay wages for all hours worked in violation  
21 of the Fair Labor Standards Act (FLSA), 29 U.S.C. § 201, et seq.; (2) Failure to pay overtime in violation  
22 of the FLSA, 29 U.S.C. § 207; (3) Failure to pay minimum wages in violation of the Nevada Constitution;  
23 (4) Failure to pay overtime in violation of NRS 284.180; and (5) Failure to comply with the terms of its  
24 contract with Plaintiffs to pay an agreed upon hourly wage for all hours worked.

25 The Court granted conditional certification in this Action under the FLSA and seven hundred and forty-  
26 eight (748) of you previously filed consents to join with the Court on or before May 23, 2022. The Court  
27 granted Plaintiffs’ motion for summary judgment on the compensability of the pre and post shift work  
28 activities at issue in this case under the FLSA but did not rule how much, if any, damages could be  
recovered. Plaintiffs sought to re-assert the previously alleged state law claims that had previously been  
dismissed by the Court. Defendant continues to dispute the allegations asserted in the Action, both under  
the FLSA and under state law, and disputes that amount of potential damages that could be recovered, if  
at all.

**III. WHAT DOES THE SETTLEMENT PROVIDE?**

A. **Maximum Settlement Amount.** The total amount of the Settlement is \$55,000,000.00  
 (“Maximum Settlement Amount”). The Maximum Settlement Amount includes the payment of  
 all Settlement Shares to Participating Class Members, the Class Representative Service Payments  
 to the Plaintiffs, Class Counsels’ attorneys’ fees and costs, the expenses of the Settlement  
 Administrator, and the employer’s share of employment taxes.

B. **Net Settlement Amount.** The net amount of the Settlement is the amount to be paid out to  
 Participating Class Members after deducting the court approved payments of the Service Awards  
 to the Class Representatives, Class Counsels’ attorneys’ fees and costs, the expenses of the

1 Settlement Administrator, and the employer's share of employment taxes ("Net Settlement  
2 Amount"). The Net Settlement Amount shall be distributed to class members who do not request  
3 exclusion ("Participating Class Members").

4 C. **Settlement Share Calculations.** The Settlement Share for each Participating Class Member will  
5 be calculated on a pro rata basis depending on the total number of workweeks worked by each  
6 Participating Class Member in comparison with the hours worked by all Participating Class  
7 Members. The Settlement Share ratio for each Participating Class Member will then be adjusted  
8 depending on whether the Participating Class Member had previously filed a consent to join in  
9 this action on or before May 23, 2022, as follows:

10 i. **Opt-In Class Members:** Settlement Awards for Class Members who had opted-in to this  
11 Action as of May 23, 2022. These Class Members will receive two (2) times as much on  
12 a per-class member basis than Non Opt-In Class Members.

13 ii. **Non Opt-In Class Members:** Settlement Awards for Class Members who had not opted-  
14 in to this Action as of May 23, 2022. These Class Members will receive half (1/2) as  
15 much on a per-class member basis than Opt-In Class Members.

16 C. **Class Representative Service Payment.** A Service Award to the Class Representatives of up to  
17 \$20,000 to each Named-Plaintiff, or such lesser amount as may be approved by the Court, to  
18 compensate them for services on behalf of the Class in initiating and prosecuting the Action, and  
19 for the risks they undertook, subject to Court approval.

20 D. **Attorneys' Fees and Costs.** Payment to Class Counsel of no more than \$18,333,333.33 (1/3 of  
21 the Maximum Settlement Amount) for all past and future legal fees, and up to \$200,000 for all  
22 litigation expenses incurred, both subject to Court approval. Class Counsel has been prosecuting  
23 the Action on behalf of Plaintiff and the Class on a contingency fee basis (that is, without being  
24 paid any money to date) and has been paying all litigation costs and expenses out of pocket. Class  
25 Counsel's attorney-client agreement with Plaintiffs provides for Class Counsel to recover up to  
26 35% of any potential recovery.

27 E. **Settlement Administration Expenses.** Payment to the Settlement Administrator, estimated not  
28 to exceed \$50,000, for expenses, including expenses of establishing a settlement account,  
preparing and sending out this Class Notice, processing opt-outs, and distributing settlement  
payments.

F. **Tax Matters.** Neither Class Counsel nor Defendant's counsel intend anything contained in this  
Settlement to constitute advice regarding taxes or taxability. You may wish to consult a tax advisor  
concerning the tax consequences of the payments received under the Settlement.

G. **Court Approval Required.** This Settlement is conditioned upon the Court entering an order  
granting final approval of the Settlement and entering judgment.

I. **Detailed Terms of Settlement.** This notice summarizes the Settlement. For the precise terms and  
conditions of the Settlement, please see the settlement agreement available at <Settlement  
Administrator's website>, by contacting class counsel at [info@thiermanbuck.com](mailto:info@thiermanbuck.com) or (775) 284-  
1500, by accessing the Court docket in this case, through the Court's online records at [insert  
PACER] or by visiting the office of the Clerk of the Court for the United States District Court,  
District of Nevada, located at 400 S. Virginia St., Reno, NV 89501, between 9:00 a.m. and 4:00  
p.m., Monday through Friday, excluding Court holidays. **PLEASE DO NOT TELEPHONE**

1           **THE COURT OR THE COURT CLERK’S OFFICE TO INQUIRE ABOUT THIS**  
2           **SETTLEMENT.**

3           **IV.     WHAT AM I GIVING UP IN EXCHANGE FOR THE SETTLEMENT?**

4           By participating in the Action and accepting the settlement payment, you will not be able to make a claim  
5           or file a lawsuit for the claims that were alleged in this Action—i.e., that Defendant owes you any unpaid  
6           wages for not compensating you for the unpaid pre and post shift activities that you performed during the  
7           Class Period. Specifically, the “Release of Claims” set forth in the Settlement states as follows:

8                           Upon final approval by the Court of this Settlement, and except as to such  
9                           rights or claims as may be created by this Settlement, each Class Member  
10                          who has not submitted a timely and valid Request for Exclusion and  
11                          without the need to manually sign a release document, in exchange for  
12                          the consideration recited in this Agreement, on behalf of himself/herself  
13                          and on behalf of his/her current, former, and future heirs, executors,  
14                          administrators, attorneys, agents, and assigns, shall and does hereby fully  
15                          and finally release the Defendant and Released Parties from any and all  
16                          state, federal and local claims arising from his/her employment including  
17                          statutory claims, whether known or unknown, in law or in equity,  
18                          including but not limited to claims under any legal theory for failure to  
19                          pay minimum wage, failure to pay overtime compensation, failure to  
20                          properly calculate overtime compensation, failure to pay for all hours  
21                          worked, failure to provide meals and rest periods, failure to timely pay  
22                          wages or compensation or final wages or compensation, failure to  
23                          reimburse for business expenses, making illegal deductions from wages  
24                          or compensation, failure to furnish accurate wage statements or other  
25                          notices, failure to keep accurate records, and any and all claims for  
26                          recovery of compensation, overtime pay, minimum wage, premium pay,  
27                          interest and/or penalties of any kind whatsoever, whether known or  
28                          unknown, whether based on common law, regulations, statute, or a  
                              constitutional provision, under state, federal or local law, arising out of  
                              the allegations made in the Action and that reasonably arise or could have  
                              arisen out of the facts alleged in the Action. Notwithstanding the  
                              foregoing, nothing in this Agreement releases any claims that cannot be  
                              released as a matter of law.

21           **V.     HOW MUCH WILL MY PAYMENT BE?**

22           Your Settlement Share will be based on the number of workweeks that you worked as a non-exempt hourly  
23           paid CO during the Class Period and whether you previously opted-in to the federal portion of the Action.

24           Defendant’s records reflect that you worked [insert number] of workweeks during the Class Period. You  
25           [did/did not] file a consent to join in the federal portion of this action on or before May 23, 2022.

26                           Your estimated Settlement Share is [insert Settlement Share]

27           If you wish to challenge the information set forth above, then you must submit a written, signed dispute  
28           challenging the information along with supporting documents, to the Settlement Administrator at the  
                              address provided in this Class Notice no later than <date 30 days after mailing of class notice>.

1 **VI. HOW CAN I BE ELIGIBLE TO RECEIVE A PAYMENT?**

2 **To be eligible to receive money from the Settlement, you do not have to do anything.** A check for  
3 your settlement payment will be mailed automatically to the same address as this Class Notice. If your  
4 address is incorrect or has changed, you must notify the Settlement Administrator. The Settlement  
5 Administrator is: [insert Settlement Administrator information]

6 **VII. WHAT IF I DON'T WANT TO BE A PART OF THE SETTLEMENT?**

7 If you do not wish to participate in the Settlement, you may exclude yourself from the Settlement or “opt  
8 out.” **If you opt out, you will not be eligible to receive any money from the Settlement, but you will  
9 not be bound by its terms. If you previously filed a consent to join in the federal portion of this  
10 Action but wish to opt-out, you will be required to retain your own legal counsel or proceed on your  
11 own behalf.**

12 To opt out, you must submit to the Settlement Administrator, by First Class Mail, a written, signed and  
13 dated request for exclusion postmarked no later than <30 days after mailing of class notice>. The address  
14 for the Settlement Administrator is *Walden, et. al. v. State of Nevada, Ex. Rel. Nevada Department of  
15 Corrections, c/o [insert Settlement Administrator name and information]*. The request for exclusion must  
16 state in substance: “I have read the Class Notice and I wish to opt out of the class action and settlement of  
17 the case *Walden, et. al. v. State of Nevada, Ex. Rel. Nevada Department of Corrections, Case No.: 3:14-  
18 cv-00320-MMD-CSD.*” The request for exclusion must contain your name, address, signature and the last  
19 four digits of your Social Security Number for verification purposes. The request for exclusion must be  
20 signed by you. No other person may opt out for a member of the Class.

21 **VIII. HOW DO I TELL THE COURT THAT I DON'T LIKE THE SETTLEMENT?**

22 Any Class Member, who has not opted out and believes that the Settlement should not be finally approved  
23 by the Court for any reason, may object to the proposed Settlement. Objections must be in writing and  
24 state the Class Member’s name, current address, telephone number, and describe why you believe the  
25 Settlement is unfair and whether you intend to appear at the final approval hearing. All objections or other  
26 correspondence must also state the name and number of the case, which is *Walden, et. al. v. State of  
27 Nevada, Ex. Rel. Nevada Department of Corrections, Case No.: 3:14-cv-00320-MMD-CSD.*

28 To object to the Settlement, you must not opt out. If the Court approves the Settlement, you will be bound  
by the terms of the Settlement in the same way as Class Members who do not object. Any Class Member  
who does not object in the manner provided in this Class Notice shall have waived any objection to the  
Settlement, whether by appeal or otherwise.

If you file a timely written objection, you may, but are not required to, appear at the Final Approval  
Hearing, either in person or through your own attorney. If you appear through your own attorney, you are  
responsible for hiring and paying that attorney. All written objections and supporting papers must (a)  
clearly identify the case name and number (*Walden, et. al. v. State of Nevada, Ex. Rel. Nevada Department  
of Corrections, Case No.: 3:14-cv-00320-MMD-CSD*), (b) be submitted to the Court either by mailing  
them or by filing them in person with the Clerk of the Court for the Clerk of the Court for the United States  
District Court, District of Nevada, located at 400 S. Virginia St., Reno, NV 89501, and (c) be filed or  
postmarked on or before <30 days following mailing of the Class Notice>.



The addresses for the Parties' Counsel are as follows:

**Class Counsel:**

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[mark@thiermanbuck.com](mailto:mark@thiermanbuck.com)  
Joshua D. Buck  
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Leah L. Jones  
[leah@thiermanbuck.com](mailto:leah@thiermanbuck.com)  
Joshua R. Hendrickson  
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GABROY MESSER  
170 S. Green Valley Pkwy., Suite 280  
Henderson, Nevada 89012

**IX. WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT?**

The Court will hold a Final Approval Hearing at <time> a.m. on <date>, in Courtroom <#> before Chief Judge Miranda Du at the United States District Court, District of Nevada, located at 400 S. Virginia St., Reno, NV 89501. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The purpose of this hearing is for the Court to determine whether to grant final approval to the Settlement. If there are objections, the Court will consider them. The Court will listen to people who have made a timely written request to speak at the hearing. This hearing may be rescheduled by the Court without further notice to you. You may check the settlement website identified in Section III above to confirm that the date has not been changed. **You are not required to attend** the Final Approval Hearing, although any Class Member is welcome to attend the hearing.

**X. HOW DO I GET MORE INFORMATION ABOUT THE SETTLEMENT?**

You may call the Settlement Administrator at <phone> or write to *Walden, et. al. v. State of Nevada, Ex. Rel. Nevada Department of Corrections*, Settlement Administrator, c/o [[insert Settlement Administrator name and information](#)]; or contact Class Counsel at 775-284-1500 or email at [info@thiermanbuck.com](mailto:info@thiermanbuck.com)

This notice summarizes the Settlement. More details are in the Settlement Agreement. You may receive a copy of the Settlement Agreement, the Final Judgment or other Settlement documents by writing to Class Counsel, or by going to the Settlement Administrator's website at <website>.

**PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.**

# **EXHIBIT B**

Proposed Order Granting Preliminary  
Approval of Class Action Settlement

**EXHIBIT B**

1 Mark R. Thierman, Nev. Bar No. 8285  
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7 Reno, Nevada 89511  
Tel. (775) 284-1500  
8 Fax. (775) 703-5027

9 GABROY LAW OFFICES  
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10 Kaine Messer (#14240)  
11 The District at Green Valley Ranch  
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12 Henderson, Nevada 89012  
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13 Fax (702) 259-7704  
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14 kmesser@gabroy.com

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*Attorneys for Defendant The State of Nevada,  
ex rel. its Department of Corrections*

18  
19 **UNITED STATES DISTRICT COURT**  
20 **DISTRICT OF NEVADA**

21 DONALD WALDEN, JR., et al., etc.,

22 Plaintiffs,

23 v.

24 THE STATE OF NEVADA, EX REL. NEVADA  
DEPARTMENT OF CORRECTIONS, and  
25 DOES 1-50,

26 Defendants.

Case No.: 3:14-cv-00320-MMD-WGC

**[PROPOSED] ORDER GRANTING  
PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT**

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 Plaintiffs' Motion for Preliminary Approval of Collective and Class Action Settlement came  
3 before this Court, the Honorable Chief Judge Miranda M. Du presiding, on December 1, 2022, at  
4 2:30 p.m.. This Court, having considered the papers submitted in support of the Motion, HEREBY  
5 ORDERS THE FOLLOWING:

6 1. This Court grants preliminary approval of the Settlement and the Settlement Classes  
7 based upon the terms set forth in the Collective and Class Action Settlement and Release between  
8 Plaintiffs Donald Walden, Jr., et. al. and Defendant the State of Nevada, Ex. Rel. Nevada  
9 Department of Corrections ("Settlement"). The Settlement preliminarily appears to be fair,  
10 adequate, and reasonable to the Class. The Joint Motion for Preliminary Approval is GRANTED.

11 2. The Settlement falls within the range of reasonableness and appears to be  
12 presumptively valid, subject only to any objections that may be raised at the final fairness hearing  
13 and final approval by this Court.

14 3. A final fairness hearing on the question of whether the proposed Settlement should  
15 be finally approved as fair, reasonable, and adequate as to the members of the Class is scheduled in  
16 accordance with the Implementation Schedule set forth below.

17 4. This Court approves, as to form and content, the Notice of Pendency of Collective  
18 and Class Action Settlement and Final Hearing Date ("Class Notice of Settlement"), in substantially  
19 the form attached to the Settlement as Exhibit A. This Court approves the procedure for Class  
20 Members to (i) participate (i.e., do nothing), (ii) opt out, or (iii) object, to the Settlement as set forth  
21 in the Class Notice of Settlement.

22 5. The Court directs the mailing of Class Notice of Settlement by first class mail to the  
23 Class Members in accordance with the Implementation Schedule set forth below. This Court finds  
24 the dates selected for the mailing and distribution of the Class Notice of Settlement, as set forth in  
25 the Implementation Schedule, meet the requirements of due process and provide the best notice  
26 practicable under the circumstances and shall constitute due and sufficient notice to all persons  
27 entitled thereto.

28 6. This Court has already conditionally certified the opt-in collective group pursuant to  
the Fair Labor Standards Act (FLSA) and that decision is not disturbed. It is further ordered that a

1 Settlement Class, as defined in the Settlement, is preliminarily certified pursuant to Rule 23 of the  
 2 Federal Rules of Civil Procedure for settlement purposes only.

3 7. This Court re-affirms Plaintiffs DONALD WALDEN JR., NATHAN ECHEVERRIA,  
 4 AARON DICUS, BRENT EVERIST, TRAVIS ZUFELT, TIMOTHY RIDENOUR, and DANIEL TRACY  
 5 as Class Representatives.

6 8. This Court re-affirms Mark Thierman, Esq., Joshua Buck, Esq., Leah Jones, Esq.,  
 7 and Joshua R. Hendrickson, Esq. of Thierman Buck, LLP of Reno, Nevada and Christian Gabroy,  
 8 Esq. and Kaine Messer, Esq. of Gabroy Messer of Henderson, Nevada as Class Counsel.

9 9. This Court confirms [insert Settlement Administrator] as the Settlement  
 10 Administrator.

11 10. This Court orders the following Implementation Schedule for further proceedings:

a.	Deadline for Defendant to Submit Class Member Information to Claims Administrator	_____, 2022 [7 calendar days after Order granting Preliminary Approval]
b.	Deadline for Claims Administrator to Mail the Notice to Class Members	_____, 2022 [14 calendar days after Order granting Preliminary Approval]
c.	Deadline for Defendant to Make Good Faith Deposit To Settlement Account maintained by Claims Administrator	_____, 202__ [21 calendar days after Order granting Preliminary Approval or 30 calendar days from date of approval by the BOE and IFC, whichever is later]
d.	Deadline for Defendant’s Insurer to Make Good Faith Deposit To Settlement Account maintained by Claims Administrator	_____, 2023 [45 calendar days after Order granting Preliminary Approval]
e.	Deadline for Class Counsel to File Motion for Final Approval of Fees, Costs, and Service Awards	_____, 2022 [21 calendar days after Order granting Preliminary Approval]
f.	Deadline for Class Members to Postmark Requests for Exclusions	_____, 2023 [30 calendar days after initial mailing of the Notice to Class Members]

1	g.	Deadline for Receipt by Court and Counsel of any Objections to Settlement	_____, 2023 [30 calendar days after initial mailing of the Notice to Class Members]
2			
3	h.	Deadline for Class Counsel to file Motion for Final Approval of Settlement, Attorneys' Fees, Costs, and Enhancement Award	_____, 2023 [7 calendar days prior to Final Approval Hearing]
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5			
6	i.	Deadline for Class Counsel to File Declaration from Claims Administrator of Due Diligence and Proof of Mailing	_____, 2023 [7 calendar days prior to Final Approval Hearing]
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10	j.	Final Fairness Hearing and Final Approval	_____, 2023
11			
12	k.	Deadline for Defendant to Deposit Remaining Settlement Fund To Settlement Account maintained by Claims Administrator	_____, 2023 [90 days after Effective Date]
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16	l.	Deadline for Claims Administrator to wire transfer the Attorneys' Fees and Costs to Class Counsel (if Settlement is Effective)	_____, 2023 [10 days after receipt of Settlement Funds]
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18			
19	m.	Deadline for Claims Administrator to mail the Settlement Awards to Class Members and the Enhancement Awards to Class Representatives (if Settlement is Effective)	_____, 2023 [10 days after receipt of Settlement Funds]
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23	n.	Claims Administrator to File Proof of Payment of Settlement Awards, Enhancement Award, Attorneys' Fees and Costs (if Settlement is Effective)	_____, 2023 [180 days after Settlement Awards being issued]
24			
25			
26			
27	o.	Uncashed Checks to be Voided and Monies Remitted	_____, 2023 [180 days after Settlement Awards being
28			

	To State of Nevada Unclaimed Property Fund	issued]
p.	Unclaimed Settlement Monies Revert to the State of Nevada	_____, 2024 [1 year following Settlement Awards being remitted to State of Nevada unclaimed property fund]

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
DISTRICT COURT JUDGE

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# **EXHIBIT C**

[Proposed] Order Granting Final  
Approval of Class Action Settlement

**EXHIBIT C**



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*Attorneys for Defendant The State of Nevada,  
ex rel. its Department of Corrections*

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

DONALD WALDEN, JR., et al., etc.,

Plaintiffs,

v.

THE STATE OF NEVADA, EX REL. NEVADA  
DEPARTMENT OF CORRECTIONS, and  
DOES 1-50,

Defendants.

Case No.: 3:14-cv-00320-MMD-WGC

**[PROPOSED] ORDER GRANTING FINAL  
APPROVAL OF CLASS ACTION  
SETTLEMENT**

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The above-referenced putative class action (“Action”) having come before the Court on  
3 \_\_\_\_\_, for a hearing and this Final Order Approving Class Action Settlement and  
4 Judgment (“Court’s Final Order and Judgment”), consistent with the Court’s Preliminary Approval  
5 Order (“Preliminary Approval Order”), filed and entered \_\_\_\_\_, and as set forth in the  
6 Joint Stipulation of Collective and Class Action Settlement and Release between Plaintiffs and  
7 Defendant (“Settlement”) in the Action, and due and adequate notice having been given to all Class  
8 Members as required in the Preliminary Approval Order, and the Court having considered all  
9 papers filed and proceedings had herein and otherwise being fully informed and good cause  
10 appearing therefore, it is hereby ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

11 1. All terms used herein shall have the same meaning as defined in the Settlement  
12 unless an alternate meaning is specifically given within this Order. Consistent with the definitions  
13 provided in the Settlement,

14 a. the term “Class Member” means those individuals that are within the  
15 Settlement Class which includes all current and former non-exempt hourly paid employees,  
16 including sergeants and lieutenants, who have been employed by Defendant as correctional officers  
17 at any time during the Class Period;

18 b. the term “Class Period” means May 12, 2011, through [insert date of  
19 preliminary approval of this Settlement];

20 c. the term “Released Claims” collectively means those claims to be released by  
21 the Settlement Class identified in Paragraph 20 of the Settlement;

22 d. the term “Class Representatives” shall mean Plaintiffs DONALD WALDEN  
23 JR., NATHAN ECHEVERRIA, AARON DICUS, BRENT EVERIST, TRAVIS ZUFELT,  
24 TIMOTHY RIDENOUR, and DANIEL TRACY.

25 e. the term “Class Counsel” shall mean Mark R. Thierman, Esq., Joshua D.  
26 Buck, Esq., Leah L. Jones, Esq., and Joshua R. Hendrickson, Esq. of Thierman Buck LLP of Reno,  
27 Nevada and Christian Gabroy, Esq. and Kaine Messer, Esq. of Gabroy Messer of Henderson,  
28 Nevada.

1           2.       This Court has jurisdiction over the subject matter of this Action and over all Parties  
2 to this Action, including all Class Members.

3           3.       Distribution of the Notice directed to the Class Members as set forth in the  
4 Settlement and the other matters set forth therein have been completed in conformity with the  
5 Preliminary Approval Order, including individual notice to all Class Members who could be  
6 identified through reasonable effort, and as otherwise set forth in the Settlement. The Notice  
7 provided due and adequate notice of the proceedings and of the matters set forth therein, including  
8 the proposed Settlement set forth in the Settlement, to all persons entitled to such Notice, and the  
9 Notice fully satisfied the requirements of due process. All Class Members and all Released Claims  
10 are covered by and included within the Settlement and the Court's Final Order and Judgment.

11           4.       The Court hereby finds the Settlement was entered into in good faith. The Court  
12 further finds that Plaintiff has satisfied the standards and applicable requirements for final approval  
13 of this class action settlement.

14           5.       The Court hereby approves the Settlement set forth in the Settlement and finds the  
15 Settlement is, in all respects, fair, adequate and reasonable, and directs the Parties to effectuate the  
16 Settlement according to its terms. The Court finds that the Settlement has been reached as a result  
17 of intensive, serious and non-collusive, arm's-length negotiations. The Court further finds the  
18 Parties have conducted extensive and costly investigation and research, and counsel for the Parties  
19 are able to reasonably evaluate their respective positions. The Court also finds the Settlement at  
20 this time will avoid additional substantial costs, as well as avoid the delay and risks that would be  
21 presented by the further prosecution of the Action. The Court has reviewed the benefits that are  
22 being granted as part of the Settlement and recognizes the significant value to the Class Members.  
23 The Court also finds the Class is properly certified as a settlement class. The Court also hereby  
24 finds there were no objections to the Settlement filed prior to or raised by any person on the record  
25 at the Final Approval Hearing that change the Court's decision to approve the Settlement; there  
26 were only [insert] of persons who opted-out of the settlement.

27           6.       As of the date of the Court's Final Order and Judgment, each and every Class  
28 Member is and shall be deemed to have conclusively released the Released Claims as against the  
Defendant and Released Parties. In addition, as of the date of the Court's Final Order and

1 Judgment, each Class Member who has not submitted a valid Request for Exclusion is forever  
2 barred and enjoined from instituting or accepting damages or obtaining relief against the Defendant  
3 and Released Parties relating to the Released Claims.

4 7. The Court hereby finds the Maximum Settlement Amount of \$55,000,000.00  
5 provided for under the Settlement to be fair and reasonable in light of all the circumstances.  
6 Defendant made a good faith deposit in the amount of \$25,000,000.00 to the settlement account  
7 safeguarded and maintained by the Settlement Administrator (“Settlement Account”). The Court  
8 hereby orders Defendant to make the remaining settlement fund deposit in the amount of  
9 \$30,000,000.00 to the Settlement Account, as set forth in the Settlement. The Court further orders  
10 the calculations and the payments of the Net Settlement Amount (Maximum Settlement Amount  
11 minus attorneys fees, costs, enhancement payment, and third party administrator fees) to be made  
12 and administered to Class Members under the Settlement in accordance with the pro rata  
13 distribution as set forth in the Settlement.

14 8. The Court hereby re-affirms Mark R. Thierman, Esq., Joshua D. Buck, Esq., Leah L.  
15 Jones, Esq., and Joshua R. Hendrickson, Esq. of Thierman Buck, LLP and Christian Gabroy, Esq.  
16 and Kaine Messer, Esq. of Gabroy Messer Law Offices as Class Counsel. Pursuant to the terms of  
17 the Settlement, and the authorities, evidence and argument submitted by Class Counsel, the Court  
18 hereby awards Class Counsel attorneys’ fees in the amount of \$18,333,333.33, and the attorney  
19 costs in the amount of \$200,000.00, to be deducted and paid from the Maximum Settlement  
20 Amount, as final payment for and complete satisfaction of any and all attorneys’ fees and costs  
21 incurred by and/or owed to Class Counsel and any other person or entity related to the Action. The  
22 Court further orders that the award of attorneys’ fees and costs set forth in this Paragraph shall be  
23 administered pursuant to the terms of the Settlement, and transferred and/or made payable to Class  
24 Counsel in the Action.

25 9. The Court hereby re-affirms Plaintiffs DONALD WALDEN JR., NATHAN  
26 ECHEVERRIA, AARON DICUS, BRENT EVERIST, TRAVIS ZUFELT, TIMOTHY  
27 RIDENOUR, and DANIEL TRACY as Class Representatives of the Settlement Class and approves  
28 and orders a Service Award to each Class Representative in the amount of \$20,000.00 to be paid  
from the Maximum Settlement Amount as set forth in the Settlement.

1           10. The Court hereby re-affirms [insert Settlement Administrator] as the Claims  
2 Administrator and approves and orders payment for actual claims administration expenses incurred  
3 by the Claims Administrator in the amount of \$50,000.00 to be paid from the Maximum Settlement  
4 Amount as set forth in the Settlement.

5           11. The Court finally finds and orders that the Settlement is and constitutes a fair,  
6 reasonable, and adequate compromise of the Released Claims against the Released Party.

7           12. The Court hereby enters judgment in the Action, as of the date of entry of the  
8 Court's Final Order and Judgment, pursuant to the terms set forth in the Settlement.

9           13. Should the Settlement Account not be fully funded by Defendant for whatever  
10 reason pursuant to the terms of the Settlement, post-judgment interest shall accrue as of the date of  
11 this Order until the Settlement Account is fully funded, pursuant to 28 U.S.C. § 1961.

12           14. Without affecting the finality of the Court's Final Order and Judgment in any way,  
13 the Court hereby retains continuing jurisdiction over the interpretation, implementation, and  
14 enforcement of the Settlement, and all orders entered in connection therewith.

15           15. Finally, the Court hereby orders that the Parties file a "Settlement Status Report"  
16 with respect to the status of Settlement payments not later than 180-days following this Order.

17 **IT IS SO ORDERED.**

18  
19 Dated: \_\_\_\_\_

\_\_\_\_\_  
DISTRICT COURT JUDGE

# **EXHIBIT D**

Opt-in Plaintiffs

**EXHIBIT D**

Last Name	First Name	Middle
Acevedo	Joel	
Aguilar-Suarez	Anthony	
Aguilera	Rafael	
Aguilera	Rogelio	
Akash	Rama	
Allan	Marc	
Allen	Harold	
Allen	Ray	
Allen	Jason	
Allen-Ricksecker	Jonathan	R.
Allison	Joseph	
Almona	MacEvans	
Alvarez	Alfonso	
Amacker	Amanda	
Amani	David	
Ambler	Jeremy	
Anderson	Eric	
Andreen	Patrick	
Andrei	Antonov	
Anguiano	Francisco	
Angus	Daniel	I
Appah	Francis	
Ardinger	Robert	
Arguelles	Raymond	
Arguello	Tania	
Arias	Adrian	
Arias	Amanda	
Arias	Gonzalo	
Arnold	Carl	
Artinger	Jayson	
Ashby	Kevin	
Ashby	Lisa	
Ashcraft	Robert	
Atherton	Mark	
Atherton	Richard	A
Atkins	Russel	
Avalos	Victor	
Aviles	Yesenia	
Baker	Daren	
Baker	Robert	A
Baker	Robert	P
Ballard	Xavier	
Bame	Almon	
Banks	Vironica	
Bankston	John	

Last Name	First Name	Middle
Barajas	Cesar	
Barba	Michael	
Barnett	James	
Baros	Rocky	
Bartholomew	Garet	
Bartlett	Fred	
Bartlett	Joe	
Bass	Omar	
Beach	Christine	
Beauchmin	Kevin	
Beaver	Kathleen	E
Becerril	Joe	
Bement	Baron	
Bennett	Gregory	
Bennett	Travis	
Bergstrom	Matthew	
Berrett	Justin	
Betancourt	Raul	
Betterly	Terrill	
Bilavarn	Johnny	
Billey	Joseph	S
Binder	Jonathan	
Blajos	Rudy	
Blake	Derland	
Blanton	Jovan	
Bloomfield	Sean	
Bogue	Richard	
Bonsignore	Michael	
Boom	Zachary	
Bouakka	Jaouad	
Bozanich	Leona	
Bradburn	Bryon	
Brandon	Dwan	
Branske	Justin	
Bratsch	Ronald	
Braun	Joshua	
Brewster	Lloyd	
Brieger	David	
Bright	Brandon	
Brigida	Michael	
Brooks	Nickey	
Brooks	Sean	
Brooks	Vincent	
Brown	Canute	
Brown	Colin	



Last Name	First Name	Middle
Brown	Mark	
Brown	Waylon	
Brown (Tyning)	Erica	
Buckley	James	
Bunting	Wendall	
Burcham	Paul	
Burnett	Dionsha	
Burnham	Shamar	
Burson	Eric	
Caggiano (Deceased)	Christopher	
Calderone	Anthony	
Caldwell	Adam	
Calles	Anthony	
Calvez	Ben	E
Camacho	Eddie	H
Capra	Giovanni	
Capristo	Bryan	
Carlman	Timothy	
Carrillo	Hector	
Carter	John	D
Case	Aaron	
Castill, Jr.	Ernesto	
Castillo	Efrain	
Castro	Javier	
Chapulin	Loren	G
Chavez	Michael	
Chiancone	Dominic	
Chislett	Karen	
Chowdhuary	Shane	
Christian	Benitez	
Clarett	Gerald	
Clark	Benu	
Clark	Kenneth	
Clarke	William	M
Clayton	Willie	
Cobb	Todd	
Coffin	Donald	
Cofield	Randy	
Collette	Gerald	
Collier	Daniel	L
Collins	Josh	
Colon	Elmo	
Coltrin	Jeremy	
Columbus	Gene	

Last Name	First Name	Middle
Conrad	Dave	
Cook	James	T
Cool	Darin	L
Coons	Cary	
Cooper	Robin	
Corley	Andrew	
Corzine	Kenneth	F
Cosman	John	
Covington	Michael	
Craig	Matthew	
Cridebring	Alan	
Cristilli	Taham	
Critchfield	Brandon	
Cruse	Lonnie	
Crossman	Michael	
Crosswhite	Rashay	
Crowder	Michael	
Crowder	Thomas	
Cruse	Michael	
Crutchfield (IV)	Huston	
Cruz	Brandon	A
Cruz	Juan	
Curiel	Mike	
Dale	Tirome	
Dante	Michael	
Daugherty	Darnell	
Davis	Donald	W
Davis	Ronald	
Dawson	Addie	
Day	Clinton	A
Day	Terry	
Dean	William	G
DeFrees	Stephen	
DeJesus	Efren	
Delaney	Ryan	
Delgado	Prince-Alejandro	
Dennis	Kevin	
Dennis	Shane	
Devito	Michael	
Di Bari	John	
Dickens	Franklin	E
Dicus	Aaron	
Dillard	Morgan	B
Dixon	Ramon	
Dodd-Castro	Rejetta	

Last Name	First Name	Middle
Dominguez	Dean	
Dority	Ryan	
Drake	Todd	
Dressler	Timothy	
Dunn (Deceased)	Timothy	
Dvorak	Radek	
Echeverria	Nathan	
Eckard	David	
Eckhardt	Gary	W
Elder	Shawn	
Erekson	Jackie (Mr.)	
Eskridge	Matthew	
Espino	Rodrigo	
Esquivel	Daniel	
Estes	Bruce	
Etcheberry	Myles	
Evangelista	Jordan	
Everett	Branden	
Everist	Brent	
Faust	Jeffrey	
Fehr	Benjamin	R
Felix	Jeffrey	
Ferraris	Carolyn	
Ferris	Lukas	
Fikes	Jessie	
Fine	Oscar	F
Finley	Cornelius	
Flagg	Ed	
Flom	Bruce	
Flores-Nava	Miguel	A
Foley	David	
Fonseca	Federico	
Ford	Michael	
Foster	Matt	
Fowler	Glenn	
Fowlston	James	
Fratis	Travis	
Frazer	Lionesha	
Fredstrom	Shon	
Freeman	Martin	
Fuentes	Gilbert	S
Fuscarino	Michael	
Gaida	James	
Gallagher	Ryan	

Last Name	First Name	Middle
Gallion	Anthony	
Garay	Felix	
Garcia	Anthony	T
Garcia	Emmanuel	
Garcia	Javier	R
Garcia	Julian	
Garcia	Oscar	
Garcia	Juan	
Gardner	Carol	
Gardner	Luke	
Gardner	Robert	
Garnica	Nathaniel	
Garrison	Gary	
Garvin	Russell	
Gaskins	Michael	
Gatlin	David	B
Gaura	Martin	
Gavin	Michael	P
Gentile	Brian	
Georgiev	Detelin	
Ghiglieri	Jeremy	
Giancola	Rick	J
Gibson	Judith	
Gibson	Lamar	
Gilbert	Jeffrey	R
Gilbert	Scott	
Gillam	Greg	
Glenn	Justin	
Goins	Reggie	
Gonzales	Rionilo	
Goodin	Frank	
Goon	Talon	
Gradney	Gordon	
Green	Lar	
Greene	Terry	
Greer	Alfonso	R
Gregory	Terrel	
Grider	Lee	
Griffin	Charles	
Griffin	Glenn	
Grimaldi	Mark	
Grimmer	Karl	
Guerra	Pedro	
Guice	Morris	T
Gwinn	Cory	

Last Name	First Name	Middle
Gwinn	Frank	D
Hackett	Sean	
Haddad	Navil	E
Haener	Brandon	
Hafen	Aaron	
Hageman	Zeke	
Hall	James	
Hallman III	Willie	
Halsey	David	
Hamilton	Douglas	
Hampton	Bernard	
Hansen	Bradley	M
Hanski	Jason	
Haralson	Vanessa	
Harmon	Brandon	
Haros	Jose	A
Harris	Britney	
Harris	Jason	
Harris	Jeffrey	
Harris	James	
Harvey	Clint	
Harvey	Tejay	
Heaps	Jami	
Heaton	Bo	L
Heckman	Trenton	
Heidt	Joseph	
Heidt	Vanessa	S
Henderson	Daryl	
Henderson	Dwayne	
Hendley	Adrian	
Hendricks	Robert	D
Henry	Jason	
Henson	Dan	
Hernandez	Danny	
Hernandez	Guillermo	E
Hernandez	Diana	
Hesser	James	
Hewitt	Keith	
Hicks	Donald	
Hightower	Joel	A
Hightower (DECEASED)	Sharrod	
Hill	April	
Hill	Donald	R
Hill	Jacob	

Last Name	First Name	Middle
Hill	Perry	R
Hinnant	James	
Hogan	James	
Holguin	Jacob	
Hollingsworth	Ira	
Hollman	William	
Holman	Eliot	M
Holmes	Zrelecia	
Holz	Jeffrey	A
Hornaert	Carl	
Horlacher	Sean	
Horn	Benjamin	
Huinker	Bruce	
Hunt	Ethan	
Hunt	Justin	
Hunter	Kerry	
Indiveri	Steven	
Ingram	Colby	G
Inwood	Edward	C
Ismail	Abdi	S
Isom	Johnny Raymond	
Jaeger	Ron	
James	Michael	
Jenkins	Chais	V
Johnson	Joe	
Johnson	Troy	
Jones	Anthony	
Jones	Christopher	
Jones	Eric	
Jones	Jimmy	
Jones	Kevin	
Jones	Virginia	
Jones (Crowley)	Nicole	
Jopalian	Sarkis	
Kaimi	Kevin	
Kang	Won Jae	
Keller	Daniel	
Kelly	James	
Kelly	Joshua	
Kelly	Martin	P
Kendall	Shane	
Kennett	Nathan	
Kerby	Brian	J
Kibbe	Daniel	
Kim	Francis ("Frank")	

Last Name	First Name	Middle
Kimbrell	Steven	
King	Emory	
Kinsey	Maria	
Kirste	William	P
Kluever	Johnathan	
Kluever	Paul	
Kobrick	Joseph	
Koch	Brian	
Kolakowski	David	
Kresky	Felix	J
Krol	Dariusz	
Lai	Tony	
Lara	Jonathan	
Lazzarino	Nick	
Leavitt	Jesus	
Leavitt	Norma	A
Ledingham	Kristopher	
Lee	Cory	
Lewis	Joseph	
Lewis	Theresa	K
Lewonczyk	Mark	
Liggett	Robert	
Lightsey	Rod	
Lima Hernandez	Walter	
Lindsay	Cedric	
Little	Austin	
Lobato	Victor	
Lona	Efrain	
Lopez	Carlo	
Lopez-Torres	Jaime	
Lovato	Danny	
Lu	Bing	
Luce	David	J
Ludwick	Brian	
Ludwig	Todd	
Luis	Adam	
Lummus	William	K
Luna	Miguel	
Lunkwitz	Paul	
Ly	Regina	
Lytle	Michael	R
Madden	Dennis	
Magnum	David	
Main	Richard	
Marangi	Mark	

<b>Last Name</b>	<b>First Name</b>	<b>Middle</b>
Marangi	Shalon	
Marcano	Brandon	
Mark	Eric	
Marrero	Andrew	
Marshall	Floyd	
Marshall	Jason	
Martensen	Louis	
Martin	Bruce	A
Martin	Richard	
Martin	Spencer	
Martindelcampo	Adrien	
Martinez	Michael	
Martinez	Oscar	A
Martinez-Hernandez	Jezrael	
Martorano	Anthony	
Mason	Jerry	
Maurer	Jack	
May	Charles	
May	Claude	
McAfee	Bradley	
McCathrin	Erik	
McColl	Michael	
McCoy	Myrshea	
McFadden	Marcus	
McFarland	Twylla	
McGahuey	Nicholas	P
McNamara	Patrick	
McTee	Jeff	
McTee	Trisha	
Medina	Armando	
Medina-Hernandez	John	
Mendez	Patrick	
Menendez	Oscar	
Menendez	Yolanda	
Meranza	Jesus	
Mercado	Jonathan	
Mesa	Julio	
Mikel	Perry	
Milanov	Desislava	
Miller	Floyd	
Miller	Thomas	
Miller	Todd	
Millim	Daniel	
Minervini	Jared	



Last Name	First Name	Middle
Mirador	Ronald	A
Mitchell	Bradley	
Mitchell	Ronald	
Moka	Nelson	
Moka	Francis	
Molina	Juan	
Mondragon	Daniel	L
Money	Danielle	
Montoya	Heather	
Montoya	Ronald	
Mooberry	Mark	
Moore	James	K
Morgenstern	Bruce	
Morgenstern	Charris	
Moses	Jeffrey	
Moten	Umair	
Moye	Randolph	
Moylan	Amanda	
Mumpower	Dustin	
Munoz	Juan	
Murdock	James	
Musto	Nanette	
Najera	Joel	
Natali	Andre	S
Navarrete	Jose	
Navarro	Andy	
Naylor	Michael	
Neidert	Edward	
Nelson	Jason	G
Nestoiter	Boris	
Nevarez	Adrian	
Nevarez	Daniel	
Neville	Christopher	
Newton	Cory	
Nieto	James	
Nivitanont	Eddie	
Nixon	George	A
Norman	Antoine	
Novello	Nathaniel	
Nuno	Michael	J
O'Dea	Jason	
Oilar	Walter	
Olague	Jorge	
Olds	Ryan	
Olsen	Sean	

Last Name	First Name	Middle
Ontiveros	Dean	
Orenstein	Marc	
Ornelas	Javier	
Orr	Douglas	
Ortega	Joshua	
Orzel	Michal	
Osburn	Samuel	
Oseguera	Rafael	
Owens	Joseph	
Pabalan	Ernesto	
Palencia	Jose	
Panozzo	Lawrence	
Paredes	Mark	L
Parotte	Edmond	
Pascascio	Charles	
Peabody	Michael	
Peck	Calvin	
Peck	Tyler	
Peeler	Jeffrey	S
Peery	Curtis	W
Pena	Robert	D
Pennington	Robert	
Perez	Casey	
Perkins	Juston	
Perry	Burch	
Perthel	Nicholas	A
Petersen	Austin	
Peterson	Jeremy	
Phillips	Cedric	
Pierce	Donald	J
Pineda	Luis	
Plumlee	Roy	N
Potter	Sean	A
Prater	Dshamba	
Prevost	Robaire	
Price	Roy	
Puckett	Larry	
Quintanilla	Domingo	J
Quiroz	Joel	
Radke	Teresa	
Ralston	Mike	
Ramirez	Gilbert	
Ramirez	Luis	
Ramos	Michael	
Rangel	Tito	

Last Name	First Name	Middle
Ratcliff	Charles	
Raymond	Garrick	
Razmic	Charles	J
Resto	Gilbert	
Rhodes	Clinton	R
Rhodes	Paula	
Rice	James	
Ridenour	Timothy	
Riggs	Donald	
Rigney	Chad	
Rigney	Curtis	
Rivera	Jonathan	
Roberson	Juliette	
Roberts	Joe	
Roberts	Larry	W
Robertson	Anthony	
Robertson	Justin	
Robinson	Edmond	
Robinson	James	
Rocho	Daryl	J
Rodman	Jason	
Rodriguez	Daniel	
Rodriguez	Luis	
Rodriguez	Steven	
Rodriguez	George	
Rogers	Joshua	
Roman	Matthew	
Romero	Alonzo	
Romero	Eric	
Romero	Jeffrey	
Ronczka	Patrick	
Rosado	Dion	
Ruchel	Christian (Krystian)	
Rucker	Thaddeus	
Rulon	Larri	N
Rush	Krystina	
Ryer	Aaron	L
Sailers	Murrell	
Saing	Jason	
Saladino	Vincent	
Salvatore	Nicholas	J
Sanchez	Gustavo	
Sandborn	Bret	
Santos	Danilo	
Scarano	Justin	

Last Name	First Name	Middle
Schaefer	Brian	
Schaeffer	Chris	
Schaeffer	Gisele	
Schoborg	Bernard	P
Schorr	Teena	
Schrumm	Fred	
Schwitters	Robert	
Scott	Justin	
Scott	Willie	
Segovia	Edwin	S
Segura-Vazquez	Antonio	
Seisan	Cameron	
Senal	Michael	
Serna	Eduardo	
Sevier	William	
Sheddy	Vance	
Shellhamer	Keith	
Shelton	Shannon	
Sherman	Frank	M
Shinault	Stanley	T
Shultz	Brian	
Shultz	Jan	M
Silva	Brandon	
Silver	Frederick	
Singleton	Jeff	
Skreba	Robert	
Sloan	Christopher	
Smith	Christopher	
Smith	Courtland	
Smith	Curtis	L
Smith	Isaiah	
Smith	Kenneth	M
Smith	Martin	
Smith	Robert	
Smith	Scott	
Smith	Stephen	
Smith	Kyle	
Solano	Kevin	
Soley	David	
Sorboro	Angelo	
Sorich	George	
Spiers	Kenneth	
Spiers	Rebecca	
Stalnaker	Rick	
Stampanoni	Bryce	

Last Name	First Name	Middle
Stark	James	
Sterba	Jeremiah	
Stevens	Jamie	
Stolk	Jason Michael	
Stratton	Darin	
Striegel	Thomas	
Struck	Tim	
Stuckey	Dennis	M
Sturgeon-Bezotte	Dominic	
Summers	Jeremy	
Sunday	Ihenyichukwu	
Swanegan	Osmond	
Sweeten	Marc	A
Tafolla	Benjamin	
Taitano	Nephi	
Talley	Maurice	
Tansey	Mark	
Taylor	Leonard	
Tedesco	Daniel	
Terriguez	Antonio	
Thackwell	Kenneth	
Thomas	Donnell	
Thomason	Ashley	
Thompson	Edward	
Thompson	Matthew	G
Thompson	Robert	
Thompson	Rose	E
Thorne	Shawn	
Thorpe	Donald	P
To	Michael	
Tobar	Roger	
Tobin	William	
Tolotti	David	
Torres	Diego	
Torres	Christian	
Tracy	Daniel	
Trainer	Quinton	M
Travis	Phillip	
Tremblay	Terry	
Trice	Joshua	
Tung	Francis	
Turner	James	E
Tyning	Joel	E
Ugalde	Noel	
Vaccaro	Anthony	

Last Name	First Name	Middle
Val	Michael	
Valdez	Kirk	
Valelo	Edwin	
Vallester	Aaron	
Valverde	Fernando	
Varay	Robert	D
Vargas	Jesse	
Vasquez	Julio	
Vaughan	Justus	
Vaughn	Bryant	
Vedova	Vincent	A
Velasquez	Hector	
Verdi	Michael	
Vesperas	Dory	
Viernes	Ronald	
Vignapiano	Emilio	
Villegas	Mitchell	
Viloria	Audy	V
Vizcarra	Eric	
Vo	Cuong	
Vogelsang	Claye	
Walden	Donald	R
Walden	Jacob	A
Walker	Debra	
Walker	LaToya	
Walker	Sandra	B
Ward	Brian	
Ward	Santerren	
Warren	Cortney	
Washington	Vernow	
Webb	Kenneth	
Welsch	Bruce	
Werlinger	Lee	
West	Matthew	
Westphal	Judy	
Whalum	Stewart	
Wharton	William	
White	Aaron	
White	Ingrid	
White	Seymon	
Whiteford (Diggle)	Angela	M
Wiggins	William	
Wikoff	Joshua	
Willhite	Curtis	
Williams	Adrien	D

Last Name	First Name	Middle
Williams	Brenda	
Williams	Emery	
Williams	Golwin	
Williams	John	
Williams	Jurea	
Williams	Matthew	J
Williams	Rashad	
Williams	Sean	
Williams	Dennis	
Willis	David	
Wilson	Bryan	
Wilson	Daniel	
Wilson	David	
Winchester	Kaleisha	
Wolf	Connor	R
Wood	Eric	A
Wood	James	
Woodside	Joshua	
Wright	Kandia	
Wyke	David	
Yager	(William) Cody	
Young	Jason	
Yung	Yekchung	J
Zahirovic	Alan	
Zamora	Cresencio	
Zaragoza	Raymond	
Zavala	Frank	
Zazhitskiy	Valentin	
Zoltowski	Christopher	D
Zufelt	Travis	
Zurschmeide	Daniel	

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15 Henderson, Nevada 89012  
16 Tel (702) 259-7777  
17 Fax (702) 259-7704

18 *Attorneys for Plaintiffs*

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

19 DONALD WALDEN, JR., et al., etc.,

20 Plaintiffs,

21 v.

22 THE STATE OF NEVADA, EX REL. NEVADA  
23 DEPARTMENT OF CORRECTIONS, and  
24 DOES 1-50,

25 Defendants.

Case No.: 3:14-cv-00320-MMD-CSD

**DECLARATION OF DONALD  
WALDEN JR. IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
PRELIMINARY APPROVAL OF  
THE COLLECTIVE AND CLASS  
ACTION SETTLEMENT**

26 ///

27 ///

28



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1 I, Donald Walden Jr., hereby declare and state as follows:

2 1. I am a named plaintiff in the above-captioned lawsuit. I make this declaration in  
3 support of the Motion for Preliminary Approval of the Collective and Class Action Settlement. I  
4 have personal knowledge of the facts contained herein, and if called as a witness I would and  
5 could competently testify thereto under oath.

6 2. I am in no way related to anyone who works for Thierman Buck, LLP or Gabroy  
7 Messer Law Offices.

8 3. I was employed by Defendant THE STATE OF NEVADA, *EX REL.* ITS  
9 NEVADA DEPARTMENT OF CORRECTIONS (“Defendant” or “NDOC”) as a non-exempt  
10 hourly correctional officer at its Southern Desert Correctional Center from on or about February  
11 2003 until on or about February 2013. During my career with NDOC I worked a variety of shifts  
12 and was assigned to a variety of job posts.

13 4. My involvement in this lawsuit began more than 8 years ago when I, along with  
14 other named plaintiffs, searched out an attorney to discuss issues I was having at NDOC. I  
15 retained the lawyers at Thierman Buck LLP (formerly known as Thierman Law Firm) to be my  
16 legal representatives based upon their experience handling employment class actions.

17 5. My attorneys explained to me the duties and responsibilities of a class  
18 representative, and I decided that I would undertake the role. I understood that as a class  
19 representative I have an obligation to place the interests of the class members in this case (i.e. the  
20 other current and former employees of Defendant on whose behalf I have brought this lawsuit)  
21 above my own personal interests and to advance this case toward a favorable outcome on their  
22 behalf.

23 6. I have been actively involved in the investigation and formation of this lawsuit. I  
24 spoke with attorneys and paralegals involved in preparing the complaint. I reviewed the  
25 complaint before it was filed and had input on the facts contained in it. I have devoted a  
26 substantial amount of hours to this case over the last eight years, including exchanging dozens of  
27 phone calls and emails with my attorneys, reviewing documents, participating in the discovery  
28 process, and participating in two mediations and an in-person settlement conference for this case.

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1           7.       I recall lengthy telephone conversations with my attorneys regarding the details of  
2 my employment with NDOC. I helped my attorneys understand NDOC’s policies and procedures  
3 at issue in this case.

4           8.       During the discovery process, I answered 38 requests for admissions, responded  
5 to 45 requests for production of documents, and answered 24 interrogatories. I was also deposed  
6 by Defendant in 2015.

7           9.       I was available all day for two mediations that took place in 2015 and in 2022 to  
8 answer any questions and contribute in any way I could. For the 2022 settlement conference, I  
9 traveled from my home in Utah to Reno and stayed over two nights in order to participate in the  
10 all-day settlement conference before Judge Denney.

11          10.       I reviewed the settlement agreement. In agreeing to the settlement that is now  
12 before this Court for approval, I did so because I understood it to be in the best interest of the  
13 class members in this case.

14          11.       Since I began pursuing this litigation, I have continued to remain available and  
15 responsive to my attorneys. I complied with my attorneys’ requests to review and sign  
16 documents, sometimes on very short notice. I have also continued to initiate contact with my  
17 attorneys to check on the status of the lawsuit and settlement.

18          12.       I did not record the time that I spent working with my attorneys, reviewing  
19 documents, participating in the discovery process and mediations, or generally thinking about this  
20 case, but I can reasonably estimate that I have invested well over 225 hours over the last 8 years  
21 on this case. I believe that my participation in the investigation of the facts concerning the  
22 allegations in this matter, and adding my name to the complaint, contributed to the overall  
23 settlement in terms of the breadth of information, and ultimately benefited the class members.

24          13.       When I agreed to be a class representative, I understood that it could have an  
25 adverse impact on my future employment prospects. For example, if a future employer were to  
26 do a background check on me and discover this litigation, I believe that there is significant risk  
27 that I could be denied a job because I have brought a class action lawsuit against a former  
28 employer for employment-related violations. In addition, at the time I filed this lawsuit, I knew

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that it was possible that Defendant could have harmed my future job prospects by giving me a negative reference because I filed this lawsuit. I believe the enhancement award of \$20,000.00 is reasonable in light of the sacrifices I made to be a part of this action over the past eight years.

14. I also understood when I became a class representative that I could be liable for Defendant’s costs if this action were unsuccessful. I undertook the risk because I believed it was important to pursue these claims for alleged violations of wage and hour laws that I believe Defendant committed against me and other employees as my attorneys have explained to me.

15. I have not entered into any undisclosed agreements, nor have I received any undisclosed compensation in this case. The only compensation I will receive is whatever amount the Court awards as a service payment, as well as my share of the settlement fund as a Class Member.

16. I have no conflict of interest with any other class member.

I have read the foregoing declaration and declare under penalty of perjury under the laws of the State of Nevada and the United States of America that the foregoing is true and correct.

Executed this 11 day of November 2022 at Cedar City, Utah.

Donald Walden Jr.  
Donald Walden Jr.

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15 Henderson, Nevada 89012  
16 Tel (702) 259-7777  
17 Fax (702) 259-7704

18 *Attorneys for Plaintiffs*

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

19 DONALD WALDEN, JR., et al., etc.,

20 Plaintiffs,

21 v.

22 THE STATE OF NEVADA, EX REL. NEVADA  
23 DEPARTMENT OF CORRECTIONS, and  
24 DOES 1-50,

25 Defendants.

Case No.: 3:14-cv-00320-MMD-CSD

**DECLARATION OF NATHAN  
ECHEVERRIA IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
PRELIMINARY APPROVAL OF  
THE COLLECTIVE AND CLASS  
ACTION SETTLEMENT**

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1 I, Nathan Echeverria, hereby declare and state as follows:

2 1. I am a named plaintiff in the above-captioned lawsuit. I make this declaration in  
3 support of the Motion for Preliminary Approval of the Collective and Class Action Settlement. I  
4 have personal knowledge of the facts contained herein, and if called as a witness I would and  
5 could competently testify thereto under oath.

6 2. I am in no way related to anyone who works for Thierman Buck, LLP or Gabroy  
7 Messer Law Offices.

8 3. I have been employed by Defendant THE STATE OF NEVADA, *EX REL.* ITS  
9 NEVADA DEPARTMENT OF CORRECTIONS (“Defendant” or “NDOC”) as a non-exempt  
10 hourly correctional officer at its Southern Desert Correctional Center from on or about May 2006  
11 to present. Throughout my career with NDOC, I have worked a variety of shifts and have been  
12 assigned to a variety of job posts.

13 4. My involvement in this lawsuit began more than 8 years ago when I took the  
14 initiative to search out an attorney to discuss issues I was having at NDOC. I retained the lawyers  
15 at Thierman Buck LLP (formerly known as Thierman Law Firm) to be my legal representatives  
16 based upon their experience handling employment class actions.

17 5. My attorneys explained to me the duties and responsibilities of a class  
18 representative, and I decided that I would undertake the role. I understood that as a class  
19 representative I have an obligation to place the interests of the class members in this case (i.e. the  
20 other current and former employees of Defendant on whose behalf I have brought this lawsuit)  
21 above my own personal interests and to advance this case toward a favorable outcome on their  
22 behalf.

23 6. I have been actively involved in the investigation and formation of this lawsuit. I  
24 spoke with attorneys and paralegals involved in preparing the complaint. I reviewed the  
25 complaint before it was filed and had input on the facts contained in it. I have devoted a  
26 substantial amount of hours to this case over the last eight years, including exchanging dozens of  
27 phone calls and emails with my attorneys, reviewing documents, participating in the discovery  
28 process, and participating in two mediations and an in-person settlement conference for this case.

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1           7.       I recall lengthy telephone conversations with my attorneys regarding the details of  
2 my employment with NDOC. I helped my attorneys understand NDOC’s policies and procedures  
3 at issue in this case.

4           8.       During the discovery process, I answered 38 requests for admissions, responded  
5 to 45 requests for production of documents, and answered 24 interrogatories. I was also deposed  
6 by Defendant in 2015.

7           9.       I was available all day for two mediations that took place in 2015 and in 2022 to  
8 answer any questions and contribute in any way I could. For the 2022 settlement conference, I  
9 traveled from my home in Las Vegas to Reno and stayed overnight in order to participate in the  
10 all-day settlement conference before Judge Denney.

11          10.       I reviewed the settlement agreement. In agreeing to the settlement that is now  
12 before this Court for approval, I did so because I understood it to be in the best interest of the  
13 class members in this case.

14          11.       Since I began pursuing this litigation, I have continued to remain available and  
15 responsive to my attorneys. I complied with my attorneys’ requests to review and sign  
16 documents, sometimes on very short notice. I have also continued to initiate contact with my  
17 attorneys to check on the status of the lawsuit and settlement.

18          12.       I did not record the time that I spent working with my attorneys, reviewing  
19 documents, participating in the discovery process and mediations, or generally thinking about this  
20 case, but I can reasonably estimate that I have invested well over 350 hours over the last 8 years  
21 on this case. I believe that my participation in the investigation of the facts concerning the  
22 allegations in this matter, and adding my name to the complaint, contributed to the overall  
23 settlement in terms of the breadth of information, and ultimately benefited the class members.

24          13.       When I agreed to be a class representative, I understood that it could have an  
25 adverse impact on my future employment prospects. For example, if a future employer were to  
26 do a background check on me and discover this litigation, I believe that there is significant risk  
27 that I could be denied a job because I have brought a class action lawsuit against a former  
28 employer for employment-related violations. In addition, at the time I filed this lawsuit, I knew

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that it was possible that Defendant could have harmed my future job prospects by giving me a negative reference because I filed this lawsuit. I believe the enhancement award of \$20,000.00 is reasonable in light of the sacrifices I made to be a part of this action over the past eight years.


14. I also understood when I became a class representative that I could be liable for Defendant’s costs if this action were unsuccessful. I undertook the risk because I believed it was important to pursue these claims for alleged violations of wage and hour laws that I believe Defendant committed against me and other employees as my attorneys have explained to me.

15. I have not entered into any undisclosed agreements, nor have I received any undisclosed compensation in this case. The only compensation I will receive is whatever amount the Court awards as a service payment, as well as my share of the settlement fund as a Class Member.

16. I have no conflict of interest with any other class member.

I have read the foregoing declaration and declare under penalty of perjury under the laws of the State of Nevada and the United States of America that the foregoing is true and correct.

Executed this 11 day of November 2022 at Las Vegas, Nevada.

  
\_\_\_\_\_  
Nathan Echeverria

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17 Fax (702) 259-7704

18 *Attorneys for Plaintiffs*

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

19 DONALD WALDEN, JR., et al., etc.,

20 Plaintiffs,

21 v.

22 THE STATE OF NEVADA, EX REL. NEVADA  
23 DEPARTMENT OF CORRECTIONS, and  
24 DOES 1-50,

25 Defendants.

Case No.: 3:14-cv-00320-MMD-CSD

**DECLARATION OF AARON DICUS  
IN SUPPORT OF PLAINTIFFS'  
MOTION FOR PRELIMINARY  
APPROVAL OF THE COLLECTIVE  
AND CLASS ACTION  
SETTLEMENT**

26 ///

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1 I, Aaron Dicus, hereby declare and state as follows:

2 1. I am a named plaintiff in the above-captioned lawsuit. I make this declaration in  
3 support of the Motion for Preliminary Approval of the Collective and Class Action Settlement. I  
4 have personal knowledge of the facts contained herein, and if called as a witness I would and  
5 could competently testify thereto under oath.

6 2. I am in no way related to anyone who works for Thierman Buck, LLP or Gabroy  
7 Messer Law Offices.

8 3. I was employed by Defendant THE STATE OF NEVADA, *EX REL.* ITS  
9 NEVADA DEPARTMENT OF CORRECTIONS (“Defendant” or “NDOC”) as a non-exempt  
10 hourly correctional officer at its Southern Desert Correctional Center and High Desert State  
11 Prison from on or about July 2007 to present. Throughout my career with NDOC, I have worked  
12 a variety of shifts and have been assigned to a variety of job posts.

13 4. My involvement in this lawsuit began more than 8 years ago when I, along with  
14 other named plaintiffs, searched out an attorney to discuss issues I was having at NDOC. I  
15 retained the lawyers at Thierman Buck LLP (formerly known as Thierman Law Firm) to be my  
16 legal representatives based upon their experience handling employment class actions.

17 5. My attorneys explained to me the duties and responsibilities of a class  
18 representative, and I decided that I would undertake the role. I understood that as a class  
19 representative I have an obligation to place the interests of the class members in this case (i.e. the  
20 other current and former employees of Defendant on whose behalf I have brought this lawsuit)  
21 above my own personal interests and to advance this case toward a favorable outcome on their  
22 behalf.

23 6. I have been actively involved in the investigation and formation of this lawsuit. I  
24 spoke with attorneys and paralegals involved in preparing the complaint. I reviewed the  
25 complaint before it was filed and had input on the facts contained in it. I have devoted a  
26 substantial amount of hours to this case over the last eight years, including exchanging dozens of  
27 phone calls and emails with my attorneys, reviewing documents, participating in the discovery  
28 process, and participating in two mediations and an in-person settlement conference for this case.

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7. I recall lengthy telephone conversations with my attorneys regarding the details of my employment with NDOC. I helped my attorneys understand NDOC’s policies and procedures at issue in this case.

8. During the discovery process, I answered 38 requests for admissions, responded to 45 requests for production of documents, and answered 24 interrogatories. I was also deposed by Defendant in 2015 and again in 2017.

9. I was available all day for two mediations that took place in 2015 and in 2022 to answer any questions and contribute in any way I could. For the 2022 settlement conference, I traveled from my home in Las Vegas to Reno and stayed overnight in order to participate in the all-day settlement conference before Judge Denney.

10. I reviewed the settlement agreement. In agreeing to the settlement that is now before this Court for approval, I did so because I understood it to be in the best interest of the class members in this case.

11. Since I began pursuing this litigation, I have continued to remain available and responsive to my attorneys. I complied with my attorneys’ requests to review and sign documents, sometimes on very short notice. I have also continued to initiate contact with my attorneys to check on the status of the lawsuit and settlement.

12. I did not record the time that I spent working with my attorneys, reviewing documents, participating in the discovery process and mediations, or generally thinking about this case, but I can reasonably estimate that I have invested well over 300 hours over the last 8 years on this case. I believe that my participation in the investigation of the facts concerning the allegations in this matter, and adding my name to the complaint, contributed to the overall settlement in terms of the breadth of information, and ultimately benefited the class members.

13. When I agreed to be a class representative, I understood that it could have an adverse impact on my future employment prospects. For example, if a future employer were to do a background check on me and discover this litigation, I believe that there is significant risk that I could be denied a job because I have brought a class action lawsuit against a former employer for employment-related violations. In addition, at the time I filed this lawsuit, I knew

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that it was possible that Defendant could have harmed my future job prospects by giving me a negative reference because I filed this lawsuit. I believe the enhancement award of \$20,000.00 is reasonable in light of the sacrifices I made to be a part of this action over the past eight years.

14. I also understood when I became a class representative that I could be liable for Defendant’s costs if this action were unsuccessful. I undertook the risk because I believed it was important to pursue these claims for alleged violations of wage and hour laws that I believe Defendant committed against me and other employees as my attorneys have explained to me.

15. I have not entered into any undisclosed agreements, nor have I received any undisclosed compensation in this case. The only compensation I will receive is whatever amount the Court awards as a service payment, as well as my share of the settlement fund as a Class Member.

16. I have no conflict of interest with any other class member.

I have read the foregoing declaration and declare under penalty of perjury under the laws of the State of Nevada and the United States of America that the foregoing is true and correct.

Executed this 11 day of November 2022 at Las Vegas, Nevada.

  
\_\_\_\_\_  
Aaron Dicus

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17 Fax (702) 259-7704

18 *Attorneys for Plaintiffs*

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

19 DONALD WALDEN, JR., et al., etc.,

20 Plaintiffs,

21 v.

22 THE STATE OF NEVADA, EX REL. NEVADA  
23 DEPARTMENT OF CORRECTIONS, and  
24 DOES 1-50,

25 Defendants.

Case No.: 3:14-cv-00320-MMD-CSD

**DECLARATION OF BRENT  
EVERIST IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
PRELIMINARY APPROVAL OF  
THE COLLECTIVE AND CLASS  
ACTION SETTLEMENT**

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1 I, Brent Everist, hereby declare and state as follows:

2 1. I am a named plaintiff in the above-captioned lawsuit. I make this declaration in  
3 support of the Motion for Preliminary Approval of the Collective and Class Action Settlement. I  
4 have personal knowledge of the facts contained herein, and if called as a witness I would and  
5 could competently testify thereto under oath.

6 2. I am in no way related to anyone who works for Thierman Buck, LLP or Gabroy  
7 Messer Law Offices.

8 3. I was employed by Defendant THE STATE OF NEVADA, *EX REL.* ITS  
9 NEVADA DEPARTMENT OF CORRECTIONS (“Defendant” or “NDOC”) as a non-exempt  
10 hourly correctional officer at its High Desert State Prison from on or about May 2006 until on or  
11 about December 2014. During my career with NDOC I worked a variety of shifts and was  
12 assigned to a variety of job posts.

13 4. My involvement in this lawsuit began more than 8 years ago when I, along with  
14 other named plaintiffs, searched out an attorney to discuss issues I was having at NDOC. I  
15 retained the lawyers at Thierman Buck LLP (formerly known as Thierman Law Firm) to be my  
16 legal representatives based upon their experience handling employment class actions.

17 5. My attorneys explained to me the duties and responsibilities of a class  
18 representative, and I decided that I would undertake the role. I understood that as a class  
19 representative I have an obligation to place the interests of the class members in this case (i.e. the  
20 other current and former employees of Defendant on whose behalf I have brought this lawsuit)  
21 above my own personal interests and to advance this case toward a favorable outcome on their  
22 behalf.

23 6. I have been actively involved in the investigation and formation of this lawsuit. I  
24 spoke with attorneys and paralegals involved in preparing the complaint. I reviewed the  
25 complaint before it was filed and had input on the facts contained in it. I have devoted a  
26 substantial amount of hours to this case over the last eight years, including exchanging dozens of  
27 phone calls and emails with my attorneys, reviewing documents, providing documents,  
28

1 participating in the discovery process, and participating in two mediations and an in-person  
2 settlement conference for this case.

3 7. I recall lengthy telephone conversations with my attorneys regarding the details of  
4 my employment with NDOC. I helped my attorneys understand NDOC’s policies and procedures  
5 at issue in this case.

6 8. During the discovery process, I answered 38 requests for admissions, responded  
7 to 45 requests for production of documents, and answered 24 interrogatories. I was also deposed  
8 by Defendant in 2015.

9 9. I was available all day for two mediations that took place in 2015 and in 2022 to  
10 answer any questions and contribute in any way I could. For the 2022 settlement conference, I  
11 traveled from my home in Las Vegas to Reno and stayed overnight in order to participate in the  
12 all-day settlement conference before Judge Denney.

13 10. I reviewed the settlement agreement. In agreeing to the settlement that is now  
14 before this Court for approval, I did so because I understood it to be in the best interest of the  
15 class members in this case.

16 11. Since I began pursuing this litigation, I have continued to remain available and  
17 responsive to my attorneys. I complied with my attorneys’ requests to review and sign  
18 documents, sometimes on very short notice. I have also continued to initiate contact with my  
19 attorneys to check on the status of the lawsuit and settlement.

20 12. I did not record the time that I spent working with my attorneys, reviewing  
21 documents, participating in the discovery process and mediations, or generally thinking about this  
22 case, but I can reasonably estimate that I have invested well over 250 hours over the last 8 years  
23 on this case. I believe that my participation in the investigation of the facts concerning the  
24 allegations in this matter, and adding my name to the complaint, contributed to the overall  
25 settlement in terms of the breadth of information, and ultimately benefited the class members.

26 13. When I agreed to be a class representative, I understood that it could have an  
27 adverse impact on my future employment prospects. For example, if a future employer were to  
28 do a background check on me and discover this litigation, I believe that there is significant risk

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that I could be denied a job because I have brought a class action lawsuit against a former employer for employment-related violations. In addition, at the time I filed this lawsuit, I knew that it was possible that Defendant could have harmed my future job prospects by giving me a negative reference because I filed this lawsuit. I believe the enhancement award of \$20,000.00 is reasonable in light of the sacrifices I made to be a part of this action over the past eight years.

14. I also understood when I became a class representative that I could be liable for Defendant’s costs if this action were unsuccessful. I undertook the risk because I believed it was important to pursue these claims for alleged violations of wage and hour laws that I believe Defendant committed against me and other employees as my attorneys have explained to me.

15. I have not entered into any undisclosed agreements, nor have I received any undisclosed compensation in this case. The only compensation I will receive is whatever amount the Court awards as a service payment, as well as my share of the settlement fund as a Class Member.

16. I have no conflict of interest with any other class member.

I have read the foregoing declaration and declare under penalty of perjury under the laws of the State of Nevada and the United States of America that the foregoing is true and correct.

Executed this 10 day of November 2022 at North Las Vegas, Nevada.

  
\_\_\_\_\_  
Brent Everist

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16 Tel (702) 259-7777  
17 Fax (702) 259-7704

18 *Attorneys for Plaintiffs*

**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEVADA**

19 DONALD WALDEN, JR., et al., etc.,

20 Plaintiffs,

21 v.

22 THE STATE OF NEVADA, EX REL. NEVADA  
23 DEPARTMENT OF CORRECTIONS, and  
24 DOES 1-50,

25 Defendants.

Case No.: 3:14-cv-00320-MMD-CSD

**DECLARATION OF TRAVIS  
ZUFELT IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
PRELIMINARY APPROVAL OF  
THE COLLECTIVE AND CLASS  
ACTION SETTLEMENT**

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1 I, Travis Zufelt, hereby declare and state as follows:

2 1. I am a named plaintiff in the above-captioned lawsuit. I make this declaration in  
3 support of the Motion for Preliminary Approval of the Collective and Class Action Settlement. I  
4 have personal knowledge of the facts contained herein, and if called as a witness I would and  
5 could competently testify thereto under oath.

6 2. I am in no way related to anyone who works for Thierman Buck, LLP or Gabroy  
7 Messer Law Offices.

8 3. I was employed by Defendant THE STATE OF NEVADA, *EX REL.* ITS  
9 NEVADA DEPARTMENT OF CORRECTIONS (“Defendant” or “NDOC”) as a non-exempt  
10 hourly correctional officer at its Northern Nevada Correctional Center from on or about January  
11 2010 to present. During my career with NDOC I worked a variety of shifts and was assigned to  
12 a variety of job posts.

13 4. My involvement in this lawsuit began more than 8 years ago when I, along with  
14 other named plaintiffs, searched out an attorney to discuss issues I was having at NDOC. I  
15 retained the lawyers at Thierman Buck LLP (formerly known as Thierman Law Firm) to be my  
16 legal representatives based upon their experience handling employment class actions.

17 5. My attorneys explained to me the duties and responsibilities of a class  
18 representative, and I decided that I would undertake the role. I understood that as a class  
19 representative I have an obligation to place the interests of the class members in this case (i.e. the  
20 other current and former employees of Defendant on whose behalf I have brought this lawsuit)  
21 above my own personal interests and to advance this case toward a favorable outcome on their  
22 behalf.

23 6. I have been actively involved in the investigation and formation of this lawsuit. I  
24 spoke with attorneys and paralegals involved in preparing the complaint. I reviewed the  
25 complaint before it was filed and had input on the facts contained in it. I have devoted a  
26 substantial amount of hours to this case over the last eight years, including exchanging dozens of  
27 phone calls and emails with my attorneys, reviewing documents, participating in the discovery  
28 process, and participating in two mediations and an in-person settlement conference for this case.

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1           7.       I recall lengthy telephone conversations with my attorneys regarding the details of  
2 my employment with NDOC. I helped my attorneys understand NDOC’s policies and procedures  
3 at issue in this case.

4           8.       During the discovery process, I answered 38 requests for admissions, responded  
5 to 45 requests for production of documents, and answered 24 interrogatories. I was also deposed  
6 by Defendant in 2015 and again in 2017.

7           9.       I was available all day for two mediations that took place in 2015 and in 2022 to  
8 answer any questions and contribute in any way I could. For the 2022 settlement conference, I  
9 traveled from my home in Carson City to Reno to participate in the all-day settlement conference  
10 before Judge Denney.

11          10.       I reviewed the settlement agreement. In agreeing to the settlement that is now  
12 before this Court for approval, I did so because I understood it to be in the best interest of the  
13 class members in this case.

14          11.       Since I began pursuing this litigation, I have continued to remain available and  
15 responsive to my attorneys. I complied with my attorneys’ requests to review and sign  
16 documents, sometimes on very short notice. I have also continued to initiate contact with my  
17 attorneys to check on the status of the lawsuit and settlement.

18          12.       I did not record the time that I spent working with my attorneys, reviewing  
19 documents, participating in the discovery process and mediations, or generally thinking about this  
20 case, but I can reasonably estimate that I have invested well over 275 hours over the last 8 years  
21 on this case. I believe that my participation in the investigation of the facts concerning the  
22 allegations in this matter, and adding my name to the complaint, contributed to the overall  
23 settlement in terms of the breadth of information, and ultimately benefited the class members.

24          13.       When I agreed to be a class representative, I understood that it could have an  
25 adverse impact on my future employment prospects. For example, if a future employer were to  
26 do a background check on me and discover this litigation, I believe that there is significant risk  
27 that I could be denied a job because I have brought a class action lawsuit against a former  
28 employer for employment-related violations. In addition, at the time I filed this lawsuit, I knew

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that it was possible that Defendant could have harmed my future job prospects by giving me a negative reference because I filed this lawsuit. I believe the enhancement award of \$20,000.00 is reasonable in light of the sacrifices I made to be a part of this action over the past eight years.

14. I also understood when I became a class representative that I could be liable for Defendant’s costs if this action were unsuccessful. I undertook the risk because I believed it was important to pursue these claims for alleged violations of wage and hour laws that I believe Defendant committed against me and other employees as my attorneys have explained to me.

15. I have not entered into any undisclosed agreements, nor have I received any undisclosed compensation in this case. The only compensation I will receive is whatever amount the Court awards as a service payment, as well as my share of the settlement fund as a Class Member.

16. I have no conflict of interest with any other class member.

I have read the foregoing declaration and declare under penalty of perjury under the laws of the State of Nevada and the United States of America that the foregoing is true and correct.

Executed this 11 day of November 2022 at Carson City, Nevada.

  
\_\_\_\_\_  
Travis Zufelt

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18 *Attorneys for Plaintiffs*

**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEVADA**

19 DONALD WALDEN, JR., et al., etc.,

20 Plaintiffs,

21 v.

22 THE STATE OF NEVADA, EX REL. NEVADA  
23 DEPARTMENT OF CORRECTIONS, and  
24 DOES 1-50,

25 Defendants.

Case No.: 3:14-cv-00320-MMD-CSD

**DECLARATION OF TIMOTHY  
RIDENOUR IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
PRELIMINARY APPROVAL OF  
THE COLLECTIVE AND CLASS  
ACTION SETTLEMENT**

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1 I, Timothy Ridenour, hereby declare and state as follows:

2 1. I am a named plaintiff in the above-captioned lawsuit. I make this declaration in  
3 support of the Motion for Preliminary Approval of the Collective and Class Action Settlement. I  
4 have personal knowledge of the facts contained herein, and if called as a witness I would and  
5 could competently testify thereto under oath.

6 2. I am in no way related to anyone who works for Thierman Buck, LLP or Gabroy  
7 Messer Law Offices.

8 3. I was employed by Defendant THE STATE OF NEVADA, *EX REL.* ITS  
9 NEVADA DEPARTMENT OF CORRECTIONS (“Defendant” or “NDOC”) as a non-exempt  
10 hourly correctional officer at its Southern Desert Correctional Center from on or about March  
11 2007 until on or about March 2016. During my career with NDOC I worked a variety of shifts  
12 and was assigned to a variety of job posts.

13 4. My involvement in this lawsuit began more than 8 years ago when I, along with  
14 other named plaintiffs, searched out an attorney to discuss issues I was having at NDOC. I  
15 retained the lawyers at Thierman Buck LLP (formerly known as Thierman Law Firm) to be my  
16 legal representatives based upon their experience handling employment class actions.

17 5. My attorneys explained to me the duties and responsibilities of a class  
18 representative, and I decided that I would undertake the role. I understood that as a class  
19 representative I have an obligation to place the interests of the class members in this case (i.e. the  
20 other current and former employees of Defendant on whose behalf I have brought this lawsuit)  
21 above my own personal interests and to advance this case toward a favorable outcome on their  
22 behalf.

23 6. I have been actively involved in the investigation and formation of this lawsuit. I  
24 spoke with attorneys and paralegals involved in preparing the complaint. I reviewed the  
25 complaint before it was filed and had input on the facts contained in it. I have devoted a  
26 substantial amount of hours to this case over the last eight years, including exchanging dozens of  
27 phone calls and emails with my attorneys, reviewing documents, providing documents,  
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1 participating in the discovery process, and participating in two mediations and an in-person  
2 settlement conference for this case.

3 7. I recall lengthy telephone conversations with my attorneys regarding the details of  
4 my employment with NDOC. I helped my attorneys understand NDOC’s policies and procedures  
5 at issue in this case.

6 8. During the discovery process, I answered 38 requests for admissions, responded  
7 to 45 requests for production of documents, and answered 24 interrogatories. I was also deposed  
8 by Defendant in 2015 and again in 2017.

9 9. I was available all day for two mediations that took place in 2015 and in 2022 to  
10 answer any questions and contribute in any way I could. For the 2022 settlement conference, I  
11 traveled from my home in Ohio to Reno and stayed over two nights in order to participate in the  
12 all-day settlement conference before Judge Denney.

13 10. I reviewed the settlement agreement. In agreeing to the settlement that is now  
14 before this Court for approval, I did so because I understood it to be in the best interest of the  
15 class members in this case.

16 11. Since I began pursuing this litigation, I have continued to remain available and  
17 responsive to my attorneys. I complied with my attorneys’ requests to review and sign  
18 documents, sometimes on very short notice. I have also continued to initiate contact with my  
19 attorneys to check on the status of the lawsuit and settlement.

20 12. I did not record the time that I spent working with my attorneys, reviewing  
21 documents, participating in the discovery process and mediations, or generally thinking about this  
22 case, but I can reasonably estimate that I have invested well over 300 hours over the last 8 years  
23 on this case. I believe that my participation in the investigation of the facts concerning the  
24 allegations in this matter, and adding my name to the complaint, contributed to the overall  
25 settlement in terms of the breadth of information, and ultimately benefited the class members.

26 13. When I agreed to be a class representative, I understood that it could have an  
27 adverse impact on my future employment prospects. For example, if a future employer were to  
28 do a background check on me and discover this litigation, I believe that there is significant risk

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that I could be denied a job because I have brought a class action lawsuit against a former employer for employment-related violations. In addition, at the time I filed this lawsuit, I knew that it was possible that Defendant could have harmed my future job prospects by giving me a negative reference because I filed this lawsuit. I believe the enhancement award of \$20,000.00 is reasonable in light of the sacrifices I made to be a part of this action over the past eight years.

14. I also understood when I became a class representative that I could be liable for Defendant’s costs if this action were unsuccessful. I undertook the risk because I believed it was important to pursue these claims for alleged violations of wage and hour laws that I believe Defendant committed against me and other employees as my attorneys have explained to me.

15. I have not entered into any undisclosed agreements, nor have I received any undisclosed compensation in this case. The only compensation I will receive is whatever amount the Court awards as a service payment, as well as my share of the settlement fund as a Class Member.

16. I have no conflict of interest with any other class member.

I have read the foregoing declaration and declare under penalty of perjury under the laws of the State of Nevada and the United States of America that the foregoing is true and correct.

Executed this 10th day of November 2022 at Seven Hills, Ohio.



\_\_\_\_\_  
Timothy Ridenour

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18 *Attorneys for Plaintiffs*

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

19 DONALD WALDEN, JR., et al., etc.,

20 Plaintiffs,

21 v.

22 THE STATE OF NEVADA, EX REL. NEVADA  
23 DEPARTMENT OF CORRECTIONS, and  
24 DOES 1-50,

25 Defendants.

Case No.: 3:14-cv-00320-MMD-CSD

**DECLARATION OF DANIEL  
TRACY IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
PRELIMINARY APPROVAL OF  
THE COLLECTIVE AND CLASS  
ACTION SETTLEMENT**

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I, Daniel Tracy, hereby declare and state as follows:

1. I am a named plaintiff in the above-captioned lawsuit. I make this declaration in support of the Motion for Preliminary Approval of the Collective and Class Action Settlement. I have personal knowledge of the facts contained herein, and if called as a witness I would and could competently testify thereto under oath.

2. I am in no way related to anyone who works for Thierman Buck, LLP or Gabroy Messer Law Offices.

3. I was employed by Defendant THE STATE OF NEVADA, *EX REL.* ITS NEVADA DEPARTMENT OF CORRECTIONS (“Defendant” or “NDOC”) as a non-exempt hourly correctional officer at its High Desert State Prison, Women’s Correctional Center, Three Lakes Valley Conservation Camp, Ely State Prison, and Southern Desert Correctional Center from on or about October 2000 until on or about February 2022. During my career with NDOC I worked a variety of shifts and was assigned to a variety of job posts.

4. My involvement in this lawsuit began more than 8 years ago when I, along with other named plaintiffs, searched out an attorney to discuss issues I was having at NDOC. I retained the lawyers at Thierman Buck LLP (formerly known as Thierman Law Firm) to be my legal representatives based upon their experience handling employment class actions.

5. My attorneys explained to me the duties and responsibilities of a class representative, and I decided that I would undertake the role. I understood that as a class representative I have an obligation to place the interests of the class members in this case (i.e. the other current and former employees of Defendant on whose behalf I have brought this lawsuit) above my own personal interests and to advance this case toward a favorable outcome on their behalf.

6. I have been actively involved in the investigation and formation of this lawsuit. I spoke with attorneys and paralegals involved in preparing the complaint. I reviewed the complaint before it was filed and had input on the facts contained in it. I have devoted a substantial amount of hours to this case over the last eight years, including exchanging dozens of

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1 phone calls and emails with my attorneys, reviewing documents, participating in the discovery  
2 process, and participating in two mediations and an in-person settlement conference for this case.

3 7. I recall lengthy telephone conversations with my attorneys regarding the details of  
4 my employment with NDOC. I helped my attorneys understand NDOC’s policies and procedures  
5 at issue in this case.

6 8. During the discovery process, I answered 38 requests for admissions, responded  
7 to 45 requests for production of documents, and answered 24 interrogatories. I was also deposed  
8 by Defendant in 2015 and again in 2017.

9 9. In 2017, I accompanied my attorneys, as well as personnel from NDOC, on walk-  
10 throughs at both Ely State Prison and Southern Desert Correctional Center to show and explain  
11 the process for correctional officers like myself to check in, pick up equipment, and walk to our  
12 assigned posts.

13 10. I was available all day for two mediations that took place in 2015 and in 2022 to  
14 answer any questions and contribute in any way I could. For the 2022 settlement conference, I  
15 traveled from my home in Montana to Reno and stayed over two nights in order to participate in  
16 the all-day settlement conference before Judge Denney.

17 11. I reviewed the settlement agreement. In agreeing to the settlement that is now  
18 before this Court for approval, I did so because I understood it to be in the best interest of the  
19 class members in this case.

20 12. Since I began pursuing this litigation, I have continued to remain available and  
21 responsive to my attorneys. I complied with my attorneys’ requests to review and sign  
22 documents, sometimes on very short notice. I have also continued to initiate contact with my  
23 attorneys to check on the status of the lawsuit and settlement.

24 13. I did not record the time that I spent working with my attorneys, reviewing  
25 documents, participating in the discovery process and mediations, or generally thinking about this  
26 case, but I can reasonably estimate that I have invested well over 350 hours over the last 8 years  
27 on this case. I believe that my participation in the investigation of the facts concerning the  
28

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allegations in this matter, and adding my name to the complaint, contributed to the overall settlement in terms of the breadth of information, and ultimately benefited the class members.

14. When I agreed to be a class representative, I understood that it could have an adverse impact on my future employment prospects. For example, if a future employer were to do a background check on me and discover this litigation, I believe that there is significant risk that I could be denied a job because I have brought a class action lawsuit against a former employer for employment-related violations. In addition, at the time I filed this lawsuit, I knew that it was possible that Defendant could have harmed my future job prospects by giving me a negative reference because I filed this lawsuit. I believe the enhancement award of \$20,000.00 is reasonable in light of the sacrifices I made to be a part of this action over the past eight years.

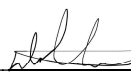
15. I also understood when I became a class representative that I could be liable for Defendant’s costs if this action were unsuccessful. I undertook the risk because I believed it was important to pursue these claims for alleged violations of wage and hour laws that I believe Defendant committed against me and other employees as my attorneys have explained to me.

16. I have not entered into any undisclosed agreements, nor have I received any undisclosed compensation in this case. The only compensation I will receive is whatever amount the Court awards as a service payment, as well as my share of the settlement fund as a Class Member.

17. I have no conflict of interest with any other class member.

I have read the foregoing declaration and declare under penalty of perjury under the laws of the State of Nevada and the United States of America that the foregoing is true and correct.

Executed this 11 day of November 2022 at Olney, Montana.

  
\_\_\_\_\_  
Daniel Tracy

1 Mark R. Thierman, Nev. Bar No. 8285  
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*Attorneys for Defendant The State of Nevada,  
ex rel. its Department of Corrections*

18  
19 **UNITED STATES DISTRICT COURT**  
20 **DISTRICT OF NEVADA**

21 DONALD WALDEN, JR., et al., etc.,

22 Plaintiffs,

23 v.

24 THE STATE OF NEVADA, EX REL. NEVADA  
DEPARTMENT OF CORRECTIONS, and  
25 DOES 1-50,

26 Defendants.

Case No.: 3:14-cv-00320-MMD-WGC

**[PROPOSED] ORDER GRANTING  
PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT**

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 Plaintiffs' Motion for Preliminary Approval of Collective and Class Action Settlement came  
3 before this Court, the Honorable Chief Judge Miranda M. Du presiding, on December 1, 2022, at  
4 2:30 p.m.. This Court, having considered the papers submitted in support of the Motion, HEREBY  
5 ORDERS THE FOLLOWING:

6 1. This Court grants preliminary approval of the Settlement and the Settlement Classes  
7 based upon the terms set forth in the Collective and Class Action Settlement and Release between  
8 Plaintiffs Donald Walden, Jr., et. al. and Defendant the State of Nevada, Ex. Rel. Nevada  
9 Department of Corrections ("Settlement"). The Settlement preliminarily appears to be fair,  
10 adequate, and reasonable to the Class. The Joint Motion for Preliminary Approval is GRANTED.

11 2. The Settlement falls within the range of reasonableness and appears to be  
12 presumptively valid, subject only to any objections that may be raised at the final fairness hearing  
13 and final approval by this Court.

14 3. A final fairness hearing on the question of whether the proposed Settlement should  
15 be finally approved as fair, reasonable, and adequate as to the members of the Class is scheduled in  
16 accordance with the Implementation Schedule set forth below.

17 4. This Court approves, as to form and content, the Notice of Pendency of Collective  
18 and Class Action Settlement and Final Hearing Date ("Class Notice of Settlement"), in substantially  
19 the form attached to the Settlement as Exhibit A. This Court approves the procedure for Class  
20 Members to (i) participate (i.e., do nothing), (ii) opt out, or (iii) object, to the Settlement as set forth  
21 in the Class Notice of Settlement.

22 5. The Court directs the mailing of Class Notice of Settlement by first class mail to the  
23 Class Members in accordance with the Implementation Schedule set forth below. This Court finds  
24 the dates selected for the mailing and distribution of the Class Notice of Settlement, as set forth in  
25 the Implementation Schedule, meet the requirements of due process and provide the best notice  
26 practicable under the circumstances and shall constitute due and sufficient notice to all persons  
27 entitled thereto.

28 6. This Court has already conditionally certified the opt-in collective group pursuant to  
the Fair Labor Standards Act (FLSA) and that decision is not disturbed. It is further ordered that a

1 Settlement Class, as defined in the Settlement, is preliminarily certified pursuant to Rule 23 of the  
 2 Federal Rules of Civil Procedure for settlement purposes only.

3 7. This Court re-affirms Plaintiffs DONALD WALDEN JR., NATHAN ECHEVERRIA,  
 4 AARON DICUS, BRENT EVERIST, TRAVIS ZUFELT, TIMOTHY RIDENOUR, and DANIEL TRACY  
 5 as Class Representatives.

6 8. This Court re-affirms Mark Thierman, Esq., Joshua Buck, Esq., Leah Jones, Esq.,  
 7 and Joshua R. Hendrickson, Esq. of Thierman Buck, LLP of Reno, Nevada and Christian Gabroy,  
 8 Esq. and Kaine Messer, Esq. of Gabroy Messer of Henderson, Nevada as Class Counsel.

9 9. This Court confirms [insert Settlement Administrator] as the Settlement  
 10 Administrator.

11 10. This Court orders the following Implementation Schedule for further proceedings:

12 a.	Deadline for Defendant to Submit Class Member Information to Claims Administrator	_____, 2022 [7 calendar days after Order granting Preliminary Approval]
13 b.	Deadline for Claims Administrator to Mail the Notice to Class Members	_____, 2022 [14 calendar days after Order granting Preliminary Approval]
14 c.	Deadline for Defendant to Make Good Faith Deposit To Settlement Account maintained by Claims Administrator	_____, 202__ [21 calendar days after Order granting Preliminary Approval or 30 calendar days from date of approval by the BOE and IFC, whichever is later]
15 d.	Deadline for Defendant's Insurer to Make Good Faith Deposit To Settlement Account maintained by Claims Administrator	_____, 2023 [45 calendar days after Order granting Preliminary Approval]
16 e.	Deadline for Class Counsel to File Motion for Final Approval of Fees, Costs, and Service Awards	_____, 2022 [21 calendar days after Order granting Preliminary Approval]
17 f.	Deadline for Class Members to Postmark Requests for Exclusions	_____, 2023 [30 calendar days after initial mailing of the Notice to Class Members]

1	g.	Deadline for Receipt by Court and Counsel of any Objections to Settlement	_____, 2023 [30 calendar days after initial mailing of the Notice to Class Members]
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3	h.	Deadline for Class Counsel to file Motion for Final Approval of Settlement, Attorneys' Fees, Costs, and Enhancement Award	_____, 2023 [7 calendar days prior to Final Approval Hearing]
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6	i.	Deadline for Class Counsel to File Declaration from Claims Administrator of Due Diligence and Proof of Mailing	_____, 2023 [7 calendar days prior to Final Approval Hearing]
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10	j.	Final Fairness Hearing and Final Approval	_____, 2023
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12	k.	Deadline for Defendant to Deposit Remaining Settlement Fund To Settlement Account maintained by Claims Administrator	_____, 2023 [90 days after Effective Date]
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16	l.	Deadline for Claims Administrator to wire transfer the Attorneys' Fees and Costs to Class Counsel (if Settlement is Effective)	_____, 2023 [10 days after receipt of Settlement Funds]
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19	m.	Deadline for Claims Administrator to mail the Settlement Awards to Class Members and the Enhancement Awards to Class Representatives (if Settlement is Effective)	_____, 2023 [10 days after receipt of Settlement Funds]
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23	n.	Claims Administrator to File Proof of Payment of Settlement Awards, Enhancement Award, Attorneys' Fees and Costs (if Settlement is Effective)	_____, 2023 [180 days after Settlement Awards being issued]
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27	o.	Uncashed Checks to be Voided and Monies Remitted	_____, 2023 [180 days after Settlement Awards being
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	To State of Nevada Unclaimed Property Fund	issued]
p.	Unclaimed Settlement Monies Revert to the State of Nevada	_____, 2024 [1 year following Settlement Awards being remitted to State of Nevada unclaimed property fund]

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
DISTRICT COURT JUDGE