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Joshua D. Buck, Nev. Bar No. 12187  
josh@thiermanbuck.com  
Leah L. Jones, Nev. Bar No. 13161  
leah@thiermanbuck.com  
THIERMAN BUCK  
325 W. Liberty Street  
Reno, Nevada 89501  
Tel. (775) 284-1500  
Fax. (775) 703-5027

ATTORNEYS FOR PLAINTIFF  
AND ALL OTHERS SIMILARLY SITUATED

**DISTRICT COURT**  
**WASHOE COUNTY, NEVADA**

ALBERT VILLANUEVA, on behalf of  
himself and all other similarly situated  
individuals,

Plaintiff,

vs.

FIGURE LENDING LLC, and DOES 1  
through 50, inclusive,

Defendant(s).

Case No.: CV24-00635

Dept. No.: 9

**COLLECTIVE AND CLASS ACTION  
COMPLAINT**

**(EXEMPT FROM ARBITRATION  
PURSUANT TO NAR 3(A): CLASS  
ACTION)**

- 1) Failure to Pay Overtime in Violation of 29 U.S.C. § 207;
- 2) Failure to Pay Overtime in Violation of NRS 608.140 and 608.018; and
- 3) Failure to Timely Pay All Wages Due and Owing in Violation of NRS 608.140 and 608.020-050.

**JURY TRIAL DEMANDED**

COMES NOW Plaintiff ALBERT VILLANUEVA (“Plaintiff”), on behalf of himself and all other similarly situated and typical persons, and alleges the following:

All allegations in this Complaint are based upon information and belief except for those allegations that pertain to the Plaintiff named herein and his Counsel. Each allegation in this

Complaint either has evidentiary support or is likely to have evidentiary support after a reasonable opportunity for further investigation and discovery.

### **JURISDICTION AND VENUE**

1. This Court has original jurisdiction over the federal claims alleged herein pursuant to the Fair Labor Standards Act (“FLSA”) 29 U.S.C. § 216(b) which states: “An action to recover the liability prescribed in the preceding sentences may be maintained against any employer (including a public agency) in any Federal or State court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated.” Plaintiff’s signed consent to sue is attached hereto as Exhibit 1.

2. This Court has original jurisdiction over the state law claims alleged herein because the amount in controversy exceeds \$15,000 and a party seeking to recover unpaid wages has a private right of action pursuant to the Nevada Revised Statute (“NRS”) Chapter 608. *See Neville v. Eighth Judicial Dist. Court in & for County of Clark*, 406 P.3d 499, 502 (Nev. 2017).

3. Plaintiff also claims a private cause of action to foreclose a lien against the property owner for wages due pursuant to NRS 608.050.

4. Venue is proper in this Court because one or more of the Defendants named herein maintains a principal place of business or otherwise is found in this judicial district and many of the acts complained of herein occurred in Washoe County, Nevada, which is located within this district.

### **PARTIES**

5. Plaintiff ALBERT VILLANUEVA (“Plaintiff” or “Villanueva”) is a natural person who was employed by Defendant from on or about October 21, 2021, to on or about January 16, 2024.

6. Defendant FIGURE LENDING LLC (“Defendant” or “Figure”) is a foreign limited liability company with its principal place of business at 650 California Street, Suite 2700, San Francisco, CA, 94108, with a registered agent in the state of Nevada located at 112 North Curry Street, Carson City, NV 89703.

7. The identity of DOES 1-50 is unknown at this time, and this Complaint will be amended at such time when the identities are known to Plaintiff. Plaintiff is informed and

believes that each of the Defendants sued herein as DOE is responsible in some manner for the acts, omissions, or representations alleged herein and any reference to “Defendant,” “Defendants,” or “Figure” herein shall mean “Defendants and each of them.”

### **FACTUAL ALLEGATIONS**

8. Defendant is a financial lending company that operates call centers throughout the United States.

9. Plaintiff was employed by Defendant as a non-exempt hourly paid Customer Service Agent (CSA).

10. At the time of his termination from employment, Plaintiff was earning an hourly rate of pay of \$24.76 for each non-overtime hour he worked and a base overtime rate of \$37.14 for each overtime hour that he worked.

11. In addition to his base hourly rate of pay, Plaintiff, and all other similarly situated individuals, also regularly received non-discretionary bonuses (“Bonus”) from Defendant. For example, for the pay period of October 9, 2023 to October 24, 2023, Plaintiff received a non-discretionary bonus in the amount of \$1,931.00. (Attached hereto as Exhibit 2 is a true and correct copy of Plaintiff’s bonus statement for that pay period (“October 2023 Bonus Statement”).) During that same pay period, Plaintiff worked a total of 53.50 overtime hours. (Attached hereto as Exhibit 3 is a true and correct copy of Plaintiff’s itemized wage statement for that same pay period (“October 2023 Wage Statement”).) As demonstrated by the October 2023 Wage Statement, Plaintiff was only paid overtime at a rate of one and one half (1 ½) times his base hourly wage rate<sup>1</sup>; his overtime rate did not include the bonus that he earned for that pay period.

12. Upon information and belief, Defendant did not include the Bonus into the regular rate of pay for overtime payment calculations for Plaintiff or any other member of the putative class members identified below.

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<sup>1</sup> Plaintiff’s base hourly rate of pay was \$24.76. One and one-half (1 ½) times this amount nets a rate of \$37.14.

**CLASS ACTION ALLEGATIONS**

13. Plaintiff realleges and incorporates by this reference all the paragraphs above in this Complaint as though fully set forth herein.

14. Plaintiff brings this action on behalf of himself and all other similarly situated and typical employees as both a collective action under the FLSA and a true class action under Nevada law.

15. Plaintiff brings this action on behalf of himself and the following **FLSA Class**:

**FLSA Class:** All nonexempt hourly paid employees employed by Defendant who received a non-discretionary bonus at any time within 3-years from the filing of this complaint.

16. With regard to the conditional certification mechanism under the FLSA, Plaintiff is similarly situated to those that he seeks to represent for the following reasons, among others:

A. Defendant employed Plaintiff as an hourly-paid employee who was not compensated premium pay at one and one-half times the regular rate of pay for all hours that he worked over forty (40) hours in a workweek.

B. Plaintiff's situation is similar to those he seeks to represent because Defendant failed to pay Plaintiff and all other FLSA Class Members their correct overtime rate when they worked over 40 hours in a workweek.

C. Common questions exist as to whether Defendant failed to pay Plaintiff and FLSA Class Members their correct overtime rate of pay.

D. Upon information and belief, Defendant employs, and has employed, in excess of 100 FLSA Class Members within the applicable statute of limitations.

E. Plaintiff has signed and filed a consent to sue form contemporaneously with this Complaint.

17. Plaintiff brings this action on behalf of himself and the following **Nevada Class and Subclass**:

**Nevada Class:** All nonexempt hourly paid employees employed by Defendant in the state of Nevada who received

a non-discretionary bonus at any time within 3-years from the filing of this complaint.

**Continuation Wage Subclass:** All Nevada Class Members who are no longer employed by Defendant.

18. Class treatment is appropriate in this case for the following reasons:

A. The Class is Sufficiently Numerous: Upon information and belief, Defendant employs, and has employed, in excess of 100 Class Members within the applicable statute of limitations. Because Defendant is legally obligated to keep accurate payroll records, Plaintiff alleges that Defendant's records will establish the members of the Class as well as their numerosity.

B. Common Questions of Law and Fact Exist: Common questions of law and fact exist and predominate as to Plaintiff and Class Members, including, without limitation: (1) Whether Defendant failed to compensate Plaintiff and all members of the Class at the correct overtime rate by failing to include the Bonus into the regular rate; and (2) Whether Defendant failed to pay Class Members all wages due and owing at the time of termination.

C. Plaintiff's Claims are Typical to Those of Fellow Class Members: Plaintiff was not paid overtime on the Bonus that was paid to him and to members of the Class. Plaintiff's claims are typical to those of the class that he seeks to represent. As a result, Defendant has not timely remitted all wages due and owing to Plaintiff and Class Members who are former employees upon their termination.

D. Plaintiff is an Adequate Representative of the Class: Plaintiff will fairly and adequately represent the interests of Class Members because Plaintiff is a member of the Class, he has common issues of law and fact with all members of the Class, and his claims are typical to other Class Members.

E. A Class Action is Superior/Common Claims Predominate: A class action is superior to other available means for the fair and efficient adjudication of this controversy, since individual joinder of all members of the Class is impractical. Class action treatment will permit a large number of similarly situated persons to prosecute their

1 common claims in a single forum simultaneously, efficiently, and without unnecessary  
2 duplication of effort and expense. Furthermore, the expenses and burden of individualized  
3 litigation would make it difficult or impossible for individual members of the Class to  
4 redress the wrongs done to them, while an important public interest will be served by  
5 addressing the matter as a class action. Individualized litigation would also present the  
6 potential for inconsistent or contradictory judgments.

7 **FIRST CAUSE OF ACTION**

8 **Failure to Pay Overtime Wages in Violation of the FLSA, 29 U.S.C. § 207**

9 (On Behalf of Plaintiff and all members of the FLSA Class Against Defendant)

10 19. Plaintiff realleges and incorporates by reference all the paragraphs above in the  
11 Complaint as though fully set forth herein.

12 20. 29 U.S.C. Section 207(a)(1) provides as follows: “Except as otherwise provided  
13 in the section, no employer shall employ any of his employees who in any workweek is engaged  
14 in commerce or in the production of goods for commerce, or is employed in an enterprise engaged  
15 in commerce or in the production of goods for commerce, for a workweek longer than forty hours  
16 unless such employee receives compensation for his employment in excess of the hours above  
17 specified at a rate not less than one and one-half times the regular rate at which he is employed.”

18 21. By failing to include the non-discretionary Bonus into the regular rate of pay for  
19 Plaintiff and member of the FLSA Class, Defendant failed to pay Plaintiff and FLSA Class  
20 Members overtime for all hours worked in excess of forty (40) hours in a week in violation of 29  
21 U.S.C. Section 207(a)(1).

22 22. Wherefore, Plaintiff demands for himself and for all others similarly situated, that  
23 Defendant pay Plaintiff and FLSA Class Members one and one-half (1 ½) times their regular  
24 hourly rate of pay for all hours worked in excess of forty (40) hours a week during the relevant  
25 time period together with liquidated damages, attorneys’ fees, costs, and interest as provided by  
26 law.

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**SECOND CAUSE OF ACTION**

**Failure to Pay Overtime Wages in Violation of Nevada law**

(On Behalf of Plaintiff and the Nevada Class Against Defendant)

23. Plaintiff realleges and incorporates by this reference all the paragraphs above in this Complaint as though fully set forth herein.

24. NRS 608.140 provides that an employee has a private right of action for unpaid wages.

25. NRS 608.018(1) provides as follows:

An employer shall pay 1 1/2 times an employee's regular wage rate whenever an employee who receives compensation for employment at a rate less than 1 1/2 times the minimum rate set forth in NRS 608.250 works: (a) More than 40 hours in any scheduled week of work; or (b) More than 8 hours in any workday unless by mutual agreement the employee works a scheduled 10 hours per day for 4 calendar days within any scheduled week of work.

26. NRS 608.018(2) provides as follows:

An employer shall pay 1 1/2 times an employee's regular wage rate whenever an employee who receives compensation for employment at a rate not less than 1 1/2 times the minimum rate set forth in NRS 608.250 works more than 40 hours in any scheduled week of work.

27. By failing to include the non-discretionary Bonus into the regular rate of pay for Plaintiff and member of the Nevada Class, Defendant failed to pay Plaintiff and Nevada Class Members overtime for all hours worked in excess of eight (8) hours in a workday (if applicable) and/or over forty (40) hours in a week in violation of NRS 608.018.

28. Wherefore, Plaintiff demands for himself, and for all members of the Nevada Class, payment by Defendant at one and one-half (1 1/2) times their regular rate of pay for all overtime pay owed for three years immediately preceding the filing of the original complaint until the date of judgment after trial, together with attorneys' fees, costs, and interest as provided by law.

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**THIRD CAUSE OF ACTION**

**Failure to Timely Pay All Wages Due and Owing Under Nevada Law**

(On Behalf of Plaintiff and the Continuation Wage Subclass Against Defendant)

29. Plaintiff realleges and incorporates by this reference all the paragraphs above in this Complaint as though fully set forth herein.

30. NRS 608.140 provides that an employee has a private right of action for unpaid wages.

31. NRS 608.020 provides that “[w]henver an employer discharges an employee, the wages and compensation earned and unpaid at the time of such discharge shall become due and payable immediately.”

32. NRS 608.040(1)(a-b), in relevant part, imposes a penalty on an employer who fails to pay a discharged or quitting employee: “Within 3 days after the wages or compensation of a discharged employee becomes due; or ... [o]n the day the wages or compensation is due to an employee who resigns or quits, the wages or compensation of the employee continues at the same rate from the day the employee resigned, quit or was discharged until paid for 30 days, whichever is less.”

33. NRS 608.050 grants an “employee lien” to each discharged or laid-off employee for the purpose of collecting the wages or compensation owed to them “in the sum agreed upon in the contract of employment for each day the employer is in default, until the employee is paid in full, without rendering any service therefor; but the employee shall cease to draw such wages or salary 30 days after such default.”

34. By failing to pay Plaintiff and all members of the Continuation Wage Subclass for all hours worked in violation of federal and state law, Defendant has failed to timely remit all wages due and owing to Plaintiff and all members of the Continuation Wage Subclass.

35. Despite demand, Defendant willfully refuses and continues to refuse to pay Plaintiff and all members of the Continuation Wage Subclass.

36. Wherefore, Plaintiff demands 30 days wages under NRS 608.140 and 608.040, and an additional 30 days’ wages under NRS 608.140 and 608.050, for all members of the

Continuation Wage Subclass, together with attorneys' fees, costs, and interest as provided by law.

**JURY DEMAND**

Plaintiff hereby respectfully demands a trial by jury on all issues so triable.

**PRAYER FOR RELIEF**

Wherefore Plaintiff, individually and on behalf of all Class Members and all others similarly situated, pray for relief as follows relating to their collective and class action allegations:

1. For an order conditionally certifying the action under the FLSA and providing notice to all FLSA Class members so they may participate in the lawsuit;
2. For an order certifying this action as a class action under Rule 23 of the Nevada Rules of Civil Procedure on behalf of the proposed Nevada Class and Subclass;
3. For an order appointing Plaintiff as the Representative of the Classes and his counsel as Class Counsel;
4. For damages according to proof for overtime compensation for all overtime hours worked under both federal and Nevada law;
5. For liquidated damages;
6. For 60-days of continuation wages, pursuant to NRS 608.140 and 608.040-.050;
7. For interest as provided by law at the maximum legal rate;
8. For reasonable attorneys' fees authorized by statute;
9. For costs of suit incurred herein;

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10. For pre-judgment and post-judgment interest, as provided by law, and

11. For such other and further relief as the Court may deem just and proper.

**AFFIRMATION**

*The undersigned does hereby affirm, pursuant to NRS 239B.030 and 603A.040, that the proceeding document filed in the Second Judicial District Court of the State of Nevada, County of Washoe, does not contain the personal information of any person.*

DATED: March 20, 2024

THIERMAN BUCK LLP

/s/Joshua D. Buck

Joshua D. Buck

Leah L. Jones

*Attorneys for Plaintiff*

**INDEX OF EXHIBITS**

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