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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

ATAVIAOUS WILLIAMS, on behalf of herself and all other similarly situated individuals,

Plaintiff,

vs.

THE HERTZ CORPORATION; and DOES 1 through 50, inclusive,

Defendant(s).

CASE No.: 2-25-cv-00017-RFB-EJY

PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO DEFENDANT'S ALTERNATIVE REQUEST TO COMPEL ARBITRATION

I. INTRODUCTION

Defendant The Hertz Corporation ("Defendant" or "Hertz") fundamentally misunderstands the nature of this suit, which leads to its misguided motion for summary judgment ("MSJ" or "Motion") based on irrelevant arguments. As this Court is well aware—having conclusively decided a substantially similar argument with regard to unpaid wages resulting from inadequate rest periods under Nevada law[1]—there is no claim for unpaid meal periods under

[1] *See The Venetian Casino Resort, LLC,* Case No. 2:16-cv-02941-RFB-NJK denying Defendants' motion to dismiss wage claims based on missed meal periods. This Court, in *Venetian* held the employee-plaintiffs had a cognizable claim based on missed meal periods, further addressed in footnote 13, p. 18 *infra.*

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Nevada law. And, even if there was, there is no private remedy for failing to provide a full 30-minute meal break.[2] Accordingly, Plaintiff has never asserted an unpaid meal period claim under NRS 608.019, for which there is no private right of action and there is no remedy. Therefore, Defendant's arguments with respect to its MSJ—*i.e.*, that the collective bargaining agreement ("CBA") exempts it from complying with NRS 608.019—are irrelevant to this case.

On the contrary, Plaintiff's case is purely a question of whether Plaintiff and all other similarly situated employees of Defendant are owed wages for time they alleged to have been working. This question concerns itself with the application of the continuous workday doctrine, which states that employees must be compensated for all the work that occurs after the start of their first work activity until their last, unless there is a sufficient amount of uninterrupted non-work time provided. Under federal law, an employee must be completely relieved of duty for at least 20 minutes in order to interrupt the continuous period of work.[3] Likewise, in Nevada, an employee must be completely relieved of duty for at least 30 minutes in order to interrupt the continuous period of work. (NRS 608.019(1).)

Here, Plaintiff has alleged that she and all other similarly situated employees were not paid wages pursuant to the continuous workday doctrine when they were not completely relieved of duty for at least 30 minutes. Plaintiff's operative Complaint does not include a claim pursuant to NRS 608.019(1) for meal breaks.[4] Plaintiff only asserts claims for failure to pay wages for hours worked

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[2] *See Baldonado v. Wynn Las Vegas, LLC,* 124 Nev. 951, 194 P.3d 96 (Oct. 9, 2008) (holding there was no private right of action to enforce the statute when the "Legislature has expressly ordered the Labor Commissioner to enforce the statute."). *But see Neville v. Eighth Judicial Dist. Court,* 133 Nev. 777, 778, 406 P.3d 499, 500 (Dec. 7, 2017).

[3] *See e.g., Rother v. Lupenko,* 515 Fed. Appx. 672, 674–75 (9th Cir. 2013) denying defendant's motion for summary judgment because "It is the general rule under federal law that breaks of less than thirty minutes are compensable."; *Lillehagen v Alorica, Inc.,* 2014 WL 6989230, (C.D. Cal. 2014) (denying summary judgment and holding breaks of less than 20 minutes during a continuous workday are compensable under the FLSA).

[4] *See* operative First Amended Complaint ("FAC"), ECF No. 18, asserting three causes of action: (1) failure to pay minimum wages in violation of the Nevada Constitution and NRS 608.250; (2) failure to compensate for all hour worked in violation of NRS 608.140 and 609.016; and (3) failure to timely pay wages due and owing in violation of NRS 608.140 and 608.020-.050.

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pursuant to the Nevada Constitution and NRS 608.016 for breaks that are less than prescribed thirty (30) minutes in duration. (FAC, ECF No. 18, ¶¶ 17-18, 21.B.1-2; 21.C.1-2; 26-27; 33-34.)

In addition to its misguided attack on Plaintiff's underlying claims, Defendant also overstates the CBA's reach specific to these claims, as well as any purported grievance/arbitration process. Indeed, there is nothing alleged in Plaintiff's Complaint that is subject to preemption, arbitration, or grievance. Even if the Court finds some foothold with Defendant's argument that the CBA applies in some form—which it does not—when a CBA is present, courts in this District follow the test articulated in *Burnside v. Kiewit ac. Corp. See Hulery v. NV Energy, Inc.,* 2014 WL 4542414, *4 (D. Nev. Sept. 9, 2014) *citing Burnside v. Kiewit ac. Corp.,* 491 F.3d 1053, 1059 (9th Cir. 2007) ("In analyzing preemption pursuant to Section 301 the Ninth Circuit follows a two-step inquiry.") That inquiry is: (1) determine whether the asserted cause of action involves a right conferred upon an employee by virtue of state law or a right that exists *solely* as a result of the CBA and if the right exists *solely* as a result of the CBA, then the claim is preempted, and [the Court's] analysis ends there; but (2) if, however, the right exists *independent* of the CBA, then the Court must proceed to the second step and consider whether the right is nevertheless *substantially dependent* on analysis of [the CBA]). *Id*. Defendant cites to *Hulery,* as well as *Alaska Airlines Inc. v. Schurke,* for the *Burnside* two-step process, but then fails to perform the requisite analysis specific to Plaintiff's alleged wage claims. (Motion pp. 10-11.) Here, as analyzed below, Plaintiff's independent statutory rights to minimum wage or regular rate wages owed for all hours worked do not exist solely as a result of the CBA, they are not dependent upon any analysis of the CBA and thus are neither preempted by the LMRA nor subject to a CBA's grievance or arbitration provisions.

Defendant's belief that it can simply ignore Nevada's statutory wage-hour requirements and refuse to compensate employees for work hours is not correct, otherwise, employers could refuse to pay employees for large swaths of work, which is what Defendant effectively argues here by attempting to rely on a CBA that fails to unmistakably waive the Nevada minimum wage claim as well as the NRS 608.016 claim let alone mention the relevant statutory wage provisions. Only when the collective bargaining agreement contains a clear and unmistakable waiver of

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statutory rights to sue in court can an employer argue this exception. *See Cramer v. Consol. Freightways Inc.*, 255 F.3d 683, 692 (9th Cir. 2001), *citing Livadas v. Bradshaw,* 512 U.S. 107, 125 (1994).

Relatedly, Plaintiff is not required to submit her statutory Nevada wage claims to a union grievance procedure or arbitration prior to bringing this action in court because they are independent of the union process—these are claims by employees based on their individual statutory rights, rights sperate from the CBA and rights the union cannot assert, and Defendant cannot ignore. *See e.g., Vasserman v. Henry Mayo Newhall Mem'l Hosp.,* 8 Cal. App. 5th 236, 250, 213 Cal. Rptr. 3d 480, 490 (2017) (CBA did not include an expressly stated, clear and unmistakable waiver of the right to a judicial forum for individual statutory claims.); *Wallace v. Island Cnty.*, 2011 WL 6210633, at *11 (W.D. Wash. Dec. 13, 2011) (Since the employees "had not agreed to arbitrate their statutory claims, and the labor arbitrators were not authorized to resolve such claims, the arbitration in those cases understandably was held not to preclude subsequent statutory actions.").

II. QUESTIONS PRESENTED

There are three questions presented by Defendant Hertz in its Motion for Summary Judgment or in the alternative, Motion to Compel Arbitration:

Question One: Whether a period of less than 30 minutes interrupts the continuous period of work in Nevada?

Answer: No. In Nevada, an employee must be completely relieved of duty for no less than 30 minutes. If an employee is not completely relieved of duty for at least 30 minutes, then the employee can recover unpaid wages pursuant to the continuous workday doctrine.

Question Two: Whether Nevada's unpaid wage claims are preempted by the Labor Management Relations Act ("LMRA"), 29 U.S.C. §185(a), when a Collective Bargaining Agreement ("CBA") is present?

Answer: Not under the facts of this case. Plaintiff's independent statutory rights to wages owed for all hours worked do not exist solely as a result of the CBA; they are not dependent upon

any analysis of the CBA, and the CBA does not include a clear and unmistakable waiver to sue for statutory wage violations in court.

Question Three: Whether Nevada hourly-paid employees are required to exhaust a grievance procedure/submit to arbitration pursuant to a CBA, prior to bringing an action for statutory wage claims?

Answer: No. The employees have not agreed to arbitrate their statutory claims, and thus, arbitrators are not authorized to resolve such claims.

III. PLAINTIFF'S RESPONSE TO DEFENDANT'S STATEMENT OF MATERIAL FACTS

Plaintiff responds to Defendant's Material Facts (ECF No. 20, §II, pp. 4-6) as follows:

The Hertz Corporation's "Statement of Material Facts"	**Plaintiff's Response**
1. Plaintiff was employed by Hertz in Las Vegas, Nevada, as a Vehicle Service Attendant ("VSA") from July 17, 2024, through August 29, 2024. (Declaration of LaKeisha Carter-Unaka ("Carter-Unaka Decl.") ¶5.)	Undisputed.
2. Plaintiff's entire employment was subject to and covered by the CSR, IRR, and VSA Las Vegas, Nevada collective bargaining agreement between Hertz and the General Teamsters, Airline Aerospace and Allied Employees, Warehousemen, Drivers, Construction, Rock and Sand Local Union No. 986 (the "Union") that applies to the time period from April 8, 2024, through and including April 7, 2027 (the "CBA").[1] (*Id.*, ¶6 & Ex. B at 1, 8.) Fn.1: The CBA was not fully executed until on or about December 9, 2024, but it explicitly states that it "shall be in full force and effect from April 8, 2024 through and including April 7, 2027"— which covers the entire period of Plaintiff's employment. (*See* Carter-Unaka Decl., Ex. B at 20-21.) *See Allmaras v. Univ. Mech.*	Disputed in relevant part. Nevada law requires minimum wage or regular rate wages for each hour worked: (1) Plaintiff does not include a claim pursuant to NRS 608.019(1) for meal breaks in her Complaint. (2) Plaintiff asserts failure to pay wages for hours worked pursuant to the Nevada Constitution and NRS 608.016. (3) Plaintiff has a private right of action to seek unpaid wages in court. *See Neville v. Eighth Judicial Dist. Court,* 133 Nev. 777, 778, 406 P.3d 499, 500 (Dec. 7, 2017). (4) The Nevada Legislature has determined that employers must provide employees with a meal break not less than 30

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& Eng'g Contractors, No. 24-cv-02021, 2025 WL 454713, at *7 (S.D. Cal. Feb. 11, 2025) ("Because the CBA provides for such retroactive effect, it effectively governs Plaintiff's employment during the relevant period."); *see also Univ. of Haw. Pro. Assembly v. Cayetano*, 183 F.3d 1096, 1100 (9th Cir. 1999) (CBA was applied retroactively where it explicitly stated that it was retroactive).

But even if the CBA did not apply retroactively to cover Plaintiff's employment, the prior CSR, IRR, VSA Las Vegas, Nevada collective bargaining agreement between Hertz and the Union that applied to the time period from April 8, 2021, through and including April 7, 2024 (the "Prior CBA") (which includes the same relevant terms), would apply to Plaintiff's employment and claims. (*See id.*, Ex. A at 16 ["This Agreement shall be in full force and effect from April 8, 2021 through and including April 8, 2024, ***and from year to year thereafter unless either party shall give written notice to the other party sixty (60) days prior to any annual date, of its desire to change, amend, modify, or terminate this Agreement.***"] [emphasis added].) Neither Hertz nor the Union ever provided written notice to one another at least sixty (60) days prior to April 7, 2024 (or at any time) of its desire to change, amend, modify, or terminate the Prior CBA. (*Id.* ¶7.) [5]

minutes in duration per 8 hours worked. *See* NRS 608.019(1)

(5) Pursuant to NRS 608.019(2), "[a]uthorized rest periods shall be counted as hours worked, for which there shall be no deduction from wages."

Accordingly, Nevada employees have a private right of action to seek wages for time worked during the continuous workday.

<u>There is no preemption issue; Plaintiff's claims are statutory. Further, because there is no agreement to arbitrate statutory claims, there is no grievance or arbitration requirement, and Defendant's motion to compel arbitration must be denied</u>

(1) Plaintiffs' claims are not based on any "agreement"; they are based on Nevada statutory law, which requires that employees be paid for all the hours they work. (NRS 608.016.)

(2) Nevada employees must be compensated at least the minimum wage for such hours. (Nev. Const. Art. 15 §16 and NRS 608.250.)

(3) Former employees must receive their continuation wages for derivative statutory violations. (NRS 608.020-.050.)

(4) The CBA does not waive Nevada statutory claims. *Cramer v. Consol. Freightways Inc.*, 255 F.3d 683, 692 (9th Cir. 2001), *citing Livadas v. Bradshaw,* 512 U.S. 107, 125 (1994).

(5) Because the parties to the CBA did not agree to arbitrate their statutory claims, and the labor arbitrators were not

[5] *See* Defendant's Motion (ECF No. 20), p. 5, fn. 1, cited here, argues that the CBA's have remained in full force and effect during Plaintiff's employment. For purposes of this Opposition, Plaintiff does not dispute Defendant's assertion but reserves the right to further assert all defenses thereto after Plaintiff has had the opportunity, through regular channels of discovery, to probe this potential issue.

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	authorized to resolve such claims, there is no grievance or arbitration requirement. (*See Wallace v. Island Cnty.*, 2011 WL 6210633, at *11 (W.D. Wash. Dec. 13, 2011) (Since the employees "had not agreed to arbitrate their statutory claims, and the labor arbitrators were not authorized to resolve such claims, the arbitration in those cases understandably was held not to preclude subsequent statutory actions.") *cf., Renteria v. Prudential Ins. Co. of Am.,* 113 F.3d 1104, 1108 (9th Cir. 1997) (arbitration of federal and state law claims cannot be compelled where employee did not knowingly agree to arbitrate because there was no express waiver of statutory remedies in the agreement). Accordingly, because Nevada statutory wage claims have not been unmistakably waived, and because they are independent of the CBA, the union grievance and arbitration procedures are inapplicable.
3. The CBA contains a mandatory grievance and arbitration procedure. (*See* Carter-Unaka Decl., Ex. B at 3-4.)	Disputed in relevant part. Plaintiff's claims are not subject to the CBA as outlined above and further analyzed herein.
4. Specifically, the CBA provides that "[a]ll grievances shall be handled" in the manner provided for in the CBA, with "grievance" defined as "a dispute regarding the interpretation and/or application of the provisions of this Agreement." (*Id.*, Ex. B at 3.)	Disputed in relevant part. Plaintiff's claims are not subject to the CBA as outlined above and further analyzed herein.
5. Pursuant to the grievance procedure set forth in the CBA, covered employees are required to: (1) present their grievances verbally to their Senior Location Manager within ten (10) calendar days of either the circumstances leading to the grievance or the time they could reasonably have known about such circumstances, and wait up to ten (10) calendar days for a response; (2)	Disputed in relevant part. Plaintiff's claims are not subject to the CBA as outlined above and further analyzed herein.

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present their grievances in written form to their General Manager within ten (10) calendar days of the Senior Location Manager's response, assuming the grievances were not resolved; and (3) request that the Union demand arbitration within ten (10) calendar days of the General Manager's response, assuming the grievances were not resolved. (*See id.*)	
6. The CBA also provides for specific arbitration procedures, such as arbitrator selection and the split of fees and costs, and makes clear that any "decision of the arbitrator shall be final and binding on the parties involved and shall be within the scope of [the CBA]." (*Id.*, Ex. B at 3-4.)	Disputed in relevant part. Plaintiff's claims are not subject to the CBA as outlined above and further analyzed herein.
7. Plaintiff never raised a complaint or grievance with either her Senior Location Manager or General Manager at any time during her employment with Hertz. (*Id.,* ¶ 9.)	Undisputed because Plaintiff's claims are not subject to the CBA as outlined above and further analyzed herein.
8. On or about December 2, 2024, Plaintiff brought suit against Defendant in the Eighth Judicial District Court of the State of Nevada in and for the County of Clark, alleging four causes of action: (1) failure to pay minimum wages in violation of the Nevada Constitution and NRS 608.250; (2) failure to compensate for all hours worked in violation of NRS 608.140 and 608.016; (3) failure to pay overtime in violation of NRS 608.140 and 608.018; and (4) failure to pay all wages due and owing in violation of NRS 608.140 and 608.020-050. (Dkt 1-1 ¶¶27-53.)	Undisputed.
9. On or about January 3, 2025, Defendant removed this case to the District of Nevada pursuant to the Class Action Fairness Act (Dkt. 1)	Undisputed.
10. On or about March 19, 2025, Plaintiff filed her FAC that omits the third cause of action for failure to pay overtime	Undisputed.

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and corresponding allegations (*See* Dkt. 18.)	
11. The FAC otherwise contains the same claims and substantially similar allegations as Plaintiff's original complaint. (*See id.*)	Undisputed.
12. Plaintiff's claims for failure to pay minimum wages, failure to pay wages for all hours worked, and failure to pay all wages due at termination are based solely on her allegations that she and the putative class members routinely did not receive a full 30-minute meal break when working a shift of at least eight hours and were not compensated for such breaks. (*See id.* ¶¶16-18, 21, 26-27, 33, 40.)	Disputed in part. Plaintiff's claims are for minimum wages pursuant to the Nevada Constitution or regular rate wages pursuant to NRS 608.016, whichever is greater. *See* ECF No. 18, FAC, and fn.. 1.

IV. PLAINTIFF'S ADDITIONAL UNDISPUTED FACTS

Plaintiffs' Undisputed Facts	**Legal Support for Plaintiffs' Undisputed Facts**
1. Defendant's 4/2021-4/2024 (ECF No. 21-1) at ECF pp. 4-5, Art. 7 – GRIEVANCE AND ARBITRATION TERMS, Sec. 1, states: "A grievance shall be defined as a dispute regarding the *interpretation and or/application* of the provisions of the Agreement. Grievances alleging a violation of any provision of this Agreement may be raised by the Union or any employee covered by the Agreement. …" *See also,* Defendant's 4/2024-4/2027 CBA (ECF No. 21-2) at ECF pp. 5, Art. 7 – GRIEVANCE AND ARBITRATION TERMS, Sec. 1, (same).	There is no unmistakable waiver of the Nevada Constitution minimum wage requirement nor NRS 608.016 regular rate claims. *See Cramer v. Consol. Freightways Inc.*, 255 F.3d 683, 692 (9th Cir. 2001), *citing Livadas v. Bradshaw,* 512 U.S. 107, 125 (1994); *see also Wallace v. Island Cnty.*, 2011 WL 6210633, at *11 (W.D. Wash. Dec. 13, 2011) (Since the employees "had not agreed to arbitrate their statutory claims, and the labor arbitrators were not authorized to resolve such claims, the arbitration in those cases understandably was held not to preclude subsequent statutory actions.") *cf., Renteria v. Prudential Ins. Co. of Am.,* 113 F.3d 1104, 1108 (9th Cir. 1997) (arbitration of federal and state law claims cannot be compelled where employee did not knowingly agree to arbitrate because there was no express waiver of statutory remedies in the agreement).

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2. Defendant's 4/2021 – 4/2027 CBA (ECF No. 21-1) at ECF pp. 8-9, Art. 10 – WAGES, HOURS AND CLASSIFICATIONS, Sec. 9.B provides minimum wage rates and Sec.9.C provides annual wage adjustments. *See also* Defendant's 4/2-24 – 4/2027 CBA (ECF No. 21-2) at ECF pp. 8-9, Art. 10 – WAGES, HOURS AND CLASSIFICATIONS, Sec. 9.B provides increased minimum wage rates and Sec.9.C provides annual wage adjustments.	*See above,* there is no unmistakable waiver of the Nevada Constitution minimum wage requirement. Additionally, there is no unmistakable waiver of the Nevada Statutory requirement pursuant to NRS 608.016 that employees must be paid their regular rate of pay for all hours worked. Further, there is no unmistakable waiver of Nevada's derivative continuation wage statutes pursuant to NRS 608.020-050.
3. Defendant's 4/2021-4/2024 CBA (ECF No. 21-1) at ECF p. 9, Art. 10 – WAGES, HOURS AND CLASSIFICATIONS, Sec. 11, meal and break requirements of "an unpaid meal break of thirty (30) minutes for eight continuous hours of work. Employees are also entitled to a paid ten (10) minute rest period in the middle of the work period, as practicable, for each four hours or major fraction worked. …" *See also* Decl. of Carter-Unaka, Exhibit B, 4/2024 – 4/2027 CBA (ECF No. 21-2) at ECF p. 22, 11/26/2024 MOU stating: "The Company agrees to meet and discuss the details of a "straight 8" schedule" and that "If implemented and while in effect, the Union, and employees voluntarily and explicitly waive any and all rights to meal and rest period under Nevada NRS 608.019 et seq as either may be amended in the future."	*See above.* In addition, even if the CBA somehow applies, the 4/2021 – 4/2024 thirty (30) minute meal period is identical in effect to the Nevada statutory scheme and thus *does* not require any interpretation from the Court – it says what it says – employees are entitled to an unpaid meal break of thirty (30) minutes for eight *continuous* hours of work, But because they do not get that break they are owed compensation for work performed when they should have been able to enjoy a statutorily prescribed period of respite and nourishment. Defendant's argument at fn. 3, specific to the MOU is inapplicable to Plaintiff's claims for Nevada Constitution minimum wages or regular rate wages pursuant to NRS 608.016, because there is no unmistakable waiver of the Nevada Statutory requirement pursuant to NRS 608.016 or the Nevada Constitutional minimum wage. Defendant's assertion that the MOU regarding the "straight 8" and NRS 608.019(1) is ***not*** an unmistakable waiver of Plaintiff's claims and further illustrates Defendant's misunderstanding of Plaintiff's Complaint and her allegations, which are specific to unpaid wages.

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IV. LEGAL ARGUMENT

A. Standard of Review for Construing Nevada's Wage-Hour Statutes

Nevada's wage-hour statutes are remedial in nature and must be liberally construed in order to effectuate the purpose of the legislation. *See Terry v. Sapphire Gentlemen's Club*, 130 Nev. Adv. Op. 87, 336 P.3d 951 (2014) (recognizing that Nevada's wage and hour statutes provided under NRS Chapter 608 are remedial in nature); *Int'l Game Tech., Inc. v. Second Judicial Dist. Court ex rel. Cnty. of Washoe*, 124 Nev. 193, 201, 179 P.3d 556, 560-61 (2008) ("[R]emedial statutes . . . should be liberally construed to effectuate the intended benefit."); *Eddington v. Eddington,* 119 Nev. 577, 583, 80 P.3d 1282, 1287 (2003) ("[S]tatutes with a protective purpose should be liberally construed in order to effectuate the benefits intended to be obtained."); *Colello v. Administrator, Real Est. Div.,* 100 Nev. 344, 347, 683 P.2d 15, 17 (1984) (recognizing that "[s]tatutes with a protective purpose should be liberally construed in order to effectuate the benefits intended to be obtained."); *SIIS v. Campbell,* 109 Nev. 997, 1001, 862 P.2d 1184, 1186 (1993) (citing the "long-standing policy to liberally construe workers' compensation laws to protect injured workers and their families"); *Hardin v. Jones,* 102 Nev. 469, 471, 727 P.2d 551, 552 (1986) (applying same principle to unemployment statute).[6]

Courts interpret statutes according to their plain language unless the statute is ambiguous. *See Echeverria v. State*, 495 P.3d 471, 476 (Nev., 2021); *see also, Young Elec. Sign Co. v. Erwin Elec. Co.,* 86 Nev 822, 826, 477 P.2d 864, 867 (1970) (Courts must ascertain the meaning of the words of a statute to give effect to the will of the Legislature.). Nevada statutory authority specifically provides that employees must be compensated for all hours worked, whether scheduled or not. (NRS 608.016.) Hours worked means anytime the employer exercises "control or custody" over an employee. NRS 608.011 (defining an "employer" as "every person having control or custody … of any employee."). Additionally, pursuant to the Nevada Administrative Code, hours

[6] Other courts also apply this long-standing canon of construction. *See e.g., Coming Glass Works v. Brennan,* 417 U.S. 188, 207 (1974) (holding that the Equal Pay Act is broadly remedial and should be construed to effectuate that purpose); *Libby, McNeill & Libby v. Alaska Indus. Bd.,* 191 F.2d 262, 264 (9th Cir. 1951) (holding that if the meaning of an employee compensation statute is doubtful, it should be construed liberally in favor of the employee).

worked includes "*all time worked* by the employee at the direction of the employer, *including* time worked by the employee that is outside the scheduled hours of work of the employee." (NAC 6078.115(1) (emphasis added)). NRS 608.012 defines "wages" as "[t]he amount which an employer agrees to pay an employee for the time the employee has worked, computed in proportion to time … but excludes any bonus or arrangement to share profits." (NRS 608.012.) And NRS 608.260 provides that "[i]f any employer pays any employee a lesser amount than the minimum wage set forth in NRS 608.250 … the employee may, at any time within 2 years, bring a civil action against the employer. A contract between the employer and the employee or any acceptance of a lesser wage by the employee is not a bar to the action." (NRS 608.260.)

The Nevada Constitution Minimum Wage Requirement. The Nevada Constitution minimum wage amendment ("MWA") Article 15 § 16 provides for a base minimum wage. NRS 608.250(1) sets the Nevada minimum wage.[7] NRS 608.250(2) states that "[i]t is unlawful for any

[7] (1) Each employer shall pay to each employee of the employer a wage of not less than:
(a) Beginning July 1, 2019:
(1) If the employer offers health benefits to the employee in the manner described in Section 16 of Article 15 of the Nevada Constitution, $7.25 per hour worked.
(2) If the employer does not offer health benefits to the employee in the manner described in Section 16 of Article 15 of the Nevada Constitution, $8.25 per hour worked.
(b) Beginning July 1, 2020;
(1) If the employer offers health benefits to the employee in the manner described in Section 16 of Article 15 of the Nevada Constitution, $8.00 per hour worked.
(2) If the employer does not offer health benefits to the employee in the manner described in Section 16 of Article 15 of the Nevada Constitution, $9.00 per hour worked.
(c) Beginning July 1, 2021:
(1) If the employer offers health benefits to the employee in the manner described in Section 16 of Article 15 of the Nevada Constitution, $8.75 per hour worked.
(2) If the employer does not offer health benefits to the employee in the manner described in Section 16 of Article 15 of the Nevada Constitution, $9.75 per hour worked.
(d) Beginning July 1, 2022;
(1) If the employer offers health benefits to the employee in the manner described in Section 16 of Article 15 of the Nevada Constitution, $9.50 per hour worked.

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person to employ, cause to be employed or permit to be employed, or to contract with, cause to be contracted with or permit to be contracted with, any person for a wage less than that established by this section." (NRS 608.250(2).)

Nevada Revised Statute Chapter 608. The purpose of NRS Chapter 608 is to protect the health and welfare of workers employed in private enterprises and provide concrete safeguards concerning hours of work, working conditions, and employee compensation. *See* NRS 608.005 ("The Legislature hereby finds and declares that the health and welfare of workers and the employment of persons in private enterprise in this State are of concern to the State and that the health and welfare of persons required to earn their livings by their own endeavors require certain safeguards as to hours of service, working conditions and compensation therefor.")[8] The interpretation of NRS Chapter 608 (and determining whether there is a private right of action to seek wages in violation of the provisions in that chapter) must always be considered in light of the Legislature's statement of purpose—i.e., to protect the health and welfare of Nevada employees concerning "hours of work" and "employee compensation." Further, as this Court is

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(2) If the employer does not offer health benefits to the employee in the manner described in Section 16 of Article 15 of the Nevada Constitution, $10.50 per hour worked.

(e) Beginning July 1, 2023:

(1) If the employer offers health benefits to the employee in the manner described in Section 16 of Article 15 of the Nevada Constitution, $10.25 per hour worked.

(2) If the employer does not offer health benefits to the employee in the manner described in Section 16 of Article 15 of the Nevada Constitution, $11.25 per hour worked.

(f) Beginning July 1, 2024:

(1) If the employer offers health benefits to the employee in the manner described in Section 16 of Article 15 of the Nevada Constitution, $11.00 per hour worked.

(2) If the employer does not offer health benefits to the employee in the manner described in Section 16 of Article 15 of the Nevada Constitution, $12.00 per hour worked.

[8] *See also,* Exhibit A, AB219, p. 4 Legislative History and Committee Noted, highlighted, hereinafter "AB219 Legislative History and Notes Highlighted," attached to the Declaration of Leah L. Jones, ("Jones Dec."), at ¶5. The page numbers cited herein are the page of the PDF exhibit as opposed to the various page numbers of the Legislative history and notes.

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well aware, employee plaintiffs in the state of Nevada have a private right of action to seek unpaid wages in court. *See Neville v. Eighth Judicial Dist. Court,* 133 Nev. 777, 778, 406 P.3d 499, 500 (Dec. 7, 2017).[9]

1. <u>Defendant's argument that employees are *not* entitled to pay for meal periods of less than 30 minutes in duration is irreconcilable with the plain language of Nevada wage statutes, contravenes public policy behind the enactment of the statutes, and would lead to absurd results.</u>

Defendant's interpretation that NRS 608.019(1) allows Nevada employers to violate the requirement to provide a meal period of no less than 30 minutes in duration yet be able to escape paying wages for time worked resulting from that failure runs afoul of the plain text of Nevada's statutory structure, contravenes the spirit of the law, and would lead to absurd results. NRS 608.019(1) requires that "[a]n employer shall not employ an employee for a continuous period of 8 hours without permitting the employee to have a meal period of at least one-half hour. No period of less than 30 minutes interrupts a continuous period of work for the purposes of this subsection." (NRS 608.019(1).)

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[9] In *Neville*, The Supreme Court of Nevada affirmed the employee-plaintiff's ability to sue his employer for the failure to pay the minimum wage rate, regular wage rate, and overtime wage rate wages for work he performed pre-shift. *Id.* at 782-83; 504. The *Neville* Court also affirmed the plaintiff-employee's ability to seek continuation wages pursuant to NRS 608.020-.050 when an employer fails to fully compensate an employee at the time of separation from employment. *Id*.

The most relevant post-*Neville* case confirms a private right of action for NRS 608.019 rest period claims is *In Re Amazon.com Inc. v. Integrity Staffing Solutions,* 905 F.3d 387, 395 fn.1. The Sixth Circuit Court of Appeals in *In Re Amazon.com* rejected the defendant-employers' argument that there is nothing in the *Neville* decision to support a private right of action for meal break claims under 608.019, holding:

> "However, the *Neville* decision provides no basis for distinguishing claims brought under §608.019 from other claims brought under Chapter 608 for unpaid wages. Like claims under §§ 608.016, 608.018, and 608.020-.050, §608.019 is also a claim for unpaid wages: if Plaintiffs were not provided a full half-hour break, there was no interruption of a "continuous period of work" under the statute, and they must be compensated for that time. Thus, we conclude that, under *Neville,* Plaintiffs have a private cause of action to enforce their rights under § 609.019, hence, Defendant's argument fails."

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A review of the legislative history behind this NRS 608.019's enactment confirms that the spirit of the law was to require Nevada employers to provide employees with a meal break of not less than 30 minutes in an 8-hour period in order to be able to enjoy a statutorily prescribed period of respite and nourishment. (EX A, AB219 History and Notes, *generally*). The "goal" of AB219 was to "humanize working conditions for all and to provide a foundation of job decency." (EX A, AB219, p. 9, *citing* Assemblyman Ford.) Further, this intent was articulated as having a "significant impact on the employment opportunities of Nevada women and men as well." (*Id.,* AB219 PDF p. 9 *citing* Labor Commissioner Jones.) Using "basketball terminology in reference to AB219, then Labor Commissioner Jones stated it "was a four-corner defense 1. Overtime 2. Rest Periods 3. Lunch breaks 4. Seats." *Ibid*. Commissioner Jones opined that AB219 was part of the "protective labor laws connected with the employment of human bodies in any industry is essential to the welfare of the workers and the industrial peace of the State of Nevada." *Ibid.*

What is most telling about the Legislative history of AB219 is that it passed out of the Assembly and on to the Senate and then was signed into law without any objections or amendments to the requisite 30-minute meal break section. Several discussions were had regarding the hours for female workers, the $1 food allowance, even 10-minute "coffee breaks," some resulting in amendments, *but no* testimony from Legislative members or the public rejected or amended the original drafted language of AB219, Sec. 8 which, to this day, still states that "An employer shall not employ an employee for a continuous period of 8 hours without permitting the employee to have a meal period of at least one-half hour. No period of less than 30 minutes interrupts a continuous period of work for the purposes of this subsection." (*See* Exhibit A, AB219 PDF pp. 5, 51, 56, 62, 91, 99, and 103; *see also* NRS 608.019(1).)

AB219 was introduced in part in response to a 1973 complaint filed by the U.S. Attorney General, asserting portions of Nevada law were in violation of Title 7 of the Civil Rights Act because they required different terms and conditions of employment for females as opposed to males. (Exhibit A, AB219 PDF p. 8.) Although in the context of wage discrimination on the basis of sex, then Attorney General Gino Menchetti reminded the Legislature—as well as the Court and the Parties here—of the core purpose specific to all of Nevada's law when he declared:

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> The Legislature does not have the limitations of the Court which can only look at the narrow and specific questions brought before it. *The Legislature has the opportunity and responsibility to carefully examine as many aspects of our law as it feels necessary in this instance and repeal some, extend others and provide limiting conditions where felt to be reasonable and desirable* as long as they are not applied solely for one sex.
>
> It is clear that *the Nevada Legislature is in a much better position to resolve this legal question than the Federal courts* and we hope that this proposed change in Nevada law is the vehicle for solution.

(EX A, AB219 History and Notes, PDF p. 78) (emphasis added).

Defendant asks this Court to disregard the plain language of NRS 608.019(1) and ignore the Nevada Legislature's intent to provide all Nevada employees with a meal break of not less than 30 minutes in duration. Requiring employees to work long hours, and in this case doing physical labor, without the statutorily prescribed 30-minute meal period does not provide for "humanize[d] working conditions for all [or] to provide a minimum standard of decency." (*Id.,* citing Assemblywoman Ford's testimony, PDF p. 9.)[10] Because Plaintiff here is an hourly wage worker, who is required to earn her living by her own endeavors (moving vehicles between lots, conducting service and maintenance checks, inspecting vehicles for damage, ensuring cleanliness of interior and exterior of vehicles, checking and refilling vehicle fluid levels[11]), who was scheduled for and worked five (5) shifts per week, from 4:00 p.m. to 12:30 a.m., equal to 8 hours per shift[12], the Nevada Legislature recognized that she and all other Nevada hourly wage workers require certain safeguards as to their hours of service, working conditions, compensation therefor, and periods of rest/meals through the enactment of NRS 608.019 *et seq*.

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[10] Defendant is likely to argue that Plaintiff omits references in AB219 and NRS 608.019 for employees covered by a collective bargaining agreement, however, as explained in §B, the law on this issue has evolved and Plaintiff's claims are statutory in nature, specific to the Nevada Constitutional minimum wage, NRS 608.016, and the continuation wage statutes that have not been waived. *See Cramer v. Consol. Freightways Inc.*, 255 F.3d 683, 692 (9th Cir. 2001), *citing Livadas v. Bradshaw,* 512 U.S. 107, 125 (1994).

[11] *See* FAC, ECF No. 18, ¶11.

[12] *Id.,* ¶¶ 12-13.

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Further, allowing Defendant to ignore NRS 608.019(1)'s command that employees are entitled to a meal period of no less than 30 minutes in a period of 8 hours worked gives Defendant an unfair competitive advantage against its rivals that do follow the law because their rivals provide compliant meal periods and/or pay their employees for the non-compliant meal break time as time worked pursuant to the Nevada Constitution minimum wage requirements or regular rate wages pursuant to NRS 608.016. Defendant is thus getting free labor every 8 hours an employee works because it is not complying with its obligation to provide a meal period of at least one-half hour. This unfair competitive advantage must not be permitted and was arguably rejected by the Nevada Legislature when they considered various business owners' arguments for and against AB219. (EX A, AB219 History and Notes, testimony in Committee Notes.)

2. <u>Employers doing business in Nevada are required to pay employees for all time worked, and no period less than 30 minutes interrupts a continuous period of work.</u>

In Nevada, a "[w]orkday means a period of 24 consecutive hours which begins when the employee begins work." (NRS 608.0126.) And, as discussed throughout this Opposition, Nevada law consistently and repeatedly affirms that an employee must be paid "wages for each ***hour*** the employee works." (NRS 608.016 (emphasis added); *see also* Nev. Const. Art. 15 § 16 (Employers must "pay a wage to each employee of not less than the ***hourly*** rates set forth in this section.").) Further, NRS 608.012(1) defines wages as "the amount which an employer agrees to pay an employee for the time the employee has worked, computed in proportion to time." (NRS 608.012.) The definition of hours worked is a matter of state law. NRS 608.016 states, "An employer shall pay to the employee wages for each hour the employee works. An employer shall not require an employee to work without wages during a trial or break-in period." (NRS 608.016.) NAC 608.115(1) states: "An employer shall pay an employee for all time worked by the employee at the direction of the employer, including time worked by the employee that is outside the scheduled hours of work of the employee." (NAC 608.115(1).)

Nevada break law is particularly strict, proving that "[n]o period of less than 30 minutes interrupts a continuous period of work[.]" (NRS 608.019(1).) In other words, the plain language of Nevada's compensation, wage, and hour statutes states that if an employee does not receive a meal

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break period of at least 30 minutes, then the meal break should be considered a continuous period of work for pay purposes. This is exactly why Plaintiff never asserted a claim under NRS 608.019(1); there would be no reason to do so because there is no remedy, such as a penalty, for violating NRS 608.019(1). The remedy is that an employee who does not achieve the full 30-minute uninterrupted meal period shall be paid his or her wages as if he or she did not take a meal period at all. This is why Plaintiff asserted a claim for wages, at the Nevada Constitutional minimum wage rate or the regular wage rate pursuant to NRS 608.016, whichever is greater. Ordinarily an employer would not be required to compensate his or her employees for non-productive work time but here, the Nevada Legislature has altered the traditional employment relationship to require that employees who do not receive a full 30-minute non-productive meal break, results in time worked, must be counted as hours worked, and must be paid.

Further, as set forth in NRS 608.019(2), when an employee is not provided with the requisite authorized break, the "[a]uthorized rest periods shall be counted as hours worked, for which there shall be no deduction from wages."[13] *See* NRS 608.019(3) ("No period of less than 30 minutes interrupts a continuous period of work[.]"); *see also IBP, Inc. v. Alvarez*, 546 U.S. 21, 29, 126 S.Ct. 514, 16.3 L.Ed.2d 288 (2005) (noting that the Department of Labor has adopted the continuous workday rule, which means that the "workday' is generally defined as 'the period between the commencement and completion on the same workday of an employee's principal activity or activities.' [29 C.F.R.] § 790.6(b).").[14]

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[13] *Cf., The Venetian Casino Resort, LLC,* Case No. 2:16-cv-02941-RFB-NJK ECF No. 223, denying Defendants' motion to dismiss wage claims based on missed meal periods. This Court, in *Venetian,* held the employee-plaintiffs had a cognizable claim based on missed meal periods. By Minute Order (ECF No. 222), "[t]he transcript of the hearing will be Opinion and Order of the Court." Exhibit B is a true and correct copy of the first eleven (11) pages of the transcript of a hearing specific to the analysis regarding Defendants' motion to dismiss wage claims based on missed meal periods, hereinafter, "Venetian M2D Hearing Transcript. *See* Jones Dec., ¶6.

[14] In the context of the FLSA, under the continuous workday doctrine, once an individual performs a principal activity, his/her workday starts and he/she will be compensated for his/her activities performed thereafter, until the end of his/her shift. *See IBP, Inc. v. Alvarez*, 546 U.S. 21, 28 (2005) ("The continuous workday rule ... means that the 'workday' is generally defined as 'the period between the commencement and completion on the same workday of an employee's principal activity or activities." (citing 29 C.F.R. § 790.6(b)). *In IBP, Inc.*, the United States Supreme Court recognized the Continuous Workday Doctrine, stating that "during a continuous

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Accordingly, Defendant's attempt to have this Court ignore the Legislative purpose of NRS 608.019(1) and the plain language of Nevada's Constitutional and statutory wage requirements must be soundly rejected.

B. There is no Preemption Issue Because This Court Need Not Interpret a CBA

Defendant cannot save itself from having to pay employees wages at the Nevada minimum wage or their regular rate of pay for meal breaks of less than 30 minutes in duration based on a CBA's mere mention of meal breaks. Indeed, the CBAs here fail to mention the Nevada Constitutional minimum wage or regular rate wages pursuant to NRS 608.016 in any manner whatsoever.

Courts in the Ninth Circuit follow a two-step process to determine whether LMRA preemption applies through the *Burnside* test, cited in *Hulery v. NV Energy, Inc*. *See Hulery v. NV Energy, Inc.,* 2014 WL 4542414, *2 (D. Nev. Sept. 9, 2014) *citing Burnside v. Kiewit ac. Corp.,* 491 F.3d 1053, 1059 (9th Cir. 2007). First, the court must determine whether the asserted cause of action involves a right conferred upon an employee by virtue of state law or a right that exists *solely* as a result of the CBA and if the right exists *solely* as a result of the CBA, then the claim is preempted, and [the Court's] analysis ends. *Ibid.* But, and next, if the right exists *independent* of the CBA, then the Court must proceed to the second step and consider whether the right is nevertheless *substantially dependent* on analysis of [the CBA]. *Ibid.*

In the analysis above, Plaintiff has provided the statutory basis for the requisite meal break of no less than 30 minutes in duration, as well as the Constitutional and statutory authority for the

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workday, any walking time that occurs after the beginning of the employee's first principal activity and before the end of the employee's last principal activity is excluded [from the travel exemption], and as a result is covered by the FLSA. 546 U.S. at 37 (emphasis added); *See also* 29 C.F.R. §778.223 (providing that an employer must compensate an employee for "(a) All time during which an employee is required to be on duty or to be on the employer's premises or at a prescribed workplace and (b) all time during which an employee is suffered or permitted to work whether or not he is required to do so"), 785.18 (providing that "[r]est periods of short duration, running from 5 minutes to about 20 minutes, are common in the industry" and "must be counted as hours worked") & 790.6 (defining "workday" as "the period between the commencement and completion on the same workday of an employee's principal activity or activities" "includ[ing] all time within that period whether or not the employee engages in work throughout all of that period").

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requisite payment of wages for breaks that do not interrupt the continuous workday. With this authority in mind, the Court need only "look to the CBA merely to discern that none of its terms is reasonably in dispute [and thus] does not require preemption." *Cramer v. Consolidated Freightways, Inc.,* 255 F.3d 683, 691–92 (9th Cir. 2001), *citing Livadas v. Bradshaw,* 512 U.S. 107, 125, 114 S. Ct. 2068 (1994). "[S]tate law claims for unpaid wages are not preempted when the court is required simply to apply the terms of a CBA; they are pre-empted only when the court must interpret the provisions of the CBA." *Soremekun v. Thrifty Payless, Inc.*, 509 F.3d 978, 991 (9th Cir. 2007). In *Cramer v. Consolidated Freightways, Inc.*, the court explained:

> "[A]lleging a hypothetical connection between the claim and the terms of the CBA is not enough to preempt the claim: adjudication of the claim must require interpretation of a provision of the CBA. A creative linkage between the subject matter of the claim and the wording of a CBA provision is insufficient; rather, the proffered interpretation argument must reach a reasonable level of credibility.... The argument does not become credible simply because the court may have to consult the CBA to evaluate it; 'look[ing] to' the CBA merely to discern that none of its terms is reasonably in dispute does not require preemption."

Cramer, 255 F.3d at 691–92 (9th Cir. 2001) *citing Livadas,* 512 U.S. at , 125, 114 S. Ct. 2068. Moreover, "in the context of §301 complete preemption, the term 'interpret' is defined narrowly—it means something more than 'consider,' 'refer to,' or 'apply.'" *Balcorta v. Twentieth Century-Fox Film Corp.*, 208 F.3d 1102, 1108 (9th Cir. 2000) *superseded by statute on other grounds*. *Accord, Jacobs v. Mandalay Corp.*, 378 F. App'x 685, 687-88, 188 L.R.R.M. (BNA) 2649, 15 Wage & Hour Cas. 2d (BNA) 225 (9th Cir. 2010).

In *Jacobs v. Mandalay Corp.,* the parties disputed whether Jacobs' "regular wage rate" under NRS section 608.018 included only his hourly wages or included both his hourly wages and his per-job commissions, such that section NRS 608.125 would also apply to him. Contrary to the district court's finding, the Court of Appeals held that the meaning of "regular wage rate" as provided in NRS 608.018 was a question of state law, requiring no reference to the terms of the CBA. Referring only to Nevada's definition of "regular wage rate," a court could calculate

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the exact amount of overtime pay that is owed by looking only at the pay stub, which has the hourly rate and hours worked. In *Jacobs*, the Ninth Circuit opined:

> Contrary to the district court's finding, the meaning of "regular wage rate" as provided in section 608.018 is a question of state law, requiring no reference to the terms of the CBA. Depending on Nevada's definition of "regular wage rate," a court can calculate the exact amount of overtime pay that is owed by looking to the CBA and the past wages paid. Referring to the CBA in this way, for the purpose of calculating damages, does not require an interpretation of the CBA. *See Livadas*, 512 U.S. at 125, 114 S.Ct. 2068 ("[T]he mere need to 'look to' the collective-bargaining agreement for damages computation is no reason to hold the state-law claim defeated by § 301."); *Burnside*, 491 F.3d at 1074 ("[D]amages may have to be calculated, and in the course of that calculation, reference to-but not interpretation of-the CBAs, to determine the appropriate wage rate, would likely be required."). Accordingly, resolution of Jacobs's overtime claim does not substantially depend on the terms of the CBA, and therefore the claim is not preempted by section 301.

See Jacobs v. Mandalay Corp., 378 F. App'x at 687-88.

Here, the 4/2021-4/2024 CBA states employees are entitled to "an unpaid meal break of thirty (30) minutes for eight continuous hours of work. …" (*See* ECF No. 21-1 at ECF p. 9, Art. 10 – WAGES, HOURS AND CLASSIFICATIONS, Sec. 11, meal and break requirements.) NRS 608.019(1) provides the statutory right to a break of 30 minutes for a continuous eight hours of work and is a right conferred upon an employee by virtue of state law and *does not exist solely* as a result of the CBA. Similarly, the 30-minute break provision and wage requirements at issue here are statutory rights that exist *independently* of the CBA. The same analysis applies to the 04/2024-04/2027 CBA and is further discussed directly below. Critically, though, Plaintiff's claims are for *unpaid wages* for meal breaks of less than 30 minutes in duration that do not interrupt the continuous workday. Thus, they are not dependent upon the CBA, and there is no need to consult the CBA, much less interpret it, because there is no mention of the Nevada Constitution minimum wage requirements or NRS 608.016 all hours worked requirement. Plaintiff's claims merely require a comparison between payroll records and time records. There is simply no reason to even reference the CBA, at all, and no provisions to interpret because the hourly wage rate, or "regular

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rate" per person, is on the pay stub and can be ascertained without even looking to the CBA. The rest is all statutory.

1. The CBAs have not waived Plaintiff's statutory rights.

There is no unmistakable waiver of the Nevada Constitution Minimum Wage Amendment, nor is there an unmistakable waiver of NRS 608.016. *See Cramer v. Consol. Freightways Inc.*, 255 F.3d 683, 692 (9th Cir. 2001), *citing Livadas v. Bradshaw,* 512 U.S. 107, 125 (1994).

As set forth directly above, the 4/2021-4/2024 CBA states employees are entitled to "an unpaid meal break of thirty (30) minutes for eight continuous hours of work. …" (*See* ECF No. 21-1 at ECF p. 9, Art. 10 – WAGES, HOURS AND CLASSIFICATIONS, Sec. 11, meal and break requirements.) Plaintiff's claims are for *unpaid wages* for meal breaks of less than 30 minutes in duration that do not interrupt the continuous workday. There is no mention of the Nevada Constitution minimum wage requirements or NRS 608.016 all hours worked requirement in the 4/2021-4/2024 CBA.

The same reasoning also applies to the 4/2024 – 4/2027 CBA and the MOU. Defendant's assertion that the MOU regarding the "straight 8" and NRS 608.019(1) is an unmistakable waiver of Plaintiff's claims further illustrates Defendant's misunderstanding of Plaintiff's Complaint and her allegations, which are specific to ***unpaid wages***. *See* Mot. at fn. 3, *citing* Exhibit B, 4/2024 – 4/2027 CBA (ECF No. 21-2) at ECF p. 22, 11/26/2024, specific to NRS 608.019. In footnote 3 of Defendant's Motion, Defendant acknowledges that a collective bargaining agreement must contain a clear and unmistakable waiver of statutory rights to sue in court. *Cramer v. Consol. Freightways Inc.*, 255 F.3d 683, 692 (9th Cir. 2001), *citing Livadas v. Bradshaw,* 512 U.S. 107, 125 (1994). There are simply no waivers of Plaintiff's Nevada Constitutional minimum wage or regular rate wage claims pursuant to NRS 608.016 in either CBA. Again, Defendant misunderstands Plaintiff's claims for Nevada Constitutional minimum wages or regular rate wages pursuant to NRS 608.016 by insisting that NRS 608.019 is the sole source of Plaintiff's meal break violation claim.

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2. In *Livadas v. Bradshaw*, the United States Supreme Court rejected a similar preemption argument regarding state continuation wage penalties.

There is no *relevant*[15] difference between the continuation wage penalties of NRS 608.040-050 and the waiting time penalties provided by California Labor Code Section 203 that were held not to be preempted in *Livadas v. Bradshaw*, 512 U.S. at 125, 114 S. Ct. 2068. Like the employer and Labor Commissioner in *Livadas*, Defendant here argues that Plaintiff's claims are covered by a CBA and that those claims are preempted by the LMRA. As explained above, Defendant misunderstands Nevada wage law and asserts there is no statutory right to meal breaks and thus also incorrectly argues the CBA is the "sole possible source" of the meal break claim. (Mot., p. 10:13-16.)

Plaintiff's continuation wage claim pursuant to NRS 608.040-.050 is derivative of the statutory wage claims, which are independent state statutes that impose penalties for the employer's failure to pay wages due without regard to the source of the underlying claim for wages. "[W]hen liability is governed by independent state law, the mere need to "look to" the collective-bargaining agreement for damages computation is no reason to hold the state-law claim defeated by §301." *Livadas v. Bradshaw*, 512 U.S. at 125, 114 S. Ct. 2068, *citing Lingle v. Norge Div. of Magic Chef, Inc*., 486 U.S. 399, 108 S. Ct. 1877, 100 L. Ed. 2d 410 (1988). Just like the Plaintiff in *Livadas* ". . . the primary text for deciding whether [Plaintiff] was entitled to a penalty [in this case] was not the [union] Contract, but a calendar."

[15] Although there are differences between the two statutes, they are not relevant to this discussion. For example, Nevada has no requirement that the failure to pay be willful. For good reason, Nevada does not want employers to hide behind claims that the wages are not due. If the employer wants to risk a worker's wages, the employer must be prepared to pay the price if wrong. California Labor Code 203(a) states: "If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. An employee who secretes or absents himself or herself to avoid payment to him or her, or who refuses to receive the payment when fully tendered to him or her, including any penalty then accrued under this section, is not entitled to any benefit under this section for the time during which he or she so avoids payment."

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Plaintiff seeks penalties for wages unpaid at the time of separation from employment. It does not matter why employees who are no longer employed were owed wages; it only matters that they were owed wages, which were not paid at the time of termination. Plaintiff and all former employees are entitled to continuation wages, and nothing in the CBA is relevant to that right. Accordingly, Defendant's argument to the contrary must be rejected.

C. Plaintiff's Claims Are Statutory, and as such, Defendant's Alternative Request to Compel Arbitration Must be Rejected

As discussed directly above, Plaintiff's independent statutory rights to wages owed for all hours worked do not exist solely as a result of the CBA, they are not dependent upon any analysis of the CBA, are not unmistakably waived, and thus are neither preempted by the LMRA nor subject to the CBA's arbitration provision. Under this same reasoning, Plaintiff is not required to submit her statutory Nevada wage claims to a union grievance procedure or arbitration prior to bringing this action in court because they are independent of the union process—these are claims by employees based on their individual statutory rights, rights separate from the CBA and rights the union cannot assert, and Defendant cannot ignore. *See Wallace v. Island Cnty.*, 2011 WL 6210633, at *11 (W.D. Wash. Dec. 13, 2011) (Since the employees "had not agreed to arbitrate their statutory claims, and the labor arbitrators were not authorized to resolve such claims, the arbitration in those cases understandably was held not to preclude subsequent statutory actions."); *cf. Renteria v. Prudential Ins. Co. of Am.,* 113 F.3d 1104, 1108 (9th Cir. 1997) (arbitration of federal and state law claims cannot be compelled where employee did not knowingly agree to arbitrate because there was no express waiver of statutory remedies in the agreement).

Moreover, Defendant's exhaustion argument is a red herring, because there is simply no CBA exhaustion requirement for state or federal law wage claims. In *Albertson's, Inc. v. United Food & Commercial Workers Union, AFL-CIO & CLC*, the Ninth Circuit, "makes it clear that the rights of employees arising out of the collective bargaining agreement are separate and distinct from those arising out a statute such as the FLSA" and that "[w]hile courts should defer to an arbitral decision where the employee's claim is based on rights arising out of the collective-bargaining agreement, different considerations apply where the employee's claim is based on

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rights arising out of a statute designed to provide minimum substantive guarantees to individual workers." *Albertson's, Inc. v. United Food & Com. Workers Union, AFL-CIO & CLC*, 157 F.3d 758, 760 (9th Cir. 1998) *citing Barrentine v. Arkansas-Best Freight Sys., Inc.,* 450 U.S. 728, 737, 101 S. Ct. 1437 (1981). The *Albertson's* court reasoned, that although the FLSA claims at issue in that case were "based on disputes over wages and hours and thus 'at the heart of the collective bargaining process'" … "[t]he statutory enforcement scheme grants individual employees broad access to the courts ... permit[ting] an aggrieved employee to bring his statutory wage and hour claim "in any Federal or State court of competent jurisdiction." *Id., citing Barrentine,* at 740. And thus, "[n]o exhaustion requirement or other procedural barriers are set up, and no other forum for enforcement of statutory rights is referred to or created by the statute." *Ibid.* The *Albertson's* court further explained:

> In submitting his grievance to arbitration, an employee seeks to vindicate his contractual right under a collective-bargaining agreement. By contrast, in filing a lawsuit under [the statute], an employee asserts independent statutory rights accorded by Congress. The distinctly separate nature of these contractual and statutory rights is not vitiated merely because both were violated as a result of the same factual occurrence. And certainly no inconsistency results from permitting both rights to be enforced in their respectively appropriate forums.

Id., citing Barrentine, at 745-46. This same reasoning must be applied to Plaintiff's Nevada Constitution minimum wage claim and the NRS statutory wage and continuation wage claims.

Like FLSA, Nevada state law prohibits an agreement that contravenes the basic wage guarantees. NRS 608.260 prohibits any agreement to pay less than the minimum wage for all hours worked.[16] NRS 608.016 simply says the employer must pay for every hour worked.[17] And the hourly rate of pay set forth in the Nevada Constitution must be for all hours worked, or the section would be a nullity when it says, "Each employer shall pay a wage to each employee of

[16] NRS 608.260 states in relevant part, "A contract between the employer and the employee or any acceptance of a lesser wage by the employee is not a bar to the action."

[17] NRS 608.016 "An employer shall pay to the employee wages for each hour the employee works. An employer shall not require an employee to work without wages during a trial or break-in period."

not less than the hourly rates set forth in this section." Accordingly, employees are not required to grieve their statutory and constitutional wage claims in order to file those claims in court.

V. CONCLUSION

Because the plain language of NRS 608.019(1) and the legislative intent behind Nevada's statutory 30-minute meal period requirement provides an actionable claim for the applicable wage rate for unpaid wages through the Nevada Constitution's minimum wage requirements, NRS 608.016, and continuation wages pursuant to NRS 608-040-.050 where a defendant-employer fails to provide an employee-plaintiff with a meal period of no less than 30 minutes in duration, Defendant's Motion for Summary Judgment must be denied.

Additionally, because all of Defendant's arguments supporting summary judgment specific to the CBA and compelled arbitration are without merit, this Court should deny Defendant's Motion in its entirety.

Should this Court decide that Plaintiffs have not provided a sufficient legal basis for the Court to answer whether Plaintiff has articulated a proper claim for wages when an employer fails to provide a meal period less than 30-minutes in duration, and given that the answer to whether employee-plaintiffs have an actionable claim for unpaid wages resulting from the failure to provide a meal break of no less than 30-minutes pursuant to NRS 608.019(1) is an issue of Nevada law that has great importance for Nevada employees and employers alike, Plaintiff invites the Court to certify the question presented to the Supreme Court of Nevada. *See* Nevada Rule of Appellate Procedure ("NRAP") 5(a), the Supreme Court of Nevada has the power to answer limited "questions of law of this state which may be determinative of the cause then pending in the certifying court …" *Echeverria v. State,* 137 Nev. Adv. Op. 49, 495 P.3d 471, 474-75 (Sept. 16, 2021).

DATED: May 16, 2025

Respectfully Submitted,

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CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b), I hereby certify that on this date I electronically filed and served a true and correct copy of the foregoing **PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO DEFENDANT'S ALTERNATIVE REQUEST TO COMPEL ARBITRATION** on the following parties through the CM/ECF filing system:

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