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8 **UNITED STATES DISTRICT COURT**

9 **DISTRICT OF NEVADA**

10
11 CHRISTY MCSWIGGIN, and KEVIN
12 MCSWIGGIN on behalf of themselves and
13 all others similarly situated,

14 Plaintiffs,

15 vs.

16 OMNI LIMOUSINE; and DOES 1 through
17 50, inclusive,

18 Defendant(s).

Case No.:

**COLLECTIVE AND CLASS ACTION
COMPLAINT FOR:**

- 1) Failure to Pay Wages for All Hours Worked in Violation of 29 U.S.C. § 201, et. seq;
- 2) Failure to Pay Overtime in Violation of 29 U.S.C. § 207;
- 3) Failure to Pay Correct Overtime Wage in Violation of 29 U.S.C. § 207
- 4) Failure to Pay Wages for All Hours Worked in Violation of NRS 608.140 and 608.016;
- 5) Failure to Pay Minimum Wages in Violation of the Nevada Constitution and NRS 608.250;
- 6) Failure to Timely Pay All Wages Due and Owing in Violation of NRS 608.140 and 608.020-050; and
- 7) Breach of Contract.

JURY TRIAL DEMANDED

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1 COMES NOW Plaintiffs CHRISTY MCSWIGGIN and KEVIN MCSWIGGIN
2 (“Plaintiffs”), on behalf of themselves and all others similarly situated, and hereby allege as
3 follows:

4 All allegations in this Complaint are based upon information and belief except for those
5 allegations that pertain to the Plaintiffs named herein and their counsel. Each allegation in this
6 Complaint either has evidentiary support or is likely to have evidentiary support after a
7 reasonable opportunity for further investigation and discovery.

8 **JURISDICTION AND VENUE**

9 1. This Court has original jurisdiction over the claims alleged herein pursuant to the
10 Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 216(b), which states: “An action to recover
11 the liability prescribed in either of the preceding sentences may be maintained against any
12 employer (including a public agency) in any Federal or State court of competent jurisdiction by
13 any one or more employees for and in behalf of himself or themselves and other employees
14 similarly situated.” 29 U.S.C. § 216(b).

15 2. Plaintiffs are also seeking to recover unpaid wages due pursuant to Nevada
16 statutory authority and pursuant to an agreement (implied by law and fact) to pay for all hours
17 worked and/or under the wage laws of the State of Nevada. Plaintiffs therefore have a private
18 right of action pursuant to Nevada Revised Statute (“NRS”) §§ 608.040 and 608.140 as well as
19 a claim for minimum wages for all hours worked “off the clock” pursuant to Section 16 of
20 Article 15 of the Nevada State Constitution. Plaintiffs seek waiting time wages under NRS
21 608.020-608.050 inclusive.

22 3. A party seeking to recover unpaid wages has a private right of action for
23 violation of the minimum wage laws pursuant to Section 16 of Article 15 of the Nevada State
24 Constitution, which states: “An employee claiming violation of this section may bring an action
25 against his or her employer in the courts of this State to enforce the provisions of this section
26 and shall be entitled to all remedies available under the law or in equity appropriate to remedy
27 any violation of this section, including but not limited to back pay, damages, reinstatement or
28 injunctive relief. An employee who prevails in any action to enforce this section shall be

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1 awarded his or her reasonable attorney's fees and costs." NEV. CONST. art. XV, § 16. There is
 2 no statute of limitations to bringing an action under Section 16 of Article 15 of the Nevada
 3 State Constitution, so the general six year statute for breach of a statutory duty, NRS
 4 11.190(1)(b) applies.

5 4. Plaintiffs also have a private cause of action under NRS sections 608.050,
 6 608.250, and 608.140. *See also Csomos v. Venetian Casino Resort, LLC*, 2011 Nev. Unpub.
 7 LEXIS 1629 (Nev. 2011) ("The legislative scheme is consistent with a private cause of action
 8 for employees and the Legislature enacted the statute to protect employees, supporting a private
 9 cause of action under NRS 608.040.);¹ *Busk v. Integrity Staffing Solutions, Inc.*, 713 F.3d 52
 10 (9th Cir. 2013) rev'd on other grounds, No. 13-433, 2014 WL 6885951 (U.S. Dec. 9, 2014)
 11 ("Nevada Revised Statute § 608.140 does provide a private right of action to recoup unpaid
 12 wages."); *Doolittle v. Eight Judicial Dist. Court*, 54 Nev. 319, 15 P.2d 684; 1932 Nev. LEXIS
 13 34 (Nev. 1932) (recognizing that former employees have a private cause of action to sue their
 14 employer (as well as third party property owners where the work was performed) for wages and
 15 waiting penalties under NRS 608.040 and NRS 608.050). It would be unreasonable to assume
 16 that the legislature would grant a private right of action for minimum wage, but not for overtime
 17 wages, resulting from the Defendant's failure to pay for the same time worked if such time was
 18 required to be compensated at a premium overtime rate.

19 5. Under Nevada law, an employee is entitled to waiting time penalties for failure
 20 by his or her employer to timely pay all wages due and owing. NRS § 608.050(1) and (2) states:

21 Whenever an employer of labor shall discharge or lay off his or its
 22 employees without first paying them the amount of any wages or
 23 salary then due them, in cash and lawful money of the United
 24 States, or its equivalent, or shall fail, or refuse on demand, to pay
 25 them in like money or its equivalent, the amount of any wages or
 26 salary at the time the same becomes due and owing to them under
 their contract of employment, whether employed by the hour, day,
 week or month, each of his employees may charge and collect
 wages in the sum agreed upon in the contract of employment for

27 ¹ "There is no bar to citing a published or unpublished decision from another circuit, regardless of its
 28 precedential value within the other circuit." *American Economy Ins. Co. v. Reboans, Inc.*, 900 F. Supp.
 1246, 1257 (N.D. Cal. 1995); Fed R. App. Proc. 32.1 and Ninth Circuit Rule 36-3.

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each day his employer is in default, until he is paid in full, without rendering any service therefor; but he shall cease to draw such wages or salary 30 days after such default. Every employee shall have a lien as provided in NRS 108.221 to 108.246, inclusive, and all other rights and remedies for the protection and enforcement of such salary or wages as he would have been entitled to had he rendered services therefor in the manner as last employed.

6. Venue is proper in this Court because one or more of the Defendants named herein maintains its principal place of business, or otherwise is found in this judicial district and the acts complained of herein occurred in Clark County, Nevada.

PARTIES

7. Plaintiff CHRISTY MCSWIGGIN (hereinafter referred to as “Mrs. McSwiggin”) is natural person who is and was a resident of the State of Nevada at all times relevant herein and was employed by Defendant from on or about May 2011 until June 2013.

8. Plaintiff KEVIN MCSWIGGIN (hereinafter individually referred to as “Mr. McSwiggin”) is natural person who is and was a resident of the State of Nevada at all times relevant herein and began employment with Defendant from on or about June 2011 to the present.

9. Defendant OMNI LIMOUSINE, INC. (hereinafter “Defendant” or “Omni”) is a Nevada corporation with a principal place of business at 1401 Helm Drive, Las Vegas, Nevada.

10. At all times relevant herein, Defendant was an employer under NRS 608.011 for all employees in Nevada. Defendant is an employer under the provisions of Nevada Revised Statutes Chapter 608, is certified by the Nevada Transportation Authority to be engaged as a charter limousine service, with an active certificate #1084.4, and is engaged in commerce for the purposes of the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq* and not subject to the motor carrier act exemption to the FLSA, 29 U.S.C. §213(b). *See, e.g., Lucas v. Bell Trans*, 773 F. Supp. 2d 930, 934 (D. Nev. 2011).

11. For labor relations purposes, Defendant constitutes the employer of Plaintiffs and all Plaintiff class members (hereinafter referred to as “Class Members”).

12. 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 Plaintiffs. Plaintiffs are informed and

1 believe that each of the Defendants sued herein as DOE is responsible in some manner for the
2 acts, omissions, or representations alleged herein and any reference to “Defendants,”
3 “Defendants,” or “Omni” herein shall mean “Defendants and each of them.”

4 **FACTUAL ALLEGATIONS**

5 13. Defendant is in the business of providing limousine services.

6 14. At all times relevant herein, Defendant employed Plaintiffs as hourly paid (non-
7 exempt) Chauffeurs/Limousine drivers.

8 15. This is a collective and class action brought on behalf of all persons who worked
9 for the Defendant within the last three years as drivers of limousines and excluding all persons
10 whom the Secretary of Transportation has power to establish qualifications and maximum hours
11 of service pursuant to the provisions of Section 204 of the Motor Carrier Act of 1935 (such
12 employees who regularly transport passengers interstate or to the airport on a “through ticket”
13 interstate).

14 16. Because Plaintiffs and Class Members do not drive passengers with “through
15 tickets” from airlines for travel interstate, they are not exempt from overtime under Section
16 13(b)(1) of the FLSA. *See* Section 24c04 of the United States Department Field Operations
17 Handbook, which states with original emphasis, “[t]herefore, Sec 13(b)(1) will *not* apply except
18 in the case of through-ticketing or other common arrangements for continuous passage or
19 interchange between the motor carrier and the air carrier.”

20 17. Plaintiffs and Class Members were employed by Defendant as limousine drivers
21 who operate either traditional or livery limousines, as the terms are defined in either Nevada
22 Administrative Code (“NAC”) 706.080 or NAC 706.124. Under NAC 706.080, a “[l]ivery
23 limousine’ means a motor vehicle engaged in the general transportation of persons for
24 compensation that was originally manufactured as having a capacity of 9 or more persons but
25 less than 16 person, including the driver.” Under NAC 706.124, a “[t]raditional limousine’
26 means a motor vehicle engaged in the general transportation of persons for compensation that
27 was originally manufactured as having a capacity of less than nine persons, including the
28 driver.”

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18. Because the limousines are subject to the above cited Nevada regulations, the employees who drive them must be subject to the minimum wage and overtime provisions of the FLSA pursuant to Section 306(a) and (c) of the SAFETEA–LU Technical Corrections Act, Pub. L. No. 110–244, 122 Stat. 1572 (2008), which states: “Beginning on the date of enactment of this Act, section 7 of the Fair Labor Standards Act of 1938 (29 U.S.C. 207) shall apply to a covered employee notwithstanding section 13(b)(1) of that Act (29 U.S.C. 213(b)(1)).” Under the SAFETEA–LU Technical Corrections Act, a covered employee includes anyone who drives a vehicle of 10,000 pounds or less, or who drives a vehicle legally holding no more than 8 passengers including driver, or in the case of a van, holds no more than 15 passengers.

19. While taxicab drivers are exempt from the minimum wage and overtime compensation provisions of the federal Fair Labor Standards Act (“FLSA”), limousine drivers are not. *See* April 17, 1998 Opinion Letter of the Wage and Hour Division of the United States Department of Labor, reported at 1998 WL 852774 (copy attached); Section 24h03 of the United States Department of Labor’s Field Operations Handbook; *Powell v. Carey Int’l, Inc.* 490 F.Supp. 2d 1202, 1213 (S.D. Fla. 2006) (Defendants are not exempt as taxicab operators when they have contract arrangements with local hotels, corporate clients, and destination management companies, and utilize large cars that are not traditionally recognized as taxicabs.). Upon information and belief, none of the vehicles driven by defendant’s limousine drivers contained meters, nor are they licensed as taxi cabs.

20. Under the FLSA the “regular rate” at which an employee must be paid includes “all remuneration for employment paid to, or on behalf of, the employee, divided by hours worked in a workweek.” 29 U.S.C. § 207(e); *see also* 29 C.F.R. § 778.211 (“Bonuses which are announced to employees to induce them to work more steadily or more rapidly or more efficiently or to remain with the firm are regarded as part of the regular rate of pay. Attendance bonuses, individual or group production bonuses, bonuses for quality and accuracy of work, bonuses contingent upon the employee’s continuing in employment until the time the payment is to be made . . . must be included in the regular rate of pay.”); 29 C.F.R. § 778.211 (“For

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1 example, any bonus which is promised to employees upon hiring or which is the result of
2 collective bargaining would not be excluded from the regular rate under this provision of the
3 Act.”). This general rule has exceptions, none of which are relevant here. *See* § 207(e)(1)-(8).

4 21. Defendant pays its limousine drivers an hourly wage of \$8.25 per hour, implicitly
5 for all hours worked. However, drivers are only paid the hourly wage for the time spent actually
6 driving the client. Plaintiffs and all other limousine drivers are not paid any wage at all for the
7 time completing required work activities prior to the actual pickup of the client and including
8 retrieving paperwork and trip sheets, collecting radios, keys and other work instruments,
9 inspecting the vehicle for damage prior to leaving the yard, purchasing and transfer supplies to
10 the vehicles (including but not limited to items such as ice, water, newspapers, tissues, and
11 snacks), making sure the vehicle is fueled and clean, driving to the pickup location, and waiting
12 for the actual fare. These work activities take approximately one hour or more prior to the
13 pickup of the first client. Additionally, at the end of Plaintiffs’ and all other limousine drivers’
14 workday, work tasks including verifying trip sheets, completing paperwork, cleaning and
15 inspecting the vehicle must also be completed after the drop off of the last client, amounting to
16 another approximate hour of unpaid work time.

17 22. Plaintiffs have attached Exhibit A with this Complaint (hereinafter “McSwiggin
18 March 29 – April 11, 2014 Pay Period”) as an example of one of the many specific pay periods
19 whereby Plaintiffs were not paid for all hours suffered or permitted by the employer to be
20 worked at the employee’s regular rate of pay or overtime rate of pay, whether scheduled or not.
21 Exhibit A consists of a spreadsheet (p. 1) that is populated by the data from Mr. McSwiggin’s
22 trip sheets and pay stub (pp. 2-14) for the pay period of March 29 through April 11. Exhibit A
23 provides irrefutable evidence of Plaintiffs’ factual allegations as follows:

- 24 a) Defendant’s pay period is based on a two week scheduled, Saturday
25 through Sunday.
- 26 b) The drive hours from trip sheets were used to pay Mr. McSwiggin his
27 hourly rate. For this pay period he was paid 93 “drive hours.” (See
28 Exhibit A, p. 1, line 6 plus line 13 equals line 25.)

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- c) However, the clock-in and clock-out hours indicate he should have been paid for 112.13 hours; where he was required to complete work activities prior to his first pick up, throughout the day, and after his last drop off. (See Exhibit A, p. 1, line 5 plus line 12.)
- d) Mr. McSwiggin should have been paid for the entire time he was working for Defendant, or a difference between the “drive hours” and the clock hours equal to a sum of 19.13 unpaid hours. (See Exhibit A, p. 1, line 26.)
 - i. As a result, Mr. McSwiggin is entitled to at least the minimum hourly wage rate or his regular rate of pay, whichever is greater, for 19.13 additional hours.
- e) Because Mr. McSwiggin had commission/bonus pay of \$409.75, this non-discretionary remuneration must be included in the calculation of his regular rate of pay for all hours worked in this pay period.
 - i. For workweek #1, Mr. McSwiggin received \$8.25 in bonus pay. (Exhibit A, p. 1, line 16.) This remuneration divided by the actual 38 hours and 36 minutes he worked equals an additional .22 cent increase to Mr. McSwiggin’s regular rate of pay or \$8.47 for week #1 (Exhibit A, p. 1, line 19.)
 - ii. For workweek #2, Mr. McSwiggin received \$401.50 in bonus pay. (Exhibit A, p. 1, line 21.) This remuneration divided by the actual 73 hours 37 minutes he worked equals an additional \$5.47 increase to Mr. McSwiggin’s regular rate of pay or \$13.72 for week #2. (Exhibit A, p. 1, line 24.)
- f) Mr. McSwiggin was only paid for 93 hours at the minimum wage rate of \$8.25/hour for a sum of \$767.28. Mr. McSwiggin should have been paid for the full 112.13 hours of work at minimum wage or his regular rate for

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all hours worked. Additionally, Mr. McSwiggin should have been paid one and one half times his regular rate of pay for all hours worked in excess of 40 hours in a single workweek under federal law.

i. Mr. McSwiggin worked 33 hours and 37 minutes overtime in workweek #2. He should have been paid an overtime premium of .5 times his regular rate, or \$6.86 for those hours to equal \$228.92 in overtime compensation. (Exhibit A, p. 1, line 29.)

g) Thus, Mr. McSwiggin was underpaid \$793.17 for the pay period of March 29 through April 11, 2014. (Exhibit A, p. 1, line 30.)

23. Exhibit A as described above is an example of one of the many specific pay periods whereby Plaintiffs were not compensated for all hours worked at the minimum hourly wage rate or their regular rate of pay, whichever is greater. Upon information and belief, all other Class Members employed by Defendant worked similar schedules and were paid in the same manner.

24. Exhibit A also shows one example of the many pay periods whereby Mr. McSwiggin worked over 40 hours in one of the pay period’s weeks, but was not compensated for the hours worked in excess of 40 hours during that workweek at the overtime compensation premium of one and one half times the minimum wage or his regular rate for the hours worked in excess of 40 in that workweek pursuant to federal law. Upon information and belief, all other Class Members employed by Defendant worked similar schedules and were paid in the same manner.

25. Plaintiffs were paid a “bonus” for customers who the driver had a previous business relationship with, but who utilized Defendant’s service because of this previous relationship with the driver. This “bonus” payment should in fact have been included in the calculation of Plaintiffs’ regular rate of pay for overtime purposes. Defendant failed to include all remuneration for employment paid to, or on behalf of, the employee in the employees’

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1 regular rate of pay. Upon information and belief, all other Class Members employed by
2 Defendant were paid in the same manner.

3 26. Plaintiffs were required to take vehicles to the mechanics for repairs and
4 inspections and wait for the vehicles to be serviced for up to an hour of time on a monthly basis.
5 Upon information and belief all other Class Members employed by Defendant were required to
6 take vehicles to the mechanics for repairs and wait for the vehicle to be serviced for up to an
7 hour of time on a monthly basis. Plaintiffs and all other Class Members were not compensated
8 for these work activities prior to late 2012.

9 27. Defendant required Plaintiffs and all other Class Members to attend semi-
10 monthly meetings that could and did last for up to one and one half hours to discuss all matters
11 of work related to: the vehicles, fares, “pet peeves” of management, all matters related to how
12 drivers were doing their jobs, including mistakes, personal appearance and uniforms,
13 professionalism, and upcoming conventions and city occupancy related to work duties.
14 Plaintiffs and all other Class Members did not receive compensation for these meetings.

15 28. Plaintiffs were not always reimbursed for the ice, water, or other items for which
16 Defendant required drivers to stock the vehicles. Upon information and belief, all other
17 limousine drivers employed by Defendant were not always reimbursed for the ice, water, or
18 other items with which Defendant required drivers to stock the vehicles.

19 29. Because Defendant pays Plaintiffs and all other Class Members an hourly wage
20 only when they were actually driving, Plaintiffs and all limousine drivers who are required to be
21 on-call (i.e., waiting for rides) and/or performing other work related tasks (e.g. washing,
22 cleaning, stocking, and servicing the vehicles) did not receive any compensation at all, let alone
23 a minimum wage for all hours engaged in work activities.

24 30. The policies and practices of Defendant at all relevant times have been
25 substantially similar, if not identical, for all limousine drivers it employs.

26 **COLLECTIVE AND CLASS ACTION ALLEGATIONS**

27 31. Plaintiffs reallege and incorporate by reference all the paragraphs above in this
28 Complaint as though fully set forth herein.

1 32. Plaintiffs bring this action on behalf of themselves and all other similarly
2 situated and typical employees as both a collective action under the FLSA and a true class
3 action under Nevada law.

4 33. Pursuant to the decision of the Ninth Circuit Court of Appeals in *Busk v.*
5 *Integrity Staffing Solutions, Inc.*, 713 F.3d 52 (9th Cir. 2013) rev'd on other grounds, No. 13-
6 433, 2014 WL 6885951 (U.S. Dec. 9, 2014) *supra*, both opt-in collective or representative
7 treatment of claims under the federal FLSA and FRCP Rule 23 Class treatment of pendant state
8 law claims may be maintained in the same action.

9 34. The Class and collective group is defined as follows: **All current and former**
10 **employees of Defendant who worked as Limousine Drivers at any time during the period**
11 **of three years prior to filing of this complaint to the date of judgment after trial.**

12 35. With regard to the conditional certification mechanism under the FLSA,
13 Plaintiffs are similarly situated to those that they seek to represent for the following reasons,
14 among others:

15 a. Defendant employed Plaintiffs as hourly employees who did not receive
16 pay for all hours that Defendant suffered or permitted them to work, and did not receive
17 overtime premium pay of one and one half their regular rate of pay for all hours worked
18 in excess of forty (40) hours in a workweek.

19 b. Plaintiffs' situation is similar to those they seek to represent because
20 Defendant failed to pay Plaintiffs and all other members of the relevant Classes for all
21 time they were required to work, including time spent performing off-the-clock
22 activities, pursuant to a uniform policy, plan and/or practice.

23 c. Common questions of fact and/or law exists whether the time spent by
24 Plaintiffs and all other members of the relevant Class engaging in off-the-clock activities
25 is compensable under federal law and whether Defendant failed to pay them one and one
26 half times their regular rate for all hours worked in excess of 40 hours a week.

27 d. Upon information and belief, Defendant employs, and has employed, in
28 excess of 70 Class Members within the applicable statute of limitations.

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1 e. Named Plaintiffs have filed or will file their consents to sue with the
2 Court. Plaintiffs will seek conditional certification so that all class members can receive
3 official court notice of the pendency of this action. *See, e.g., Hoffmann-La Roche Inc. v.*
4 *Sperling*, 493 U.S. 165, 110 S. Ct. 482, 107 L. Ed. 2d 480 (1989).

5 f. Defendant has known or should have known its policies alleged herein
6 were unlawful and that they owe employees this money, and have willfully failed to pay
7 their employees properly.

8 36. FRCP Rule 23 Class treatment for all non-FLSA claims alleged in this
9 complaint is appropriate in this case for the following reasons:

10 A. The Class is Sufficiently Numerous: Upon information and belief,
11 Defendant employs, and has employed, in excess of 70 Class Members within the
12 applicable statute of limitations.

13 B. Common Questions of Law and Fact Exist: Common questions of law
14 and fact exist and predominate as to Plaintiffs and Class Members, including, without
15 limitation:

16 1) Whether Defendants' policy of not paying Plaintiffs and Class Members
17 for all hours worked violates the minimum wage provision of the Nevada
18 Constitution.

19 2) Whether Defendant paid former employees all their wages due and
20 owing at the time of their termination.

21 C. Plaintiffs' Claims are Typical to Those of Fellow Class Members:
22 Plaintiffs and all Class Members were not paid for all hours worked. As a result of this
23 pay scheme, Plaintiffs and all other Class Members were compensated at an hourly rate
24 less than the applicable minimum wage. In addition, Defendant did not timely remit all
25 wages due and owing to Plaintiffs and Class Members who are former employees upon
26 their termination.

27 D. Plaintiffs are Adequate Representatives of the Class: Plaintiffs will fairly
28 and adequately represent the interests of Class Members because Plaintiffs are members

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1 of the Class, they have common issues of law and fact with all members of the class,
2 and their claims are typical to other Class Members.

3 E. A Class Action is Superior: A class action is superior to other available
4 means for the fair and efficient adjudication of this controversy, since individual joinder
5 of all members of the Class is impractical. Class action treatment will permit a large
6 number of similarly situated persons to prosecute their common claims in a single forum
7 simultaneously, efficiently, and without unnecessary duplication of effort and expense.
8 Furthermore, the expenses and burden of individualized litigation would make it
9 difficult or impossible for individual members of the Class to redress the wrongs done to
10 them, while an important public interest will be served by addressing the matter as a
11 class action. Individualized litigation would also present the potential for inconsistent or
12 contradictory judgments.

13 **FIRST CAUSE OF ACTION**

14 (Failure to Pay Wages in Violation of the FLSA, 29 U.S.C. § 201, *et seq.*)

15 37. Plaintiffs reallege and incorporate by this reference all the paragraphs above in
16 this Complaint as though fully set forth herein.

17 38. Pursuant to the FLSA, 29 U.S.C. § 201, *et seq.*, Plaintiffs and Class Members are
18 entitled to compensation at their regular rate of pay or minimum wage rate, whichever is higher,
19 for all hours actually worked.

20 39. 29 U.S.C. § 206(a)(1) states that “Every employer shall pay to each of his
21 employees who in any workweek is engaged in commerce or in the production of goods for
22 commerce, or is employed in an enterprise engaged in commerce or in the production of goods
23 for commerce, wages at the following rates: (1) except as otherwise provided in this section, not
24 less than (A) \$5.85 an hour beginning on the 60th day after the enactment of the Fair Minimum
25 Wage Act of 2007; (B) \$6.55 an hour, beginning 12 months after that 60th day; and C) \$7.25 an
26 hour, beginning 24 months after that 60th day.”
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1 47. By failing to compensate Plaintiffs and Class Members for the time spent
2 engaging in work activities identified above, Defendant failed to pay Plaintiffs and Class
3 Members overtime for all hours worked in excess of forty (40) hours in a week in violation of
4 29 U.S.C. Section 207(a)(1).

5 48. Defendant's unlawful conduct has been widespread, repeated, and willful.
6 Defendant knew or should have known that its policies and practices have been unlawful and
7 unfair.

8 49. Wherefore, Plaintiffs demand for themselves and for all others similarly situated,
9 that Defendant pay Plaintiffs and all Class Members one and one half times their regular hourly
10 rate of pay for all hours worked in excess of forty (40) hours a week during the relevant time
11 period alleged herein together with liquidated damages, attorneys' fees, costs, and interest as
12 provided by law.

13 **THIRD CAUSE OF ACTION**

14 (Failure to Pay Overtime Wages at the Correct Rate in Violation of the FLSA, 29 U.S.C. § 207)

15 50. Plaintiffs reallege and incorporate by this reference all the paragraphs above in
16 this Complaint as though fully set forth herein.

17 51. 29 U.S.C. Section 207(e) defines the regular rate "at which an employee is
18 employed shall be deemed to include all remuneration for employment paid to, or on behalf of,
19 the employee" (with certain exceptions not relevant here) divided by the hours worked.

20 52. By failing to include mandatory gratuities, the "bonus"/commission, and other
21 non-discretionary payments in the total sum earned before dividing by hours worked, Defendant
22 failed to pay the correct hourly rate for overtime hours worked.

23 53. Defendant's unlawful conduct has been widespread, repeated, and willful.
24 Defendant knew or should have known that its policies and practices have been unlawful and
25 unfair.

26 54. Wherefore, Plaintiffs demand for themselves and for all others similarly situated,
27 that Defendant pay and reimburse Plaintiffs and all Class Members at the correct overtime rate
28 one and one half times their regular hourly rate of pay for all hours worked in excess of forty

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1 (40) hours a week during the relevant time period alleged herein together with liquidated
2 damages, attorneys' fees, costs, and interest as provided by law.

3 **FOURTH CAUSE OF ACTION**

4 (Failure to Pay Wages for All Hours Worked in Violation of
5 NRS 608.140, 608.016)

6 55. Plaintiffs reallege and incorporate by this reference all the paragraphs above in
7 this Complaint as though fully set forth herein.

8 56. NRS 608.140 provides that an employee has a private right of action for unpaid
9 wages: "Whenever a mechanic, artisan, miner, laborer, servant or employee shall have cause to
10 bring suit for wages earned and due according to the terms of his or her employment, and shall
11 establish by decision of the court or verdict of the jury that the amount for which he or she has
12 brought suit is justly due, and that a demand has been made, in writing, at least 5 days before
13 suit was brought, for a sum not to exceed the amount so found due, the court before which the
14 case shall be tried shall allow to the plaintiff a reasonable attorney fee, in addition to the
15 amount found due for wages and penalties, to be taxed as costs of suit." On or about November
16 7, 2014 Plaintiffs made demand for unpaid wages upon Defendant pursuant to NRS 608.140
17 but satisfactory payment was not received.

18 57. NRS 608.016 states, "An employer shall pay to the employee wages for each
19 hour the employee works." Hours worked means anytime the employer exercises "control or
20 custody" over an employee. *See* NRS 608.011 (defining an "employer" as "every person
21 having control or custody . . . of any employee."). Pursuant to the Nevada Administrative
22 Code, hours worked includes "all time worked by the employee at the direction of the
23 employer, including time worked by the employee that is outside the scheduled hours of work
24 of the employee." NAC 608.115(1).

25 58. By failing to compensate Plaintiffs and Class Members for the time spent
26 engaged in work activities described above, Defendant also failed to pay Plaintiffs and Class
27 Members for all hours worked in violation of NRS 608.140 and 608.016.
28

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1 64. By failing to compensate Plaintiffs and Class Members for the time spent
2 engaging in work activities identified above, Defendant failed to pay Plaintiffs and Class
3 Members minimum wages for all hours worked in violation of the Nevada Constitution.

4 65. Wherefore, Plaintiffs demand for themselves and for all Class Members
5 payment by Defendant at their regular hourly rate of pay or the minimum wage rate, whichever
6 is higher, for all hours worked during the relevant time period alleged herein together with
7 attorneys' fees, costs, and interest as provided by law.

8 **SIXTH CAUSE OF ACTION**

9 (Failure to Timely Pay All Wages Due and Owing Upon Termination
10 Pursuant to NRS 608.140 and 608.020-.050)

11 66. Plaintiffs reallege and incorporate by this reference all the paragraphs above in
12 this Complaint as though fully set forth herein.

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

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

18 69. NRS 608.040(1)(a-b), in relevant part, states that “Within 3 days after the wages
19 or compensation of a discharged employee becomes due; or on the day the wages or
20 compensation is due to an employee who resigns or quits, the wages or compensation of the
21 employee continues at the same rate from the day the employee resigned, quit, or was
22 discharged until paid for 30-days, whichever is less.”

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

28

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1 71. By failing to pay Plaintiffs and Class Members who are former employees of
2 Defendant all their wages owed for all hours worked in violation of NRS 608.140, 608.016, the
3 Nevada Constitution, and 608.018, Defendant has failed to timely remit all wages due and
4 owing to Plaintiffs and Class Members who are former employees.

5 72. Despite demand, Defendant willfully refuses and continues to refuse to pay
6 Plaintiffs and Class Members who are former employees all the wages that were due and owing
7 upon the termination of their employment.

8 73. Because there is no express statute of limitations for violations of NRS 608.020-
9 050 and NRS 608.140, the three-year statute contained in NRS 11.190(3) for statutory
10 violations applies.

11 74. Wherefore, Plaintiffs and Class Members demand thirty (30) days wages under
12 NRS 608.040 and NRS 608.140, and thirty (30) days wages under NRS 608.050 and NRS
13 608.140, together with attorneys' fees, costs, and interest as provided by law.

14 **SEVENTH CAUSE OF ACTION**

15 (Breach of Contract)

16 75. Plaintiffs reallege and incorporate by this reference all the paragraphs above in
17 this Complaint as though fully set forth herein.

18 76. At all times relevant herein, Defendant had an agreement with Plaintiffs and
19 with every Class Member to pay an agreed upon hourly wage rate for all hours they worked for
20 Defendant. Indeed, Defendant offered to pay Plaintiffs and Class Members a specific rate of
21 pay in exchange for Plaintiffs' and Class Members' promise to perform work for Defendant.

22 77. The parties' employment agreement necessarily incorporated all applicable
23 provisions of both state and federal law, including especially the labor laws of the State of
24 Nevada.

25 78. Defendant beached its agreement with Plaintiffs and Class Members by failing
26 to compensate them for all hours worked, namely all hours spent under the custody and control
27 of Defendant while not actually driving a client, at the agreed upon rate of pay.

28

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1 79. As a result of Defendant's breach, Plaintiffs and Class Members have suffered
2 economic loss that includes lost wages and interest.

3 80. Wherefore, Plaintiffs demand for themselves and for Class Members that
4 Defendant pay Plaintiffs and Class Members their agreed upon rate of pay for all hours worked
5 off the clock during the relevant time period alleged herein together with attorney's fees, costs,
6 and interest as provided by law.

7 **JURY TRIAL DEMANDED**

8 Plaintiffs hereby demand a jury trial pursuant to FRCP 38.

9 **PRAYER FOR RELIEF**

10 WHEREFORE Plaintiffs, individually and on behalf of all Class Members and all
11 others similarly situated, prays for relief as follows:

- 12 1. For an order conditionally certifying this action under the FLSA and providing
13 notice to all members of the Class so they may participate in this lawsuit;
- 14 2. For an order certifying this action as a class action under FRCP Rule 23 on
15 behalf of each of the Class Members;
- 16 3. For an order appointing Plaintiffs as the representatives of the Class and their
17 counsel as Class Counsel;
- 18 4. For damages according to proof for regular rate pay under federal laws for all
19 hours worked;
- 20 5. For damages according to proof for minimum rate pay under federal law for all
21 hours worked;
- 22 6. For damages according to proof for overtime compensation at the applicable rate
23 under federal law for all hours worked over 40 per week;
- 24 7. For liquidated damages pursuant to 29 U.S. C. § 216(b);
- 25 8. For damages according to proof for regular rate or minimum wage rate,
26 whichever is higher, under NRS 608.140, 608.016, and the Nevada Constitution,
27 for all hours worked;
- 28 9. For thirty (30) days wages pursuant to NRS 608.140 and NRS 608.040;

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