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**IN THE SECOND JUDICIAL DISTRICT COURT OF
THE STATE OF NEVADA IN AND FOR THE
COUNTY OF WASHOE**

LISA WALSH, on behalf of herself and all
others similarly situated,

Plaintiff,

vs.

ITS LOGISTICS, LLC; and DOES 1 through
50, inclusive,

Defendant(s).

Case No.:

Dept. No.:

**COLLECTIVE AND CLASS ACTION
COMPLAINT**

- 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 Compensate for All Hours
Worked in Violation of NRS 608.140 and
608.016;
- 4) Failure to Pay Minimum Wages in
Violation of the Nevada Constitution;
- 5) Failure to Pay Overtime in Violation of
NRS 608.140 and 608.018;
- 6) Failure to Timely Pay All Wages Due and
Owing in Violation of NRS 608.140 and
608.020-050;
- 7) Breach of Contract; and
- 8) Quantum Meruit/Unjust Enrichment.

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JURY TRIAL DEMANDED

COMES NOW Plaintiff LISA WALSH on behalf of herself and all other similarly situated and typical persons and alleges the following:

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

JURISDICTION AND VENUE

1. The Nevada state district court has jurisdiction over the claims alleged herein because the amount in controversy exceeds \$10,000 and the parties seeking to recover unpaid wages have a private right of action pursuant to the Nevada Constitution, Nevada Revised Statute (“NRS”) sections 608.050 and 608.140, among others. *Baldonado v. Wynn Las Vegas, LLC*, 124 Nev. 951 (Nev. 2008); *Lucatelli v. Texas de Brazil (Las Vegas) Corp.*, 2012 U.S. Dist. LEXIS 66765, *7 (D. Nev. May 11, 2012) (recognizing that the Nevada Supreme Court stated “it is “illogical” that a plaintiff who can privately enforce a claim for attorneys’ fees under NRS § 608.140 cannot privately enforce the underlying claim the fees arose from”) (citing *Csomos v. Venetian Casino Resort, LLC*, No. 55203, 2011 Nev. Unpub. LEXIS 1629, 2011 WL 4378744, at *2 (Nev. Sept. 19, 2011)); accord, *Busk v. Integrity Staffing Solutions, Inc.*, 2013 U.S. App. LEXIS 7397 (9th Cir. Nev. Apr. 12, 2013)(“Nevada Revised Statute § 608.140 does provide a private right of action to recoup unpaid wages.”) cert. granted 2014 WL 801096 (Mar. 3, 2014), rev’d on other grounds, No. 13-433, 2014 WL 6885951 (U.S. Dec. 9, 2014); *Evans v. Wal-Mart Stores, Inc.*, No. 14-16566, 2016 WL 4269904 (9th Cir. August 15, 2016) (Terminated employees have a private right of action for statutorily mandated overtime premium pay both as wages and as compensation under NRS 608.040 and 608.050); *see also* *Doolittle v. Eight Judicial Dist. Court*, 54 Nev. 319, 15 P.2d 684; 1932 Nev. LEXIS 34 (1932) (recognizing that former employees have a private cause of action to sue their employer (as well as third party property owners where the work was performed) for wages and waiting penalties under NRS 608.040 and NRS 608.050).

2. This Court also has supplemental jurisdiction to all claims for wages resulting from the same transaction or occurrence of not paying for all hours worked, or working employees “off the clock” in violation of Article 15 section 16 of the Nevada State Constitution, for which there is an express private right of action contained therein.

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

4. Venue is proper in the Nevada state district court because one or more of the Defendants named herein maintains its principal place of business, or otherwise is found, in that judicial district, and the acts complained of herein occurred in Washoe County.

5. Pursuant to NRS 608.050(2), the Nevada state district court has jurisdiction to foreclose the lien for the wages alleged due herein on the place of employment, as provided in NRS 108.221 to 108.246, inclusive.

PARTIES

6. Plaintiff LISA WALSH (hereinafter “Plaintiff” or “Ms. Walsh”) is a natural person who is and was a resident of the State of Nevada and had been employed by Defendant as a non-exempt hourly employee in its Sparks, Nevada facility during the relevant time period alleged herein

7. Defendant ITS LOGISTICS, LLC (hereinafter “Defendant” or “ITS”) is a foreign limited-liability company incorporated in the state of Delaware and is an employer engaged in commerce under the provisions of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201 *et. seq.* and is an employer under NRS 608.011.

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

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

FACTUAL ALLEGATIONS

9. Plaintiff was employed by Defendant as a customer service representative at its Sparks, Nevada primary warehouse and office location. She was employed from on or about March 11, 2014 to on or about May 27, 2016 at a beginning hourly rate of \$16.00 and an ending hourly rate of \$17.00 per hour.

10. Plaintiff was scheduled for and did work 40 hours per week, eight hour shifts per day, five days a week prior to maternity leave in July 10, 2015. Her schedule was 8:30 a.m. to 5:00 p.m., with a half hour lunch period she did not always take. Plaintiff regularly worked 40 hours or more per week, and regularly worked over eight hours in a day.

11. When Plaintiff returned from maternity leave on or about October 8, 2015 she was placed on part-time status for three days a week, averaging about 30 hours per week until May 2016. In May 2016 her schedule was back to fulltime, 8:30 a.m. to 5:00 p.m., with a half hour lunch period she did not always take. Since that time Plaintiff regularly worked 40 hours or more per week, and regularly worked over eight hours in a day.

12. As one of the many employees required to use a computer in completing her job functions, Plaintiff had to perform work activities before she was actually logged in to the timekeeping system (i.e., “off-the-clock”) and was not compensated for engaging in those activities. Namely, each and every day she worked, Plaintiff was required boot up her computer, load numerous programs to be used during her workday prior to that same computer actually clocking her in to the timekeeping system. While Plaintiff was waiting for her computer to boot up she would check paperwork, such as bills of lading and any shipment documents left on her desk from the night before, inventory lists, and would also speak with warehouse employees who saw she was at her desk regarding shipments, check phone messages, and other work-related tasks. The initial boot up required input of her credentials into the shared network which could take up to 15 minutes or more a day.

13. Upon information and belief customer service representatives such as herself, human resources, IT, and administrative clerical personnel all used the same computer system Plaintiff did and were required to follow the same policies and procedures as mandated by Defendant.

14. Depending on the number of persons trying to log in at any given time, one or two days a week Plaintiff would be able to log directly on to her computer when she first arrived at her work station. However, three to four days a week Plaintiff was unable to get her computer booted up to start registering the work activities she was completing while she was waiting for her computer to boot up and load all the programs she needed to complete work tasks. Plaintiff estimates it took between 15 to 20 minutes to log in to the timekeeping system resulting in the 15 to 20 minutes or more of off-the-clock work three to four times a week each and every week worked.

15. Plaintiff was instructed by her management team to be at her work station and keep working while trying to log onto her computer. And, if she was unable to log on to her computer after 30 minutes of work and trying to log on to the computer, she was required to have her supervisor manipulate the clock in time to register the fact that she had been there for 30 minutes competing required work tasks.

16. Plaintiff worked “on the clock” 40 hours a week almost every week, such that the “off the clock” time was almost always in excess of eight hours a day and in excess of 40 hours a week.

17. Working “off the clock” means that the employee was not compensated at all for the time worked. In other words, the employee was paid zero dollars per hour for the time spent working off the clock. Zero dollars per hour is less than the federal and state minimum wages to be paid per hour for all time worked. The Nevada Constitution requires payment per hour, and does not mention any other compensation method. Nor does the federal labor law allow for any such offset if there is time worked in excess of 40 in such workweek.

18. Like all other class members, Plaintiff had an agreed upon “regular rate” of pay. All hours worked off the clock are required to be paid either at that regular rate, or, one and one

half times the regular rate for all time worked exceeds 40 hours in a workweek including the off the clock time.

19. Plaintiff has attached as Exhibit 2 to this Complaint the Punch Detail and Corresponding Earnings statement for her final week of work, for the period May 15, 2016 to May 26, 2015. The punch detail provides an example of the clock-in and clock-out detail and the fact that the total time paid is based on those clock times. Exhibit 2 reflects the following factual allegations:

- a. Plaintiff's regularly scheduled start time was 8:30 a.m.
- b. Although Plaintiff arrived at her regularly scheduled start time of 8:30 a.m. ready to work, logging in to and booting up her computer could and did take up to 26 minutes; *see* 5/26/2016 punch time of 8:56.
- c. The number of minutes it took Plaintiff to be able to boot up her computer and log in to the timekeeping system for the 5/15/2016 through 5/20/216 is 40 minutes. (Nine minutes on 5/16, one minute on 5/17, sixteen minutes on 5/18, eight minutes on 5/19, six minutes on 5/20.)
- d. The number of minutes it took Plaintiff to be able to boot up her computer and log in to the timekeeping system for the partial week for 5/23/2106 through 5/26/2016 is 75. (Twenty-one minutes on 5/23, twelve minutes on 5/24, sixteen minutes on 5/25 and 26 minutes on 5/26).
- e. Thus, Defendant failed to pay Plaintiff for one hour and 55 minutes of pay for this particular pay period. Plaintiff should have been paid her hourly rate of \$17.00 per hour for non-overtime hours and \$25.50 for all overtime hours.
- f. Based on the punch data provided, Plaintiff worked 50 regular rate minutes (nine minutes on 5/16, fifteen minutes on 5/18, twenty-six minutes on 5/26) and 65 overtime minutes (one minute on 5/17, one minute on 5/18, eight minutes on 5/19, six minutes on 5/20, twenty-one

minutes on 5/23, twelve minutes on 5/24, sixteen minutes on 5/25) equal to an underpayment of \$43.92 for this pay period alone.

20. Upon information and belief, all ITS employees who use a computer in their job function are similarly required to perform these same off-the-clock activities without compensation.

21. To the extent Plaintiff and other employees worked more than 8 hours a day or 40 hours a week, the unpaid time should have been paid at a rate of one-and-one-half times their regular rate of pay as required by law.

22. Plaintiff had an agreement to work for Defendant in exchange for the payment of wages under terms and conditions of employment, express and implied. Like all agreements, Defendant's agreement with its employees includes, expressly and/or implicitly, an agreement to comply with all state and federal laws, and in particular, the labor laws of the state of Nevada. Defendant agreed to hire Plaintiff and members of the class to work pursuant to the "terms and conditions" of their employment, and Plaintiff agreed to show up for work as a condition of receiving pay for that work. Plaintiff and all Plaintiff class members performed their jobs and detrimentally relied upon the terms and conditions contained in that handbook.

COLLECTIVE AND CLASS ACTION ALLEGATIONS

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

24. Plaintiff brings this action on behalf of herself and all other similarly situated and typical employees as both a collective action under the FLSA and a true class action under Nevada law, which are defined as follows:

A. **FLSA CLASS:** All hourly paid employees who are required to use their computer as a timeclock and who were employed by Defendant at any time during the relevant time period alleged herein.

B. **NEVADA CLASS:** All hourly paid employees who are required to use their computer as a timeclock and who were employed by

Defendant in the state of Nevada at any time during the relevant time period alleged herein.

C. **WAGES DUE AND OWING CLASS:** All members of the NEVADA CLASS who are former employees.

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

A. Defendant employed Plaintiff as an hourly employee who did not receive her regular rate of pay for all hours that Defendant suffered or permitted her to work, did not receive the required minimum wage for work performed for Defendant, and did not receive overtime premium pay of one and one half her regular rate of pay for all hours worked over forty (40) hours in a workweek.

B. Plaintiff's situation is similar to those she seeks to represent because Defendant failed to pay Plaintiff and all other FLSA Class Members for all time they were required to work, including time spent performing off-the-clock work activities without compensation after the work day had begun.

C. Common questions exist as to: Whether the time spent by Plaintiff and all other FLSA Class Members engaged in off-the-clock activities is compensable under federal law; and Whether Defendant failed to pay Plaintiff and FLSA Class Members one and one half times their regular rate for all hours worked in excess of 40 hours a week.

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

E. Plaintiff has signed a Consent to Sue form, which is attached to the Complaint as Exhibit 1. Consent to sue forms are not required for state law claims under Rule 23 of the Federal Rules of Civil Procedure.

26. Rule 23 Class treatment is appropriate in the case for the following reasons:

1 A. The Class is Sufficiently Numerous: Upon information and belief,
2 Defendant employs, and has employed, in excess of 100 NEVADA and WAGES DUE
3 AND OWING Class Members within the applicable statute of limitations. Because
4 Defendant is legally obligated to keep accurate payroll records, Plaintiff alleges that
5 Defendant's records will establish the identity and ascertainability of members of the
6 NEVADA Class as well as their numerosity.

7 B. Plaintiff's Claims are Typical to Those of Fellow Class Members: Each
8 NEVADA and WAGES DUE AND OWING Class Member is and was subject to the
9 same practices, plans, and/or policies as Plaintiff, as follows: Defendant required
10 Plaintiff and NEVADA Class Members to engage in off-the-clock activities without
11 compensation; Defendant failed to pay Plaintiff and NEVADA Class Members at their
12 regular rate for all time spent on the above referenced activities, and if applicable time
13 and one half their regular rate if they worked in excess of 40 hours in a workweek or, if
14 paid a base rate of less than one and one half the minimum wage, then failed to pay a
15 premium rate of one and one half their regular rate if they worked more than 8 hours in a
16 day; and Defendant failed to pay Plaintiff and WAGES DUE AND OWING Class
17 Members all wages due and owing at the time of their termination or separation from
18 employment.

19 C. Common Questions of Law and Fact Exist: Common questions of law
20 and fact exist and predominate as to Plaintiff and the Class, including, without limitation
21 the following: (1) Whether Defendant failed to pay a premium rate of one and one half
22 times their regular rate for all hours worked in excess of 40 hours a week, and if they
23 were paid less than one and one half the minimum wage, then for all hours worked in
24 excess of 8 hours a day; (2) Whether Plaintiff and NEVADA Class Members were
25 compensated for "all time worked by the employee at the direction of the employer,
26 including time worked by the employee that is outside the scheduled hours of work of
27 the employee" pursuant to the Nevada Administrative Code ("NAC") 608.115(1), and
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NRS 608.016; and (3) Whether Defendant delayed final payment to Plaintiff and the WAGES DUE AND OWING Class Members in violation of NRS 608.020-050.

D. Plaintiff Is an Adequate Representative of the Class: Plaintiff will fairly and adequately represent the interests of the Classes because Plaintiff is a member of the Classes, she has issues of law and fact in common with all members of the Classes, and she does not have any interests antagonistic to Class Members. Plaintiff and counsel are aware of their fiduciary responsibilities to Class Members and are determined to discharge those duties diligently and vigorously by seeking the maximum possible recovery for Class Members as a group.

E. Superior Mechanism: A class action is superior to other available means for the fair and efficient adjudication of their controversy. Each Class Member has been damaged and is entitled to recovery by reason of Defendant's illegal policy and/or practice of failing to compensate its employees in accordance with federal and Nevada wage and hour law. The prosecution of individual remedies by each Class Member will be cost prohibitive and may lead to inconsistent standards of conduct for Defendant and result in the impairment of Class Members' rights and the disposition of their interest through actions to which they were not parties.

FIRST CAUSE OF ACTION

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

(On Behalf of Plaintiff and all members of the FLSA CLASS)

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

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

29. 29 U.S.C. § 206(a)(1) states that "Every employer shall pay to each of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods

for commerce, wages at the following rates: (1) except as otherwise provided in this section, not less than (A) \$5.85 an hour beginning on the 60th day after the enactment of the Fair Minimum Wage Act of 2007; (B) \$6.55 an hour, beginning 12 months after that 60th day; and C) \$7.25 an hour, beginning 24 months after that 60th day.”

30. By failing to compensate Plaintiff and the FLSA Class Members for the time spent engaging in off-the-clock activities, Defendant failed to pay Plaintiff and the FLSA Class Members for all hours worked.

31. Defendants’ unlawful conduct has been widespread, repeated, and willful. Defendant knew or should have known that its policies and practices have been unlawful and unfair.

32. Wherefore, Plaintiff demands for herself and for all others similarly situated, that Defendant pays Plaintiff and all other members of the FLSA Class the minimum hourly wage rate or their regular rate of pay, whichever is greater, for all hours worked during the relevant time period together with liquidated damages, attorneys’ fees, costs, and interest as provided by law.

SECOND CAUSE OF ACTION

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

(On Behalf of Plaintiff and all members of the FLSA CLASS)

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

34. 29 U.S.C. Section 207(a)(1) provides as follows: “Except as otherwise provided in the section, no employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.”

35. By failing to compensate Plaintiff and FLSA Class Members for time spent engaging in off-the-clock activities, Defendant failed to pay Plaintiff and FLSA Class Members overtime for all hours worked in excess of forty (40) hours in a week in violation of 29 U.S.C. Section 207(a)(1).

36. Defendants' unlawful conduct has been widespread, repeated, and willful. Defendant knew or should have known that its policies and practices have been unlawful and unfair.

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

THIRD CAUSE OF ACTION

Failure to Pay Wages for All Hours Worked in Violation of NRS 608.140 and 608.016

(On Behalf of Plaintiff and all members of the NEVADA CLASS)

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

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

1 40. NRS 608.016 states that “An employer shall pay to the employee wages for each
2 hour the employee works.” Hours worked means any time the employer exercises “control or
3 custody” over an employee. *See* NRS 608.011 (defining an “employer” as “every person
4 having control or custody . . . of any employee.”). Pursuant to the Nevada Administrative
5 Code, hours worked includes “all time worked by the employee at the direction of the
6 employer, including time worked by the employee that is outside the scheduled hours of work
7 of the employee.” NAC 608.115(1).

8 41. By failing to compensate Plaintiff and NEVADA Class Members for the time
9 spent when they first attempt to log into their computer terminal until the time they are actually
10 logged in to their computer terminal, including all time spent engaging in off-the-clock
11 activities, Defendant has failed to pay Plaintiff and NEVADA Class Members for all hours
12 worked in violation of NRS 608.140 and 608.016.

13 42. Wherefore, Plaintiff demands for herself and for the NEVADA Class Members
14 payment by Defendant at the regular hourly rate of pay for all hours worked during the relevant
15 time period together with attorneys’ fees, costs, and interest as provided by law.

16 **FOURTH CAUSE OF ACTION**

17 **Failure to Pay Minimum Wages in Violation of the Nevada Constitution**

18 (On Behalf of Plaintiff and all members of the NEVADA CLASS)

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

21 44. Article 15 Section 16 of the Nevada Constitution sets forth the requirements the
22 minimum wage requirements in the State of Nevada and further provides that “[t]he provisions
23 of the section may not be waived by agreement between an individual employee and an
24 employer. . . . An employee claiming violation of the section may bring an action against her
25 or her employer in the courts of the State to enforce the provisions of the section and shall be
26 entitled to all remedies available under the law or in equity appropriate to remedy any violation
27 of the section, including but not limited to back pay, damages, reinstatement or injunctive
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relief. An employee who prevails in any action to enforce the section shall be awarded her or her reasonable attorney's fees and costs."

45. By failing to compensate Plaintiff and all other members of the NEVADA Class for the time spent under the custody and control of the employer, or upon the place of employment (i.e. from the time they arrived at their workstation until they leave) including time spent engaging in off-the-clock activities, Defendant failed to pay Plaintiffs and NEVADA Class Members for all hours worked in violation of the Nevada Constitution.

46. Wherefore, Plaintiff demands for herself and for the NEVADA Class Members payment by Defendant at their regular hourly rate of pay or the minimum wage rate, whichever is higher, for all hours worked during the relevant time period together with attorneys' fees, costs, and interest as provided by law.

FIFTH CAUSE OF ACTION

Failure to Pay Overtime Wages in Violation of NRS 608.140 and 608.018

(On Behalf of Plaintiff and all members of the NEVADA CLASS)

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

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

49. NRS 608.018(1) provides as follows:

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

50. NRS 608.018(2) provides as follows:

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

51. By failing to compensate Plaintiff and all other members of the NEVADA Class for the time spent engaging in off-the-clock activities, Defendant failed to pay Plaintiff and NEVADA Class Members daily overtime premium pay to those NEVADA Class Members who were paid a regular rate of less than one and one half times the minimum wage premium pay and, failed to pay a weekly premium overtime rate of pay of time and one half their regular rate for all members of the NEVADA Class who worked in excess of forty (40) hours in a week in violation of NRS 608.140 and 608.018.

52. Wherefore, Plaintiff demands for herself and for the NEVADA Class Members payment by Defendant at one and one half times their “regular rate” of pay for all hours worked in excess of eight (8) hours in a workday for those class members whose regular rate of pay did not exceed the one and one half the minimum wage set by law, and premium overtime rate of one and one half their regular rate for all class members who worked in excess of forty (40) hours a workweek during the relevant time period together with attorneys’ fees, costs, and interest as provided by law.

SIXTH CAUSE OF ACTION

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

(On Behalf of Plaintiff and the WAGES DUE AND OWING CLASS)

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

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

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

56. NRS 608.040(1)(a-b), in relevant part, imposes a penalty on an employer who fails to pay a discharged or quitting employee: “Within 3 days after the wages or compensation of a discharged employee becomes due; or on the day the wages or compensation is due to an

employee who resigns or quits, the wages or compensation of the employee continues at the same rate from the day the employee resigned, quit, or was discharged until paid for 30-days, whichever is less.”

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

58. By failing to pay Plaintiff and all members of the NEVADA Class for all hours worked in violation of state and federal law, at the correct legal rate, Defendant has failed to timely remit all wages due and owing to Plaintiff and all members of the WAGES DUE AND OWING Class.

59. Despite demand, Defendant willfully refuses and continues to refuse to pay Plaintiff and all WAGES DUE AND OWING Class Members.

60. Wherefore, Plaintiff demands thirty (30) days wages under NRS 608.140 and 608.040, and an additional thirty (30) days wages under NRS 608.140 and 608.050, to all members of the WAGES DUE AND OWING Class together with attorneys’ fees, costs, and interest as provided by law.

SEVENTH CAUSE OF ACTION

Quantum Meruit/Unjust Enrichment

(On Behalf of Plaintiff and the NEVADA CLASS)

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

62. Plaintiff performed labor for Defendant and for Defendant’s benefit.

63. By virtue of performing labor in the state of Nevada, Plaintiff expects to be compensated according to the laws of the state of Nevada.

64. Similarly, by employing persons in the state of Nevada, Defendant is obligated to comply with the wage and hour laws of the state of Nevada. Indeed, “[it is unlawful for any

employer to: (b) Pay a lower wage, salary or compensation to an employee than the amount that the employer is required to pay to the employee by virtue of any statute or regulation or by contract between the employer and the employee[.]” NRS 608.100(1).

65. By failing to pay Plaintiff and all members of the Class overtime compensation mandated by law, Defendant has been unjustly enriched and has engaged in unfair competition with other Nevada businesses that compensate employees in accordance with the laws of this state.

66. Wherefore, Plaintiff demands for herself and for Nevada Class Members who worked over 8 hours in a workday and/or over 40 hours in a workweek that they be compensated their overtime rate for all the overtime hours worked during the relevant time period alleged herein together with attorney’s fees, costs, and interest as provided by law.

EIGHTH CAUSE OF ACTION

Breach of Contract

(On Behalf of Plaintiff and the NEVADA CLASS)

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

68. The parties’ employment agreement necessarily incorporated all applicable provisions of both state and federal law, including the labor laws of the State of Nevada.

69. At all times relevant herein, Defendant had an agreement with Plaintiff and with every NEVADA Class Member to pay an agreed upon hourly wage rate for all hours they worked for Defendant. Indeed, Defendant offered to pay Plaintiff and NEVADA Class Members a specific rate of pay in exchange for Plaintiff and NEVADA Class Members’ promise to perform work for Defendant.

70. Plaintiff and all other employees relied upon these promises to their detriment when they performed their duties. Defendant beached its agreement with Plaintiff and NEVADA Class Members by failing to compensate them for all hours worked, namely, for hours spent performing work activities off-the-clock at the agreed upon rate of pay.

71. As a result of Defendant's breach, Plaintiff and NEVADA Class Members have suffered economic loss that includes lost wages and interest.

72. Wherefore, Plaintiff demands for herself and for NEVADA Class Members that Defendant pay Plaintiff and NEVADA Class Members their agreed upon rate of pay for all hours worked off the clock during the relevant time period alleged herein together with attorney's fees, costs, and interest as provided by law.

JURY TRIAL DEMANDED

Plaintiff hereby demands a jury trial pursuant to Nevada Rule of Civil Procedure 38.

PRAYER FOR RELIEF

Wherefore Plaintiff, individually and on behalf of Class Members, prays for relief as follows relating to her collective and class action allegations:

1. For an order conditionally certifying the action under the FLSA and providing notice to all members so they may participate in the lawsuit;
2. For an order certifying the action as a traditional class action under Federal Rule of Civil Procedure Rule 23 on behalf of each proposed class;
3. For an order appointing Plaintiff as the Representative of each class and her counsel as Class Counsel for each class;
4. For damages according to proof for regular rate pay under federal laws for all hours worked;
5. For damages according to proof for minimum rate pay under federal law for all hours worked;
6. For damages according to proof for overtime compensation under federal law for all hours worked over 40 per week;
7. For damages according to proof for overtime compensation at the correct overtime rate under federal law for all hours worked over 40 per week;
8. For liquidated damages pursuant to 29 U.S. C. § 216(b);
9. For damages according to proof for regular rate pay under NRS 608.140 and 608.016 for all hours worked;

10. For damages according to proof for minimum wage rate pay under the Nevada Constitution for all hours worked;
11. For damages according to proof for overtime compensation under NRS 608.140 and 608.018 for all hours worked for those employees who earned a regular rate of less than one and one half times the minimum wage for hours worked in excess of 8 hours per day and/or for all class members for overtime premium pay of one and one half their regular rate for all hours worked in excess of 40 hours per week;
12. For sixty days of waiting time penalties pursuant to NRS 608.140 and 608.040-.050;
13. For damages pursuant to Defendant's breach of contract;
14. For interest as provided by law at the maximum legal rate;
15. For reasonable attorneys' fees authorized by statute;
16. For costs of suit incurred herein;
17. For pre-judgment and post-judgment interest, as provided by law; and
18. For such other and further relief as the Court may deem just and proper.

AFFIRMATION

The undersigned does hereby affirm that the preceding document filed in the Second Judicial District Court of the State of Nevada, County of Washoe, does not contain the social security number of any person.

DATED: September 23, 2016

Respectfully Submitted,

THIERMAN BUCK LLP

/s/Mark R. Thierman

Mark R. Thierman

Joshua D. Buck

Leah L. Jones

Attorneys for Plaintiff

Index of Exhibits

1. Walsh Consent to Sue
2. Time Punch Detail