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Electronically Filed 2/5/2019 11:03 AM Steven D. Grierson **CLERK OF THE COURT**

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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA A-19-788823-C

Case No.:

Dept. No.:

THERESA B. VOZZA, on behalf of herself and all others similarly situated,

THE MARSHALL RETAIL GROUP, LLC d/b/a and a/k/a MARSHALL RETAIL GROUP LLC; DOES 1 through 50;

CLASS ACTION COMPLAINT

Arbitration Exemption Claimed: Class Action

Department 27

- 1) Failure to Pay Overtime in Violation of NRS 608.018 and 608.140:
- 2) Failure to Timely Pay All Wages Due and Owing in Violation of NRS 608.020-050 and 608.140; and,
- Injunctive Relief.

LIEN REQUESTED PURSUANT TO NRS 608.050

JURY TRIAL DEMANDED

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COMES NOW Plaintiff Theresa B. Vozza, on behalf of herself and all others similarly situated 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. This Court has original jurisdiction over the state law claims alleged herein because the amount in controversy exceeds \$15,000 and a party seeking to recover unpaid wages has a private right of action pursuant to the Nevada Constitution, Article 15 Section 16, and Nevada Revised Statute ("NRS") sections 608.050 and 608.140. See Neville v. Eighth Judicial Dist. Court in & for County of Clark, 406 P.3d 499, 502 (Nev. 2017).
- 2. Plaintiff also claims a private cause of action to foreclose a lien against the property owner for wages due pursuant to NRS 608.050.
- 3. Plaintiff made a proper demand for wages due pursuant to NRS 608.140 on January 29, 2019.
- Venue is proper in this Court because the Defendant named herein maintains a principal place of business or otherwise is found in this judicial district and many of the acts complained of herein occurred in Clark County, Nevada.
 - 5. Plaintiff demands a jury trial on all issues triable by jury herein.

PARTIES

- 6. Plaintiff Theresa B. Vozza (hereinafter "Plaintiff" or "Vozza") was at all relevant times a resident of the State of Nevada and was employed by Defendant as a non-exempt hourly employee from January of 2018 to January of 2019.
- 7. Defendant The Marshall Retail Group, LLC d/b/a and a/k/a Marshall Retail Group LLC ("Defendant") is a foreign limited-liability company registered with the Nevada Secretary of State.

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- 8. Defendant was doing business in this Judicial District in Clark County, Nevada where the subject incidences occurred.
- 9. At all relevant times, each Defendant was an agent, employee, jointventurer, shareholder, director, member, co-conspirator, alter ego, master, or partner of each of the other Defendants, and at all times mentioned herein were acting within the scope and course and in pursuance of his, her, or its agency, joint venture, partnership, employment, common enterprise, or actual or apparent authority in concert with each other and the other Defendants.
- 10. At all relevant times, the acts and omissions of Defendants concurred and contributed to the various acts and omissions of each and every one of the other Defendants in proximately causing the complaints, injuries, and damages alleged herein. At all relevant times herein, Defendants approved of, condoned and/or otherwise ratified each and every one of the acts or omissions complained of herein. At all relevant times herein, Defendants aided and abetted the acts and omissions of each and every one of the other Defendants thereby proximately causing the damages as herein alleged.
- 11. The Defendants named herein are the employers of the Plaintiff and all Class Members alleged herein. The Defendants are employers engaged in commerce under the provisions of NRS 608.011. 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" or "Defendants" herein shall mean "Defendants and each of them."

FACTUAL ALLEGATIONS

- 12. Plaintiff was employed by Defendant as a non-exempt employee from January of 2018 to January of 2019.
- Defendant maintains an unlawful policy of not paying daily overtime to non-13. exempt hourly employees who earn 1 ½ times less than the applicable minimum wage.

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- 14. Plaintiff has frequently worked over 8 hours in any 24-hour workday.
- 15. On many occasions, Plaintiff has worked a shift until the late evening hours and then returned early the next morning to work a day shift. The number of hours she worked in a workday under Nevada law was over 8 hours in a 24-hour period of time.
- For instance, during the workweek of October 23, 2018 Defendant scheduled Plaintiff to work and Plaintiff did work over 8 hours in a 24-hour period of time. See a true and correct copy of Plaintiff's schedule attached hereto as Exhibit I.
- 17. But despite having worked more than 8 hours in a 24-hour period of time, Defendant failed to compensate Plaintiff at 1 ½ times her regular rate of pay for the overtime hours she worked. See a true and correct copy of Plaintiff's paystub attached hereto as Exhibit II.
- 18. Upon information and belief, Defendant maintains a company-wide policy and practice of refusing to pay daily overtime wages to Nevada employees who worked over 8 hours in a workday.
- 19. This "no daily overtime" policy has always been common to all non-exempt hourly paid employees at Defendant's locations in the state of Nevada.

CLASS ACTION ALLEGATIONS

- 20. Plaintiff realleges and incorporates by this reference all the paragraphs above in this Complaint as though fully set forth herein.
- 21. Plaintiff brings this action on behalf of herself and all other similarly situated employees as a class action under Rule 23 of the Nevada Rules of Civil Procedure.
- 22. The **Nevada Overtime Class** is defined as "All hourly paid non-exempt persons employed by Defendant in the state of Nevada who earned less than 1 ½ times the applicable minimum wage and who worked over eight (8) hours in a workday at any time within 3 years from January 29, 2019 until judgment."
- 23. The Waiting Time Penalty Class is defined as "All Nevada Overtime Class Members who are former employees of Defendant."

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- 24. Class treatment is appropriate under Rule 23's class certification mechanism because:
- The Classes are Sufficiently Numerous: Upon information and belief, a. Defendant employs, and has employed, in excess of 500 Nevada Overtime Class Members within the applicable time period. Because Defendant is legally obligated to keep accurate payroll records, Plaintiff alleges that Defendant's records will establish the members of the Classes as well as their numerosity.
- b. Plaintiff's Claim is Typical to Those of Fellow Class Members: Each Class Member is and was subject to the same practices, plans, or policies as Plaintiff: whether Defendant compensated Plaintiff and members of the Class daily overtime wages when they worked over 8 hours in a workday and whether members of the Waiting Time Penalty Class are entitled to waiting time penalties for the failure to pay them minimum, regular, and overtime wages owed.
- C. Common Questions of Law and Fact Exist: Common questions of law and fact exist and predominate as to Plaintiff and the Class Members, including, without limitation: whether Defendant failed to pay Plaintiff and the Class Members one and one-half times their regular rate for all hours worked in excess of 8 hours a workday and whether Defendant failed to pay the Waiting Time Penalty Class Members all their wages due and owing in violation of NRS 608.020-050.
- d. Plaintiff is 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 her interests are not antagonistic to Class members. Plaintiff and her counsel are aware of their fiduciary responsibilities to Class Members and are determined to discharge those duties diligently by vigorously seeking the maximum possible recovery for Class Members.
- Predominance/Superior Mechanism: Class claims predominate and е. a class action is superior to other available means for the fair and efficient adjudication of

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this 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 Nevada wage and hour law. The prosecution of individual remedies by each Class Member will tend to establish 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 Overtime Wages in Violation of NRS 608.018 and 608.140 (On Behalf of Plaintiff and the Nevada Overtime Class)

- 25. Plaintiff realleges and incorporates by this reference all the paragraphs above in this Complaint as though fully set forth herein.
- 26. NRS 608.140 provides that an employee has a private right of action for unpaid wages.
 - 27. 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.

28. 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 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.

29. As described above. Defendant maintains a policy and/or practice of illegal shift jamming (i.e., refusing to pay daily overtime when Plaintiff and members of the Nevada Overtime Class worked over 8 hours in a workday). As a result, Plaintiff and Nevada Overtime Class Members have been denied overtime compensation according to Nevada law.

30. Wherefore, Plaintiff demands for herself and all Nevada Overtime Class Members that Defendant pays Plaintiff and Nevada Overtime Class Members one and one-half times their "regular rate" of pay for all hours worked in excess of eight (8) hours in a workday during the relevant time period together with attorneys' fees, costs, and interest as provided by law.

SECOND CAUSE OF ACTION Waiting Time Penalties Pursuant to NRS 608.020-.050 and 608.140 (On Behalf of Plaintiff and the Waiting Time Penalty Class)

- 31. Plaintiff realleges and incorporates by this reference all the paragraphs above in this Complaint as though fully set forth herein.
- 32. NRS 608.140 provides that an employee has a private right of action for unpaid wages.
- 33. NRS 608.020 provides that "[w]henever an employer discharges an employee, the wages and compensation earned and unpaid at the time of such discharge shall become due and payable immediately."
- 34. NRS 608.030 provides that "[w]henever an employee resigns or quits his or her employment, the wages and compensation earned and unpaid at the time of the employee's resignation or quitting must be paid no later than...[t]he day on which the employee would have regularly been paid the wages or compensation; or[s]even days after the employee resigns or quits...whichever is earlier."
- 35. 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."
- 36. 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,

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until the employee is paid in full, without rendering any service therefore; but the employee shall cease to draw such wages or salary 30 days after such default."

- 37. By failing to pay Waiting Time Penalty Class Members their minimum, regular, and overtime wages in violation of state and federal law, Defendant has failed to timely remit all wages due and owing to the Waiting Time Penalty Class Members.
- 38. Despite demand, Defendant willfully refused and continues to refuse to pay Waiting Time Penalty Class Members all the wages that were due and owing upon the termination of their employment.
- 39. Wherefore, the Waiting Time Penalty Class Members demand thirty (30) days of pay as waiting penalties under NRS 608.040 and 608.140, and thirty (30) days of pay as waiting penalties under NRS 608.050 and 608.140, together with attorneys' fees, costs, interest, and punitive damages, as provided by law.

THIRD CAUSE OF ACTION Injunctive/Declaratory Relief (On Behalf of Plaintiff and the Nevada Overtime Class)

- 40. Plaintiff realleges and incorporates by this reference all the paragraphs above in this Complaint as though fully set forth herein.
- 41. As Defendant has failed to compensate Plaintiff and members of the Overtime Class at the correct overtime wage rate for all the overtime hours that they worked pursuant to NRS 608.018, Defendant has wrongfully withheld wages properlyowed to the Plaintiff and the Overtime Class Members.
- 42. Plaintiff and the Nevada Overtime Class will suffer irreparable injury if Defendant is not enjoined from the future wrongful retention of wages owed.
- 43. As a result of the aforementioned unlawful payment practices, Plaintiff submits that there has been a likelihood of success on the merits that Plaintiff and the Class Members have been damaged, that there is irreparable harm, and Plaintiff requests that this Honorable Court enter an Order that restrains Defendant from attempting to enforce the alleged unlawful payment practices.

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44.	Plaintiff	requests	that	this	Honorable	Court	enter	а	declaration	of
rights/obligations in regards to all such unlawful payment practices in this matter.										

- 45. Further, disputes and controversies have arisen between the parties relative to the lawfulness of the payment practices, and Plaintiff is entitled to have an order entered pursuant to Chapter 30 of the Nevada Revised Statutes construing the payment practices and adjudging and declaring Plaintiff and the Class Members' rights and remedies thereunder including such an Order stating that such payment practices are unlawful.
- 46. Plaintiff has been required to retain the services of an attorney and is entitled to a reasonable award of attorneys' fees and costs.

PRAYER FOR RELIEF

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

- 1. For an order certifying this action as a class action on behalf the proposed Classes and providing notice to all Class Members so they may participate in this lawsuit;
- 2. For an order appointing Plaintiff as the Representative of the Classes and her counsel as Class Counsel;
- 3. For damages according to proof for overtime compensation under NRS 608.018 and 608.140 for all hours worked over 8 hours per day;
- 4. For waiting time penalties pursuant to NRS 608.040-.050 and 608.140;
- 5. For a lien on the property where Plaintiff and all Nevada Class Members labored pursuant to NRS 608.050;
- 6. For interest as provided by law at the maximum legal rate;
- 7. For injunctive relief;
- 8. For declaratory relief;
- 9. For punitive damages;
- 10. For reasonable attorneys' fees authorized by statute;

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- 11. For costs of suit incurred herein;
- 12. For pre-judgment and post-judgment interest, as provided by law; and,
- 13. For such other and further relief as the Court may deem just and proper.

DATED: February 5, 2019

Respectfully Submitted,

GABROY LAW OFFICES

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EXHIBIT



Theresa Vozza

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9:09:00







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29 097 9:00 AM - 5:00 PM	30	31	i dan ya merendiki di kebasa di Kabulata		Α		

EXHIBIT II

FILE DEPT CLOCK VCHR NO 073 CO WZJ 018600 097120 0000440237

MarshallRetailGroup

THE MARSHALL RETAIL GROUP, LLC 3755 W. SUNSET ROAD, SUITE A LAS VEGAS, NV 89118 COMPANY PH#:702-385-5233

Taxable Marital Status: Single Exemptions/Allowances:

Federal: NV:

1,\$10 Additional Tax No State Income Tax

Earnings Statement



Period Beginning: Period Ending:

Pay Date:

10/15/2018 10/28/2018

11/02/2018



Earnings	rate	hours	this period	year to date	Other Benefits a	and	
Regular	11.7500	65.68	771.74	17,164.18	Information	this period	total to date
Vacation	11.7500	8.00	94.00	270.25	Vacation Bal.		33.12
Overtime				131.70			
Meeting				65,21	Important Notes		
Retroactive				20.29	YOUR COMPANY'S I	PHONE NUMBER IS 702	-385-5233
	Gross Pay		\$865.74	17,651.63			
Deductions	Statutory						
	Federal Income	Tax	-46.70	1,040.74			
	Social Security	Tax	-41.46	895.08			
	Medicare Tax		-9.69	209.33			
	Other						
	Dental Ee+Spou	IS	-16.09*	257.44			
	Med Ee+Spouse	9	-178.57*	2,920,39			
	Vision Spouse		-2.31*	36.96			
	Net Pay		\$570.92				
	Checking		-570.92				
	Net Check		\$0.00				

C 2000 ACP. LLC

MarshallRetailGroup

THE MARSHALL RETAIL GROUP, LLC 3755 W. SUNSET ROAD, SUITE A

* Excluded from federal taxable wages

Your federal taxable wages this period are \$668.77

Advice number:

00000440237 11/02/2018

transit ABA

amount

XXXX XXXX

\$570.92

account number

NON-NEGOTIABLE