

1 Mark R. Thierman, Nev. Bar No. 8285  
mark@thiermanbuck.com  
2 Joshua D. Buck, Nev. Bar No. 12187  
josh@thiermanbuck.com  
3 Leah L. Jones, Nev. Bar No. 13161  
leah@thiermanbuck.com  
4 THIERMAN BUCK LLP  
7287 Lakeside Drive  
5 Reno, Nevada 89511  
6 Tel. (775) 284-1500  
7 Fax. (775) 703-5027

8 *Attorneys for Plaintiffs*

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 CARIENE CADENA and ANDREW  
12 GONZALES, on behalf of themselves and all  
13 others similarly situated,

14 Plaintiffs,

15 vs.

16 CUSTOMER CONNEXX LLC; ARCA,  
17 INC.; and DOES 1 through 50, inclusive,

18 Defendants.  
19  
20  
21  
22  
23  
24

Case No.: 2:18-cv-00233-APG-DJA

**FIRST AMENDED COLLECTIVE AND  
CLASS ACTION COMPLAINT**

- 1) Failure to Pay Overtime in Violation of 29 U.S.C. § 207;
- 2) Failure to Compensate for All Hours Worked in Violation of NRS 608.140 and 608.016;
- 3) Failure to Pay Minimum Wages in Violation of the Nevada Constitution;
- 4) Failure to Pay Overtime in Violation of NRS 608.140 and 608.018;
- 5) Failure to Timely Pay All Wages Due and Owing in Violation of NRS 608.140 and 608.020-050; and
- 6) Breach of Contract.

**JURY TRIAL DEMANDED**

25 COMES NOW Plaintiffs CARIENE CADENA and ANDREW GONZALES on behalf  
26 of themselves and all other similarly situated and typical persons and allege the following:

27 All allegations in the Complaint are based upon information and belief except for those  
28 allegations that pertain to the Plaintiffs named herein and their counsel. Each allegation in the

THIERMAN BUCK LLP  
7287 Lakeside Drive  
Reno, NV 89511  
(775) 284-1500 Fax (775) 703-5027  
Email info@thiermanbuck.com www.thiermanbuck.com

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

3 **JURISDICTION AND VENUE**

4 1. The Court has original jurisdiction over both state and federal claims alleged  
5 herein. The Court has original jurisdiction over the state law claims alleged herein because the  
6 amount in controversy exceeds \$10,000 and a party seeking to recover unpaid wages has a  
7 private right of action pursuant to Nevada Revised Statute (“NRS”) sections 608.050, 608.250,  
8 and 608.140. *See Neville v. Eighth Judicial Dist., Terrible Herbst, Inc.*, 133 Nev. Adv. Op. 95  
9 (Dec. 7, 2017), 406 P.3d 499 (2017). The Court has jurisdiction over the federal claims alleged  
10 herein pursuant to Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 216(b).

11 2. Plaintiffs seek to recover unpaid wages due pursuant to Nevada statutory  
12 authority and pursuant to an agreement (implied by law and fact) to pay for all hours worked  
13 and/or under the wage laws of the State of Nevada. Plaintiffs therefore have a private right of  
14 action pursuant to Nevada Revised Statute (“NRS”) Sections 608.040 and 608.140 as well as a  
15 claim for at least minimum wages for all hours worked “off-the-clock” pursuant to Section 16  
16 of Article 15 of the Nevada State Constitution. Plaintiffs made a proper demand for wages due  
17 pursuant to NRS 608.140 and by agreement of the parties.

18 3. Venue is proper in the Court because one or more of the Defendants named  
19 herein maintains a principal place of business or otherwise is found in the judicial district and  
20 many of the acts complained of herein occurred in Clark County, Nevada.

21 **PARTIES**

22 4. Plaintiff CAREINE CADENA (hereinafter “Plaintiff” or “Ms. CADENA”) is a  
23 natural person who is and was a resident of the State of Nevada and had been employed by  
24 Defendants as a non-exempt hourly employee in its Las Vegas facility during the relevant time  
25 period alleged herein.

26 5. Plaintiff ANDREW GONZALES (hereinafter “Plaintiff” or “Mr. GONZALEZ”) is a  
27 natural person who is and was a resident of the State of Nevada and had been employed by  
28

**THIERMAN BUCK LLP**  
7287 Lakeside Drive  
Reno, NV 89511  
(775) 284-1500 Fax (775) 703-5027  
Email info@thiermanbuck.com www.thiermanbuck.com

**THIERMAN BUCK LLP**  
7287 Lakeside Drive  
Reno, NV 89511  
(775) 284-1500 Fax (775) 703-5027  
Email info@thiermanbuck.com www.thiermanbuck.com

1 Defendants as a non-exempt hourly employee in its Las Vegas facility during the relevant time  
2 period alleged herein.

3 6. Defendant CUSTOMER CONNEXX LLC (hereinafter “Customer Connexx” or  
4 “Defendant”) is a Nevada Limited Liability Company whose managing member is  
5 APPLIANCE RECYCLING CENTERS OF AMERICA, INC., located at 175 JACKSON  
6 AVENUE NORTH, SUITE 102, Hopkins, Minnesota 55343. Defendant is an employer  
7 engaged in commerce under the provisions of the Fair Labor Standards Act (“FLSA”), 29  
8 U.S.C. § 201 *et. seq.* and is an employer under NRS 608.011.

9 7. Defendant ARCA, INC. (hereinafter “ARCA” or “Defendant”) is a foreign  
10 corporation incorporated in the state of Minnesota with a principal place of business at 175  
11 JACKSON AVENUE NORTH, SUITE 102, Hopkins, Minnesota 55343. Defendant is an  
12 employer engaged in commerce under the provisions of the Fair Labor Standards Act  
13 (“FLSA”), 29 U.S.C. § 201 *et. seq.* and is an employer under NRS 608.011.

14 8. At all relevant times, each Defendant was an agent, employee, joint-venturer,  
15 shareholder, director, member, co-conspirator, alter ego, master, or partner of each of the other  
16 Defendants, and at all times mentioned herein were acting within the scope and course and in  
17 pursuance of his, her, or its agency, joint venture, partnership, employment, common enterprise,  
18 or actual or apparent authority in concert with each other and the other Defendants.

19 9. At all relevant times, the acts and omissions of Defendants concurred and  
20 contributed to the various acts and omissions of each and every one of the other Defendants in  
21 proximately causing the complaints, injuries, and damages alleged herein. At all relevant times  
22 herein, Defendants approved of, condoned and/or otherwise ratified each and every one of the  
23 acts or omissions complained of herein. At all relevant times herein, Defendants aided and  
24 abetted the acts and omissions of each and every one of the other Defendants thereby  
25 proximately causing the damages as herein alleged.

26 10. The identity of DOES 1-50 is unknown at this time and the Complaint will be  
27 amended at such time when the identities are known to Plaintiffs. Plaintiffs are informed and  
28 believe that each Defendant sued herein as DOE is responsible in some manner for the acts,

1 omissions, or representations alleged herein and any reference to “Defendant,” “Defendants,”  
2 “Customer Connexx,” or “ARCA” herein shall mean “Defendants and each of them.”

3 **FACTUAL ALLEGATIONS**

4 11. Customer Connexx is a wholly-owned subsidiary of ARCA and operates as a  
5 customer-care and contact center providing scheduling and customer service support for  
6 ARCA’s various utility programs and ventures.

7 12. Upon information and belief, both Customer Connexx and ARCA jointly and  
8 separately exercise control over the hours and other working conditions of Plaintiffs and all  
9 similarly-situated hourly employees.

10 13. Plaintiffs were employed by Defendants as a call center employees at their Las  
11 Vegas call center location.

12 14. Plaintiff Cadena was employed from on or about August 2017 to on or about  
13 March 2018. Plaintiff Cadena’s hourly rate of pay was approximately \$16.40 per hour.

14 15. Plaintiff Gonzales was employed from on or about January 16, 2017 to on or  
15 about November 9, 2018. Plaintiff Gonzales’ rate of pay was approximately \$14.28 per hour.

16 16. Plaintiffs were scheduled for, and regularly worked, at least 5 shifts per week, 8  
17 hours per shift, and 40 hours per workweek. Plaintiffs regularly worked various schedules and  
18 worked overtime hours depending on the needs of the employer.

19 17. In their roles as a call center employees, Plaintiffs had to perform work activities  
20 before clocking-in and after clocking-out (i.e., “off-the-clock”) and were not compensated for  
21 engaging in those activities. At the beginning of the day, Plaintiffs were required to boot up  
22 their computer, load numerous programs to be used during their workday, and confirm that their  
23 phone was connected and ready to accept calls. Plaintiffs estimate that it took approximately 10  
24 to 20 minutes to perform these work-related activities prior to clocking in.

25 18. At the end of their workday, Plaintiffs were then required to clock out of the  
26 timekeeping system, shut down the various programs used during the workday, power off the  
27 computers, and wait to confirm that all systems were successfully powered down prior to  
28

**THERMAN BUCK LLP**  
7287 Lakeside Drive  
Reno, NV 89511  
(775) 284-1500 Fax (775) 703-5027  
Email info@thermanbuck.com www.thermanbuck.com

1 leaving. Plaintiffs estimate it took approximately six to eight minutes to perform these  
2 activities after clocking out.

3 19. For example, Ms. Cadena recalls that during the last full workweek in August,  
4 she worked a full 40-hour workweek, plus overtime, but was not paid for the boot-up/log-in  
5 time nor was he paid for the log-off/boot down time. Plaintiff Cadena is informed and believes  
6 that she was paid for 40 hours of work for work performed during her regular shift hours but  
7 was not paid anything for time spent performing the pre- and post-shift activities described  
8 above. Defendants thus owe Plaintiff wages (both in the form of overtime, regular rate, and  
9 minimum wages) for 15 minutes pre-shift and six minutes post shift per day, for a total of 21  
10 minutes for each of the five shifts worked during that workweek. In other words, Defendants  
11 owe Plaintiff \$43.05 in overtime wages for this workweek alone ( $\$16.40 \times .5 = \$8.20 + \$16.40$   
12  $= \$24.60$  [overtime rate] divided by 60 minutes = .41 per minute  $\times 21$  minutes =  $\$8.61$  [per  
13 shift]  $\times 5$  shifts =  $\$43.05$ ).

14 20. For example, Mr. Gonzales recalls during the end of August or early part of  
15 September 2017 he worked a full 40-hour workweek and incurred overtime during Customer  
16 Connexx switch of payroll systems where he was not paid for the boot-up/log-in time nor was  
17 he paid for the log-off/boot down time. Plaintiff Gonzales is informed and believes that he was  
18 paid for 40 hours of work for work performed during his regular shift hours but was not paid  
19 anything for time spent performing the pre- and post-shift activities described above.  
20 Defendants thus owe Plaintiff wages (both in the form of overtime, regular rate, and minimum  
21 wages) for approximately 20 minutes pre-shift and approximately eight minutes post shift per  
22 day, for a total of approximately 28 minutes for each of the five shifts worked during that  
23 workweek. In other words, Defendants owe Plaintiff \$49.98 in overtime wages for this  
24 workweek alone ( $\$14.28 \times .5 = \$7.14 + \$14.28 = \$21.42$  [overtime rate] divided by 60 minutes  
25  $= .357$  per minute  $\times 28$  minutes =  $\$9.996$  [per shift]  $\times 5$  shifts =  $\$49.98$ ).

26 21. Upon information and belief, all call center employees employed by Defendants  
27 were similarly required to perform these same pre- and post-shift activities without  
28 compensation.

1 22. The off-the-clock work requirements alleged herein caused Plaintiffs and all  
2 other similarly situated employees to work regular time and overtime for which they were either  
3 not compensated or not properly compensated by Defendants. To the extent Plaintiffs and other  
4 employees worked more than 8 hours a day or 40 hours a week, the unpaid time should have  
5 been paid at a rate of one-and-one-half times their regular rate of pay as required by law.

6 23. Like all agreements, Defendants’ agreement with its employees includes,  
7 expressly and/or implicitly, an agreement to comply with all state and federal laws, and in  
8 particular, the labor laws of the State of Nevada.

9 **COLLECTIVE AND CLASS ACTION ALLEGATIONS**

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

12 25. Plaintiffs bring this action on behalf of themselves and all other similarly  
13 situated and typical employees as both a collective action under the FLSA and a true class  
14 action under Nevada law, on behalf of the classes defined as follows:

- 15 A. **FLSA CLASS:** All hourly paid call center employees employed  
16 by Defendants in the United States at any time during the relevant  
17 time period alleged herein.
- 18 B. **NEVADA CLASS:** All hourly paid call center employees  
19 employed by Defendants in the state of Nevada at any time during  
20 the relevant time period alleged herein.
- 21 C. **WAGES DUE AND OWING CLASS:** All members of the  
22 NEVADA CLASS who are former employees.

23 26. With regard to the conditional certification mechanism under the FLSA,  
24 Plaintiffs are similarly situated to those that they seek to represent for the following reasons,  
25 among others:

- 26 A. Defendants employed Plaintiffs as hourly employees who did not receive  
27 their regular rate of pay for all hours that Defendants suffered or permitted them to  
28 work, did not receive the required minimum wage for work performed for Defendants,

**THIERMAN BUCK LLP**  
7287 Lakeside Drive  
Reno, NV 89511  
(775) 284-1500 Fax (775) 703-5027  
Email info@thiermanbuck.com www.thiermanbuck.com

THIERMAN BUCK LLP  
7287 Lakeside Drive  
Reno, NV 89511  
(775) 284-1500 Fax (775) 703-5027  
Email info@thiermanbuck.com www.thiermanbuck.com

1 and did not receive overtime premium pay of one and one half their regular rate of pay  
2 for all hours worked over forty (40) hours in a workweek.

3 B. The Plaintiffs’ situation is similar to those they seek to represent because  
4 Defendants failed to pay Plaintiffs and all other FLSA Class Members for all the time  
5 they were required to work, including time spent performing pre-shift and post-shift  
6 work activities without compensation after the work day had begun.

7 C. Common questions exist as to: Whether the time spent by Plaintiffs and  
8 all other FLSA Class Members engaged in pre-shift and post-shift activities is  
9 compensable under federal law; and Whether Defendants failed to pay Plaintiffs and  
10 FLSA Class Members one and one half times their regular rate for all hours worked in  
11 excess of 40 hours a week.

12 D. Upon information and belief, Defendants employ, and have employed, in  
13 excess of 100 Class Members within the applicable statute of limitations.

14 E. Plaintiffs have signed Consent to Sue forms, which are attached to the  
15 Complaint as Exhibit “A. Consent to sue forms are not required for state law claims  
16 under Rule 23 of the Federal Rules of Civil Procedure.

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

18 A. The Class is Sufficiently Numerous: Upon information and belief,  
19 Defendants employ, and have employed, in excess of 100 NEVADA Class Members  
20 within the applicable statute of limitations. Because Defendants are legally obligated to  
21 keep accurate payroll records, Plaintiffs allege that Defendants’ records will establish  
22 the identity and ascertainability of members of the NEVADA Class as well as their  
23 numerosity.

24 B. Plaintiffs’ Claims are Typical to Those of Fellow Class Members: Each  
25 NEVADA Class Member is and was subject to the same practices, plans, and/or policies  
26 as Plaintiffs, as follows: Defendants required Plaintiffs and NEVADA Class Members to  
27 engage in pre- and post-shift activities without compensation; Defendants failed to pay  
28 Plaintiffs and NEVADA Class Members at their regular rate for all time spent on the

**THIERMAN BUCK LLP**  
7287 Lakeside Drive  
Reno, NV 89511  
(775) 284-1500 Fax (775) 703-5027  
Email info@thiermanbuck.com www.thiermanbuck.com

1 above referenced activity, and if applicable time and one-half their regular rate if they  
2 worked in excess of 40 hours in a workweek or, if paid a base rate of less than one and  
3 one-half the minimum wage, then failed to pay a premium rate of one and one-half their  
4 regular rate if they worked more than 8 hours in a day; and Defendants failed to pay  
5 Plaintiffs and WAGES DUE AND OWING Class Members all wages due and owing at  
6 the time of their termination or separation from employment.

7 C. Common Questions of Law and Fact Exist: Common questions of law  
8 and fact exist and predominate as to Plaintiffs and the Class, including, without  
9 limitation the following: Whether the time spent by Plaintiffs and NEVADA Class  
10 Members engaging in pre-shift activities is compensable under federal and Nevada law;  
11 (3) Whether Defendants failed to pay a premium rate of one and one-half times their  
12 regular rate for all hours worked in excess of 40 hours a week, and if they were paid less  
13 than one and one-half the minimum wage, then for all hours worked in excess of 8 hours  
14 a day; Whether Plaintiffs and NEVADA Class Members were compensated for “all time  
15 worked by the employee at the direction of the employer, including time worked by the  
16 employee that is outside the scheduled hours of work of the employee” pursuant to the  
17 Nevada Administrative Code (“NAC”) 608.115(1), and NRS 608.016; and Whether  
18 Defendants delayed final payment to Plaintiffs and WAGES DUE AND OWING Class  
19 Members in violation of NRS 608.020-050.

20 D. Plaintiffs Are Adequate Representatives of the Class: Plaintiffs will fairly  
21 and adequately represent the interests of the Classes because Plaintiffs are members of  
22 the Classes, they have issues of law and fact in common with all members of the  
23 Classes, and they do not have any interests antagonistic to Class Members. Plaintiffs and  
24 counsel are aware of their fiduciary responsibilities to Class Members and are  
25 determined to discharge those duties diligently and vigorously by seeking the maximum  
26 possible recovery for Class Members as a group.

27 E. Predominance/Superior Mechanism: Common questions of whether  
28 Plaintiffs and putative class members were compensated according to state and federal



**THIERMAN BUCK LLP**  
7287 Lakeside Drive  
Reno, NV 89511  
(775) 284-1500 Fax (775) 703-5027  
Email info@thiermanbuck.com www.thiermanbuck.com

1 law predominate over individual questions. A class action is superior to other available  
2 means for the fair and efficient adjudication of their controversy. Each Class Member  
3 has been damaged and is entitled to recovery by reason of Defendants’ illegal policy  
4 and/or practice of failing to compensate its employees in accordance with federal and  
5 Nevada wage and hour law. The prosecution of individual remedies by each Class  
6 Member will be cost prohibitive and may lead to inconsistent standards of conduct for  
7 Defendants and result in the impairment of Class Members’ rights and the disposition of  
8 their interest through actions to which they were not parties.

9 **FIRST CAUSE OF ACTION**

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

11 (On Behalf of Plaintiffs and all members of the FLSA CLASS)

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

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

21 30. By failing to compensate Plaintiffs and FLSA Class Members for time spent  
22 engaging in pre-and post-shift activities, Defendants failed to pay Plaintiffs and FLSA Class  
23 Members overtime for all hours worked in excess of forty (40) hours in a week in violation of  
24 29 U.S.C. Section 207(a)(1).

25 31. Defendants’ unlawful conduct has been widespread, repeated, and willful.  
26 Defendants knew or should have known that their policies and practices have been unlawful and  
27 unfair.

28

1 32. Wherefore, Plaintiffs demand for themselves and for all others similarly situated,  
2 that Defendants pay Plaintiffs and FLSA Class Members one and one-half times their regular  
3 hourly rate of pay for all hours worked in excess of forty (40) hours a week during the relevant  
4 time period together with liquidated damages, attorneys’ fees, costs, and interest as provided by  
5 law.

6 **SECOND CAUSE OF ACTION**

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

8 (On Behalf of Plaintiffs and all members of the NEVADA CLASS)

9 33. Plaintiffs reallege and incorporate by the reference all the paragraphs above in  
10 the Complaint as though fully set forth herein.

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

21 35. NRS 608.016 states that “An employer shall pay to the employee wages for each  
22 hour the employee works.” Hours worked means any time the employer exercises “control or  
23 custody” over an employee. *See* NRS 608.011 (defining an “employer” as “every person having  
24 control or custody . . . of any employee.”). Pursuant to the Nevada Administrative Code, hours  
25 worked includes “all time worked by the employee at the direction of the employer, including  
26 time worked by the employee that is outside the scheduled hours of work of the employee.”  
27 NAC 608.115(1).  
28

**THERMAN BUCK LLP**  
7287 Lakeside Drive  
Reno, NV 89511  
(775) 284-1500 Fax (775) 703-5027  
Email info@thermanbuck.com www.thermanbuck.com

1 36. By failing to compensate Plaintiffs and NEVADA Class Members for the time  
2 spent engaging in pre-and post-shift, Defendants failed to pay Plaintiffs and NEVADA Class  
3 Members for all hours worked in violation of NRS 608.140 and 608.016.

4 37. Although the statute of limitations for minimum wage violations is two years,  
5 there is no express statute of limitations for violations of NRS 608.140 and 608.016 and,  
6 therefore, the three-year statute contained in NRS 11.190(3) for statutory violations applies.

7 38. Wherefore, Plaintiffs demand for themselves and for the NEVADA Class  
8 Members payment by Defendants at the regular hourly rate of pay for all hours worked during  
9 the relevant time period together with attorneys’ fees, costs, and interest as provided by law.

10 **THIRD CAUSE OF ACTION**

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

12 (On Behalf of Plaintiffs and all members of the NEVADA CLASS)

13 39. Plaintiffs reallege and incorporate by reference all the paragraphs above in the  
14 Complaint as though fully set forth herein.

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

24 41. By failing to compensate Plaintiffs and all other members of the NEVADA Class  
25 for the time spent engaging in pre-and post-shift activities, Defendants failed to pay Plaintiffs  
26 and NEVADA Class Members for all hours worked in violation of the Nevada Constitution.

27 42. Wherefore, Plaintiffs demand for themselves and for the NEVADA Class  
28 Members payment by Defendants at their regular hourly rate of pay or the minimum wage rate,

**THIERMAN BUCK LLP**  
7287 Lakeside Drive  
Reno, NV 89511  
(775) 284-1500 Fax (775) 703-5027  
Email info@thiermanbuck.com www.thiermanbuck.com

1 whichever is higher, for all hours worked during the relevant time period together with  
2 attorneys' fees, costs, and interest as provided by law.

3 **FOURTH CAUSE OF ACTION**

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

5 (On Behalf of Plaintiffs and all members of the NEVADA CLASS)

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

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

10 45. NRS 608.018(1) provides as follows:

11 An employer shall pay 1 1/2 times an employee's regular wage rate  
12 whenever an employee who receives compensation for employment at a  
13 rate less than 1 1/2 times the minimum rate prescribed pursuant to NRS  
14 608.250 works: (a) More than 40 hours in any scheduled week of work; or  
15 (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.

16 46. NRS 608.018(2) provides as follows:

17 An employer shall pay 1 1/2 times an employee's regular wage rate  
18 whenever an employee who receives compensation for employment at a  
19 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.

20 47. By failing to compensate Plaintiffs and all other members of the NEVADA Class  
21 for the time spent engaging in pre and post-shift activities, Defendants failed to pay Plaintiffs  
22 and NEVADA Class Members daily overtime premium pay to those NEVADA Class Members  
23 who were paid a regular rate of less than one and one-half times the minimum wage premium  
24 pay and, failed to pay a weekly premium overtime rate of pay of time and one half their regular  
25 rate for all members of the NEVADA Class who worked in excess of forty (40) hours in a week  
26 in violation of NRS 608.140 and 608.018.

27 48. Although the statute of limitations for minimum wage violations is two years,  
28 there is no express statute of limitations for violations for failure to pay overtime rates of pay

**THIERMAN BUCK LLP**  
7287 Lakeside Drive  
Reno, NV 89511  
(775) 284-1500 Fax (775) 703-5027  
Email info@thiermanbuck.com www.thiermanbuck.com

1 pursuant to NRS 608.140 and 608.018 and, therefore, the three-year statute contained in NRS  
2 11.190(3) for statutory violations applies.

3 49. Wherefore, Plaintiffs demand for themselves and for the NEVADA Class  
4 Members payment by Defendants at one and one-half times their “regular rate” of pay  
5 (inclusive of the incentive plan payments) for all hours worked in excess of eight (8) hours in a  
6 workday for those class members whose regular rate of pay did not exceed the one and one-half  
7 the minimum wage set by law, and premium overtime rate of one and one-half their regular rate  
8 for all class members who worked in excess of forty (40) hours a workweek during the relevant  
9 time period together with attorneys’ fees, costs, and interest as provided by law.

10 **FIFTH CAUSE OF ACTION**

11 **Failure to Timely Pay All Wages Due and Owing Upon Termination Pursuant to NRS**

12 **608.140 and 608.020-.050**

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

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

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

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

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

27 54. NRS 608.050 grants an “employee lien” to each discharged or laid-off employee  
28 for the purpose of collecting the wages or compensation owed to them “in the sum agreed upon

**THIERMAN BUCK LLP**  
7287 Lakeside Drive  
Reno, NV 89511  
(775) 284-1500 Fax (775) 703-5027  
Email info@thiermanbuck.com www.thiermanbuck.com

1 in the contract of employment for each day the employer is in default, until the employee is paid  
2 in full, without rendering any service therefor; but the employee shall cease to draw such wages  
3 or salary 30 days after such default.”

4 55. By failing to pay Plaintiffs and all members of the NEVADA Class for all hours  
5 worked in violation of state and federal law, at the correct legal rate, Defendants have failed to  
6 timely remit all wages due and owing to Plaintiffs and all members of the WAGES DUE AND  
7 OWING Class.

8 56. Despite demand, Defendants willfully refuse and continue to refuse to pay  
9 Plaintiffs and all WAGES DUE AND OWING Class Members.

10 57. Wherefore, Plaintiffs demand thirty (30) days wages under NRS 608.140 and  
11 608.040, and an additional thirty (30) days wages under NRS 608.140 and 608.050, all  
12 members of the WAGES DUE AND OWING Class together with attorneys’ fees, costs, and  
13 interest as provided by law.

14 **SIXTH CAUSE OF ACTION**

15 **Breach of Contract**

16 (On Behalf of Plaintiffs and the NEVADA CLASS)

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

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

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

26 61. Defendants beached their agreement with Plaintiffs and NEVADA Class  
27 Members by failing to compensate them for all hours worked, namely, for hours spent  
28 performing work activities off-the-clock at the agreed upon rate of pay.

**THIERMAN BUCK LLP**  
7287 Lakeside Drive  
Reno, NV 89511  
(775) 284-1500 Fax (775) 703-5027  
Email info@thiermanbuck.com www.thiermanbuck.com

**THIERMAN BUCK LLP**  
7287 Lakeside Drive  
Reno, NV 89511  
(775) 284-1500 Fax (775) 703-5027  
Email info@thiermanbuck.com www.thiermanbuck.com

1 62. As a result of Defendants’ breach, Plaintiffs and NEVADA Class Members have  
2 suffered economic loss that includes lost wages and interest.

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

7 **JURY TRIAL DEMANDED**

8 Plaintiffs hereby demand a jury trial pursuant to Nevada Rule of Civil Procedure 38.

9 **PRAYER FOR RELIEF**

10 Wherefore Plaintiffs, individually and on behalf of Class Members, pray for relief as  
11 follows relating to her collective and class action allegations:

- 12 1. For an order conditionally certifying the action under the FLSA and providing  
13 notice to all members so they may participate in the lawsuit;
- 14 2. For an order certifying the action as a traditional class action under Federal Rule  
15 of Civil Procedure Rule 23 on behalf of each proposed class;
- 16 3. For an order appointing Plaintiffs as the Representatives of each class and her  
17 counsel as Class Counsel for each class;
- 18 4. For damages according to proof for overtime compensation under federal law for  
19 all hours worked over 40 per week;
- 20 5. For liquidated damages pursuant to 29 U.S. C. § 216(b);
- 21 6. For damages according to proof for regular rate pay under NRS 608.140 and  
22 608.016 for all hours worked;
- 23 7. For damages according to proof for minimum wage rate pay under the Nevada  
24 Constitution for all hours worked;
- 25 8. For damages according to proof for overtime compensation under NRS 608.140  
26 and 608.018 for all hours worked for those employees who earned a regular rate  
27 of less than one and one-half times the minimum wage for hours worked in  
28 excess of 8 hours per day and/or for all class members for overtime premium pay

**THIERMAN BUCK LLP**  
7287 Lakeside Drive  
Reno, NV 89511  
(775) 284-1500 Fax (775) 703-5027  
Email info@thiermanbuck.com www.thiermanbuck.com

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- of one and one-half their regular rate for all hours worked in excess of 40 hours per week;
- 9. For sixty days of waiting time penalties pursuant to NRS 608.140 and 608.040-.050;
- 10. For damages pursuant to Defendant’s breach of contract;
- 11. For interest as provided by law at the maximum legal rate;
- 12. For reasonable attorneys’ fees authorized by statute;
- 13. For costs of suit incurred herein;
- 14. For pre-judgment and post-judgment interest, as provided by law; and
- 15. For such other and further relief as the Court may deem just and proper.

DATED: January 17, 2020

Respectfully Submitted,

**THIERMAN BUCK LLP**

/s/ Leah L. Jones  
 Mark R. Thierman  
 Joshua D. Buck  
 Leah L. Jones

Attorneys for Plaintiffs



**Index of Exhibits**

No.	Description	No. of Pages
A.	Consents to Sue	4

**THIERMAN BUCK LLP**

7287 Lakeside Drive

Reno, NV 89511

(775) 284-1500 Fax (775) 703-5027

Email info@thiermanbuck.com www.thiermanbuck.com

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

# **EXHIBIT A**

**Consent to Join**

**EXHIBIT A**

**THIERMAN BUCK, LLP**  
7287 Lakeside Drive  
Reno, NV 89511  
(775) 284-1500 Fax (775) 703-5027  
Email: info@thiermanbuck.com www.thiermanbuck.com

**THIERMAN BUCK, LLP**  
Mark R. Thierman, Nev. Bar No. 8285  
mark@thiermanbuck.com  
Joshua D. Buck, Nev. Bar No. 12187  
josh@thiermanbuck.com  
Leah L. Jones, Nev. Bar No. 13161  
leah@thiermanbuck.com  
7287 Lakeside Drive  
Reno, Nevada 89511  
Tel. (775) 284-1500  
Fax. (775) 703-5027

*Attorneys for Plaintiffs*

**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEVADA**

DANIELLE CURLEY, on behalf of herself  
and all others similarly situated,

Case No.: 2:18-cv-00233-KJD-GWF

Plaintiff,

**CONSENT TO JOIN**

vs.

CUSTOMER CONNEXX LLC; ARCA,  
INC.; and DOES 1 through 50, inclusive,

Defendants.


Pursuant to the Fair Labor Standards Act, (“FLSA”) 29 U.S.C.S. § 216(b), the undersigned hereby gives my consent in writing to become a party plaintiff against my Employer, Former Employer, and/or any and all of its affiliated entities identified below. I authorize the filing of a copy of this consent form in Court. I further consent to join this and/or any subsequent or amended suit against the same or related defendants for wage and hour violations. 29 U.S.C. 216(b) states that “No employee shall be a party plaintiff to any such action [under the Fair Labor Standards Act] unless he gives his consent in writing to become such a party and such consent is filed in the court in which such action is brought” and that unless the Court provides otherwise, the statute of limitations is tolled on the federal Fair Labor

1 Standards Act claims only when the consent to suit is filed with the court. This provision does  
2 not apply to other federal and to state law claims.

3 I understand that this lawsuit has been brought under the FLSA and that it seeks unpaid  
4 wages from CUSTOMER CONNEXX LLC; ARCA, INC.; and DOES 1 through 50, inclusive,  
5 (“Defendant” or “Customer Connexx”). I have read the Notice accompanying this Consent to  
6 Join. I work, or have worked, for Customer Connexx at some point from January 3, 2016, to the  
7 present.

8 **I CONSENT TO JOIN THIS LAWSUIT.** By signing this Consent to Join, I am  
9 agreeing to have Plaintiff DANIELLE CURLEY, act as my agent to make decisions on my  
10 behalf concerning the litigation and resolution of my FLSA claims. I am also agreeing to be  
11 represented by Plaintiff’s attorneys, (Thierman Buck, LLP, 7287 Lakeside Drive, Reno, NV  
12 89511), and any other attorneys with whom they may associate, unless I hire my own attorney.

**THIERMAN BUCK, LLP**  
7287 Lakeside Drive  
Reno, NV 89511  
(775) 284-1500 Fax (775) 703-5027  
Email: info@thiermanbuck.com www.thiermanbuck.com

13 Signature:  \_\_\_\_\_  
14 F6942961DAB5423...

15 Date signed: 8/19/2019 \_\_\_\_\_

16 Print Name: Andrew gonzales \_\_\_\_\_

17 Address: \_\_\_\_\_

18 City, State & Zip: \_\_\_\_\_

19 Telephone number: \_\_\_\_\_

20 Email: \_\_\_\_\_

21  
22  
23  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**THIERMAN BUCK, LLP**  
Mark R. Thierman, Nev. Bar No. 8285  
mark@thiermanbuck.com  
Joshua D. Buck, Nev. Bar No. 12187  
josh@thiermanbuck.com  
Leah L. Jones, Nev. Bar No. 13161  
leah@thiermanbuck.com  
7287 Lakeside Drive  
Reno, Nevada 89511  
Tel. (775) 284-1500  
Fax. (775) 703-5027

*Attorneys for Plaintiffs*

**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEVADA**

DANIELLE CURLEY, on behalf of herself  
and all others similarly situated,

Plaintiff,

vs.

CUSTOMER CONNEXX LLC; ARCA,  
INC.; and DOES 1 through 50, inclusive,

Defendants.

Case No.: 2:18-cv-00233-KJD-GWF

**CONSENT TO JOIN**

Pursuant to the Fair Labor Standards Act, (“FLSA”) 29 U.S.C.S. § 216(b), the undersigned hereby gives my consent in writing to become a party plaintiff against my Employer, Former Employer, and/or any and all of its affiliated entities identified below. I authorize the filing of a copy of this consent form in Court. I further consent to join this and/or any subsequent or amended suit against the same or related defendants for wage and hour violations. 29 U.S.C. 216(b) states that “No employee shall be a party plaintiff to any such action [under the Fair Labor Standards Act] unless he gives his consent in writing to become such a party and such consent is filed in the court in which such action is brought” and that unless the Court provides otherwise, the statute of limitations is tolled on the federal Fair Labor

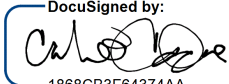
**THIERMAN BUCK, LLP**  
7287 Lakeside Drive  
Reno, NV 89511  
(775) 284-1500 Fax (775) 703-5027  
Email: info@thiermanbuck.com www.thiermanbuck.com

1 Standards Act claims only when the consent to suit is filed with the court. This provision does  
2 not apply to other federal and to state law claims.

3 I understand that this lawsuit has been brought under the FLSA and that it seeks unpaid  
4 wages from CUSTOMER CONNEXX LLC; ARCA, INC.; and DOES 1 through 50, inclusive,  
5 (“Defendant” or “Customer Connexx”). I have read the Notice accompanying this Consent to  
6 Join. I work, or have worked, for Customer Connexx at some point from January 3, 2016, to the  
7 present.

8 **I CONSENT TO JOIN THIS LAWSUIT.** By signing this Consent to Join, I am  
9 agreeing to have Plaintiff DANIELLE CURLEY, act as my agent to make decisions on my  
10 behalf concerning the litigation and resolution of my FLSA claims. I am also agreeing to be  
11 represented by Plaintiff’s attorneys, (Thierman Buck, LLP, 7287 Lakeside Drive, Reno, NV  
12 89511), and any other attorneys with whom they may associate, unless I hire my own attorney.

**THIERMAN BUCK, LLP**  
7287 Lakeside Drive  
Reno, NV 89511  
(775) 284-1500 Fax (775) 703-5027  
Email: info@thiermanbuck.com www.thiermanbuck.com

13 DocuSigned by:  
14   
14 Signature: \_\_\_\_\_  
14 1969CB9F64374AA...

15 Date signed: 3/13/2019

16 Print Name: Cariene Cadema

17 Address: \_\_\_\_\_

18 City, State & Zip: \_\_\_\_\_

19 Telephone number: \_\_\_\_\_

20 Email: \_\_\_\_\_

21  
22  
23  
24  
25  
26  
27  
28