

1 \$1425
2 Mark R. Thierman, Nev. Bar No. 8285
3 mark@thiermanbuck.com
4 Joshua D. Buck, Nev. Bar No. 12187
5 josh@thiermanbuck.com
6 Leah L. Jones, Nev. Bar No. 13161
7 leah@thiermanbuck.com
8 THIERMAN BUCK LLP
9 7287 Lakeside Drive
10 Reno, Nevada 89511
11 Tel. (775) 284-1500
12 Fax. (775) 703-5027

13 Attorneys for Plaintiff

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

EMILY NEVETT, on behalf of herself and
all other similarly situated individuals,

Plaintiff,

vs.

RENOWN HEALTH, and DOES 1 through
50, inclusive,

Defendant(s).

Case No.:

Dept. No.:

CLASS ACTION COMPLAINT

**(EXEMPT FROM ARBITRATION
PURSUANT TO N.A.R. 5)**

- 1) Failure to Compensate for All Hours
Worked in Violation of NRS 608.140 and
608.016;
- 2) Failure to Pay Overtime in Violation of
NRS 608.140 and 608.018; and
- 3) Failure to Timely Pay All Wages Due and
Owing in Violation of NRS 608.140 and
608.020-050.

JURY TRIAL DEMANDED

COME NOW Plaintiff EMILY NEVETT (“Plaintiff”), on behalf of herself and all other
similarly situated and typical persons, and alleges the following:

All allegations in this Complaint are based upon information and belief except for those
allegations that pertain to the Plaintiff named herein and her counsel. Each allegation in this

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. This Court has original jurisdiction over the state law claims alleged herein
5 because the amount in controversy exceeds \$15,000 and a party seeking to recover unpaid
6 wages has a private right of action pursuant to the Nevada Revised Statute (“NRS”) Chapter
7 608. *See Neville v. Eighth Judicial Dist. Court in & for County of Clark*, 406 P.3d 499, 502
8 (Nev. 2017).

9 2. Plaintiff also claims a private cause of action to foreclose a lien against the
10 property owner for wages due pursuant to NRS 608.050.

11 3. Venue is proper in this Court because one or more of the Defendants named
12 herein maintains a principal place of business or otherwise is found in this judicial district and
13 many of the acts complained of herein occurred in Washoe County, Nevada, which is located
14 within this district.

15 **PARTIES**

16 4. Plaintiff EMILY NEVETT is a natural person who was employed by Defendant
17 within the State of Nevada from July 2018 to October 2019.

18 5. Defendant RENOWN HEALTH (“Renown” or “Defendant”) is a Nevada
19 Nonprofit Corporation with its principle place of business at 50 W. Liberty Street, 56h Floor,
20 Reno, Nevada 89502.

21 6. The identity of DOES 1-50 is unknown at this time, and this Complaint will be
22 amended at such time when the identities are known to Plaintiff. Plaintiff is informed and
23 believes that each of the Defendants sued herein as DOE is responsible in some manner for the
24 acts, omissions, or representations alleged herein and any reference to “Defendant,”
25 “Defendants,” or “Renown” herein shall mean “Defendants and each of them.”

26 **FACTUAL ALLEGATIONS**

27 7. Renown is a not-for-profit corporation that operates primarily in Washoe
28 County.

1 8. Plaintiff was employed by Renown as a Registered Nurse (RN) in the medical-
2 surgery department.

3 9. Plaintiff was an hourly paid non-exempt employee and was earning \$30.62 per
4 hour at the time of her termination.

5 10. In addition to her hourly rate of pay, Plaintiff, and all other similarly situated
6 individuals, also received a non-discretionary PACE bonus that was employee earnings during
7 the preceding year. Plaintiff received one such PACE bonus during her employment with
8 Defendant in the amount of \$1,514.74. Upon information and belief, this bonus was not
9 included in the regular rate of pay for overtime payment calculations for Plaintiff or any other
10 member of the putative class members identified below.

11 11. Plaintiff's regular schedule was three (3) shifts a week, for 12.5 hours each shift,
12 from 6:45 a.m. to 7:15 p.m. She was also required to be available for 1 additional on call shift
13 per month. In addition to her regularly scheduled shifts and her required on call time, Plaintiff
14 also routinely worked extra shifts and extra hours.

15 12. Defendant maintained a timekeeping policy whereby all non-exempt hourly paid
16 employees would clock in and out via the KRONOS timekeeping system. The clock in/out
17 times were then used to calculate the hours worked for the payment of wages. An employee
18 would not be compensated for time worked if he/she was not clocked-in to KRONOS.

19 13. Defendant maintained an electronic medical record (EMR) system called EPIC,
20 whereby Plaintiff and all other patient care employees would record and document any and all
21 patient care notes and records. The EPIC system records the specific time in which Plaintiff
22 and all other patient care employees enter data into the system.

23 14. Defendant engaged Plaintiff and all others similarly situated to make entries into
24 the EPIC system while at the employer's place of employment. It is an integral, indispensable
25 and legally necessary to the performance of the job of providing patient care that patient care
26 employees make these entries into the EPIC system, which was also an essential part of the
27 medical billing process as well.

28

1 **A Comparison Between KRONOS and EPIC Data Demonstrates That Defendant**
2 **Suffered and/or Permitted Patient Care Employees To Perform Work Without**
3 **Compensation**

4 15. Plaintiff performed work for which she was not compensated.

5 16. A comparison between the KRONOS and EPIC data demonstrates and/or will
6 demonstrate that Plaintiff interacted with the EPIC system when she was either off-the-clock
7 and/or during her meal break; therefore, Plaintiff was not compensated for all the hours that she
8 actually worked.

9 17. Defendant and Defendant’s agents were aware that Plaintiff and all other
10 similarly situated employees were working without compensation because employees were
11 required to be physically present at Defendant’s facility and the EPIC system recorded the time
12 when Plaintiff and similarly situated employees made entries. Defendants agents would
13 routinely observe Plaintiff and all others similarly situated making these patient chart EPIC
14 entries “off the clock” such as during lunch breaks and before and after each shift.

15 18. Despite knowing that Plaintiff and other similarly situated individuals were
16 performing work off-the-clock and without compensation, Defendant failed to prevent the
17 performance of such work. Defendant suffered and permitted Plaintiff to continue doing
18 uncompensated work that they were engaged to perform.

19 **Defendant Automatically Deducted 30-Minutes For Meal Periods Without Verification**
20 **That Employees Received A Full Uninterrupted 30-Minute Meal Break (“Auto Deduct**
21 **Policy”)**

22 19. Nevada law requires that an employee be completely relieved of duty for a full
23 30-minute uninterrupted meal period. NRS 608.019. If an employee is not relieved of duty for
24 the full 30-minutes, without interruption, the employee must be compensated for the full 30-
25 minutes under the continuous workday doctrine.

26 20. Plaintiff and other similarly situated employees did not clock out for meal
27 periods. Instead, Defendant maintained a policy whereby 30-minutes would be automatically
28 deduced from the hours worked each shift that an employee worked (“Auto Deduct Policy”).

1 In other words, although Plaintiff was scheduled for 12.5 hour shifts, Plaintiff was only
2 compensated for 12 hours of work.

3 21. Defendant deducted 30-minutes for a meal period without verifying that Plaintiff
4 and other similarly situated employees were able to take a full 30-minute interrupted lunch.
5 Since the KRONOS data shows that an employee was clocked in/out for the full shift, and that
6 Defendant automatically took back 30-minutes of those work hours and did not pay employees
7 for that time, Defendant bears the burden of demonstrating that Plaintiff and other similarly
8 situated employees took a full 30-minute uninterrupted lunch. If Defendant cannot meet its
9 burden that an employee did not perform any compensable work during those 30-minutes, it
10 must compensate these employees at their applicable wage rate for these 30 minutes.

11 22. Plaintiff was never able to take a full 30-minute uninterrupted lunch. A
12 comparison between the KRONOS data and the EPIC data demonstrate that Plaintiff was not
13 fully relieved of duty for a full uninterrupted 30-minute break. Furthermore, Plaintiff was
14 always required to carry a telephone with her, and respond to any calls, during any attempted
15 meal break and was not allowed to leave Defendant's premises for a meal break. Accordingly,
16 Plaintiff is entitled to recover the 30-minutes of wages at her applicable wage rate that were
17 automatically deducted by Defendant. Plaintiff also seeks recovery of a 30-minutes of wages at
18 the applicable wage rate for all similarly situated employees.

19 **Defendant Did Not Include On-Call Shift Hours Worked Into The Weekly Overtime**
20 **Computation ("On-Call Overtime Policy")**

21 23. Defendant paid Plaintiff and all other similarly situated employees a premium
22 when they worked an on-call shift. The premium was 1 ½ times an employees' regular hourly
23 rate of pay ("On-Call Premium").

24 24. Plaintiff was required to be available for at least one (1) on call shift per month,
25 in addition to her normal schedule of three (3), twelve and a half (12.5) hour shifts.

26 25. When Plaintiff worked an on-call shift, Defendant did not compensate Plaintiff
27 at her overtime rate of 1 ½ times her regular rate of pay when she worked over 40 hours in that
28 workweek. Instead, Defendant only compensated Plaintiff her regular base hourly rate for her

1 regular shifts, in the amount of \$1,102.32 (\$30.62 x 36 hours), and her regular base On-Call
2 Premium for her on call hours in the amount of \$551.16 (\$45.93 x 12 hours).

3 26. Plaintiff's regular rate for the workweeks that she works an on call shift is
4 \$34.45. (Her total monetary remuneration of \$1,653.48, divided by total hours worked of 48
5 hours.) Thus, her overtime rate is \$51.68. Here total wages should have been paid as follows:
6 \$1,791.44 (\$1,378 in regular rate wages for 40 regular hours and \$413.44 in overtime wages for
7 8 overtime hours). The difference between what Defendant paid Plaintiff (\$1,653.48) and what
8 Plaintiff is owed (\$1,791.44) is \$137.96.

9 27. During the course of her employment with Defendant, Plaintiff worked
10 approximately 10 on call shifts. Each on-call shift that she worked was in addition to her
11 regularly scheduled shifts so that Plaintiff incurred overtime hours during those workweeks that
12 she worked an on-call shift. Accordingly, Plaintiff is owed an estimated amount of \$2,069.40
13 in unpaid overtime wages.

14 28. Defendant's overtime pay compensation scheme was not unique to Plaintiff.
15 Defendant paid all employees who worked on-call shifts in the same fashion. Defendant
16 similarly failed to compensate all similarly situated employees at the correct overtime rate
17 when they worked over 40 hours in a workweek.

18 **CLASS ACTION ALLEGATIONS**

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

21 30. Plaintiff brings this action on behalf of herself and the following Classes of
22 similarly situated individuals employed by Defendant:

- 23 A. **Off-the-Clock Class:** All nonexempt hourly paid persons
24 employed by Defendant who interacted with EPIC off the
25 clock (as demonstrated by the comparison between the
26 EPIC and KRONOS time data) at any time during the
27 relevant time period alleged herein.
28 B. **Auto Deduct Class:** All nonexempt hourly paid persons
employed by Defendant who were subject to Defendant's

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

Auto Deduct Meal Break policy at any time during the relevant time period alleged herein.

C. **On-Call Overtime Class:** All nonexempt hourly paid persons employed by Defendant who were subject to Defendant’s On-Call Overtime policy at any time during the relevant time period alleged herein.

D. **Continuation Wage Class:** All members of the Off the Clock, Auto Deduct, and On-Call Classes who are former employees at anytime during the relevant time period alleged herein.

31. Class treatment is appropriate in this case for the following reasons:

A. The Class is Sufficiently Numerous: Upon information and belief, Defendant employs, and has employed, in excess of 1,000 Class Members within the applicable statute of limitations. Because Defendant is legally obligated to keep accurate payroll records, Plaintiff alleges that Defendant’s records will establish the members of the Class as well as their numerosity.

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

- 1) Whether Defendant failed to compensate Plaintiff and members of the Off-the-Clock Class for all the hours they worked, as demonstrated by the difference between the EPIC and KRONOS data;
- 2) Whether Defendant can prove that Plaintiff and members of the Auto Deduct Class took an uninterrupted 30-minute meal period for each and every shift that Defendant deducted 30-minutes from their wages;
- 3) Whether Defendant failed to compensate Plaintiff and members of the On-Call Overtime Class overtime premium when they worked over 40 hours in a workweek; and
- 4) Whether Defendant failed to pay members of the Continuation Wage Class all their wages due and owing at the time of termination.

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

C. Plaintiff's Claims are Typical to Those of Fellow Class Members: Defendant directed, suffered and/or permitted Plaintiff to perform work without compensation; Plaintiff was the victim of Defendant's Auto Deduct policy whereby Defendant deducted 30-minutes from her wages even though she was never authorized and/or permitted to take a full 30-minute uninterrupted break; Plaintiff was the victim of Defendant's On-Call Overtime policy whereby she was not paid the appropriate overtime rate of 1 ½ times her regular rate of pay when she worked over 40 hours in a workweek; and, as a result of the aforementioned, Plaintiff was not compensated her full wages due and owing to her at the time of her termination of employment. Because Plaintiff is a victim of all of the wrongs committed by Defendant as all members of the Classes that she seeks to represent, her claims are typical.

D. Plaintiff is an Adequate Representative of the Class: Plaintiff will fairly and adequately represent the interests of Class Members because Plaintiff is a member of the Class, she has common issues of law and fact with all members of the Class, and her claims are typical to other Class Members.

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

//
//
//

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

FIRST CAUSE OF ACTION

Failure to Pay Wages for All Hours Worked

(On Behalf of Plaintiff and the Off-the-Clock and Auto Deduct Classes Against Defendant)

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

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

34. Nevada Revised Statutes (“NRS”) 608.016 entitled, “Payment for each hour of work; trial or break-in period not excepted” states that: “An employer shall pay to the employee wages for each hour the employee works. An employer shall not require an employee to work without wages during a trial or break-in period.”

35. Nevada Administrative Code (“NAC”) 608.115(1), entitled “Payment for time worked. (NRS 607.160, 608.016, 608.250)” states: “An employer shall pay an employee for all time worked by the employee at the direction of the employer, including time worked by the employee that is outside the scheduled hours of work of the employee.”

36. By failing to compensate Plaintiff and Off-the-Clock Class Members for all the time they were suffered and/or permitted to work, as demonstrated by the comparison between EPIC and KRONOS time data, Defendant failed to pay Plaintiff and Nevada Off-the-Clock Class Members for all hours they worked.

37. By maintaining the Auto Deduct policy, whereby Defendant deducted 30-minutes of wages from Plaintiff and Auto Deduct Class Members’ pay without verification that Plaintiff and Auto Deduct Class Members took a full, duty free, uninterrupted meal period, Defendant failed to pay Plaintiff and Auto Deduct Class Members for all hours that they worked.

38. Wherefore, Plaintiff demands for herself and for all members of the Off the Clock and Auto Deduct Classes, the payment of all regular rate wages owed for three years

1 immediately preceding the filing of this complaint until the date of judgement after trial,
2 together with attorneys' fees, costs, and interest as provided by law.

3
4 **SECOND CAUSE OF ACTION**

5 **Failure to Pay Overtime Wages for All Hours Worked**

6 (On Behalf of Plaintiff and the Off-the-Clock, Auto Deduct, and On-Call Overtime Classes
7 Against Defendant)

8 39. Plaintiff realleges and incorporates by this reference all the paragraphs above in
9 this Complaint as though fully set forth herein.

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

12 41. NRS 608.018(1) provides as follows:

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

21 42. NRS 608.018(2) provides as follows:

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

27 43. By failing to compensate Plaintiff and Off-the-Clock Class Members for all the
28 overtime hours they were suffered and/or permitted to work, as demonstrated by the
comparison between EPIC and KRONOS time data, Defendant failed to pay Plaintiff and
Nevada Off-the-Clock Class Members the overtime premium of 1 1/2 times their regular rate of
pay for all hours worked over 8 hours in a workday and/or 40 in a workweek.

1 same rate from the day the employee resigned, quit, or was discharged until paid for 30-days,
2 whichever is less.”

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

8 52. By failing to pay Plaintiff and all members of Continuation Wage Class for all
9 hours worked in violation of state law, Defendant has failed to timely remit all wages due and
10 owing to Plaintiff and all members of Continuation Wage Class.

11 53. Despite demand, Defendant willfully refuses and continues to refuse to pay
12 Plaintiff and all members of the Continuation Wage Class.

13 54. Wherefore, Plaintiff demands 30 days wages under NRS 608.140 and 608.040,
14 and an additional 30 days wages under NRS 608.140 and 608.050, for all members of the
15 Nevada Continuation Wage Class, together with attorneys’ fees, costs, and interest as provided
16 by law.

17 **JURY DEMAND**

18 Plaintiff EMILY NEVETT hereby respectfully demands a trial by jury on all issues so
19 triable.

20 **PRAYER FOR RELIEF**

21 Wherefore Plaintiff, individually and on behalf of all Class Members and all others
22 similarly situated, prays for relief as follows relating to her collective and class action
23 allegations:

- 24 1. For an order certifying this action as a class action on behalf of the proposed
25 Classes;
- 26 2. For an order appointing Plaintiff as the Representative of the Class and her
27 counsel as Class Counsel;

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

3. For damages according to proof for regular rate pay for all hours worked without compensation under Nevada law;
4. For damages according to proof for overtime compensation for all overtime hours worked without compensation under both federal and Nevada law;
5. For 60-days of continuation wages;
6. For interest as provided by law at the maximum legal rate;
7. For reasonable attorneys' fees authorized by statute;
8. For costs of suit incurred herein;
9. For pre-judgment and post-judgment interest, as provided by law, and
10. For such other and further relief as the Court may deem just and proper.

AFFIRMATION

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

DATED: April 3, 2020

THIERMAN BUCK LLP

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

Attorneys for Plaintiff