

THIERMAN BUCK LLP

MARK R. THIERMAN, SB# 72913
JOSHUA D. BUCK, SB# 258325
LEAH L. JONES, SB# 276448
JOSHUA R. HENDRICKSON, SB# 282180
7287 Lakeside Drive
Reno, NV 89511
Tel: 775.284.1500
Fax: 775.703.5027
mark@thiermanbuck.com
josh@thiermanbuck.com
leah@thiermanbuck.com
joshh@thiermanbuck.com

ATTORNEYS FOR PLAINTIFFS

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

TOMERY DARLING and ANA JARA, on
behalf of themselves and all other similarly
situated individuals,

Plaintiffs,

vs.

DIGNITY HEALTH; DIGNITY
COMMUNITY CARE; DIGNITY
HEALTH MEDICAL GROUP NEVADA,
LLC; and DOES 1 through 50, inclusive,

Defendant(s).

Case No. 4:20-cv-06043-YGR

**SECOND AMENDED COLLECTIVE AND
CLASS ACTION COMPLAINT**

- 1) Failure to Pay Overtime in Violation of 29 U.S.C. § 207;
- 2) Unfair Business Practices Under California Law;
- 3) Failure to Pay Wages for All Hours Worked Under Nevada Law;
- 4) Failure to Pay Overtime Wages for All Hours Worked Under Nevada Law;
- 5) Failure to Pay Wages For Interrupted Meal Breaks Under Nevada Law; and
- 6) Failure to Timely Pay All Wages Due and Owing Under Nevada Law.

JURY TRIAL DEMANDED

Plaintiffs TOMERY DARLING and ANA JARA (collectively, "Plaintiffs"), on behalf of themselves and all other similarly situated and typical persons, allege the following:

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

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

1 **JURISDICTION AND VENUE**

2 1. This Court has original jurisdiction over the federal claims alleged herein pursuant
3 to the Fair Labor Standards Act (“FLSA”) 29 U.S.C. § 216(b) which states: “An action to recover
4 the liability prescribed in either of the preceding sentences may be maintained against any
5 employer (including a public agency) in any Federal or State court of competent jurisdiction by
6 any one or more employees for and in behalf of himself or themselves and other employees
7 similarly situated.” Plaintiffs have filed with this court consents to join this action.

8 2. This Court has supplemental jurisdiction over the state law claims alleged herein
9 pursuant to 28 U.S.C. § 1367 because the state law claims alleged herein all arise out of the same
10 transaction and occurrence, i.e. the failure to properly pay all wages due—and there is no conflict
11 between the procedures applicable to the FLSA and State law claims. *Integrity Staffing Solutions,*
12 *Inc.*, 2013 U.S. App. LEXIS 7397 (9th Cir. Nev. Apr. 12, 2013) (“In sum, we agree with the other
13 circuits to consider the issue that the fact that Rule 23 class actions use an opt-out mechanism
14 while FLSA collective actions use an Opt-in mechanism does not create a conflict warranting
15 dismissal of the state law claims.”)

16 3. Venue is proper in this Court because one or more of the Defendants named herein
17 maintains a principal place of business at 185 Berry Street, Suite 300, San Francisco, California,
18 94107.

19 **PARTIES**

20 4. Plaintiff TOMERY DARLING is natural person who has been employed by
21 Defendants as a non-exempt hourly paid employee in Sacramento, California, during the
22 relevant time period.

23 5. Plaintiff ANA JARA is natural person who has been employed by Defendants as
24 a non-exempt hourly paid employee in Las Vegas, Nevada, during the relevant time period.

25 6. Defendant DIGNITY HEALTH (“Dignity Health”) is a domestic non-profit
26 corporation with a principal place of business at 185 Berry Street, Suite 300, San Francisco,
27 California, 94107. Defendant DIGNITY COMMUNITY CARE (“Dignity Community Care”)
28 is a foreign non-profit corporation with a principal place of business at 185 Berry Street, Suite

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

1 300, San Francisco, California, 94107. Defendant DIGNITY HEALTH MEDICAL GROUP
2 NEVADA, LLC is a foreign limited liability company with a principal place of business at 185
3 Berry Street, Suite 300, San Francisco, California, 94107, and Dignity Community Care serves
4 as the sole managing member of the LLC. Collectively, DIGNITY HEALTH, DIGNITY
5 COMMUNITY CARE, and DIGNITY HEALTH MEDICAL GROUP NEVADA, LLC, are
6 referred to as “Defendants” or “Dignity Health”.

7 7. The identity of DOES 1-50 is unknown at this time, and this Complaint will be
8 amended at such time when the identities are known to Plaintiffs. Plaintiffs are informed and
9 believe that each of the Defendants sued herein as DOE is responsible in some manner for the
10 acts, omissions, or representations alleged herein and any reference to “Defendant,”
11 “Defendants,” herein shall mean “Defendants and each of them.”

12 **FACTUAL ALLEGATIONS**

13 8. Dignity Health is a health care organization that employs over 60,000 individuals
14 nationwide. According to its website, “Dignity Health is made up of more than 60,000 caregivers
15 and staff who deliver excellent care to diverse communities in 21 states. Headquartered in San
16 Francisco, Dignity Health is the fifth largest health system in the nation and the largest hospital
17 provider in California.” *See* <https://www.dignityhealth.org/about-us> (last visited Apr. 6, 2020).

18 9. Plaintiffs were two of Dignity Health’s 60,000 employees.

19 10. Plaintiff Darling was employed by Dignity Health as a full-time hourly paid non-
20 exempt Nursing employee from on or about May 2012 to on or about December 2016. She was
21 scheduled for and regularly worked 72 hours per two (2) week pay period, not including the time
22 that she worked that was unrecorded. She was scheduled for and regularly worked 36 hours per
23 workweek, not including the time worked that was unrecorded. Plaintiff Darling earned
24 approximately \$61 per hour at the time of her separation of employment with Dignity Health.

25 11. Plaintiff Jara was employed by Defendants a full-time hourly paid non-exempt
26 employee with a job title of Medical Assistant in Las Vegas, Nevada, from on or about
27 November 2015 to on or about December 3, 2019. She was scheduled for and regularly worked
28 80 hours per two (2) week pay period, not including the time that she worked that was

1 unrecorded. She was scheduled for and regularly worked 40 hours per workweek, not including
2 the time worked that was unrecorded. Plaintiff Jara earned approximately \$17.59 per hour at the
3 time of her separation of employment with Defendants.

4 **Defendants Systematically Fail To Compensate Patient Care Employees For All The**
5 **Hours That They Work**

6 12. Defendants have systematically failed to compensate Plaintiffs and all other
7 similarly situated employees for all their work performed, both overtime and non-overtime hours.
8 Defendants' facilities are systematically understaffed so that Plaintiffs and all other similarly
9 situated employees are left to input patient information "off-the-clock" into the electronic medical
10 record (EMR) keeping software used by Defendants, either before the start of their shift, during
11 their meal breaks, or after their shift.

12 13. Plaintiffs and all other similarly situated employees would record and document
13 any and all patient care notes into the EMR. The EMR used by Defendants automatically
14 records the times in which Plaintiffs and all other similarly situated employees enter data into
15 the system, thereby leaving a "time stamp" to indicate when employees were using the system.

16 14. Defendants required Plaintiffs and all others similarly situated to make entries into
17 the EMR while at the employer's place of employment. It is an integral, indispensable and
18 legally necessary to the performance of Plaintiffs' job of providing patient care that they make
19 these entries of patient care notes into the EMR, which was also an essential part of the medical
20 billing process as well.

21 15. Defendants and Defendants' agents were aware that Plaintiffs and all other
22 similarly situated employees were working without compensation because employees were
23 physically present at Defendants' facility and the EMR recorded the time when Plaintiffs and
24 similarly situated employees made entries. Defendants' agents would routinely observe
25 Plaintiffs and all others similarly situated making these patient chart EMR entries "off-the-
26 clock" such as during lunch breaks and before and after each shift. Upon information and belief,
27 Defendants were repeatedly informed, and it was generally common knowledge, the patient care
28

1 employees would routinely enter patient care data (also known as “charting”) during times that
2 the hourly paid patient care employees were not being compensated for.

3 16. Defendants also required all hourly paid employees to clock in and out using an
4 electronic timekeeping system for pay purposes. When comparing the difference between the
5 time entries from the EMR to the time entries in the electronic timekeeping system, Plaintiffs
6 and all other similarly situated employees worked a significant amount of time “off-the-clock”.

7 17. Despite knowing that Plaintiffs and other similarly situated individuals were
8 performing work off-the-clock and without compensation, Defendants failed to prevent the
9 performance of such work. Defendants suffered and permitted Plaintiffs to continue doing
10 uncompensated work that they were engaged to perform.

11 18. In addition to suffering and permitting Plaintiffs and all other similarly situated
12 employees to perform work without compensation, the EMR data shows, or will show, that
13 Defendants also violated California and Nevada state meal and rest break law by not providing a
14 meal period and rest periods within the requisite number of hours after the start of a shift; failing
15 to provide a second meal period and/or rest period within the time proscribed by law, and by not
16 permitting a full 30-minute uninterrupted meal period.

17 19. Based on the aforementioned facts that Defendants suffered and/or permitted
18 Plaintiffs and all other putative Class Members to work without compensation and suffered and/or
19 permitted to work without their legally mandated 30-minute uninterrupted lunch, Plaintiffs and
20 putative Class Members have suffered significant damages resulting therefrom. Plaintiff Jara, for
21 instance, worked 1,691.75 non overtime hours, 154 overtime hours, 38.25 2nd shift differential
22 hours, and 33 weekend premium hours in 2019, not including the unrecorded time that she worked.
23 She therefore worked a total of 1,917 hours, not including the unrecorded time that she worked.
24 As a result of the aforementioned Plaintiff Jara was not able to take a full 30-minute uninterrupted
25 break. Since she worked five (5) 8-hour shifts per week, she is owed 30-minutes of compensation
26 at her applicable overtime rate of pay (\$26.82) for each shift that she worked. Plaintiff also worked
27 on average an additional fifteen (15) minutes per shift off the clock entering patient information
28 into the EMR system. Therefore, in total, Plaintiff is owed approximately 45 minutes of wages at

1 the overtime rate for each shift that she worked, or \$20.12 for each shift. Plaintiff is not currently
2 in possession of her time and pay data. Plaintiff Jara is informed and believes that Defendants
3 should be in possession of such information because they are required, by law, to retain this
4 information for a certain amount of time. Nevertheless, Plaintiff is informed and believes that she
5 worked five (5) 8-hours shifts during the workweek of November 4, 2019, and that she did not
6 receive full 30-minute uninterrupted meal breaks during that workweek and she was required to
7 enter patient information into the EMR system off the clock during that workweek. As such,
8 Plaintiff is informed and believes that she worked 43.75 hours that workweek but was only
9 compensated for 40 hours and, as a result, has suffered approximately \$100 in hard damages
10 during that workweek, not including liquidated damages and the recovery of other related relief.

11 **COLLECTIVE, CLASS, AND REPRESENTATIVE ACTION ALLEGATIONS**

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

14 21. Plaintiffs bring this action on behalf of themselves and all other similarly situated
15 and typical employees as both a collective action under the FLSA and a class action under
16 applicable state laws.

17 **The FLSA Class**

18 22. Plaintiff Jara bring this action on behalf of herself and the following **FLSA Class**
19 **(hereinafter referred to as “FLSA Class Members”)**:

20 All nonexempt hourly paid employees employed by
21 Defendants within the United States who worked off the
22 clock as demonstrated by the comparison between the EMR
23 system and electronic timekeeping system at any time during
the relevant time period alleged herein.

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

26 A. Defendants employed Plaintiff Jara as an hourly-paid employee who did
27 not receive her full wages for all the hours that she worked, and, where applicable, their
28

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

1 overtime premium pay at one and one-half times the regular rate of pay for all hours
2 worked over forty (40) hours in a workweek.

3 B. Plaintiff Jara’s situation is similar to those she seeks to represent because
4 Defendants failed to pay Plaintiff Jara and all other FLSA Class Members for all time
5 they were required to work, but with the knowledge, acquiescence and/or approval (tacit
6 as well as expressed) of Defendants’ managers and agents.

7 C. Common questions exist as to whether Plaintiff Jara and all other FLSA
8 Class Members worked off the clock and without compensation.

9 D. Upon information and belief, Defendants employ, and have employed, in
10 excess of 50,000 FLSA Class Members within the applicable statute of limitations.

11 E. Plaintiff Jara has signed and filed a Consent to Sue with this Court (*see*
12 ECF No. 1-2).

13 **The State Law Classes**

14 24. Plaintiff Darling brings this action on behalf of herself and the following
15 **California Class (hereinafter referred to as “California Class Members”):**

16 All nonexempt hourly paid employees employed by
17 Defendants in California who worked off the clock as
18 demonstrated by the comparison between the EMR system
19 and electronic timekeeping system at any time during the
relevant time period alleged herein.

20 A. Plaintiff reserves the right to further subdivide the **California Class** into
21 subclasses of similarly-situated and typical individuals.

22 25. Plaintiff Jara brings this action on behalf of herself and the following **Nevada**
23 **Class (hereinafter referred to as “Nevada Class Members”):**

24 All nonexempt hourly paid employees employed by
25 Defendants in Nevada who worked off the clock as
26 demonstrated by the comparison between the EMR system
27 and electronic timekeeping system at any time during the
28 relevant time period alleged herein.

1 A. The **Nevada Class** may be further subdivided into the following
2 subclasses of similarly-situated and typical individuals based upon the divergent statute
3 of limitations period for various claims asserted herein (collectively “the Subclasses” or
4 “Subclass Members”):

5 **Nevada Meal Break Subclass:** All Nevada Class Members
6 who worked off the clock during a meal break as
7 demonstrated by the comparison between the EMR system
8 and electronic timekeeping system at any time during the
9 relevant time period alleged herein.

10 **Nevada Waiting Time Penalties Subclass:** All Nevada
11 Class Members who are former employees and who were
12 employed at any time during the relevant time period alleged
13 herein.

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

15 A. The Classes Are Sufficiently Numerous: Upon information and belief,
16 Defendants employ, and have employed, in excess of 10,000 California and Nevada Class
17 Members within the applicable statute of limitations. Because Defendants are legally
18 obligated to keep accurate payroll records, Plaintiffs allege that Defendants’ records will
19 establish the members of the Classes as well as their numerosity.

20 B. Common Questions of Law and Fact Exist: Common questions of law and
21 fact exist and predominate as to Plaintiffs and members of the Classes, including, without
22 limitation:

23 1) Whether Defendants failed to compensate Plaintiffs and members of the
24 Classes for all the hours that they worked; and

25 2) Whether Defendants willfully failed to pay members of the Classes all
26 wages due and owing at the time of termination.

27 C. Plaintiffs’ Claims are Typical to Those of Fellow Members of the Classes:
28 Plaintiffs’ claims are typical to those of the class they seek to represent. Plaintiffs performed
work off the clock without compensation; Defendants forced, suffered and/or permitted
Plaintiffs to work through their meal and/or rest breaks; and Defendants have not timely

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

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

1 remitted all wages due and owing to Class Members who are former employees upon their
2 termination.

3 D. Plaintiffs Are Adequate Representatives of the Class: Plaintiffs will fairly
4 and adequately represent the interests of Class Members because Plaintiffs are members
5 of the Classes (Plaintiff Darling is a member of the California Class and Subclasses and
6 Plaintiff Jara is a member of the Nevada Class and Subclasses), they have common issues
7 of law and fact with all members of the Classes, and their claims are typical to other Class
8 Members.

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

19 **FIRST CAUSE OF ACTION**

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

21 (On Behalf of Plaintiff Jara and all members of the FLSA Class Against Defendants)

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

24 28. 29 U.S.C. Section 207(a)(1) provides as follows: “Except as otherwise provided
25 in the section, no employer shall employ any of his employees who in any workweek is engaged
26 in commerce or in the production of goods for commerce, or is employed in an enterprise engaged
27 in commerce or in the production of goods for commerce, for a workweek longer than forty hours
28

1 unless such employee receives compensation for his employment in excess of the hours above
2 specified at a rate not less than one and one-half times the regular rate at which he is employed.”

3 29. By failing to compensate Plaintiff Jara and FLSA Class Members for all the time
4 they were suffered and/or permitted to work as described above, Defendants have failed to pay
5 Plaintiff Jara and FLSA Class Members overtime for all hours worked in excess of forty (40)
6 hours in a week in violation of 29 U.S.C. Section 207(a)(1).

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

12 **SECOND CAUSE OF ACTION**

13 **Unfair Business Practices Under California Law**

14 (On Behalf of Plaintiff Darling and the California Classes Against Defendants)

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

17 32. By the conduct described throughout this Complaint, Defendants have violated
18 the provisions of the California Labor Code as specified and have engaged in unlawful, deceptive,
19 and unfair business practices prohibited by California Business & Professions Code § 17200, *et*
20 *seq.* Defendants’ use of such practices resulted in greatly decreased labor costs and constitutes
21 an unfair business practice, unfair competition, and provides an unfair advantage over
22 Defendants’ competitors.

23 33. The unlawful and unfair business practices complained of herein are ongoing and
24 present a threat and likelihood of continuing against Defendants’ current employees as well as
25 other members of the general public. Plaintiff Darling and California Class Members are
26 therefore entitled to injunctive and other equitable relief against such unlawful practices in order
27 to prevent future damage and to avoid a multiplicity of lawsuits. Accordingly, Plaintiff Darling
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 and the California Class Members request a preliminary and permanent injunction prohibiting
2 Defendants from the unfair practices complained of herein.

3 34. Defendants generated income as a direct result of the above-mentioned unlawful
4 and unfair business practices. Plaintiff Darling and the California Class Members are therefore
5 entitled to restitution of any and all monies withheld, acquired, and/or converted by Defendants
6 by means of the unfair and unlawful practices complained of herein.

7 35. As a result, Plaintiff Darling and California Class Members seek restitution of
8 their unpaid wages, unpaid overtime, meal and rest break pay, in addition to interest, attorneys'
9 fees, and costs, as necessary and according to proof. Plaintiff Darling seeks the appointment of
10 a receiver, as necessary, to establish the total monetary relief sought from Defendants.

11 36. Specifically, Defendants have engaged in the following unfair business practices:

12 **A.**

13 **Defendants' Failure to Pay Minimum Wages for All Hours Worked**

14 **Under California Law**

15 37. California Labor Code (hereinafter referred to as "Labor Code") § 1194 provides
16 that "Notwithstanding any agreement to work for a lesser wage, any employee receiving less than
17 the legal minimum wage or the legal overtime compensation applicable to the employee is entitled
18 to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime
19 compensation, including interest thereon, reasonable attorney's fees, and costs of suit."

20 38. Labor Code § 1197 empowers the Industrial Welfare Commission to fix the
21 minimum wage and states that "the payment of a less wage than the minimum so fixed is
22 unlawful." Section 4 of applicable Wage Order No. 9 requires Defendant to pay its employees
23 minimum wages for all hours worked.

24 39. Because Defendants failed to compensate Plaintiff Darling and California Class
25 Members for their hours worked off the clock as set forth above, Defendants failed to pay
26 Plaintiff Darling and California Class Members the required minimum wage rate for each hour
27 worked.

28

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

43. Because Defendants failed to compensate Plaintiff Darling and California Class Members for their hours worked off the clock as set forth above, Defendants failed to pay Plaintiff Darling and California Class Members overtime compensation when due.

C.

Defendants’ Failure to Provide Meal Breaks Under California Law

44. Section 11 of the applicable Wage Order states, in relevant part: “(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes . . . If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided.”

45. Labor Code § 226.7 states that: “a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission. (b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.” California Labor Code § 229 provides for a private right of action to enforce the provisions of Labor Code 226.7.

46. Labor Code § 512 provides in relevant part: “An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes . . .”

47. As described above and demonstrated by the comparison of the EMR and electronic timekeeping records, Plaintiff Darling and California Meal Break Subclass Members routinely worked through meal periods as required by Defendants but were not compensated for the missed meal period pursuant to 226.7.

THIRD CAUSE OF ACTION

Failure to Pay Wages for All Hours Worked Under Nevada Law

(On Behalf of Plaintiff Jara and the Nevada Class Against Defendants)

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

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.

57. 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.

58. By failing to compensate Plaintiff and Nevada Class Members for all the overtime hours they were suffered and/or permitted to work as described above, Defendant failed to pay Plaintiff and Nevada Class Members the overtime premium of 1 ½ times their regular rate of pay for all hours worked over 8 hours in a workday and/or 40 in a workweek.

59. Wherefore, Plaintiff Jara demands for herself, and for all members of the Nevada Class, payment by Defendants at 1 ½ times their regular rate of pay for all overtime pay owed during the relevant time period alleged herein, together with attorneys’ fees, costs, and interest as provided by law.

FIFTH CAUSE OF ACTION

Failure to Pay Wages For Interrupted Meal Breaks Under Nevada Law

(On Behalf of Plaintiff Jara and Nevada Meal Subclass Against Defendants)

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

61. NRS 608.019(1) ”Periods for meals and rest” states: “An employer shall not employ an employee for a continuous period of 8 hours without permitting the employee to have a meal period of at least one-half hour. No period of less than 30 minutes interrupts a continuous period of work for the purposes of this subsection.”

62. As described above and demonstrated by the comparison of the EMR and electronic timekeeping records, Plaintiff Jara and Nevada Meal Break Subclass Members

1 routinely worked through meal periods as required by Defendants but were not compensated for
2 the missed meal period.

3 63. NRS 608.140 provides that an employee has a private right of action for unpaid
4 wages. By failing to compensate Plaintiff and Nevada Class Members for all the time they were
5 suffered and/or permitted to work as described above, Defendant failed to pay Plaintiff and
6 Nevada Class Members for all hours they worked.

7 64. Wherefore, Plaintiff Jara demands for herself and for all members of the Nevada
8 Meal Break Class, the payment of all regular rate wages and/or overtime wages, whichever is
9 applicable, during the relevant time period alleged herein, together with attorneys’ fees, costs,
10 and interest as provided by law.

11 **SIXTH CAUSE OF ACTION**

12 **Failure to Timely Pay All Wages Due and Owing Under Nevada Law**

13 (On Behalf of Plaintiff Jara and Nevada Waiting Time Subclass Against Defendants)

14 65. Plaintiffs realleges and incorporates by this reference all the paragraphs above in
15 this Complaint as though fully set forth herein.

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

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

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

27 69. 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

THERMAN BUCK LLP
7287 Lakeside Drive
Reno, NV 89511
(775) 284-1500 Fax (775) 703-5027
Email info@thermanbuck.com www.thermanbuck.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 70. By failing to pay Plaintiff Jara and Nevada Waiting Time Penalty Subclass
5 Members for all hours worked in violation of Nevada state law, Defendants have failed to timely
6 remit all wages due and owing to Plaintiff Jara and all members of Waiting Time Penalty
7 Subclass.

8 71. Despite demand, Defendants willfully refuse and continue to refuse to pay Plaintiff
9 Jara and all members of the Waiting Time Penalty Subclass.

10 72. Wherefore, Plaintiff Jara demands 30 days wages under NRS 608.140 and
11 608.040, and an additional 30 days wages under NRS 608.140 and 608.050, for all members of
12 the Nevada Waiting Time Penalty Subclass, together with attorneys’ fees, costs, and interest as
13 provided by law.

14 **JURY DEMAND**

15 Plaintiffs hereby respectfully demand a trial by jury on all issues so triable.

16 **PRAYER FOR RELIEF**

17 Wherefore Plaintiffs, individually and on behalf of all Class Members and all others
18 similarly situated, pray for relief as follows relating to their collective and class action allegations:

- 19 1. For an order conditionally certifying the action under the FLSA and providing
20 notice to all FLSA Class Members so they may participate in the lawsuit;
- 21 2. For an order certifying this action as a class action on behalf of the proposed
22 Classes and Subclasses;
- 23 3. For an order appointing Plaintiffs as the Representatives of the Classes and
24 Subclasses and for an order appointing their counsel as Class Counsel for each;
- 25 4. For damages according to proof for regular rate or minimum rate pay, whichever
26 is higher, for all hours worked under both federal and state law;
- 27 5. For damages according to proof for overtime compensation for all overtime hours
28 worked under both federal and state law;

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

- 1 6. For liquidated damages;
- 2 7. For one hour of pay at the regular rate or minimum rate pay, whichever is higher,
- 3 for every missed and/or inadequate meal period under California law;
- 4 8. For waiting time penalties;
- 5 9. For interest as provided by law at the maximum legal rate;
- 6 10. For reasonable attorneys' fees authorized by statute;
- 7 11. For costs of suit incurred herein;
- 8 12. For pre-judgment and post-judgment interest, as provided by law, and
- 9 13. For such other and further relief as the Court may deem just and proper.

10
11 DATED: December 22, 2020

THIERMAN BUCK LLP

12
13 *s/ Joshua D. Buck*

Mark R. Thierman

Joshua D. Buck

Leah L. Jones

14
15
16 *Attorneys for Plaintiff*

17
18
19
20
21
22
23
24
25
26
27
28
THIERMAN BUCK LLP
7287 Lakeside Drive
Reno, NV 89511
(775) 284-1500 Fax (775) 703-5027
Email info@thiermanbuck.com www.thiermanbuck.com