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 8 *Attorneys for Plaintiffs RENA NICOLE MEDINA and*
ALYSSA BONHAM on behalf of themselves and
 9 *all others similarly situated*

10 **UNITED STATES DISTRICT COURT**

11 **CENTRAL DISTRICT OF CALIFORNIA**

12 RENA NICOLE MEDINA and ALYSSA
 13 BONHAM on behalf of themselves and all
 14 others similarly situated,

15 Plaintiffs,

16 vs.

17 PEGASUS TRUCKING LLC; and DOES 1-
 18 100,

19 Defendants.

Case No.: 2:20-cv-07269-JAK-JPR

**FIRST AMENDED COLLECTIVE AND
 CLASS ACTION COMPLAINT**

- 1) Failure to Pay Minimum Wages for All Hours Worked (29 U.S.C. § 206(a)(1));
- 2) Failure to Pay Overtime (29 U.S.C. § 207);
- 3) Failure to Compensate for All Hours Worked (NRS 608.140 and 608.016);
- 4) Failure to Pay Minimum Wages for All Hours Worked (Nevada Constitution Section 15 of Article 16);
- 5) Failure to Pay and Overtime Wages for All Hours Worked (NRS 608.140 and 608.018);
- 6) Failure to Timely Pay All Wages Due and Owing (NRS 608.140 and 608.020-050);
- 7) Unlawful Payroll Card Practices in Violation of Nevada Law (NAC 608.1352);
- 8) Unlawful Payroll Deductions in Violation of the FLSA; and

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9) Unlawful Payroll Card Practices in Violation of the Electronic Fund Transfer Act (EFTA) 15 U.S.C. § 1693 et seq.

JURY TRIAL DEMANDED

COME NOW Plaintiffs RENA NICOLE MEDINA and ALYSSA BONHAM, on behalf of themselves and all others similarly situated and alleges the following:

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

JURISDICTION AND VENUE

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

2. This Court has jurisdiction over both the employer and payroll card issuer pursuant to 15 U.S.C. § 1693m(g) which states: “Without regard to the amount in controversy, any action under this section may be brought in any United States district court, or in any other court of competent jurisdiction, within one year from the date of the occurrence of the violation.”

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

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1 4. In addition, this Court has jurisdiction over the Nevada statutory and constitutional
2 minimum wage claims alleged herein because the Parties seeking to recover unpaid wages for all
3 hours worked have a private right of action pursuant to Nevada Revised Statute (“NRS”) sections
4 608.020 through 608.050, 608.140, and NRS 608.262 among others. *See e.g., Neville v. Eighth*
5 *Judicial District Court in & for Cty. of Clark*, Case No. 70696, 133 Nev. Adv. Op. 95, 2017 WL
6 6273614, at *4 (Dec. 7, 2017) and *Porteous v. Capital One Services II, LLC*, 9th Cir. Unpublished
7 Case: 18-16336 dated 04/14/2020. In addition, Section 16 of Article 15(B) of the Nevada State
8 Constitution states:

9 An employee claiming violation of this section may bring an action
10 against his or her employer in the courts of this State to enforce the
11 provisions of this section and shall be entitled to all remedies
12 available under the law or in equity appropriate to remedy any
13 violation of this section, including but not limited to back pay,
14 damages, reinstatement or injunctive relief. An employee who
15 prevails in any action to enforce this section shall be awarded his or
16 her reasonable attorney’s fees and costs.

17 5. Venue is proper in this Court because Defendant PEGASUS TRUCKING, LLC
18 is a California Corporation with its principal place of business at 15001 S. Figueroa St., Gardena,
19 CA 90248. Upon information and belief, a copy and/or electronic data base of all the relevant
20 records are retained at, and/or accessible through, computers located at this same Gardena,
21 California location.

PARTIES

22 6. Plaintiff RENA NICOLE MEDINA, (hereinafter “Plaintiff” or “MEDINA”) 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 from on or about November 26, 2019 to on or about
25 December 8, 2019. Attached hereto as Exhibit A is a copy of Plaintiff MEDINA’s consent to sue
26 to become a party plaintiff to this lawsuit as required by 29 U.S.C. 216(b).

27 7. Plaintiff ALYSSA BONHAM, (hereinafter “Plaintiff” or “BONHAM”) is a
28 natural person who is and was a resident of the State of Nevada and had been employed by
Defendants as a non-exempt hourly employee from on or about November 26, 2019 to December

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1 2, 2019. Attached hereto as Exhibit B is a copy of Plaintiff BONHAM’s consent to sue to become
2 a party plaintiff to this lawsuit as required by 29 U.S.C. 216(b).

3 8. Defendant PEGASUS TRUCKING LLC is listed as the employer on Plaintiffs’
4 itemized pay statement and w-2 tax statements with an address at 15001 S. Figueroa St., Gardena,
5 CA 90248. Mr. Michael Fallas is listed as the Agent of Service for PEGASUS TRUCKING LLC
6 at the following address: 15001 S. Figueroa St., Gardena, CA 90248. Upon information and
7 belief, Defendant is the employer of persons who work at retail stores branded as FALLAS,
8 FALLAS PAREDES, FALLAS DISCOUNT STORES, FACTORY 2-U, CONWAY,
9 WEINER’S, CW PRICE, FALAS (spelled with single "l" in Puerto Rico) and ANNA’S LINEN’S
10 by FALLAS. These retail stores offer brand name and private label clothing for men, ladies,
11 boys, girls, juniors, infants and toddlers along with lingerie, shoes, and household items.

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

17 10. Defendants are employers under the FLSA and are engaged in commerce for the
18 purposes of the FLSA, 29 U.S.C. § 201 *et. seq.* Defendants, and each of them, are also employers
19 under the provisions of Nevada Revised Statutes Chapter 608. For labor relations purposes,
20 Defendants, each and together, constitute the employer and/or joint employer of Plaintiffs and
21 all Plaintiff class members for each of the classes alleged herein.

22 **FACTUAL ALLEGATIONS**

23 **A. System-wide Shorting Of Hours by Manual Override Of Electronic Time**
24 **Clocks**

25 11. Plaintiffs were employed by Defendants as non-exempt hourly paid
26 “Merchandizers” at Defendants’ store number 403 located at 6895 Sierra Center Parkway, Reno,
27 Nevada. At the time of hire and throughout their employment, Plaintiffs were told that they were
28 to be paid at \$10.00 per hour for each and every hour worked. Plaintiffs accepted the offer of

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1 employment based upon that agreed upon hourly wage rate for all hours worked and began
2 working under that agreement.

3 12. But Defendants did not pay Plaintiffs for all hours worked. Instead, Plaintiffs
4 were paid less than half the federal and state minimum wage per hour worked despite the fact
5 that Defendants never revised their contract of employment to reflect this lower hourly wage rate.

6 13. Like all or most of the Defendants’ retail stores, Fallas Store 403 uses an electro-
7 mechanical system for clocking in and clocking out hourly paid workers.

8 14. The hourly paid employees are required to “clock in” when they begin work, and
9 “clock out” when they stop working. Employees are also required to clock in and clock out for
10 lunch breaks. Clocking devices are located immediately adjacent to the work area, and company
11 policy prohibits employees from loitering on site without working once they are clocked in.

12 15. Company policy prohibits the employees from clocking in early without going to
13 work or clocking out later than when they stop working.

14 16. The computer system connected to the electro-mechanical timekeeping devices
15 accurately reports the minimum amount of time worked by each employee. In other words,
16 employees may be suffered or permitted to work before and after their clock in times, commonly
17 known as working off the clock, but all clocked in time is working time and must be
18 compensated. The computer system then uses the clock-in and clock-out data to calculate wages
19 due to each employee.

20 17. Notwithstanding this fool proof method of insuring that employees were paid for
21 all hours that they reportedly worked, Defendants allowed, suffered and/or permitted managers
22 and district managers to systematically utilize a system of manually adjusting the time entries so
23 that the employees are not compensated for all hours worked.

24 18. A true and correct copy of the time entry interface is attached as Exhibit C. As
25 can be seen from Exhibit C, the clock-in and clock-out time entry results are available for review
26 in printed form, or on a computer screen, by store, by time period.

27 19. Whenever there is a manual override of time recorded electronically, the printout
28 states “WARNING” on the time reports.

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1 20. Exhibit C shows an excessive number of “warnings” for the time worked,
2 indicating that the employer was not merely correcting for clerical mistakes like missing punches,
3 but that the employer was systematically shorting hours worked, usually to achieve company
4 mandated “labor budget” goals and projections.

5 21. For example, in one, seven-day week, Exhibit C shows that store cashier Cynthia
6 Giles worked five days, and four of those days contain a manual override of the actual time
7 recorded. Both Plaintiffs Medina and Bonham have one out of three days worked in the first
8 week reported as a manual override. In the next week, the computer printout for Plaintiff Bonham
9 shows four out of four days marked “warning” which means that every day was manually
10 overridden by the store manager or other management employee. And Plaintiff Medina has two
11 out of four days marked “Warning,” meaning her time was manually adjusted half the working
12 days in that workweek.

13 22. In addition, the employer automatically deducted one-half hour per employee per
14 shift for unpaid lunch or meal breaks, but frequently required employees to return to work before
15 one-half hour of time at rest. This automatic deduction for one-half hour meal period, when the
16 employee was working, routinely resulted in unpaid work time.

17 23. NRS 608.019(1) states, in relevant part: “No period of less than 30 minutes
18 interrupts a continuous period of work for the purposes of this subsection.”

19 24. During her time employed by Defendants, Plaintiff Medina actually worked
20 approximately 195 hours at the regular agreed upon rate of \$10.00 per hour. However, based
21 upon the amount of her direct deposit for wages, divided by the hours actually worked in that
22 approximately two-week period, Defendant paid Plaintiff Medina \$2.86 per hour assuming time
23 and one half for hours worked in excess of eight (8) per day, as required by Nevada law, and
24 \$2.98 per hour without daily overtime, assuming only the weekly overtime premium applied
25 under the Federal Fair Labor Standards Act.

26 25. During her time of employment, Plaintiff Bonham actually worked over 149 hours
27 at the promised regular rate of \$10.00 per hour. However, based upon the amount deposited to
28 her pay card as earned wages, divided by the hours actually worked in that approximately two-

1 week period covered by the December 11, 2019 pay card, Defendants paid Plaintiff Bonham .66
2 cents an hour without daily overtime under Nevada law, and .56 cents per hour with daily
3 overtime at time and one half.

4 **B. Rebate and Wage Forfeitures by Payroll Card for the Employer’s Benefit**

5 26. Payroll cards provide an economic benefit to the employer by lowering the
6 employer’s cost of paying employee wages.

7 27. According to Visa, a payroll card deposit costs an employer \$0.35 compared to
8 \$2.00 to issue a paper check. Visa reports that employers who have switched to payroll cards
9 have saved up to 65% in payroll processing costs. *See*, Visa Payroll Card: Reinvent Payday With
10 An Easier, More Cost-Effective Way to Pay and Get Paid (2010), available at
11 <http://usa.visa.com/download/business/visa-payroll-profile.pdf> (last visited June 11, 2014), *cited*
12 in Office of N.Y. State Att’y Gen., Pinched by Plastic: The Impact of Payroll Cards on Low-
13 Wage Workers (2014), <http://www.ag.ny.gov/pdfs/Pinched%20by%20Plastic.pdf>. (last visited
14 2/20/2020).

15 28. Depending on which payroll card system the employer selects, a payroll card
16 system for payment of wages can be neutral, beneficial, or harmful to employees.

17 29. Particularly at risk for abuse by a payroll card system are low-wage workers
18 and/or those with limited financial and literacy skills. Such employees, like Plaintiff BONHAM,
19 often do not have a regular bank account in which to make direct deposit payments.

20 30. An employer who chooses to use a payroll card system in lieu of payments in cash
21 or by check redeemable locally, has a duty to make sure that the payroll card system does not
22 charge employees for the employer’s cost of being paid wages that the employees were promised
23 and that are due to the employees “free and clear” without rebate of any kind.

24 31. Employees do not have the choice to select payment of wages from Defendants
25 in cash or in the form of a check drawn on a local bank, credit union, savings and loan or other
26 financial institution.

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1 32. The Money Network Payroll Program allows for a form of check writing, such
2 checks are only payable without discount or fee at a participating Money Network Check Cashing
3 location.

4 33. Defendants require that all employees who do not elect to be paid by direct deposit
5 into a bank, credit union or other financial institution, must accept payment in the form of a credit
6 on a Money Network Payroll Card.

7 34. Nevada Administrative Code (NAC) 608.135(2) states: An employer may use an
8 electronic payment system, including, but not limited to, a direct deposit, debit card or similar
9 payment system, as an alternative location of payment if: (a) The employee can obtain
10 immediate payment in full; (b) The employee receives at least one free transaction per pay
11 period and any fees or other charges are prominently disclosed to and subject to the written
12 consent of the employee; (c) The alternative location of payment is easily and readily accessible
13 to the employee (d) There are no other requirements or restrictions that a reasonable person
14 would find to be an unreasonable burden or inconvenience; and (e) The use of an electronic
15 payment system is optional at the election of the employee.

16 **C. Electronic Fund Transfer Act (EFTA) 15 USC 1693 et seq**

17 35. 15 U.S.C. § 1693k(2) states: “No person may- require a consumer to establish an
18 account for receipt of electronic fund transfers with a particular financial institution as a condition
19 of employment or receipt of a government benefit.”

20 36. 15 U.S.C. § 1693i prohibits the issuance, absent certain disclosures, of unsolicited
21 validated cards that provide access to a “consumer’s account.” Id. § 1693i. A card is “validated
22 when it may be used to initiate an electronic fund transfer.” Id. § 1693i(c).

23 37. 15 U.S.C. § 1693(l)-1 prohibits charging service fees to “general-use prepaid
24 cards” unless the card has not been used for 12 months and other requirements have been met.
25 Id. § 1693l-1(b). A general-use prepaid card is (1) “redeemable at multiple, unaffiliated
26 merchants or services providers, or automated teller machines”; (2) “issued in a requested
27 amount”; (3) “purchased or loaded on a prepaid basis”; and (4) “honored . . . by merchants for
28 goods or services, or at automated teller machines.” Id. § 1693l-1(a)(2)(A).

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1 38. Defendants indirectly “offer[], advertise[], or . . . promote[]” the Money Network
2 Payroll Card system their employees which constitutes a large section of the general public. *See*
3 12 C.F.R. § 1005.20(b)(4); *Brown v. Stored Value Cards, Inc.*, No. 18-35735 (9th Cir. Mar. 16,
4 2020)

5 39. 12 C.F.R. § 1005.2(b)(3), states that “[t]he term [account] includes a prepaid
6 account.”

7 40. Defendants paid Plaintiff BONHAM and all other employees who did not elect to
8 have direct deposit their wages as a credit on a Money Network payroll card whether they wished
9 to or not.

10 41. Although the Money Network Payroll Card brochure includes an arbitration
11 waiver embedded within an arbitration provision, such a document was delivered with the card
12 itself after, and not before, wages were due and owing the employee. The Money Network Payroll
13 Card has no value except for amount of payroll already earned by the employee diverted to the
14 Card instead of being paid by check or in cash.

15 42. Therefore, the only consideration for agreeing to the terms and conditions of the
16 Money Network Payroll Card system is the payment of wages already due and owing to all the
17 employees who are required to receive their wages on the Money Network Payroll Card,
18 including Plaintiff BONHAM, are wages already owned by the employee. In other words, the
19 employee receives no benefit from the Money Network Payroll Card system except to collect
20 that which is legally owed to the employee already. Therefore, under the laws of every state,
21 there is no legal consideration for the employee agreeing to the provisions of the Money Network
22 Payroll Card, including but not limited to its arbitration provisions.

23 43. Upon information and belief, all non-Money Network ATM machines owned
24 and/or operated by banks, credit unions and/or other financial institutions not expressly affiliated
25 with the Money Network system charge a fee for using their ATMs to disburse funds.

26 44. In addition to the fee charged by any non-affiliated ATM for processing a
27 withdrawal from the Money Network system, Money Network itself charges an additional fee
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1 for using a non-Money Network ATM to access a Money Network account, after the first
2 withdrawal during the pay period.

3 45. Upon information and belief, other cash cards like Schwab Visa Debit card, rebate
4 all fees charged by other institutions ATMs and charge no fees themselves for accessing one’s
5 own money through an ATM machine. Without a rebate to the users of its payroll cards, Money
6 Network is incentivized to have fewer of its own ATM machines available to its users. In
7 addition, the fees charged by Money Network itself for its users to use another institution’s ATM
8 machine are unreasonable compared to the costs to Money Network.

9 46. In addition, most, if not all, ATMs disburse funds in amounts no less than \$20.00
10 increments. In addition, merchants that give “cash back” when someone purchases using a debit
11 card, also restrict their cash back to five, ten or twenty dollars (or more) over the purchases made,
12 and do not allow cash back of sums less than these minimums. Therefore, although the employee
13 may have been told that he or she is entitled to wages in an amount more than \$20.00 increments
14 of an ATM or more than the lowest “cash back” amount allowed by a merchant, the employee
15 cannot withdraw the entire balance of his or her Money Network Payroll card.

16 47. As a result, employees forfeit the amount of money they earned but cannot access
17 due to these limits.

18 48. Therefore, Plaintiff and all other employees who are paid by the Money Network
19 payroll card, must pay a fee to convert their Money Network payroll card into lawful currency
20 and forfeit an amount each pay period because any odd “residual” amount is incapable of being
21 accessed by the employee.

22 49. As a result, whatever regularly hourly rate these employees were promised to have
23 been paid, the employee actually receives a lesser rate “free and clear” because they can’t access
24 the money that is in their “account” without paying these fees and/or experiencing a forfeiture.

25 50. As a result, whatever overtime rate employees are required by law to actually
26 receive as one- and one-half times their agreed upon hourly rate of pay, the employees actually
27 receive a lesser rate because of these fees and forfeitures.

28 **COLLECTIVE AND CLASS ACTION ALLEGATIONS**

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

52. Plaintiffs bring this action on behalf of themselves and all other similarly situated hourly paid employees of the Defendants employed in as both a collective action under the FLSA and as to employees who worked in Nevada during the relevant time, a true Rule 23 class action under Nevada law.

53. The **FLSA WAGE CLASS** is defined as follows: “All current and former hourly paid, non-exempt employees who were employed by Defendants within the United States and Puerto Rico during the relevant time period and who have more than one manual override to the electro-mechanical time keeping system resulting in hours “clocked in but not paid.”

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

- A. Defendants employed Plaintiffs as hourly-paid employees whose hours of work were falsely reported and therefore, did not receive the federal minimum wage and did not receive overtime premium pay at one and one-half times the regular hourly rate of pay (but not less than the minimum wage) for all hours worked over forty (40) hours in a workweek.
- B. Plaintiffs’ situation is similar to those they seek to represent because Defendants failed to pay Plaintiffs and all other **FLSA CLASS** Members for all time they were required to work, but were not paid because of manual alterations to the electro-mechanical time and attendance record keeping system.
- C. Common questions exist as to: 1) Whether the time changed from the employers records, which was not compensated, was time worked for which payment was due; 2) Whether, as a result thereof, Defendants failed to pay Plaintiffs and **FLSA CLASS** Members the federal minimum wage for all hours worked as required by law, and 3) Whether, as a result thereof, Defendants failed to pay Plaintiffs and **FLSA CLASS** Members

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1 one and one-half times their regular hourly agreed upon rate (but not less
2 than the minimum wage) for all hours worked in excess of 40 hours a
3 week; and

4 D. Upon information and belief, Defendants employ, and have employed, in
5 excess of 1,000 FLSA WAGE CLASS Members within the applicable
6 statute of limitations.

7 E. Plaintiffs have signed Consent to Sue forms which have been filed with
8 the Court. Consent to sue forms are not required for state law claims under
9 Rule 23 of the Nevada Rules of Civil Procedure.

10 55. The **NEVADA WAGE CLASS** is defined as follows: “All current and former
11 hourly paid, non-exempt employees who were employed by Defendants within the State of
12 Nevada during the relevant time period and who have more than one manual override to the
13 electro-mechanical time keeping system resulting in hours “clocked in” but not paid.” The
14 **NEVADA WAGE CLASS** is further divided into the following sub-class:

15 A. **WAGES DUE AND OWING SUB-CLASS:** All members of the
16 **NEVADA WAGE CLASS** who, at any time during the Class Period,
17 were terminated or otherwise separated from employment.

18 56. The **NEVADA MONEY NETWORK PAYROLL CARD CLASS** is defined as
19 follows: “All former employees who were employed by Defendant in the State of Nevada during
20 the relevant period of time and who during their employment received payroll wages, including
21 termination pay, through and/or in the form of a Money Network Payroll Card.”

22 57. The **FEDERAL MONEY NETWORK PAYROLL CARD CLASS** is defined
23 as follows: “All former employees who were employed by Defendants in the United States and
24 Puerto Rico during the relevant period of time and who during their employment received payroll
25 wages, including termination pay, through in the form of a Money Network Payroll Card.”

26 58. Rule 23 treatment is appropriate for the **NEVADA WAGE CLASS** and the
27 **WAGES DUE and OWING SUB-CLASS**, the **NEVADA MONEY NETWORK PAYROLL**

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CARD CLASS and the **FEDERAL MONEY NETWORK PAYROLL CARD CLASS** for the following reasons:

A. Class Members are Numerous. The **NEVADA WAGE CLASS** and the **WAGES DUE and OWING SUB-CLASS**, and the **NEVADA MONEY NETWORK PAYROLL CARD CLASS** and the **FEDERAL MONEY NETWORK PAYROLL CARD CLASS** are each sufficiently numerous. Upon information and belief, Defendants employ, and has employed, in excess of 500 employees within the **NEVADA WAGE CLASS** and the **WAGES DUE and OWING SUB-CLASS**, the **NEVADA MONEY NETWORK PAYROLL CARD CLASS** and the **FEDERAL MONEY NETWORK PAYROLL CARD CLASS** within the applicable statute of limitations. Because Defendants are legally obligated to keep accurate payroll and employment records, the members of each subclass is ascertainable from the employers records.

B. Class Members are Easily Ascertainable. Members of the **NEVADA WAGE CLASS** and the **WAGES DUE and OWING SUB-CLASS**, the **NEVADA MONEY NETWORK PAYROLL CARD CLASS** and the **FEDERAL MONEY NETWORK PAYROLL CARD CLASS** are easily ascertainable. Plaintiffs allege that Defendants’ records will establish the identity and ascertainability of members of the **NEVADA WAGE CLASS** and the **WAGES DUE AND OWING SUB-CLASS** by identifying all those employee whose time records show significant manager overrides within the applicable time period, and if that employee was terminated or is still employed. Members of the **NEVADA MONEY NETWORK PAYROLL CARD CLASS** and the **FEDERAL MONEY NETWORK PAYROLL CARD CLASS** are also ascertainable by reference to the employers’ and the Money Network’s records of which employees had payroll cards, and which if any, paid fees for use of the

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cards, and/or forfeited sums too small to be withdrawn from an ATM machine.

C. Plaintiffs’ Claims are Typical to Those of Fellow Class and Sub-Class Members. Each person who is a member of the **NEVADA WAGE CLASS** and **WAGES DUE AND OWING SUB-CLASS, NEVADA MONEY NETWORK PAYROLL CARD CLASS** and the **FEDERAL MONEY NETWORK PAYROLL CARD CLASS** is and was subject to the same practices, plans, and/or policies as Plaintiffs, as follows: 1) Defendants required Plaintiffs and all other individuals who were members of **NEVADA WAGE CLASS** to engage in pre-shift and post-shift activities without compensation; and 2) As a result of working employees without compensation off the clock, Defendants failed to pay Plaintiffs and all members of the **WAGES DUE AND OWING SUB-CLASS** all wages due and owing at the time of their termination or separation from employment; and 3) Plaintiffs and all members of the **NEVADA MONEY NETWORK PAYROLL CARD CLASS** and the **FEDERAL MONEY NETWORK PAYROLL CARD CLASS** were paid by a Money Network card that was not reasonably converted to cash at a local financial institution and could not be used without paying a fee, which was under the circumstance not reasonable.

D. Common Questions of Law and Fact Exist. Common questions of law and fact exist and predominate as to Plaintiffs and the **NEVADA WAGE CLASS** and **WAGES DUE AND OWING SUB-CLASS, NEVADA MONEY NETWORK PAYROLL CARD CLASS**, and the **FEDERAL MONEY NETWORK PAYROLL CARD CLASS** including, without limitation the following: 1) Whether Plaintiffs and all other individuals who were members of the **NEVADA WAGE CLASS** were compensated for “all time worked by the employee at the direction of the employer,

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including time worked by the employee that is outside the scheduled hours of work of the employee” pursuant to the Nevada Administrative Code (“NAC”) 608.115(1), and NRS 608.016; and 2) Whether Defendants delayed final payment to Plaintiffs and all separated class Members in violation of NRS 608.020-050; 3); and Whether Defendants violated federal and/or Nevada state law by paying employees with a Money Network card.

E. Plaintiffs Are Adequate Representatives of the Classes. Plaintiffs will fairly and adequately represent the interests of the **NEVADA WAGE CLASS** and **WAGES DUE AND OWING SUB-CLASS, NEVADA MONEY NETWORK PAYROLL CARD CLASS** and the **FEDERAL MONEY NETWORK PAYROLL CARD CLASS** because Plaintiffs are members of each of these classes, Plaintiffs have issues of law and fact in common with all members of each of these classes, and Plaintiffs do not have any interests antagonistic to the members of any of these classes. Plaintiffs and Counsel are aware of their fiduciary responsibilities to the members of each of the above described classes and are determined to discharge those duties diligently and vigorously by seeking the maximum possible recovery for all of the classes as a group.

F. Class Issues Predominate and a Class Action Is A Superior Mechanism to Hundreds of Individual Actions. Class issues predominate, and a class action is superior to other available means for the fair and efficient adjudication of this controversy, because individual joinder of all members of the Classes 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

1 impossible for individual members of the Classes to redress the wrongs
2 done to them, while and important public interest will be served by
3 addressing the matter as a class action. Individualized litigation would
4 also present the potential for inconsistent or contradictory judgments. In
5 addition, for the **FEDERAL MONEY NETWORK PAYROLL CARD**
6 **CLASS** , 15 U.S.C. § 1693m specifically contemplates such class action
7 status for limitation of the penalty amounts (in addition to actual damages
8 suffered by the class members).

9 **FIRST CAUSE OF ACTION**

10 **Failure to Pay Minimum Wages in Violation of the FLSA, 29 U.S.C. § 206(a)(1)**
11 **(On Behalf of Plaintiffs and all members of the FLSA CLASS Against Defendants)**

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

14 60. 29 U.S.C. § 206(a)(1) states that “Every employer shall pay to each of his
15 employees who in any workweek is engaged in commerce or in the production of goods for
16 commerce, or is employed in an enterprise engaged in commerce or in the production of goods
17 for commerce, wages at the following rates: (1) except as otherwise provided in this section, not
18 less than (A) \$5.85 an hour beginning on the 60th day after the enactment of the Fair Minimum
19 Wage Act of 2007; (B) \$6.55 an hour, beginning 12 months after that 60th day; and C) \$7.25 an
20 hour, beginning 24 months after that 60th day.”

21 61. By failing to compensate Plaintiffs and **FLSA CLASS** Members all working time
22 recorded electronically, Defendants failed to pay Plaintiffs and **FLSA CLASS** Members
23 minimum wages in violation of 29 U.S.C. Section 206(a)(1).

24 62. Defendants’ unlawful conduct has been widespread, repeated, and willful.
25 Defendants knew or should have known that its policies and practices have been unlawful and
26 unfair.

27 63. Wherefore, Plaintiffs demands for herself and for all others similarly situated, that
28 Defendants pay Plaintiffs and all other members of the **FLSA CLASS** the minimum hourly wage

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1 rate or their regular rate of pay, whichever is greater, for all hours worked during the relevant
2 time period together with liquidated damages, attorneys’ fees, costs, and interest as provided by
3 law.

4 **SECOND CAUSE OF ACTION**

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

6 **(On Behalf of Plaintiffs and all members of the FLSA CLASS Against Defendants)**

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

9 65. 29 U.S.C. Section 207(a)(1) provides as follows: “Except as otherwise provided
10 in the section, no employer shall employ any of his employees who in any workweek is engaged
11 in commerce or in the production of goods for commerce, or is employed in an enterprise engaged
12 in commerce or in the production of goods for commerce, for a workweek longer than forty hours
13 unless such employee receives compensation for his employment in excess of the hours above
14 specified at a rate not less than one and one-half times the regular rate at which he is employed.”

15 66. By failing to compensate Plaintiffs and **FLSA CLASS** Members all working time
16 recorded electronically, Defendants failed to pay Plaintiffs and **FLSA CLASS** Members
17 minimum wages for all hours worked, and overtime for all hours worked in excess of forty (40)
18 hours in a week in violation of 29 U.S.C. § 207(a)(1).

19 67. Wherefore, Plaintiffs demand for themselves and for all others similarly situated,
20 that Defendants pay Plaintiffs and **FLSA CLASS** Members one and one-half times their regular
21 hourly rate of pay for all hours worked in excess of forty (40) hours a week during the relevant
22 time period together with liquidated damages, attorneys’ fees, costs, and interest as provided by
23 law.

24 **THIRD CAUSE OF ACTION**

25 **Failure to Pay Wages for All Hours Worked -NRS 608.140 and 608.016**

26 **(On Behalf of Plaintiffs and all members of the NEVADA WAGE CLASS Against**
27 **Defendants)**

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1 of the section may not be waived by agreement between an individual employee and an employer.
2 . . . An employee claiming violation of the section may bring an action against her or her
3 employer in the courts of the State to enforce the provisions of the section and shall be entitled
4 to all remedies available under the law or in equity appropriate to remedy any violation of the
5 section, including but not limited to back pay, damages, reinstatement or injunctive relief. An
6 employee who prevails in any action to enforce the section shall be awarded her or her reasonable
7 attorney’s fees and costs.”

8 76. By failing to compensate Plaintiffs and the individuals who were members of the
9 **NEVADA WAGE CLASS** for all working time as electronically recorded, Defendants failed
10 to pay Plaintiffs and members of the **NEVADA WAGE CLASS** the minimum wage amount for
11 all hours worked in violation of the Nevada Constitution.

12 77. Wherefore, Plaintiff demands for herself and for individuals who are members of
13 the **NEVADA WAGE CLASS** payment by Defendant at their regular hourly rate of pay or the
14 minimum wage rate, whichever is higher, for all hours worked during the relevant time period
15 together with attorneys’ fees, costs, and interest as provided by law.

16 **FIFTH CAUSE OF ACTION**

17 **Failure to Pay Overtime Wages in Violation of NRS 608.140 and 608.018**
18 **(On Behalf of Plaintiffs and all members of the NEVADA WAGE CLASS Against**
19 **Defendants)**

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

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

24 80. NRS 608.018(2) provides as follows: “An employer shall pay 1 1/2 times an
25 employee’s regular wage rate whenever an employee who receives compensation for
26 employment at a rate not less than 1 1/2 times the minimum rate prescribed pursuant to NRS
27 608.250 works (a) More than 40 hours in any scheduled week of work or (b) More than 8 hours
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1 in any workday unless by mutual agreement the employee works a scheduled 10 hours per day
2 for 4 calendar days within any scheduled week of work.

3 81. By failing to compensate Plaintiffs and all individuals who are members of the
4 **NEVADA WAGE CLASS** for all working time as it is recorded electronically, Defendants
5 failed to pay, daily premium overtime rate of time and one half their regular rate to Plaintiffs,
6 and all individuals who are members of the **NEVADA WAGE CLASS** who earned less than
7 \$12.38 per hour, and who worked in excess of 8 hours per shift, and failed to pay weekly overtime
8 to all members of the **NEVADA WAGE CLASS** who worked in excess of over forty (40) hours
9 in a week in violation of NRS 608.140 and 608.018.

10 82. Wherefore, Plaintiffs demand for themselves and for all individuals who are
11 members of the **NEVADA WAGE CLASS** Members one and one-half times their regular hourly
12 rate of pay for all hours worked in excess of forty (40) hours a workweek, and daily overtime at
13 one and one-half times their regular hourly rate of pay for those members of the **NEVADA**
14 **WAGE CLASS** who were paid less than \$12.38 per hour and who worked more than 8 hours in
15 a 24 hour period, during the relevant time period alleged herein together with attorneys’ fees,
16 costs, and interest as provided by law.

17 **SIXTH CAUSE OF ACTION**

18 **Failure to Timely Pay All Wages Due and Owing Upon Termination Pursuant to NRS**
19 **608.140 and 608.020-.050**

20 **(On Behalf of Plaintiffs and the WAGES DUE AND OWING SUB-CLASS Against**
21 **Defendants)**

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

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

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

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1 92. Nevada Administrative code (NAC) 608.1352 states: An employer may use an
2 electronic payment system, including, but not limited to, a direct deposit, debit card or similar
3 payment system, as an alternative location of payment if: (a) The employee can obtain
4 immediate payment in full; (b) The employee receives at least one free transaction per pay
5 period and any fees or other charges are prominently disclosed to and subject to the written
6 consent of the employee; (c) The alternative location of payment is easily and readily accessible
7 to the employee; (d) There are no other requirements or restrictions that a reasonable person
8 would find to be an unreasonable burden or inconvenience; and (e) The use of an electronic
9 payment system is optional at the election of the employee.

10 93. Defendants’ payroll card system violates NAC 608.1352(a), (c), (d) and (e).

11 94. Defendants’ payroll card system violates NAC 608.1352(a) because Plaintiff
12 cannot receive immediate payment in full. For example, the employee cannot go to the Fallas
13 store which issued the payroll card to withdraw the entire amount of the payroll card at the time
14 his or her wages are due. In addition, an employee cannot withdraw the entire amount of his or
15 her wages anywhere (even at a local ATM) immediately in the first use because the ATM
16 provider limits withdrawals to \$500 per transaction, and because the ATM will not distribute the
17 residue amounts less than \$20.

18 95. Defendants’ payroll card system violates NAC 608.1352 (e) because there is no
19 written consent.

20 96. Defendants’ payroll card system violates NAC 608.1352 (d) because (among
21 other reasons, like paying a fee to access one’s own money), the Money Network and/or the
22 employer earns money on the forced deposits of the employees, collects a fee for using another
23 bank’s ATM, and does not reimburse the payroll card holder the costs the other bank charges the
24 cardholder for the transaction. In addition, the Money Network receives the default of money
25 not collected because ATM’s only disburse in \$20 increments.

26 97. Defendants violated NAC 608.1352 (e) because the payroll card system is the
27 “default” system of payment of wages unless the employee elects direct deposit. Employees are
28

1 required to accept the payroll card as payment if they do not elect direct deposit, and therefore
2 do not voluntarily consent to the process.

3 98. Because the Defendants’ payroll card system does not satisfy the requirements of
4 NAC 608.1352, the Defendants have failed to pay all minimum wages, regular rate wages and
5 overtime wages due as required by the Nevada Minimum Wage Amendment of the Nevada
6 Constitution, NRS 608.016, 608.018, and Defendants have failed to pay all continuation wages
7 authorized by 608.020-.050 to Plaintiff and class members who are former employees.

8 **EIGHTH CAUSE OF ACTION**

9 **Unlawful Payroll Deductions in Violation of the FLSA**

10 **(On Behalf of Plaintiff BONHAM and the FEDERAL MONEY NETWORK PAYROLL**
11 **CARD CLASS Against Defendants)**

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

14 100. For an employee who is “employed solely on the basis of a single hourly rate, the
15 hourly rate is the [employee’s]‘regular rate.’” See 29 C.F.R. § 778.110(a).

16 101. If an employee designates to receive his or her pay by direct deposit, then the
17 regular rate is the same as the hourly rate promised.

18 102. But an employee who is issued a payroll card does not receive the agreed upon
19 regular rate.

20 103. As a result, an employee who is issued a payroll card is not paid an overtime rate
21 equal to one and one-half the promised hourly rate which for an hourly paid employee, is the
22 regular rate. See, generally, *Sobczak v. AWL Industries, Inc.*, 540 F. Supp. 2d 354 (E.D.N.Y.
23 2007) (The FLSA protects plaintiffs who have been paid far in excess of the minimum wage, and
24 who have also been paid overtime, but whose base rate was lower than the contractual rate to
25 which they were allegedly entitled.)

26 104. 29 CFR 531.35 states: Whether in cash or in facilities, “wages” cannot be
27 considered to have been paid by the employer and received by the employee unless they are paid
28 finally and unconditionally or “free and clear.” The wage requirements of the Act will not be met

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1 where the employee “kicks-back” directly or indirectly to the employer or to another person for
2 the employer’s benefit the whole or part of the wage delivered to the employee. This is true
3 whether the “kick-back” is made in cash or in other than cash. For example, if it is a requirement
4 of the employer that the employee must provide tools of the trade which will be used in or are
5 specifically required for the performance of the employer's particular work, there would be a
6 violation of the Act in any workweek when the cost of such tools purchased by the employee
7 cuts into the minimum or overtime wages required to be paid him under the Act. *See also*, §
8 531.32(c). (emphasis supplied.)

9 105. Just as in the case of *Silfee v. Automated Data Processing, Inc.*, CIVIL ACTION
10 No. 3:15-CV-00023 (M.D. Pa. Sep. 15, 2016), where the Money Network payroll card system
11 has been declared to be a fee imposed by the employer for the benefit of the employer on payment
12 of wages due, and thus an illegal kickback, the Defendants herein has not paid all wages due as
13 promised by the contract of employment and has not paid overtime based on one and one half
14 the “regular rate” of pay. *See also, Hussein v. Capital Bldg. Servs. Grp., Inc.*, 152 F. Supp. 3d
15 1182 (D. Minn. 2015) (granting conditional certification in the FLSA context based in part upon
16 allegations that the payroll card system was an unlawful fee on wages earned).

17 106. Some employees are paid an hourly wage which, after deduction of the costs of
18 the payroll card is less than the minimum wage required by law.

19 107. The foregoing violations were willful.

20 108. Because the cost of the payroll card system reduces the wages of some employees
21 less than the minimum wage, and reduces the overtime rate paid to all employees who work in
22 excess of 40 hours in a work week to less than one and one half the true agreed upon regular rate,
23 Plaintiffs seek restitution in lost wages, and amounts forfeited and/or paid to the Money Network
24 payroll system from wages due, attorneys fees and costs.

25 **NINTH CAUSE OF ACTION**

26 **Unlawful Payroll Card Practices Violation of the Electronic Fund Transfer Act (EFTA)**

27 **15 U.S.C. § 1693 et seq.**

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1 **(On Behalf of Plaintiff BONHAM and the FEDERAL MONEY NETWORK PAYROLL**
2 **CARD CLASS Against Defendants)**

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

5 110. Plaintiff **BONHAM** and all members of the **FEDERAL MONEY NETWORK**
6 **PAYROLL CARD CLASS** are consumers as that term is used in the Electronic Funds Transfer
7 Act (15 U.S.C. § 1693 et seq.

8 111. The primary objective of the EFTA is to protect consumer rights by providing a
9 basic framework establishing the rights, liabilities, and responsibilities of participants in the
10 electronic fund and remittance transfer systems.

11 112. Employees whose wages are deposited onto a payroll card are entitled to the
12 protections of The Electronic Fund Transfer Act (EFTA) generally, and Regulation E’s
13 provisions applicable to payroll cards specifically.

14 113. The Electronic Fund Transfer Act and Regulation E prohibit employers from
15 forcing employees to receive wages via pay card of the employer’s choosing without the option
16 of receiving payment in cash or bank check which can be negotiated locally for cash without
17 payment of fees.

18 114. Among its consumer protection provisions, the EFTA prohibits the unsolicited
19 issuance to a consumer of an electronic fund transfer card that does not meet all of the EFTA’s
20 unsolicited access device criteria. See 15 U.S.C. § 1693(i).

21 115. ETFA Section 1693i prohibits the issuance, absent certain disclosures, of
22 unsolicited validated cards that provide access to a “consumer’s account.” ETFA § 1693i(c) says
23 that a card is “validated when it may be used to initiate an electronic fund transfer.”

24 116. ETFA Section 16931-1 prohibits charging service fees to “general-use prepaid
25 cards” unless the card has not been used for 12 months and other requirements have been met.
26 ETFA § 16931-1(b).

27 117. A general-use prepaid card is (1) “redeemable at multiple, unaffiliated merchants
28 or services providers, or automated teller machines”; (2) “issued in a requested amount”; (3)

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1 “purchased or loaded on a prepaid basis”; and (4) “honored . . . by merchants for goods or
2 services, or at automated teller machines.” ETFA § 16931-1(a)(2)(A). A general-use prepaid card
3 does not include a card that “is not marketed to the general public.” Id. § 16931-1(a)(2)(D)(iv).

4 118. The Money Network Card is general-use prepaid card which charges a
5 maintenance fee regardless of whether or not the card has been used within twelve months.

6 119. From the moment Plaintiffs and each member of the FEDERAL MONEY
7 NETWORK PAYROLL CARD CLASS received the Money Network card, she had only five
8 days to either spend the money or retrieve the card’s cash value. Therefore, the Money Network
9 Payroll System Cards are not the functional equivalent of cash or a check because the value of
10 the cards quickly and permanently deteriorates.

11 120. As previously stated, other pre-paid cards have either no fees or fess much less
12 than those imposed by the Money Network Card.

13 121. In addition, the fees were a result of shifting the burden of preparing payroll from
14 the employer to the employee, which is prohibited by law.

15 122. Therefore, Money Network Payroll system charge Plaintiff BONHAM fees
16 charged by the were not reasonable.

17 123. Defendants and each of them forced employees who do not have established bank
18 accounts to receive their wages on a payroll card of the employer’s choosing that had
19 unreasonably high fees and was not conveniently converted into cash, at full value without
20 discount or fees at any local, nearby location within a reasonable period of time but not less than
21 one year.

22 124. Wherefore, Plaintiff BONHAM and all members of the FEDERAL MONEY
23 NETWORK PAYROLL CARD CLASS demand return of all fees they paid for using the Money
24 Network Payroll Card , pursuant to 15 U.S.C. § 1693m(a)(1), plus additional damages pursuant
25 to 15 U.S.C. § 1693m(a)(2), together with costs and reasonable attorney's fee as determined by
26 the court.

27 **JURY TRIAL DEMANDED**

28 Plaintiffs hereby demand a jury trial pursuant to Federal Rule of Civil Procedure 38.

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PRAYER FOR RELIEF

Wherefore Plaintiffs, individually and on behalf of all Class Members alleged herein, pray for relief as follows:

1. For an order conditionally certifying the action under the FLSA and providing notice to all FLSA CLASS members so they may participate in the lawsuit;
2. For an order certifying the action as a traditional class action under Federal Rule of Civil Procedure Rule 23 on behalf of all members of the NEVADA WAGE CLASS and the WAGES DUE AND OWING SUB-CLASS, and the MONEY NETWORK PAYROLL CARD CLASSES;
3. For an order appointing Plaintiffs as the Representatives of the Classes and their counsel as Class Counsel for the Classes;
4. For damages according to proof for regular rate pay under federal laws for all hours worked;
5. For damages according to proof for minimum rate pay under federal law for all hours worked;
6. For damages according to proof for overtime compensation under federal law for all hours worked over 40 per week;
7. For liquidated damages pursuant to 29 U.S. C. § 216(b);
8. For damages according to proof for regular rate pay under NRS 608.140 and 608.016 for all hours worked;
9. For damages according to proof for minimum wage rate pay under the Nevada Constitution for all hours worked;
10. For damages according to proof for overtime compensation under NRS 608.140 and 608.018 for all hours worked for those employees who earned a regular rate of less than one and one half times the minimum wage for hours worked in excess of 8 hours per day and/or for all class members for overtime premium pay of one and one half their regular rate for all hours worked in excess of 40 hours per week;

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- 11. For sixty days of waiting time penalties pursuant to NRS 608.140 and 608.040-.050;
- 12. For statutory and actual damages as provided by the Electronic Fund Transfer Act pursuant to 15 U.S.C. § 1693m(a)(1) and (2);
- 13. For interest as provided by law at the maximum legal rate;
- 14. For reasonable attorneys’ fees authorized by statute;
- 15. For costs of suit incurred herein;
- 16. For pre-judgment and post-judgment interest, as provided by law; and
- 17. For such other and further relief as the Court may deem just and proper.

DATED: October 30, 2020

Respectfully Submitted,
THIERMAN BUCK LLP

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

Attorneys for Plaintiffs and the Putative Classes