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Attorneys for Plaintiff EMILY NEVETT

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

27 EMILY NEVETT, on behalf of herself and
28 all others similarly situated,

Plaintiff,

vs.

RENOWN HEALTH, and DOES 1 through
50, inclusive,

Defendants.

Case No.: 3:21-CV-00319-RCJ-WGC
**STIPULATION AND ORDER TO FILE
PLAINTIFF'S PROPOSED FIRST
AMENDED COMPLAINT**

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1 Plaintiff EMILY NEVETT, on behalf of herself and all others similarly situated
2 (“Plaintiff”), by and through her counsel of record THIERMAN BUCK, LLP, and Defendant
3 RENOWN HEALTH, by and through their counsel of record LITTLER MENDELSON P.C.
4 (collectively “the Parties”), hereby stipulate and agree that Plaintiff may file with the Court,
5 without further motion, the Proposed First Amended Complaint, a copy of which is attached
6 hereto as **Exhibit A**.

7 By agreeing to this stipulation, neither Party waives any rights and/or defenses to the
8 claims and/or factual allegations asserted in the Proposed First Amended Complaint, including
9 but not limited to any disputes related to the applicable statute of limitations, relation back to
10 the filing date of the Original Complaint, and/or equitable tolling of the limitations period.

11 Additionally, and in the interest of judicial economy, the parties also hereby stipulate
12 that Plaintiff will withdraw her Motion to Remand to State Court (ECF No. 6) upon granting of
13 this Stipulation and Order.

14 Respectfully submitted,

15
16 Dated: August 24, 2021
17 THIERMAN BUCK, LLP

Dated: August 24, 2021
LITTLER MENDELSON, P.C.

18
19 /s/ Joshua D. Buck
20 Mark R. Thierman, Bar No. 8285
21 Joshua D. Buck, Bar No. 12187
22 Leah L. Jones, Bar No. 13161
23 Joshua R. Hendrickson, Bar No. 1225

/s/ Ethan D. Thomas
Montgomery Y. Paek, Bar # 10176
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24 *Attorneys for Plaintiff EMILY NEVETT on*
25 *behalf of themselves and*
26 *All others similarly situated*

Attorneys for Defendant RENOWN HEALTH.

27 ///
28 ///

ORDER

1
2 The Parties' stipulation to allow Plaintiff to file a First Amended Complaint is hereby
3 GRANTED. Plaintiff shall file the First Amended Complaint within seven (7) days of entry of
4 this Order.

5 IT IS SO ORDERED.

6 DATED: August 25, 2021
7

8 *William G. Cobb*
9 _____
10 U.S. Magistrate Judge

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EXHIBIT A

Proposed First Amended Complaint

EXHIBIT A

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7 ATTORNEYS FOR PLAINTIFFS
8 AND THE PUTATIVE CLASSES

9 UNITED STATES DISTRICT COURT
10 DISTRICT OF NEVADA

11
12 EMILY NEVETT and BONNIE NOBLE,
on behalf of themselves and all other
13 similarly situated individuals,

14 Plaintiffs,

15 vs.

16 RENOWN HEALTH, and DOES 1 through
17 50, inclusive,

18 Defendant(s).

Case No.: 3:21-cv-00319-RCJ-WGC

**FIRST AMENDED COLLECTIVE AND
CLASS ACTION COMPLAINT**

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

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

JURY TRIAL DEMANDED

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24 COME NOW Plaintiffs EMILY NEVETT and BONNIE NOBLE (“Plaintiffs”), on behalf
25 of themselves and all other similarly situated and typical persons, and allege the following:

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

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

3 **JURISDICTION AND VENUE**

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

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

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

22 **PARTIES**

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

25 5. Plaintiff BONNIE NOBLE is a natural person who was employed by Defendant
26 within the State of Nevada from on or about 2015 to August 2020.

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1 6. Defendant RENOWN HEALTH (“Renown” or “Defendant”) is a Nevada
2 Nonprofit Corporation with its principle place of business at 50 W. Liberty Street, 11th Floor,
3 Reno, Nevada 89502.

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

9 **FACTUAL ALLEGATIONS**

10 **A. The Parties**

11 8. Renown is a not-for-profit corporation that operates primarily in Washoe County.

12 9. Plaintiff NEVETT was employed by Renown as a Registered Nurse (RN) in the
13 medical-surgery department.

14 10. Plaintiff NEVETT was an hourly paid non-exempt patient care union employee
15 and earned \$30.62 per hour at the time of her termination. In addition to her hourly rate of pay,
16 Plaintiff NEVETT, and all other similarly situated individuals, also received a non-discretionary
17 PACE bonus that was based on employee earnings during the preceding year. Plaintiff NEVETT
18 received one such PACE bonus during her employment with Defendant in the amount of
19 \$1,514.74. Upon information and belief, this bonus was not included in the regular rate of pay
20 for overtime payment calculations for Plaintiff NEVETT or any other member of the putative
21 class members identified below.

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

26 12. Plaintiff NOBLE worked at the Renown Rehabilitation Hospital in Reno, Nevada
27 from about 2015 to 2019. While employed at the Renown Rehabilitation Hospital, she worked as
28 a non-exempt, hourly paid Certified Nursing Assistant from about 2015 – 2018 and from about

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1 2018 to 2019, she worked as a non-exempt, hourly paid Unit Clerk. These were non-union
2 positions. Plaintiff NOBLE worked at the Renown Regional Medical Center from about 2019 to
3 about August 2020 as a non-exempt, hourly paid Certified Nursing Assistant. This was also a
4 non-union position.

5 13. At the end of her employment with the Renown Regional Medical Center, Plaintiff
6 NOBLE earned approximately \$16.40 per hour.

7 14. Plaintiff NOBLE's regular schedule at the Renown Rehabilitation Hospital was
8 three 12.5 hour shifts per week. Plaintiff NOBLE's regular schedule at the Renown Regional
9 Medical Center was five 8.5 hour shifts per week. In addition to her regularly scheduled shifts,
10 Plaintiff NOBLE also routinely worked extra shifts and extra hours.

11 **B. Renown's Timekeeping and Electronic Medical Records Systems**

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

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

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

25 **C. A Comparison Between KRONOS and EPIC Data Demonstrates That Defendant**
26 **Suffered and/or Permitted Patient Care Employees To Perform Work Without**
27 **Compensation**

28 18. Plaintiffs performed work for which they were not compensated.

1 19. A comparison between the KRONOS and EPIC data demonstrates and/or will
2 demonstrate that Plaintiffs interacted with the EPIC system when they were either off-the-clock
3 and/or during their meal break; therefore, Plaintiffs were not compensated for all the hours that
4 they actually worked.

5 20. Defendant and Defendant's agents were aware that Plaintiffs and all other
6 similarly situated employees were working without compensation because employees were
7 required to be physically present at Defendant's facility and the EPIC system recorded the time
8 when Plaintiffs and similarly situated employees made entries. Defendant's agents would
9 routinely observe Plaintiffs and all others similarly situated making these patient chart EPIC
10 entries "off the clock" such as during lunch breaks and before and after scheduled shifts.

11 21. Despite knowing that Plaintiffs and other similarly situated individuals were
12 performing work off-the-clock and without compensation, Defendant failed to prevent the
13 performance of such work. Defendant suffered and permitted Plaintiffs to continue doing
14 uncompensated work that they were engaged to perform.

15 **D. Defendant Automatically Deducted 30-Minutes For Meal Periods Without**
16 **Verification That Employees Received A Full Uninterrupted 30-Minute Meal**
17 **Break ("Auto Deduct Policy")**

18 22. Plaintiffs and other similarly situated employees did not clock out for meal
19 periods. Instead, Defendant maintained a policy whereby 30-minutes would be automatically
20 deducted from the hours worked each shift that an employee worked ("Auto Deduct Policy"). In
21 other words, when Plaintiffs were scheduled for, and worked, 12.5 hour shifts, Plaintiffs were
22 only compensated for 12 hours of work; when Plaintiffs were scheduled for, and worked, 8.5
23 hour shifts, they were only compensated for 8 hours of work.

24 23. Defendant deducted 30-minutes for a meal period without verifying that Plaintiffs
25 and other similarly situated employees were able to take a lunch break. Since the KRONOS data
26 shows that an employee was clocked in/out for the full shift, and that Defendant automatically
27 took back 30-minutes of those work hours and did not pay employees for that time, Defendant
28 bears the burden of confirming that Plaintiffs and other similarly situated employees did not

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1 perform any work during the 30-minutes that were removed from employee time records. If
2 Defendant cannot meet its burden that an employee did not perform any compensable work
3 during those 30-minutes, it must compensate these employees at their applicable wage rate for
4 the 30-minutes that Defendant manipulated from employees’ pay.

5 24. Plaintiffs were not able to take at least a 30-minute uninterrupted lunch. A
6 comparison between the KRONOS data and the EPIC data demonstrate that Plaintiffs were not
7 fully relieved of duty for their lunch break that was automatically deducted from their pay.
8 Furthermore, Plaintiffs were always required to carry a Renown-provided telephone/radio with
9 them, and respond to any calls, during any attempted meal break and was not allowed to leave
10 Defendant’s premises for a meal break. Accordingly, Plaintiffs are entitled to recover wages at
11 their applicable wage rate that were automatically deducted by Defendant for themselves and all
12 similarly situated employees.

13 **E. Defendant Did Not Include On-Call Shift Hours Worked Into The Weekly**
14 **Overtime Computation (“On-Call Overtime Policy”)**

15 25. Defendant paid Plaintiff NEVETT and all other similarly situated employees a
16 premium when they worked an on-call shift. The premium was 1 ½ times an employees’ regular
17 hourly rate of pay (“On-Call Premium”).

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

20 27. When Plaintiff NEVETT worked an on-call shift, Defendant did not compensate
21 Plaintiff NEVETT at her overtime rate of 1 ½ times her regular rate of pay when she worked
22 over 40 hours in that workweek. Instead, Defendant only compensated Plaintiff NEVETT her
23 regular base hourly rate for her regular shifts, in the amount of \$1,102.32 (\$30.62 x 36 hours),
24 and her regular base On-Call Premium for her on call hours in the amount of \$551.16 (\$45.93 x
25 12 hours).

26 28. Plaintiff NEVETT’s regular rate for the workweeks that she works an on call shift
27 is \$34.45. (Her total monetary remuneration of \$1,653.48, divided by total hours worked of 48
28 hours.) Thus, her overtime rate is \$51.68. Here total wages should have been paid as follows:

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1 \$1,791.44 (\$1,378 in regular rate wages for 40 regular hours and \$413.44 in overtime wages for
2 8 overtime hours). The difference between what Defendant paid Plaintiff NEVETT (\$1,653.48)
3 and what Plaintiff NEVETT is owed (\$1,791.44) is \$137.96.

4 29. During the course of her employment with Defendant, Plaintiff NEVETT worked
5 approximately 10 on call shifts. Each on-call shift that she worked was in addition to her
6 regularly scheduled shifts so that Plaintiff NEVETT incurred overtime hours during those
7 workweeks that she worked an on-call shift. Accordingly, Plaintiff NEVETT is owed an
8 estimated amount of \$2,069.40 in unpaid overtime wages.

9 30. Defendant’s overtime pay compensation scheme was not unique to Plaintiff
10 NEVETT. Defendant paid all employees who worked on-call shifts in the same fashion.
11 Defendant similarly failed to compensate all similarly situated employees at the correct overtime
12 rate when they worked over 40 hours in a workweek.

13 **CLASS ACTION ALLEGATIONS**

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

16 32. Plaintiffs bring this action on behalf of themselves and all other similarly situated
17 and typical employees as both a collective action under the FLSA and a class action under Nevada
18 wage-hour laws.

19 **FLSA Classes**

20 33. Plaintiffs bring this action on behalf of themselves and the following **FLSA**
21 **Classes** of similarly situated individuals employed by Defendant:

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

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C. **FLSA 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.

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

35. Defendant employed Plaintiffs as hourly-paid employees who did not receive their full wages for all the hours that they worked, and, where applicable, their overtime premium pay at one and one-half times the regular rate of pay for all hours worked over forty (40) hours in a workweek.

36. Plaintiffs’ situation is similar to those they seek to represent because Defendant failed to pay Plaintiffs and all other FLSA Class Members for all time they were required to work, but with the knowledge, acquiescence and/or approval (tacit as well as expressed) of Defendant’s managers and agents.

37. Common questions exist as to whether Plaintiffs and all other FLSA Class Members worked off the clock and without compensation.

38. Upon information and belief, Defendant employs, and has employed, in excess of 1,000 FLSA Class Members within the applicable statute of limitations.

39. Plaintiffs have signed or will sign a Consent to Sue form to be filed in the court shortly.

40. Plaintiffs bring this action on behalf of themselves and the following **Nevada Classes** of similarly situated individuals employed by Defendant:

A. **Nevada Off-the-Clock Class:** All nonexempt hourly paid persons employed by Defendant in the state of Nevada who interacted with EPIC off the clock (as demonstrated by the comparison between the EPIC and KRONOS time data) at any time during the relevant time period alleged herein.

1. **Non-Union Subclass:** All members of the Nevada Off-the-Clock Class who are not covered by a collective bargaining agreement.

1 B. **Nevada Auto Deduct Class:** All nonexempt hourly paid
2 persons employed by Defendant in the state of Nevada who
3 were subject to Defendant’s Auto Deduct Meal Break policy
4 at any time during the relevant time period alleged herein.

5 1. **Non-Union Subclass:** All members of the Nevada Auto
6 Deduct Class who are not covered by a collective
7 bargaining agreement.

8 C. **Continuation Wage Class:** All members of the FLSA
9 and/or Nevada Classes who are former employees at any
10 time during the relevant time period alleged herein.

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

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

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

- 20 1) Whether Defendant failed to compensate Plaintiffs and members of the
21 Off-the-Clock Class for all the hours they worked, as demonstrated by the
22 difference between the EPIC and KRONOS data;
- 23 2) Whether Defendant can prove that Plaintiffs and members of the Auto
24 Deduct Class took an uninterrupted 30-minute meal period for each and
25 every shift that Defendant deducted 30-minutes from their wages; and
- 26 3) Whether Defendant failed to pay members of the Continuation Wage Class
27 all their wages due and owing at the time of termination.

28 C. Plaintiffs’ Claims are Typical to Those of Fellow Class Members:
Defendant directed, suffered and/or permitted Plaintiffs to perform work without
compensation; Plaintiffs were the victims of Defendant’s Auto Deduct policy whereby

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1 Defendant deducted 30-minutes from their wages even though they were never authorized
2 and/or permitted to take a full 30-minute uninterrupted break; and, as a result of the federal
3 and state wage-hour violations set forth herein, Plaintiffs were not compensated their full
4 wages due and owing to them at the time of their termination of employment. Because
5 Plaintiffs are the victims of all of the wrongs committed by Defendant as all members of
6 the Classes that they seek to represent, their claims are typical.

7 D. Plaintiffs are Adequate Representatives of the Classes: Plaintiffs will
8 fairly and adequately represent the interests of Class Members because Plaintiffs are
9 members of the Classes, they have common issues of law and fact with all members of
10 the Classes, and their claims are typical to other Class Members.

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

21 **FIRST CAUSE OF ACTION**

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

23 (On Behalf of Plaintiffs and all members of the FLSA Classes Against Defendant)

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

26 43. 29 U.S.C. Section 207(a)(1) provides as follows: “Except as otherwise provided
27 in the section, no employer shall employ any of his employees who in any workweek is engaged
28 in commerce or in the production of goods for commerce, or is employed in an enterprise engaged

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1 in commerce or in the production of goods for commerce, for a workweek longer than forty hours
2 unless such employee receives compensation for his employment in excess of the hours above
3 specified at a rate not less than one and one-half times the regular rate at which he is employed.”

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

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

13 **SECOND CAUSE OF ACTION**

14 **Failure to Pay Wages for All Hours Worked Under Nevada Law**

15 (On Behalf of Plaintiffs and the Nevada Off-the-Clock and Nevada Auto Deduct Classes
16 Against Defendant)

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

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

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

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

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

5 51. By maintaining the Auto Deduct policy, whereby Defendant deducted 30-minutes
6 of wages from Plaintiffs and Nevada Auto Deduct Class Members' pay without verification that
7 Plaintiffs and Auto Deduct Class Members took a full, duty free, uninterrupted meal period,
8 Defendant failed to pay Plaintiffs and Nevada Auto Deduct Class Members for all hours that they
9 worked.

10 52. Wherefore, Plaintiffs demand for themselves and for all members of the Nevada
11 Off the Clock and Nevada Auto Deduct Classes, the payment of all regular rate wages owed for
12 three years immediately preceding the filing of this complaint until the date of judgement after
13 trial, together with attorneys' fees, costs, and interest as provided by law.

14 **THIRD CAUSE OF ACTION**

15 **Failure to Pay Overtime Wages for All Hours Worked Under Nevada Law**

16 (On Behalf of Plaintiff NOBLE and the Nevada Off-the-Clock Non-Union Subclass and
17 Nevada Auto Deduct Non-Union Subclass Against Defendant)

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

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

22 55. NRS 608.018(1) provides as follows:

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

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56. 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.

57. By failing to compensate Plaintiff NOBLE and Nevada Off-the-Clock Non-Union Subclass Members for all the 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 NOBLE and Nevada Off-the-Clock Non-Union Subclass 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.

58. By maintaining the Auto Deduct policy, whereby Defendant deducted 30-minutes of wages from Plaintiff NOBLE and Nevada Auto Deduct Non-Union Subclass Members’ pay without verification that Plaintiff NOBLE and Nevada Auto Deduct Non-Union Subclass Members took a full, duty free, uninterrupted meal period, Defendant failed to pay Plaintiff NOBLE and Nevada Auto Deduct Non-Union Subclass 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 NOBLE demands for herself, and for all members of the Nevada Off the Clock Non-Union Subclass and Nevada Auto Deduct Non-Union Subclass, payment by Defendant at 1 ½ times their regular rate of pay for all overtime pay owed for three years immediately preceding the filing of this complaint until the date of judgement after trial, together with attorneys’ fees, costs, and interest as provided by law.

FOURTH CAUSE OF ACTION

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

(On Behalf of Plaintiffs and the Continuation Wage Class Against Defendant)

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

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

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

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

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

17 65. By failing to pay Plaintiffs and all members of Continuation Wage Class for all
18 hours worked in violation of federal and state law, Defendant has failed to timely remit all wages
19 due and owing to Plaintiffs and all members of Continuation Wage Class.

20 66. Despite demand, Defendant willfully refuses and continues to refuse to pay
21 Plaintiffs and all members of the Continuation Wage Class.

22 67. Wherefore, Plaintiffs demand 30 days wages under NRS 608.140 and 608.040,
23 and an additional 30 days’ wages under NRS 608.140 and 608.050, for all members of the Nevada
24 Continuation Wage Class, together with attorneys’ fees, costs, and interest as provided by law.

25 **JURY DEMAND**

26 Plaintiffs hereby respectfully demand a trial by jury on all issues so triable.
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PRAYER FOR RELIEF

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

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 this action as a class action on behalf of the proposed Classes;
3. For an order appointing Plaintiffs as the Representatives of their respective Classes and their counsel as Class Counsel;
4. For damages according to proof for regular rate or minimum rate pay, whichever is higher, for all hours worked under both federal and state law;
5. For damages according to proof for overtime compensation for all overtime hours worked under both federal and state law;
6. For liquidated damages;
7. For 60-days of continuation wages;
8. For interest as provided by law at the maximum legal rate;
9. For reasonable attorneys' fees authorized by statute;
10. For costs of suit incurred herein;
11. For pre-judgment and post-judgment interest, as provided by law, and
12. For such other and further relief as the Court may deem just and proper.

DATED: August 24, 2021

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

Attorneys for Plaintiffs