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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

EDDY MARTEL et al.,

Plaintiffs,

vs.

MEI-GSR Holdings, LLC et al.,

Defendants.

3:16-cv-00440-RJC-WGC

ORDER

This putative class action arises out of alleged wage-and-hour violations under NRS Chapter 608. Now pending before the Court are Plaintiffs’ Motion to Remand (ECF No. 8.) and Defendants’ Motion to Dismiss (ECF No. 6). For the reasons given herein, the Court grants the Motion to Remand and denies the Motion to Dismiss as moot.

I. FACTS AND PROCEDURAL HISTORY

Plaintiffs Eddy Martel, Mary Anne Capilla, Janice Jackson-Williams, and Whitney Vaughan (collectively “Plaintiffs”) are former non-exempt hourly employees of Defendants HG Staffing, LLC and MEI-GSR Holdings, LLC d/b/a Grand Sierra Resort (collectively “Defendants” or “GSR”). (Compl. ¶¶ 5–13, ECF No. 1-1.) Martel was a Bowling Center Attendant from January 2012 through July 2014; Capilla was a Dealer from March 2011 through September 2013; Jackson-Williams was a Room Attendant from April 2014 through December

1 2015; and Vaughan was a “Dancing Dealer”—described by Plaintiffs as “part cards dealer, part
2 go-go dancer”—from August 2012 through June 2013. (*Id.* ¶¶ 5–8.)

3 On June 14, 2016, Plaintiffs filed a class action complaint in Nevada’s Second Judicial
4 District Court, alleging Defendants maintained several policies or practices that resulted in off-
5 the-clock work and the underpayment of overtime:

6 ***Off-the Clock Work Due to Time Clock Rounding.*** First, Plaintiffs allege generally that
7 GSR’s policy of rounding time clock punches to the nearest quarter-hour prior to calculating
8 payroll is unlawful, in that it “favors the employer and deprives the employees of pay for time
9 they actually perform work activities.” (*Id.* at ¶ 16.)

10 ***Off-the-Clock Work Due to Cash Bank Policy.*** In addition, Martel alleges he was
11 required to carry a “cash bank” during his shifts. (*Id.* at ¶¶ 17–19.) Prior to starting his shift,
12 Martel had to retrieve the cash bank from GSR’s dispatch cage and then proceed to his
13 workstation. (*Id.*) After his shift ended, he was required to reconcile and return the bank to the
14 same cage. (*Id.*) Martel alleges GSR required these tasks to be done off the clock, and estimates
15 he spent approximately fifteen minutes a day completing them. (*Id.*) Martel also alleges the
16 policy was applicable to “cashiers, bartenders, change persons, slot attendants, retail attendants,
17 and front desk agents.” (*Id.*)

18 ***Off-the-Clock Work Due to Dance Class Policy.*** Vaughan alleges that “servetainers” and
19 “dancing dealers” were not compensated for mandatory off-the-clock dance classes, which
20 resulted in roughly two to four hours of uncompensated work time each week. (*Id.* at ¶¶ 20–21.)

21 ***Off-the-Clock Work Due to Pre-Shift Meetings.*** Jackson-Williams alleges that room
22 attendants and housekeepers were required to arrive to work twenty minutes prior to the
23 beginning of each scheduled shift to receive assignments, submit to a uniform inspection, and
24 collect tools and materials necessary to complete their jobs. (*Id.* at ¶¶ 22–23.) Employees were

1 not compensated for these twenty minutes. (*Id.*) Capilla and Martel also allege that all cocktail
2 waitresses, bartenders, dealers, security guards, technicians, construction workers, and retail
3 attendants had to attend a mandatory pre-shift meeting every workday. (*Id.* at ¶¶ 24–25.) These
4 meetings lasted “ten minutes or more” and were uncompensated. (*Id.*)

5 ***Off-the-Clock Work Due to Uniform Policy.*** Vaughan alleges that dancing dealers,
6 waitresses, and baristas were required to change into their uniforms on site and off the clock. (*Id.*
7 at ¶¶ 26–28.) Vaughan estimates it took her a total of at least fifteen minutes each workday to
8 change into and out of her uniform. (*Id.*)

9 ***Underpayment of Overtime Due to “Shift Jamming.”*** Lastly, Plaintiffs allege
10 Defendants’ “shift-jamming” policy resulted in the underpayment of overtime wages. (*Id.* at ¶¶
11 29–37.) This claim is based on Nevada’s statutory definition of “workday,” which is “a period of
12 24 consecutive hours which begins when the employee begins work.” NRS § 608.0126.
13 According to Plaintiffs, Defendants “routinely” required employees to work eight-hour shifts,
14 and then begin subsequent shifts less than twenty-four hours after the start of the previous shift.
15 (Compl. ¶¶ 29–37.) Plaintiffs’ theory is that if an employee works an eight-hour shift on Monday
16 beginning at 9:00 a.m., and then starts another shift on Tuesday at 8:00 a.m., the employee would
17 be entitled to overtime compensation for the first hour of Tuesday’s shift under § NRS 608.018
18 (“An employer shall pay 1-1/2 times an employee’s regular wage rate whenever an employee
19 who receives compensation for employment at a rate less than 1-1/2 times the minimum rate
20 prescribed pursuant to NRS 608.250 works . . . [m]ore than 8 hours in any *workday*.”) (emphasis
21 added).

22 On July 25, 2016, Defendants timely removed the action to this Court. (Pet. Removal,
23 ECF No. 1.) Defendants’ basis for invoking the Court’s jurisdiction is Section 301 of the Labor
24 Management Relations Act of 1947 (“LMRA”). (*Id.* at ¶ 6.) Defendants assert that a valid

1 collective-bargaining agreement (“CBA”) between GSR and certain classes of employees was in
2 effect at times relevant to the Complaint, and argue that Plaintiffs’ action arises under or is at
3 least “substantially dependent” on a CBA. (*Id.* at ¶¶ 7–11.) Of the four named plaintiffs in this
4 action, Defendants assert only that Jackson-Williams was ever subject to a CBA, and “readily
5 admit” that Martel and Capilla were not covered by any such agreement. (Resp. 9, ECF No. 10.)

6 On August 1, 2016, Defendants filed a Motion to Dismiss. (ECF No. 6.) On August 17,
7 2016, Plaintiffs filed their Motion to Remand. (ECF No. 8.) On August 24, 2016, the Court
8 partially granted a stipulation of the parties to stay proceedings, and stayed briefing on
9 Defendants’ Motion to Dismiss pending the Court’s determination of the Motion to Remand.
10 (ECF No. 9.)

11 **II. LEGAL STANDARDS**

12 Section 301 of the LMRA provides that the United States district courts have original
13 jurisdiction over “[s]uits for violation of contracts between an employer and a labor organization
14 representing employees . . . without respect to the amount in controversy or without regard to the
15 citizenship of the parties.” 29 U.S.C. § 185(a). It is now well settled that “the preemptive force of
16 § 301 is so powerful as to displace entirely any state cause of action for violation of contracts
17 between an employer and a labor organization.” *Franchise Tax Bd. v. Constr. Laborers Vacation*
18 *Trust*, 463 U.S. 1, 23 (1983) (internal quotation marks omitted). Accordingly, any suit for
19 violation of a CBA “is purely a creature of federal law, notwithstanding the fact that state law
20 would provide a cause of action in the absence of § 301.” *Id.* Indeed, state-law claims arising
21 under a labor contract are entirely preempted by Section 301, “even in some instances in which
22 the plaintiffs have not alleged a breach of contract in their complaint, if the plaintiffs’ claim is
23 either grounded in the provisions of the labor contract or requires interpretation of it.” *Burnside*
24 *v. Kiewit Pac. Corp.*, 491 F.3d 1053, 1059 (9th Cir. 2007).

1 The Ninth Circuit, citing Supreme Court precedent, has articulated a two-step analytical
2 framework for determining whether state-law causes of action are preempted by Section 301. *See*
3 *id.* at 1059–60, citing *Caterpillar Inc. v. Williams*, 482 U.S. 386, 394 (1987) (“Section 301
4 governs claims founded directly on rights created by collective-bargaining agreements, and also
5 claims substantially dependent on analysis of a collective-bargaining agreement.”). First, the
6 court must determine “whether the asserted cause of action involves a right conferred upon an
7 employee by virtue of state law, not by a CBA. If the right exists solely as a result of the CBA,
8 then the claim is preempted, and [the] analysis ends there.” *Id.* at 1059. To determine whether a
9 right derives from state law or a CBA, the court must consider “the legal character of a claim, as
10 ‘independent’ of rights under the collective-bargaining agreement [and] not whether a grievance
11 arising from ‘precisely the same set of facts’ could be pursued.” *Id.* at 1060, quoting *Livadas v.*
12 *Bradshaw*, 512 U.S. 107, 123 (1994).

13 Second, if the asserted right “exists independently of the CBA,” the court must then
14 determine whether the right “is nevertheless substantially dependent on analysis of the
15 collective-bargaining agreement.” *Id.* at 1059 (internal quotation marks omitted). This
16 determination is made by considering whether the claim requires the court to “interpret” the
17 CBA. *Id.* at 1060. If so, the claim is preempted. In contrast, if the court need only “look to” the
18 agreement to resolve a state-law claim, there is no preemption. *Id.* (providing examples of
19 situations in which courts may “look to” a CBA without triggering Section 301 preemption).

20 Furthermore, the Supreme Court has established that a defendant’s invocation of a CBA
21 in a defensive argument cannot alone trigger preemption:

22 It is true that when a defense to a state claim is based on the terms of a collective-
23 bargaining agreement, the state court will have to interpret that agreement to
24 decide whether the state claim survives. But the presence of a federal question,
even a § 301 question, in a defensive argument does not overcome the paramount
policies embodied in the well-pleaded complaint rule—that *the plaintiff is the*
master of the complaint, that a federal question must appear on the face of the

1 *complaint, and that the plaintiff may, by eschewing claims based on federal law,*
2 *choose to have the cause heard in state court. . . . [A] defendant cannot, merely*
3 *by injecting a federal question into an action that asserts what is plainly a state-*
4 *law claim, transform the action into one arising under federal law, thereby*
5 *selecting the forum in which the claim shall be litigated. If a defendant could do*
6 *so, the plaintiff would be master of nothing.*

7 *Caterpillar*, 482 U.S. at 398–99 (emphasis added).

8 **III. ANALYSIS**

9 There is, of course, the threshold matter of whether a valid CBA was in effect at times
10 relevant to this action. There are two agreements at issue here: (1) a fully executed agreement
11 with an initial term of June 10, 2009, through December 10, 2010 (“June 2009 CBA”); and (2)
12 an unsigned, undated, redlined draft agreement which Defendants assert is valid and has been in
13 effect “since 2010” (“Redlined Draft CBA”). There are complex issues arising from both
14 agreements.

15 First, it appears the June 2009 CBA expired by its own terms on or around May 1, 2011.
16 (See Reply 6–7, ECF No. 11.) Defendants do not contest this fact. Generally, “[w]hen a
17 complaint alleges a claim based on events occurring after the expiration of a collective
18 bargaining agreement, courts have held that section 301 cannot provide a basis for jurisdiction.”
19 *Derrico v. Sheehan Emergency Hosp.*, 844 F.2d 22, 25 (2d Cir. 1988) (collecting cases).

20 However, Plaintiffs allege that Defendants’ liability for off-the-clock work dates back to March
21 31, 2011.¹ By arguing the June 2009 CBA expired in May 2011, Plaintiffs effectively concede
22 that there was a valid CBA in effect during at least the month of April 2011, which does overlap
23 with the alleged period of liability. (See Mot. Remand 5, ECF No. 8.)

24 ¹ Plaintiffs argue their claims were tolled from June 21, 2013, to January 12, 2016, as a result of another class
action complaint asserting the same claims, which was dismissed prior to class certification. (Compl. 8, n. 1, ECF
No. 1-1.) Neither this issue nor the related statute of limitations issue is presently before the Court. The Court need
not address these issues to rule on the Motion to Remand.

1 In addition, the Redlined Draft CBA is extremely problematic. Defendants submit the
2 declarations of Larry Montrose, Human Resources Director of MEI-GSR Holdings, and Kent
3 Vaughan, Senior VP of Hotel Operations of MEI-GSR Holdings, wherein both declarants assert
4 that the Redlined Draft CBA has been in effect “from 2010 to present.” (Montrose Decl. ¶ 3,
5 ECF No. 10 at 17; Vaughan Decl. ¶ 2, ECF No. 10 at 107.) However, the Redlined Draft CBA is
6 unsigned and undated. (Redlined Draft CBA, ECF No. 10 at 20–93.) It is also clearly a
7 preliminary draft, not in final form. (*Id.*) Moreover, Defendants’ names do not appear anywhere
8 on the face of the Redlined Draft CBA; rather, the document indicates that the “Employer” is
9 Worklife Financial, Inc. d/b/a Grand Sierra Resort and Casino (“Worklife”), which was the
10 Employer under the June 2009 CBA and Defendants’ apparent predecessor-in-interest. (*Id.*) In
11 support of the Redlined Draft CBA’s validity, Defendants argue, correctly, that a CBA need not
12 always be signed to be enforceable. *See Warehousemen’s Union Local No. 206 v. Continental*
13 *Can Co.*, 821 F.2d 1348, 1350 (9th Cir. 1987) (“Union acceptance of an employer’s final offer is
14 all that is necessary to create a contract, regardless of whether either party later refuses to sign a
15 written draft.”). Moreover, Defendants point to communications from Culinary Workers Union
16 Local 226 (“Union”) to Defendants between May 2015 and February 2016, which indicate that
17 the Union was invoking the Redlined Draft CBA to initiate grievance proceedings throughout
18 this timeframe.² (Union Letters, ECF No. 10 at 95–97, 99, 105.) *See S. California Painters &*
19 *Allied Trade Dist. Council No. 36 v. Best Interiors, Inc.*, 359 F.3d 1127, 1133 (9th Cir. 2004),

22 2 Specifically, on June 23, 2015, the Union took the position that Defendants had violated “Exhibit 1 and all other
23 pertinent provisions of the Collective Bargaining Agreement.” (June 23, 2015 Union Letter, ECF No. 10 at 97.) The
24 alleged violation related to “bringing wages consistent to \$15.16 for all Slot Tech I” positions. (*Id.*) The June 2009
CBA includes an Exhibit 1, but it does not address Slot Tech wage rates. (June 2009 CBA at Ex. 1, ECF No. 8-4 at
42.) Rather, the June 2009 CBA covers Slot Tech wages exclusively in Side Letter #1. (*Id.* at Side Letter #1, ECF
No. 8-4 at 59.) In contrast, Exhibit 1 in the Redlined Draft CBA includes a Slot Tech Wage Chart. (Redlined Draft
CBA at Ex. 1, ECF No. 10 at 93.) Therefore, of the two CBAs provided to the Court, the Union’s June 23, 2015
letter can only be referencing the Redlined Draft CBA.

1 quoting *NLRB v. Haberman Constr. Co.*, 641 F.2d 351, 356 (5th Cir. 1981) (en banc) (“To
2 determine whether a party has adopted a contract by its conduct, the relevant inquiry is whether
3 the party has displayed ‘conduct manifesting an intention to abide by the terms of the
4 agreement.’”).

5 The Court need not and will not determine whether either the June 2009 CBA or the
6 Redlined Draft CBA was valid and in effect during times relevant to the Complaint. Because the
7 Motion to Remand may be decided on other grounds, as shown below, the Court declines to
8 wade into the waters of whether and when these contracts may have been in force.

9 **a. The rights at issue were created by Nevada law and not by a CBA.**

10 Plaintiffs advance three primary legal theories: (1) they were required to work while off
11 the clock, and therefore did not receive compensation of at least minimum wage for all hours
12 worked; (2) they were deprived of overtime when they worked a shift that began within the same
13 statutory “workday” as their previous shift; and (3) Defendants’ alleged failure to compensate
14 Plaintiffs pursuant to theories (1) and (2) resulted in a failure to timely pay Plaintiffs all wages
15 due and owing upon termination of employment. All of Plaintiffs’ claims arise specifically under
16 Nevada law, independently of any CBA. Plaintiffs’ claims are expressly based on NRS 608.016
17 (“[A]n employer shall pay to the employee wages for each hour the employee works.”); Article
18 15, Section 16 of the Nevada Constitution (“Each employer shall pay a wage to each employee
19 of not less than the hourly rates set forth in this section.”); NRS 608.018 (“An employer shall
20 pay 1-1/2 times an employee’s regular wage rate whenever an employee who receives
21 compensation for employment at a rate less than 1-1/2 times the minimum [wage] works . . .
22 [m]ore than 8 hours in any workday.”); and NRS 608.020–050 (“Whenever an employer
23 discharges an employee, the wages and compensation earned and unpaid at the time of such
24 discharge shall become due and payable immediately.”).

1 Therefore, the rights asserted by Plaintiffs—the right to be compensated at minimum
2 wage for all hours worked, the right to overtime compensation, and the right to be paid all wages
3 due and owing at the time of termination—are created by Nevada law, not a CBA. Each right
4 “arises from state law, not from the CBA, and is vested in the employees directly, not through
5 the medium of the CBA.” *Burnside*, 491 F.3d at 1064. Moreover, notwithstanding the fact that
6 some of the rights asserted by Plaintiffs may be waived pursuant to a bona fide CBA, they are
7 still conferred upon Plaintiffs by virtue of state law. *See id.* (“[A]s a matter of pure logic, a right
8 that inheres *unless* it is waived exists independently of the document that would include the
9 waiver, were there a waiver.”).

10 **b. Plaintiffs’ claims are not substantially dependent on the terms of a CBA.**

11 Having concluded that the rights asserted in Plaintiffs’ Complaint inhere in state law, the
12 Court must now consider whether those rights are nonetheless “substantially dependent” on a
13 CBA (i.e., whether resolving Plaintiffs’ claims will require interpretation of a CBA). *See id.* at
14 1060. Defendants have not met their burden to show that the interpretation of a CBA will be
15 required.

16 First, in arguing that Plaintiffs’ claim for failure to pay wages for all hours worked requires
17 interpretation of a CBA, Defendants’ focus is NRS 608.012, which defines “wages” as the “amount
18 which an employer agrees to pay an employee for the time the employee has worked” (Resp.
19 6, ECF No. 10.) Defendants contend that because NRS Chapter 608 requires only the payment of
20 “wages,” and the “wages” of employees governed by the CBA are set by the CBA, all wage claims
21 are “effectively claims for breach of the CBA.” (*Id.*) Defendants’ conclusion is incorrect.
22 “[N]either looking to the CBA merely to discern that none of its terms is reasonably in dispute,
23 *nor the simple need to refer to bargained-for wage rates in computing a penalty*, is enough to
24 warrant preemption.” *Burnside*, 491 F.3d at 1060 (emphasis added) (brackets and citations

1 omitted), citing *Livadas*, 512 U.S. at 125. With respect to off-the-clock work, Defendants have
2 identified no CBA provision that has any bearing on the issue, much less a relevant provision that
3 is reasonably in dispute. Merely “looking to” a CBA to calculate the amount of unpaid wages does
4 not trigger Section 301 preemption.³ *See id.* at 1074.

5 The same reasoning applies to Plaintiffs’ constitutional minimum wage claim. Plaintiffs
6 allege they were required to work without pay, and that under the Nevada Constitution these unpaid
7 hours should have been paid at no less than the state minimum wage. Defendants do not argue that
8 the CBA contains any particular provision that must be interpreted in order to resolve this claim.
9 Nor do Defendants contend that the Union waived the right to minimum wages under Article 15,
10 Section 16(B). Indeed, the Redlined Draft CBA contains no such waiver. On the contrary, the wage
11 rate tables in Exhibit 1 all reference a footnote, which reads: “Where these standard rates fall below
12 the applicable minimum wage, the rates have been adjusted accordingly to satisfy Nevada’s
13 minimum wage requirements.” (Redlined Draft Agreement, Ex. 1, ECF No. 10 at 86–93.) *See*
14 *Cramer v. Consol. Freightways, Inc.*, 255 F.3d 683, 692 (9th Cir. 2001), *as amended* (Aug. 27,
15 2001) (“[A] court may look to the CBA to determine whether it contains a clear and unmistakable
16 waiver of state law rights without triggering § 301 preemption.”).

17 Similarly, Plaintiffs’ claim for failure to timely pay wages due and owing upon termination
18 is not preempted. Again, Defendants fail to identify any provision in a CBA that must be
19 interpreted to resolve this claim. Furthermore, the Supreme Court has examined Section 301
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23 ³ Defendants also assert that this and other claims in Plaintiffs’ Complaint are alleged here improperly, because
24 another court in this District recently granted summary judgment for Defendants in a related case, finding that
“except for claims for minimum wage pursuant to NRS 608.250, [...] Nevada does not recognize a private statutory
cause of action for wages.” (Resp. 2, ECF No. 10.) However, the validity of Plaintiffs’ claims is not properly before
the Court on Plaintiff’s Motion to Remand. Indeed, a court must first determine whether it has subject matter
jurisdiction to hear a claim before ruling such claim is invalid.

1 preemption in the context of a closely analogous California statute—Labor Code § 203—and
2 opined:

3 The only issue raised by [plaintiff’s] claim, whether [defendant] “willfully failed
4 to pay” her wages promptly upon severance, was a question of state law, entirely
5 independent of any understanding embodied in the collective-bargaining
6 agreement between the union and the employer. There is no indication that there
7 was a “dispute” in this case over the amount of the penalty to which [plaintiff]
8 would be entitled, and [*Lingle v. Norge Div. of Magic Chef, Inc.*, 486 U.S. 399
9 (1988)] makes plain in so many words that when liability is governed by
10 independent state law, the mere need to “look to” the collective-bargaining
11 agreement for damages computation is no reason to hold the state-law claim
12 defeated by § 301.

13 *Livadas*, 512 U.S. at 124–25 (brackets and citation omitted). The same reasoning applies here,
14 and the Court reaches the same conclusion.

15 Defendants present a somewhat more persuasive argument that Plaintiffs’ overtime claim
16 based on allegations of “shift-jamming” requires interpretation of a CBA. NRS 608.018(3)(e)
17 expressly provides that statutory overtime requirements do not apply to “[e]mployees covered by
18 collective bargaining agreements which provide otherwise for overtime.” The Redlined Draft
19 CBA provides for overtime compensation. (Redlined Draft CBA ¶ 9.01, ECF No. 10 at 35.)
20 Therefore, Defendants contend that any employees subject to the CBA waived their statutory
21 right to overtime pay, and any claim for unpaid overtime must arise under the contract. (Resp.
22 10, ECF No. 10.) Furthermore, Defendants argue that NRS 608.018 requires daily overtime for
23 each “workday,” as defined in the statute, while the Redlined Draft CBA requires overtime for
24 each “day,” which is undefined and should be given its ordinary meaning. (*Id.* at 12–13.)
Therefore, Defendants argue, a court must interpret the CBA to determine the meaning of “day”
as the term is used in the CBA. (*Id.*)

The Court declines to reach Defendants’ arguments with respect to the alleged shift-
jamming policy and the respective meanings of “day” and “workday.” Plaintiffs’ Complaint

1 provides: “The claim for unpaid overtime wages pursuant to Defendants’ shift jamming policy is
2 *only brought on behalf of employees who are not covered* by a valid and effective collective
3 bargaining agreement.” (Compl. ¶ 37, ECF No. 1-1 (emphasis added).) There is no need to
4 interpret a CBA to resolve Plaintiffs’ shift-jamming claims because Plaintiffs have specifically
5 pled around any valid CBA that may be applicable. “[T]he plaintiff is the master of the
6 complaint . . . and . . . may, by eschewing claims based on federal law, choose to have the cause
7 heard in state court.” *Caterpillar*, 482 U.S. at 398–99.

8 Lastly, with respect to unpaid overtime on the basis of off-the-clock work, the Court’s
9 decision is governed by *Burnside* and *Livadas*. As in those cases, Plaintiffs are not “complaining
10 about the wage rate the employees were paid for certain work, but about the fact that [they were]
11 not paid at all.” *Burnside*, 491 F.3d at 1073. The Redlined Draft CBA contains provisions
12 governing the regular rate and the rate of overtime wages. *See id* at 1073–74. However, as in
13 *Burnside* and *Livadas*, “there is no indication in this case of any dispute concerning which wage
14 rate would apply to” off-the-clock hours, *if* such hours are compensable. *See id.* at 1074.

15 Therefore, the conclusion in *Burnside* is directly applicable to Plaintiffs’ overtime claim:

16 The basic legal issue presented by this case, therefore, can be decided without
17 interpreting the CBA. Depending on how that issue is resolved, damages may
18 have to be calculated, and in the course of that calculation, reference to—but not
19 interpretation of—the CBAs, to determine the appropriate wage rate, would likely
be required. Under *Livadas*, this need to consult the CBAs to determine the wage
rate to be used in calculating liability cannot, alone, trigger section 301
preemption.

20 491 F.3d at 1074 (finding overtime claims not preempted where based on allegedly compensable
21 off-the-clock travel time).

22 Accordingly, all of Plaintiffs’ claims can be resolved without interpretation of a CBA.
23 Plaintiffs’ claims are not preempted by Section 301, and may not be removed to federal court.

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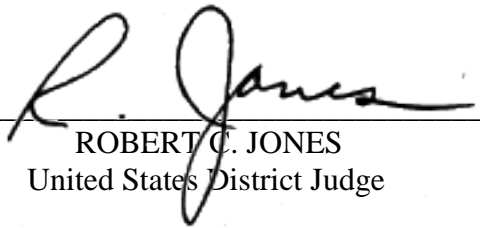
1 **CONCLUSION**

2 IT IS HEREBY ORDERED that the Motion to Remand (ECF No. 8) is GRANTED.

3 IT IS FURTHER ORDERED that Defendants' Motion to Dismiss (ECF No. 6) is
4 DENIED as moot.

5 IT IS FURTHER ORDERED that the case is REMANDED to the Second Judicial
6 District Court of Washoe County, Nevada, and the Clerk shall close the case.

7 IT IS SO ORDERED December 6, 2016.

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10 ROBERT C. JONES
11 United States District Judge
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