

IN THE SUPREME COURT OF THE STATE OF NEVADA

DONALD WALDEN JR., NATHAN  
ECHEVERRIA, AARON DICUS,  
BRENT EVERIST, TRAVIS  
ZUFELT, TIMOTHY RIDENOUR,  
and DANIEL TRACY on behalf of  
themselves and all others similarly  
situated,

Appellants,

v.

THE STATE OF NEVADA ex rel  
NEVADA DEPARTMENT OF  
CORRECTIONS,

Respondent.

Case No. 82030 Electronically Filed  
Feb 22 2021 02:00 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**JOINT APPENDIX VOLUME 1 OF 5**

Mark R. Thierman, Nev. Bar No. 8285  
mark@thiermanbuck.com

Joshua D. Buck, Nev. Bar No. 12187  
josh@thiermanbuck.com

Leah L. Jones, Nev. Bar No. 13161  
leah@thiermanbuck.com

Joshua R. Hendrickson, Nev. Bar No. 12225  
joshh@thiermanbuck.com

THIERMAN BUCK LLP  
7287 Lakeside Drive

Reno, Nevada 89511

Tel. (775) 284-1500

Fax. (775) 703-5027

*Attorneys for Appellants*

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IN THE FIRST JUDICIAL DISTRICT COURT  
IN AND FOR THE COUNTY OF CARSON CITY, STATE OF NEVADA

DONALD WALDEN JR., ET AL

Plaintiff,

vs.

THE STATE OF NEVADA, NEVADA  
DEPARTMENT OF CORRECTIONS

Defendant

Case No: 14OC000891B ALAN GLOVER

BY C. Cooper CLERK

2014 MAY 22 PM 1:16

AFFIDAVIT OF SERVICE

STATE OF NEVADA  
COUNTY OF CARSON CITY ss.:



WADE MORLAN, being duly sworn says: That at all times herein affiant was and is a citizen of the United States over 18 years of age, not a party to nor interested in the proceedings in which this affidavit is made.

The affiant received copy(ies) of the **SUMMONS; COLLECTIVE AND CLASS ACTION COMPLAINT; AFFIRMATION; CIVIL COVER SHEET**, on 05/16/2014 and served the same on 05/16/2014 at 2:45 PM by delivering and leaving a copy with:

**AMANDA WHITE, OF THE OFFICE OF THE ATTORNEY GENERAL** who stated he/she is authorized to accept service on behalf of **THE STATE OF NEVADA, NEVADA DEPARTMENT OF CORRECTIONS**.

Service address: 100 N. CARSON ST NEVADA ATTORNEY GENERAL'S OFFICE CARSON CITY, NV 89705

A description of **AMANDA WHITE** is as follows:

Sex	Color of skin/race	Color of hair	Age	Height	Weight
Female	Caucasian	Blonde	20-30	5ft 5in	141-150lbs
Other Features:					

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

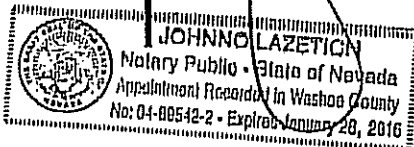
Sworn to and subscribed before me on  
05/19/2014  
by **WADE MORLAN**

Notary Public

WADE MORLAN  
Registration#: R-006823  
Reno/Carson Messenger Service, Inc. (Lic# 322)  
185 Martin Street  
Reno, NV 89509  
775.322.2424  
Atty File#: WALDEN V. NV



\*49275\*







STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL

100 North Carson Street  
Carson City, Nevada 89701-4717

CATHERINE CORTEZ MASTO  
Attorney General

KEITH G. MUNRO  
Assistant Attorney General

Gregory Smith  
Chief of Staff

TO: Wayne Howle, Solicitor General, BGA Entered Into DB \_\_\_\_\_ DB No. \_\_\_\_\_

DATE RECEIVED: 5/16/14 REVIEWER: A. White

CASE NAME: Donald Warden II v. State of Nevada

Department of Corrections

CASE NUMBER: 14DC00001B COURT: 1st JDC/Carson City

RECEIVED FROM:

Process Server: Wade Morken / Dams  
(Name and Company of process server)

ProLaw

DOCUMENT(S) RECEIVED: Summons

DOCUMENTS RECEIVED FOR:

NOTICE

NRS 41.031(2) provides in part that, in any action against the State of Nevada, the action must be brought in the name of the State of Nevada on relation of the particular department, commission, board or other agency of the state whose actions are the basis for the suit. In an action against the State of Nevada, the summons and a copy of the complaint must be served upon the Attorney General, at the Office of the Attorney General in Carson City and upon the person serving in the office of administrative head of the named agency. **Service on the Attorney General or designee does not constitute service on any individual or administrative head.**

This Receipt acknowledges that the documents described herein have been received by the Nevada Attorney General or the designee authorized by NRS 41.031(2)(a). This Receipt does not ensure that any party, person or agency has been properly served, nor does it waive any legal requirement for service.

Receipt of a subpoena by the Office of the Attorney General does not constitute valid service of the subpoena upon any individual or upon any state agency, except the Office of the Attorney General. **Receipt of summons and complaint or any other process by the Attorney General or designee does not constitute service upon any individual, nor does it constitute service upon the administrative head of an agency pursuant to NRS 41.031(2)(b).**

Int. AW Copy given to person delivering document(s)? Yes ✓

REC'D & FILED

2014 MAY 22 PM 1:16

ALAN GLOVER  
C. COOPER  
DEPUTY CLERK

IN THE FIRST JUDICIAL DISTRICT COURT  
IN AND FOR THE COUNTY OF CARSON CITY, STATE OF NEVADA

DONALD WALDEN JR., ET AL

Plaintiff,

Case No:14OC000891B

vs.

THE STATE OF NEVADA, NEVADA  
DEPARTMENT OF CORRECTIONS

Defendant

AFFIDAVIT OF SERVICE

STATE OF NEVADA  
COUNTY OF CARSON CITY ss.:



WADE MORLAN, being duly sworn says: That at all times herein affiant was and is a citizen of the United States over 18 years of age, not a party to nor interested in the proceedings in which this affidavit is made.

The affiant received copy(ies) of the **SUMMONS; COLLECTIVE AND CLASS ACTION COMPLAINT; AFFIRMATION; CIVIL COVER SHEET**, on 05/16/2014 and served the same on 05/19/2014 at 8:43 AM by delivering and leaving a copy with:

**NANCY SAUNDERS**, who stated he/she is authorized to accept service on behalf of **JAMES COX, DIRECTOR ON BEHALF OF THE STATE OF NEVADA, NEVADA DEPARTMENT OF CORRECTIONS.**

Service address:5500 SNYDER AVE. Carson City, NV 89701

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

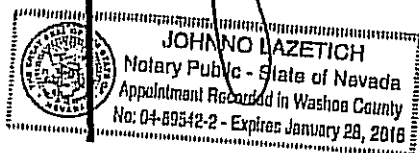
Sworn to and subscribed before me on  
05/19/2014  
by WADE MORLAN

WADE MORLAN  
Registration#: R-006823  
Reno/Carson Messenger Service, Inc. (Lic# 322)  
185 Martin Street  
Reno, NV 89509  
775.322.2424  
Atty File#: WALDEN V. NV

Notary Public



\*49276\*



Office of the Attorney General  
5420 Kietzke Lane, Suite 202  
Reno, NV 89511

CATHERINE CORTEZ MASTO  
Attorney General  
ANN M. McDERMOTT  
Chief Deputy Attorney General  
Nevada Bar No. 8180  
JANET E. TRAUT  
Superv. Sr. Deputy Attorney General  
Nevada Bar No. 8695  
Bureau of Litigation  
Personnel Division  
5420 Kietzke Lane, Suite 202  
Reno, Nevada 89511  
Tele: (775) 850-4107  
Fax: (775) 688-1822  
*Attorneys for Defendant*

**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEVADA**

DONALD WALDEN JR., NATHAN  
ECHEVERRIA, AARON DICUS, BRENT  
EVERIST, TRAVIS ZUFELT, TIMOTHY  
RIDENOUR, and DANIEL TRACY on  
behalf of themselves and all other similarly  
situated,  
  
Plaintiffs,  
  
vs.  
  
STATE OF NEVADA, NEVADA  
DEPARTMENT OF CORRECTIONS, and  
DOES 1-50,  
  
Defendants.

Case No. 3:14-cv-

**NOTICE OF REMOVAL**

**TO: THE UNITED STATES DISTRICT COURT OF THE DISTRICT OF NEVADA**

Defendant, STATE OF NEVADA, NEVADA DEPARTMENT OF CORRECTIONS, by  
and through its attorneys, CATHERINE CORTEZ MASTO, Attorney General of the State of  
Nevada, ANN M. MCDERMOTT, Chief Deputy Attorney General, and JANET E. TRAUT,  
Supervising Senior Deputy Attorney General, hereby notice removal of this action to the  
United States District Court, and, in support thereof, state:

1. Defendant State of Nevada, Nevada Department of Corrections is named in an  
action which commenced in the First Judicial District Court of the State of Nevada in and for  
Carson City assigned Case No. 14-OC-00089-1B and now pending in that State District Court.

1           2.       Service of a Summons and a copy of the Complaint were made upon Defendant  
2 State of Nevada, Nevada Department of Corrections through Director Cox on May 19, 2014.  
3 Service of a Summons and a copy of the Complaint were made upon Attorney General  
4 Catherine Cortez Masto on May 16, 2014.

5           3.       The Complaint alleges violations of the Plaintiffs' rights pursuant to 29 U.S.C. §  
6 201, *et seq.* and 29 U.S.C. § 207, as well as additional State torts.

7           4.       This Court has original jurisdiction over the subject matter of this action under  
8 the provisions of 28 U.S.C. § 1331 arising under 29 U.S.C. § 201, *et. seq.* and 29 U.S.C. §  
9 207. Actions over which the Federal Court has original jurisdiction may be removed from  
10 State courts to the District Court in the place where the action is pending, pursuant to 28  
11 U.S.C. § 1441.

12           This action is pending in the First Judicial District Court of the State of Nevada in  
13 Carson City, and is appropriately removed to the United States District Court, District of  
14 Nevada under 28 U.S.C. §§ 1331 and 1441. Defendants are entitled to remove this action to  
15 this Court.

16           5.       The Federal District Court has supplemental jurisdiction over claims concerning  
17 the same case or controversy as the federal question. 28 U.S.C. § 1367(a).

18           6.       The Civil Cover Sheet is attached and marked as Exhibit C.

19           7.       Copies of the Complaint and Summons from the State District Court file are  
20 attached and marked respectively as Exhibits A and B, constituting all of the papers and  
21 pleadings served on Defendant Nevada Department of Corrections.

22       ///

23       ///

24       ///

25       ///

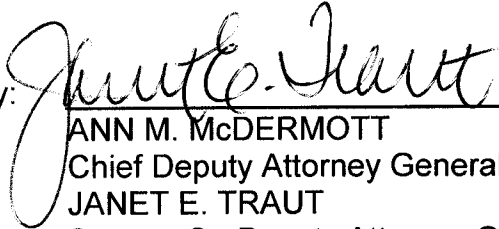
26       ///

27       ///

28       ///

1 Based on the foregoing, Defendant removes the above action now pending in the First  
2 Judicial District Court of the State of Nevada in and for Carson City as Case No. 14-OC-  
3 00089-1B to this Court.

4 CATHERINE CORTEZ MASTO  
5 Attorney General

6 By:   
7

8 ANN M. McDERMOTT  
9 Chief Deputy Attorney General  
10 JANET E. TRAUT  
11 Superv. Sr. Deputy Attorney General  
12 Bureau of Litigation  
13 Personnel Division  
14 *Attorneys for Defendant*

**CERTIFICATE OF SERVICE**

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on this 17<sup>th</sup> day of June, 2014, I served a copy of the foregoing NOTICE OF REMOVAL, by providing a true and correct copy via U.S. Mail first class postage fully paid to the following:

Mark R. Thierman, Esq.  
Thierman Law Firm, P.C.  
7287 Lakeside Drive  
Reno, Nevada 89511

Joshua D. Buck, Esq.  
Thierman Law Firm, P.C.  
7287 Lakeside Drive  
Reno, Nevada 89511

Leah L. Jones, Esq.  
Thierman Law Firm, P.C.  
7287 Lakeside Drive  
Reno, Nevada 89511

  
An Employee of the Office of the Attorney General

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EXHIBIT A

EXHIBIT A



REC'D &amp; FILED

2014 MAY 12 PM 2: 39

ALAN GLOYER

BY C. GRIFFIN ~~THIERMAN~~  
DEPUTY

## COMPLAINT

1 Mark R. Thierman, Nev. Bar No. 8285  
 mark@thiermanlaw.com  
 2 Joshua D. Buck, Nev. Bar No. 12187  
 josh@thiermanlaw.com  
 3 Leah L. Jones, Nev. Bar. No. 13161  
 leah@thiermanlaw.com  
 4 THIERMAN LAW FIRM, P.C.  
 7287 Lakeside Drive  
 5 Reno, Nevada 89511  
 Tel. (775) 284-1500  
 6 Fax. (775) 703-5027

Attorneys for Plaintiffs

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

7  
 8  
 9  
 10  
 11  
 12 DONALD WALDEN JR, NATHAN  
 13 ECHEVERRIA, AARON DICUS, BRENT  
 14 EVERIST, TRAVIS ZUFELT, TIMOTHY  
 15 RIDENOUR, and DANIEL TRACY on behalf  
 of themselves and all others similarly situated,

Plaintiffs,

v.

16  
 17  
 18 THE STATE OF NEVADA, NEVADA  
 19 DEPARTMENT OF CORRECTIONS, and  
 20 DOES 1-50,

Defendants.

Case No.:

Dept. No.:

COLLECTIVE AND CLASS ACTION  
COMPLAINT(EXEMPT FROM ARBITRATION  
PURSUANT TO NAR 5)

- 1) Failure to Pay Wages for All Hours  
Worked in Violation of 29 U.S.C. § 201,  
et. seq;
- 2) Failure to Pay Overtime in Violation of  
29 U.S.C. § 207;
- 3) Failure to Pay Minimum Wages in  
Violation of the Nevada Constitution; and
- 4) Breach of Contract.

- 1 -

COLLECTIVE AND CLASS ACTION COMPLAINT

000001

THIERMAN LAW FIRM, PC  
 7287 Lakeside Drive  
 Reno, NV 89511  
 (775) 284-1500 Fax (775) 703-5027  
 Email laborlawyer@pacbell.net www.laborlawyer.net

1 COME NOW Plaintiffs DONALD WALDEN JR, NATHAN ECHEVERRIA, AARON  
2 DICUS, BRENT EVERIST, TRAVIS ZUFELT, TIMOTHY RIDENOUR, and DANIEL TRACY  
3 ("Plaintiffs") on behalf of themselves and all others similarly situated and allege the following:

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

#### 8 JURISDICTION AND VENUE

9 1. This Court has original jurisdiction over both state and federal claims alleged  
10 herein. This Court has original jurisdiction over the state law claims alleged herein because the  
11 amount in controversy exceeds \$10,000 and a party seeking to recover unpaid minimum wages  
12 has a private right of action pursuant to the Nevada Constitution Article 15 Section 16.

13 2. This Court also has jurisdiction over the federal claims alleged herein pursuant to  
14 Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 216(b) which states in relevant part "An action  
15 to recover [such liability] may be maintained against any employer (*including a public agency*)  
16 in any Federal *or State court* of competent jurisdiction...." (emphasis supplied).

17 3. Venue is proper in this Court pursuant to NRS 41.013(2).

18 4. The State of Nevada has waived its sovereign immunity from suit for the claims  
19 alleged herein. *See* NRS 41.031.

#### 20 PARTIES

21 5. Plaintiff DONALD WALDEN JR is a natural person who is and was a resident of  
22 the State of Nevada at all relevant times herein and was employed by Defendant as a non-exempt  
23 hourly correctional officer at the Southern Desert Correctional Center from on or about February  
24 24, 2003 to on or about February 2013 when he retired.

25 6. Plaintiff NATHAN ECHEVERRIA is a natural person who is and was a resident  
26 of the State of Nevada at all relevant times herein and has been employed by Defendant as a non-  
27 exempt hourly correctional officer at the Southern Desert Correctional Center from on or about  
28 May 1, 2006 to the present.

THIERMAN LAW FIRM, PC  
7287 Lakeside Drive  
Reno, NV 89511

(775) 284-1500 Fax (775) 703-5027  
Email laborlawyer@pacbell.net www.laborlawyer.net

7. Plaintiff AARON DICUS is a natural person who is and was a resident of the State of Nevada at all relevant times herein and has been employed by Defendant as a non-exempt hourly correctional officer at the Southern Desert Correctional Center from on or about July 2007 to the present.

8. Plaintiff BRENT EVERIST is a natural person who is and was a resident of the State of Nevada at all relevant times herein and has been employed by Defendant as a non-exempt hourly correctional officer at the High Desert State Prison from on or about May 1, 2006 to the present.

9. Plaintiff TRAVIS ZUFELT is a natural person who is and was a resident of the State of Nevada at all relevant times herein and has been employed by Defendant as a non-exempt hourly correctional officer at the Northern Nevada Correctional Center from on or about August 2009 to the present.

10. Plaintiff TIMOTHY RIDENOUR is a natural person who is and was a resident of the State of Nevada at all relevant times herein and has been employed by Defendant as a non-exempt hourly correctional officer at the Southern Desert Correctional Center from on or about March 2007 to the present.

11. Plaintiff DANIEL TRACY is a natural person who is and was a resident of the State of Nevada at all relevant times herein and has been employed by Defendant as a non-exempt hourly correctional officer from on or about October 2000 to the present and has worked at High Desert State Prison, Women's Correctional Center, and Southern Desert Correctional Center during his employment.

12. Defendants STATE OF NEVADA and NEVADA DEPARTMENT OF CORRECTIONS (hereinafter collectively "Defendants" or "NDOC") are public agencies subject to the provisions of the Fair Labor Standards Act, 29 U.S.C. § 201 *et. seq.* and is an employer entity under the Nevada Constitution, Nev. Const. Art. 15 § 16 (defining "employer" as any "entity that may employ individuals").

13. The identity of DOES 1-50 is unknown at this time and this Complaint will be amended at such time when the identities are known to Plaintiffs. Plaintiffs are informed and

THERMAN LAW FIRM, PC  
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 Reno, NV 89511  
 (775) 284-1500 Fax (775) 703-5027  
 Email laborlawyer@pacbell.net www.laborlawyer.net

1 believe that each of Defendants sued herein as DOE is responsible in some manner for the acts,  
 2 omissions, or representations alleged herein and any reference to "Defendant," "Defendants," or  
 3 "NDOC" herein shall mean "Defendants and each of them."

#### 4 FACTUAL ALLEGATIONS

5 14. Plaintiffs have been employed as correctional officers at various correctional  
 6 facilities throughout the state of Nevada.

7 15. Despite having been employed at different facilities, Plaintiffs experiences with  
 8 regard to the claims alleged herein are similar, common, and typical of all other correctional  
 9 officers employed by Defendants throughout the State during the relevant time period alleged  
 10 herein (i.e., the "putative class"). Namely, Plaintiffs are or were non-exempt hourly paid  
 11 employees of Defendants. By law, express, and implied agreement, Defendants are required to  
 12 pay Plaintiffs and putative class members for all hours worked either at their regular hourly rate  
 13 or minimum wage rate, whichever is higher, or at the overtime rate of time and one-half times  
 14 their regular hourly rate for all hours worked over 40 hours in a week or over 80 hours in a 14-  
 15 day work period.<sup>1</sup> However, Defendants have required Plaintiffs and the putative class to perform  
 16 work activities before and after their regularly scheduled shifts for which they have not been  
 17 compensated. Indeed, as set forth below, Plaintiffs and the putative class have been required to  
 18 work an estimated extra hour per shift "off-the-clock"—i.e., without compensation.

19 16. Defendants only compensated Plaintiffs and the putative class for the time spent  
 20 working during their regularly scheduled shift times. Notwithstanding that their compensation  
 21 was only for their scheduled shift times, Defendant required Plaintiffs and putative class members  
 22 to perform numerous work related activities prior to arriving at their work station and after leaving  
 23 their work station without any compensation at all. By paying Plaintiffs and putative class  
 24 members zero dollars (\$0.00) for work performed pre and post shift, Defendants violated  
 25 numerous wage and hour laws, such as failing to pay Plaintiffs and putative class members their  
 26 minimum wages, regular rate wages, and overtime wages, as applicable.

27  
 28 <sup>1</sup> Defendants agreed to pay Plaintiffs and putative class members who agree to a 14-day work  
 period that they would be paid overtime after working 80 hours during the 14-day work period.

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7287 Lakeside Drive

Reno, NV 89511

(775) 284-1500 Fax (775) 703-5027

Email laborlawyer@pacbell.net www.laborlawyer.net

17. Upon arriving to the correctional facility and passing through security (which Plaintiffs do not alleged to be compensable time), Plaintiffs and putative class members were required to report to the supervisor or sergeant on duty for roll-call/check-in, receive their assignments for the day, pass a uniform inspection, and collect any and all tools that would be needed for their daily assignment (e.g., radios, keys, weapons, tear gas, hand cuffs). Indeed, this pre-shift requirement is specifically set forth in the NDOC's Administrative Regulations: "All correctional staff will report to the shift supervisor/shift sergeant upon arrival to ensure their status if required to work mandatory overtime." See <http://www.doc.nv.gov/sites/doc/files/pdf/AR326.pdf> (last visited Feb. 25, 2014). Plaintiffs and putative class members would then proceed to their designated work station, which, given the size of the correctional facilities involved, could take up to 15-minutes or more per employee per shift. Once they arrived at their designated work station, Plaintiffs and putative class members would be briefed by the outgoing correctional officer. Plaintiffs and putative class members were not compensated for any of this these pre-shift activities. On average, Plaintiffs estimate that they, and every member of putative class, performed upwards to 30-minutes of compensable work before their regularly scheduled shifts for which they were not paid.

18. Similar to their pre-shift activities, Plaintiffs and putative class members were also required to perform work activities without compensation after the end of their regularly scheduled shift. Plaintiffs and putative class members were required to stay past their scheduled shift to conduct the mandatory de-briefing with the oncoming correctional officer and then they would have to return to the main office to return the various tools they attained for the day. Only upon returning the tools, were they finally permitted to process through security (which Plaintiffs do not alleged to be compensable time) and leave the facility. On average, Plaintiffs estimate that they, and every member of putative class, performed upwards to 30-minutes of compensable work after their regularly scheduled shifts for which they were not paid.

19. Upon Plaintiffs' own observations, beliefs, and understanding of the NDOC's Administrative Regulations, all correctional officers in the state of Nevada were required to perform the same work activities off-the-clock for \$0.00 compensation.

**COLLECTIVE AND CLASS ACTION ALLEGATIONS**

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

21. Plaintiffs bring this action on behalf of themselves and all other similarly situated and typical employees as both a collective action under the FLSA and a true class action under Nevada law.

22. The statute of limitations under the FLSA is 3 years for willful violations.

23. The statute of limitations for violation of a constitutional duty under Nevada law is 6 years.

24. The statute of limitations for breach of a contract under Nevada law is 6 years.

25. The FLSA and Nevada Classes are defined as follows: All persons who were employed by Defendants as correctional officers at any time during the applicable statute of limitations time period.

26. 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 an hourly employees who did not receive pay for all hours that Defendant suffered or permitted them to work, and did not receive overtime premium pay of one and one half their regular rate of pay for all hours worked in excess of forty (40) hours in a workweek and/or in excess of the hours set forth in 29 U.S.C. § 207(k).

B. Plaintiffs' situation is similar to those they seek to represent because Defendants failed to pay Plaintiffs and all other Class Members for all time they were required to work, including time spent performing off-the-clock activities, pursuant to a uniform policy, plan and/or practice embodied, in part, in the applicable administrative regulations themselves.

C. Common questions of fact and/or law exists whether the time spent by Plaintiffs and all other Class Members engaging in off-the-clock activities is compensable under federal law and whether Defendants failed to pay Plaintiffs and Class Members one

THIERMAN LAW FIRM, PC  
7287 Lakeside Drive  
Reno, NV 89511  
(775) 284-1500 Fax (775) 703-5027  
Email laborlawyer@pacbell.net www.laborlawyer.net

1 and one half times their regular rate for all hours worked in excess of 40 hours a week  
2 and/or in excess of the hours set forth in 29 U.S.C. § 207(k)..

3 D. Upon information and belief, Defendants employ, and have employed, in  
4 excess of 1,000 Class Members within the applicable statute of limitations.

5 E. Plaintiffs have filed or will file their consents to sue with the Court.

6 F. Defendants have known or should have known its policies alleged herein  
7 were unlawful and that they owe employees this money, and have willfully failed to pay  
8 their employees properly.

9 G. Defendants' actions or omissions giving rise to this complaint were not in  
10 good faith and/or were not based upon an informed, reasonable belief that Defendants'  
11 behavior was lawful.

12 27. Pursuant to the recent decision of the Ninth Circuit Court of Appeals in *Busk v.*  
13 *Integrity Staffing Solutions, Inc.*, 2013 U.S. App. LEXIS 7397 (9th Cir. Nev. Apr. 12, 2013), both  
14 opt-in collective or representative treatment of claims under the federal FLSA and NRCP Rule  
15 23, class treatment of pendant state law claims may be maintained in the same action. Therefore,  
16 NRCP Rule 23(b)(3) Class treatment for all non-FLSA claims alleged in this complaint is  
17 appropriate in this case for the following reasons:

18 A. The Class is Sufficiently Numerous: Upon information and belief,  
19 Defendants employ, and have employed, in excess of 1,000 Class Members within the  
20 applicable statute of limitations.

21 B. Plaintiffs' Claims are Typical to Those of Fellow Class Members: Each  
22 Class Member is and was subject to the same practices, plans, or policies as Plaintiffs—  
23 Defendants required Class Members to perform off-the-clock activities without  
24 compensation and agreed to pay Class Members overtime for all hours worked over 40  
25 hours in a workweek and over 80 hours in a 14-day work period.

26 C. Common Questions of Law and Fact Exist: Common questions of law and  
27 fact exist and predominate as to Plaintiffs and the Class, including, without limitation:  
28 Whether the time spent by Plaintiffs and Class Members engaging in off-the-clock



THIERMAN LAW FIRM, PC  
 7287 Lakeside Drive  
 Reno, NV 89511  
 (775) 284-1500 Fax (775) 703-3027  
 Email laborlawyer@pacbell.net www.laborlawyer.net

activities is compensable under Nevada law and Whether Defendants breached their contract with Plaintiffs and Class Members for failing to pay overtime pursuant to the parties' contract.

D. Plaintiffs are an Adequate Representative of the Class: Plaintiffs will fairly and adequately represent the interests of the Class because Plaintiffs are members of the Class, they have issues of law and fact in common with all members of the Class, and they do not have interests that are antagonistic to Class members.

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

#### FIRST CAUSE OF ACTION

Failure to Pay Wages in Violation of the FLSA, 29 U.S.C. § 201, *et seq.*

(On Behalf of Plaintiffs and the FLSA Class Against All Defendants)

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

29. 29 U.S.C. § 203(e)(1)(C) defines employee, for purposes of the FLSA, to include any individual employed by a State, political subdivision of a State, or an interstate governmental agency.

30. With certain exceptions not relevant here, the minimum wage provisions of Section 6 and the overtime provisions of Section 7 of the Fair Labor Standards are and were applicable to employees of governmental agencies including but not limited to correctional



THIERMAN LAW FIRM, PC  
7287 Lakeside Drive  
Reno, NV 89511  
(775) 284-1500 Fax (775) 703-5027  
Email laborlawyer@pacbell.net www.laborlawyer.net

1 officers during the time period alleged herein. 29 U.S.C. § 206(b); PL 99-150 (S 1570), PL 99-  
2 150, November 13, 1985, 99 Stat 787; *see, e.g., Adderly v. City of Atlanta, Ga.*, CIV.A. 1:08-CV-  
3 2111-, 2009 WL 1456575 (N.D. Ga. May 22, 2009).

4 31. Pursuant to the FLSA, 29 U.S.C. § 206, *et seq.*, Plaintiffs and Class Members are  
5 entitled to compensation at their regular rate of pay or minimum wage rate, whichever is higher,  
6 for all hours actually worked.

7 32. 29 U.S.C. § 553.221(b) states that "Compensable hours of work generally include  
8 all of the time during which an employee is on duty on the employer's premises or at a prescribed  
9 workplace, as well as all other time during which the employee is suffered or permitted to work  
10 for the employer. Such time includes all pre-shift and post-shift activities which are an integral  
11 part of the employee's principal activity or which are closely related to the performance of the  
12 principal activity, *such as attending roll call*, writing up and completing, tickets or reports, and  
13 washing and re-racking fire hoses. Emphasis added.

14 33. Once the work day has begun, all time suffered or permitted by the employer to be  
15 worked by the employee is compensable at the employee's applicable rate of pay, whether  
16 scheduled or not.

17 34. By engaging in the conduct explained above, Defendants paid Plaintiffs and Class  
18 Members \$0.00 for working off-the-clock.

19 35. By failing to compensate Plaintiffs and Class Members for the time spent engaging  
20 in the off-the-clock activities identified above, Defendants failed to pay Plaintiffs and the Class  
21 Members for all hours worked.

22 36. Defendants' unlawful conduct has been widespread, repeated, and willful.  
23 Defendants knew or should have known that its policies and practices have been unlawful an  
24 unfair. The actions of Defendants were willful and deliberate and without good cause, and the  
25 relevant time period until the date of judgment after trial.

26 37. Wherefore, Plaintiffs demand for themselves and for all others similarly situated,  
27 that Defendants pay Plaintiffs and all other members of the Class their minimum hourly wage rate  
28 or their regular rate of pay, whichever is greater, for all hours worked during the relevant time

1 period alleged herein together with liquidated damages, attorneys' fees, costs, and interest as  
2 provided by law.

### 3 SECOND CAUSE OF ACTION

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

5 (On Behalf of Plaintiffs and the FLSA Class Against All Defendants)

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

8 39. 29 U.S.C. § 207(a)(1) provides as follows: "Except as otherwise provided in this  
9 section, no employer shall employ any of his employees who in any workweek is engaged in  
10 commerce or in the production of goods for commerce, or is employed in an enterprise engaged  
11 in commerce or in the production of goods for commerce, for a workweek longer than forty hours  
12 unless such employee receives compensation for his employment in excess of the hours above  
13 specified at a rate not less than one and one-half times the regular rate at which he is employed."

14 40. 29 U.S.C. § 207(k) provides as follows:

15 No public agency shall be deemed to have violated subsection (a) of  
16 this section with respect to the employment of any employee in fire  
17 protection activities or any employee in law enforcement activities  
18 (including security personnel in correctional institutions) if—

19 (1) in a work period of 28 consecutive days the employee  
20 receives for tours of duty which in the aggregate exceed the  
21 lesser of

22 (A) 216 hours, or

23 (B) the average number of hours (as determined by the  
24 Secretary pursuant to section 6(c)(3) of the Fair Labor  
25 Standards Amendments of 1974) in tours of duty of  
26 employees engaged in such activities in work periods of 28  
27 consecutive days in calendar year 1975; or

28 (2) in the case of such an employee to whom a work period of at  
least 7 but less than 28 days applies, in his work period the  
employee receives for tours of duty which in the aggregate  
exceed a number of hours which bears the same ratio to the  
number of consecutive days in his work period as 216 hours (or

THIERMAN LAW FIRM, PC  
7287 Lakeside Drive  
Reno, NV 89511  
(775) 284-1500 Fax (775) 703-5027  
Email laborlawyer@pacbell.net www.laborlawyer.net

1 if lower, the number of hours referred to in clause (B) of  
2 paragraph (1)) bears to 28 days,

3 compensation at a rate not less than one and one-half times the  
4 regular rate at which he is employed.

5 41. 29 U.S.C. § 553.221(b) states that "Compensable hours of work generally include  
6 all of the time during which an employee is on duty on the employer's premises or at a prescribed  
7 workplace, as well as all other time during which the employee is suffered or permitted to work  
8 for the employer. Such time includes all pre-shift and post-shift activities which are an integral  
9 part of the employee's principal activity or which are closely related to the performance of the  
10 principal activity, *such as attending roll call*, writing up and completing, tickets or reports, and  
11 washing and re-racking fire hoses. Emphasis added.

12 42. Once the work day has begun, all time suffered or permitted by the employer to be  
13 worked by the employee is compensable at the employee's applicable rate of pay, whether  
14 scheduled or not.

15 43. By engaging in the conduct explained above, Defendants paid Plaintiffs and Class  
16 Members \$0 for working off-the-clock.

17 44. By failing to compensate Plaintiffs and Class Members either in cash payment or  
18 compensating time off at one and one half the hours worked for the time spent engaging in off-  
19 the-clock activities identified above, Defendants failed to pay Plaintiffs and Class Members  
20 overtime for all hours worked in excess of forty (40) hours in a week in violation of 29 U.S.C.  
21 Section 207(a)(1) and/or in excess of the hours set forth in 29 U.S.C. § 207(k).

22 45. Defendants have not satisfied this obligation to pay for all hours worked in excess  
23 of 40 per week and/or in excess of the hours set forth in 29 U.S.C. § 207(k) at one and one half  
24 the employees regular rate by the payment of money nor by the grant of compensatory time off  
25 as provided in 29 U.S.C. § 207(o).

26 46. Defendants' unlawful conduct has been widespread, repeated, and willful.  
27 Defendants knew or should have known that its policies and practices have been unlawful and  
28 unfair. The actions complained of herein were willful and deliberate and without good cause, and  
the relevant time period until the date of judgment after trial.

THIERMAN LAW FIRM, PC  
7287 Lakeside Drive  
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(775) 284-1500 Fax (775) 703-5027  
Email laborlawyer@pacbell.net www.laborlawyer.net

47. Wherefore, Plaintiffs demand for themselves and for all others similarly situated, that Defendants pay Plaintiffs and all members of the Class one and one half times their regular hourly rate of pay for all hours worked in excess of forty (40) hours a week and/or in excess of the hours set forth in 29 U.S.C. § 207(k) during the relevant time period alleged herein together with liquidated damages, attorneys' fees, costs, and interest as provided by law.

### THIRD CAUSE OF ACTION

Failure to Pay Minimum Wages in Violation of the Nevada Constitution

(On Behalf of Plaintiff and the Nevada Class Against All Defendant)

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

49. Article 15 Section 16 of the Nevada Constitution sets forth the requirements the minimum wage requirements in the State of Nevada and further provides that "[t]he provisions of this section may not be waived by agreement between an individual employee and an employer. . . . An employee claiming violation of this section may bring an action against his or her employer in the courts of this State to enforce the provisions of this section and shall be entitled to all remedies available under the law or in equity appropriate to remedy any violation of this section, including but not limited to back pay, damages, reinstatement or injunctive relief. An employee who prevails in any action to enforce this section shall be awarded his or her reasonable attorney's fees and costs."

50. Article 15 § 16 of the Constitution does not contain any statute of limitations. There is a written agreement of employment at will, and for an hourly rate of pay. Therefore the relevant statute of limitations is contained in NRS 11.190(1)(recognizing that an obligation founded upon instrument carries a 6 year statute of limitations).

51. Once the work day has begun, all time suffered or permitted by the employer to be worked by the employee is compensable at the employee's applicable rate of pay, whether scheduled or not.

52. By engaging in the conduct explained above, Defendants paid Plaintiffs and Class Members \$0 for working off-the-clock.

THIERMAN LAW FIRM, PC  
 7287 Lakeside Drive  
 Reno, NV 89511  
 (775) 284-1500 Fax (775) 703-5027  
 Email laborlawyer@pachell.net www.laborlawyer.net

53. By failing to compensate Plaintiffs and Class Members for the time spent engaging in "off-the-clock" work activities as described above identified above, Defendants failed to pay Plaintiffs and Class Members the Nevada Constitutional minimum wage for that uncompensated time in violation of the Nevada Constitution.

54. Wherefore, Plaintiffs demand for themselves and for all Class Members payment by Defendants at their regular hourly rate of pay or the minimum wage rate, whichever is higher, for all hours worked during the relevant time period alleged herein together with attorneys' fees, costs, and interest as provided by law.

#### FOURTH CAUSE OF ACTION

##### Breach of Contract

(On Behalf of Plaintiffs and the Nevada Class Against All Defendants)

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

56. At all times relevant herein, Defendants had an agreement with Plaintiffs and with every Class Member to pay an agreed upon hourly wage rate for all hours they worked for Defendants. Defendants offered to pay Plaintiffs and Class Members a specific rate of pay per unit of time (hour) in exchange for Plaintiffs and Class Members' promise to perform work for Defendants at that hourly rate for all hours worked. The parties had an agreement, expressed or implied, to pay this hourly rate of pay for all hours worked.

57. Defendants also had an agreement with Plaintiffs and with every Class Member to pay overtime for all hours worked over 40 hours in a workweek or, if employee decided to accept the 14-day work period, to pay overtime for all hours worked over 80 hours in a 14-day work period.

58. The parties' employment agreement necessarily incorporated all applicable provisions of both state and federal law, including especially the labor laws of the State of Nevada.

59. Defendants breached their agreement with Plaintiffs and Class Members by failing to compensate them for all hours worked, namely the hours spent performing work activities off-the-clock, at the agreed upon rate of pay, including overtime.

61. Wherefore, Plaintiffs demand for themselves and for Class Members that Defendants pay Plaintiffs and Class Members their agreed upon rate of pay for all hours worked off the clock during the relevant time period alleged herein together with attorney's fees, costs, and interest as provided by law.

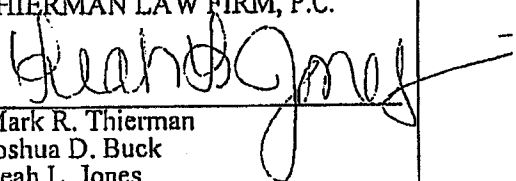
Wherefore Plaintiffs, by themselves and on behalf of all Class Members, pray for relief as follows relating to their collective and class action allegations:

1. For an order conditionally certifying this action under the FLSA and providing notice to all members of the Class so they may participate in this lawsuit;
2. For an order certifying this action as a traditional class action under Nevada Rule of Civil Procedure Rule 23 for all other claims presented in this complaint;
3. For an order appointing Plaintiffs as the Representatives of the Class and their counsel as Class Counsel;
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 and/or in excess of the hours set forth in 29 U.S.C. § 207(k);
7. For liquidated damages pursuant to 29 U.S.C. § 216(b);
8. For damages according to proof for minimum wage rate pay under the Nevada Constitution for all hours worked;
9. For damages pursuant to Defendants' breach of contract;
10. For interest as provided by law at the maximum legal rate;
11. For reasonable attorneys' fees authorized by statute;

- 1 12. For costs of suit incurred herein;
- 2 13. For pre-judgment and post-judgment interest, as provided by law, and
- 3 14. For such other and further relief as the Court may deem just and proper.
- 4

5 DATED: May 9, 2014

THIERMAN LAW FIRM, P.C.

  
Mark R. Thierman  
Joshua D. Buck  
Leah L. Jones  
7287 Lakeside Drive  
Reno, Nevada 89511  
Tel. (775) 284-1500  
Fax. (775) 703-5027

*Attorneys for Plaintiff*

THIERMAN LAW FIRM, P.C.  
7287 Lakeside Drive  
Reno, NV 89511  
(775) 284-1500 Fax (775) 703-5027  
Email laborlawyer@pacbell.net www.laborlawyer.net

# EXHIBIT B

# EXHIBIT B



**Received**

MAY 19 2014

**Personnel,**

Mark R. Thierman, Nev. Bar No. 8285  
 Joshua D. Buck, Nev. Bar No. 12187  
 Leah L. Jones, Nev. Bar. No. 13161  
 THIERMAN LAW FIRM, P.C.  
 7287 Lakeside Drive  
 Reno, Nevada 89511  
 Tel. (775) 284-1500  
 Fax. (775) 703-5027  
 Attorneys for Plaintiffs

**In The First Judicial District Court of the State of Nevada**  
**In and for Carson City**

DONALD WALDEN, JR., et al.

Plaintiff,

Case No.: 14000008910Dept. No. II

vs.

THE STATE OF NEVADA,  
 DEPARTMENT OF CORRECTIONS

Defendant.

SUMMONS

THE STATE OF NEVADA SENDS GREETINGS TO THE ABOVE-NAMED DEFENDANT:

**NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU**  
**WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS.**

**READ THE INFORMATION BELOW.**

TO THE DEFENDANT: A civil Complaint has been filed by the plaintiff against you.

1. If you wish to defend this lawsuit, you must, within 20 days after this Summons is served on you, exclusive of the day of service, file with this Court a written pleading\* in response to this Complaint.
2. Unless you respond, your default will be entered upon application of the plaintiff, and this Court may enter a judgment against you for the relief demanded in the Complaint\*\*, which could result in the taking of money or property or the relief requested in the Complaint.
3. If you wish to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time.
4. You are required to serve your response upon plaintiff's attorney, whose address is

ALAN GLOVER, Clerk of the Court

By: [Signature]

Deputy Clerk

Date: May 12, 20 14.

\*There is a fee associated with filing a responsive pleading. Please refer to fee schedule.

\*\*Note - When service by publication, insert a brief statement of the object of the action. See Rule 4.

Mark R. Thierman, Nev. Bar No. 8285  
 Joshua D. Buck, Nev. Bar No. 12187  
 Leah L. Jones, Nev. Bar. No. 13161  
 THIERMAN LAW FIRM, P.C.  
 7287 Lakeside Drive  
 Reno, Nevada 89511  
 Tel. (775) 284-1500  
 Fax. (775) 703-5027  
 Attorneys for Plaintiffs

**In The First Judicial District Court of the State of Nevada  
 In and for Carson City**

DONALD WALDEN, JR., et al.

Plaintiff,

Case No.: 140C000891B

Dept. No. II

vs.

THE STATE OF NEVADA,  
 DEPARTMENT OF CORRECTIONS

Defendant.

SUMMONS

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NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU  
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1. If you wish to defend this lawsuit, you must, within 20 days after this Summons is served on you, exclusive of the day of service, file with this Court a written pleading\* in response to this Complaint.
2. Unless you respond, your default will be entered upon application of the plaintiff, and this Court may enter a judgment against you for the relief demanded in the Complaint\*\*, which could result in the taking of money or property or the relief requested in the Complaint.
3. If you wish to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time.
4. You are required to serve your response upon plaintiff's attorney, whose address is

ALAN GLOVER, Clerk of the Court

By: [Signature], Deputy Clerk

Date: May 12, 20 14

\*There is a fee associated with filing a responsive pleading. Please refer to fee schedule.

\*\*Note - When service by publication, insert a brief statement of the object of the action. See Rule 4.

EXHIBIT C

EXHIBIT C

JS 44 (Rev. 12/07)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

Donald Walden Jr., Nathan Echeverria, Aaron Dicus, Brent Everist,  
Travis Zufeit, Timothy Ridenour, Daniel Tracy

(b) County of Residence of First Listed Plaintiff Clark  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Mark R. Thierman, Thierman Law Firm, P.C. 7287 Lakeside Dr.,  
Reno, NV 89511; 775-284-1500

**DEFENDANTS**

State of Nevada, Department of Corrections

County of Residence of First Listed Defendant Carson City  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
LAND INVOLVED.

Attorneys (If Known)

Ann M. McDermott, Chief AG; Janet E. Traut, SSDAG; 5420  
Kietzke Lane, Suite 202, Reno, NV 89511; 775-850-4107

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                            |                            |  |                            |                            |
|---|----------------------------|----------------------------|--|----------------------------|----------------------------|
|   | PTF                        | DEF                        |  | PTF                        | DEF                        |
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated <i>or</i> Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated <i>and</i> Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation   | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
				<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

**V. ORIGIN**

(Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):  
29 U.S.C. Section 201, et seq. and 29 U.S.C. Section 207

Brief description of cause:

Failure to pay wages, overtime, minimum wages, breach of contract

**VII. REQUESTED IN COMPLAINT:**

☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ unspecified

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

000018

Office of the Attorney General  
5420 Kietzke Lane, Suite 202  
Reno, NV 89511

CATHERINE CORTEZ MASTO  
Attorney General  
ANN M. McDERMOTT  
Chief Deputy Attorney General  
Nevada Bar No. 8180  
JANET E. TRAUT  
Superv. Sr. Deputy Attorney General  
Nevada Bar No. 8695  
Bureau of Litigation  
Personnel Division  
5420 Kietzke Lane, Suite 202  
Reno, Nevada 89511  
Tele: (775) 850-4117  
Fax: (775) 688-1822

*Attorneys for Defendant*

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

DONALD WALDEN JR., NATHAN  
ECHEVERRIA, AARON DICUS, BRENT  
EVERIST, TRAVIS ZUFELT, TIMOTHY  
RIDENOUR, and DANIEL TRACY on  
behalf of themselves and all other similarly  
situated,  
  
Plaintiffs,  
  
vs.  
  
STATE OF NEVADA, NEVADA  
DEPARTMENT OF CORRECTIONS, and  
DOES 1-50,  
  
Defendants.

Case No. 3:14-cv-00320-LRH-WGC

**ANSWER**

Defendant, State of Nevada, Nevada Department of Corrections, by and through its attorneys, Catherine Cortez Masto, Attorney General of the State of Nevada, Ann M. McDermott, Chief Deputy Attorney General, and Janet E. Traut, Supervising Senior Deputy Attorney General, hereby answer the Complaint in this matter.

1. Deny.
2. Admit.
3. Deny.
4. Deny.



15. Admit that Plaintiffs are or were classified state employees pursuant to NRS 284.150. Deny all of Plaintiffs' remaining allegations, if any, in this paragraph.

16. Deny.

17. Deny.

18. Deny.

19. Deny.

Collective and class action allegations

20. Defendant incorporates its responses to the preceding paragraphs 1-19 as if set forth fully here.

21. Defendant is without sufficient information or belief to admit or deny Plaintiffs' allegations in this paragraph, if any, and on that basis deny the same.

22. Admit.

23. Deny.

24. Admit that the statute of limitations is 6 years for a contract, but deny that this is a contract matter.

25. Defendant is without sufficient information or belief to admit or deny Plaintiffs' allegations in this paragraph, if any, and on that basis deny the same.

26. A. Deny.

B. Deny.

C. Deny.

D. Deny.

E. Defendant incorporates its responses to the preceding paragraphs 1-19 as if set forth fully here.

F. Deny.

G. Deny.

27. A. Deny.

B. Deny.

C. Deny.

1 D. Deny.

2 E. Deny.

3 First Cause of Action

4 28. Defendant incorporates its responses to the preceding paragraphs 1-27 as if set  
5 forth fully here.

6 29. Deny. 29 USC § 203(e)(2)(c).

7 30. Admit that the FLSA applies generally to State employees.

8 31. Admit that 29 USC § 206 addresses rate of pay. Defendant is without sufficient  
9 information or belief to admit or deny Plaintiffs' remaining allegations in this paragraph and on  
10 that basis deny the same.

11 32. Admit that Plaintiffs cite statute. Defendant is without sufficient information or  
12 belief to admit or deny Plaintiffs' remaining allegations in this paragraph, if any, and on that  
13 basis deny the same.

14 33. Defendant is without sufficient information or belief to admit or deny Plaintiffs'  
15 allegations in this paragraph, if any, and on that basis deny the same.

16 34. Deny.

17 35. Deny.

18 36. Deny.

19 37. The Defendant affirmatively alleges that Plaintiffs are not entitled to any of the  
20 relief requested.

21 Second Cause of Action

22 38. Defendant incorporates its responses to the preceding paragraphs 1-37 as if set  
23 forth fully here.

24 39. Admit that Plaintiffs cite statute. Defendant is without sufficient information or  
25 belief to admit or deny Plaintiffs' remaining allegations in this paragraph, if any, and on that  
26 basis deny the same.

27 ///

28 ///



40. Admit that Plaintiffs cite statute. Defendant is without sufficient information or belief to admit or deny Plaintiffs' remaining allegations in this paragraph, if any, and on that basis deny the same.

42. Defendant is without sufficient information or belief to admit or deny Plaintiffs' allegations in this paragraph, if any, and on that basis deny the same.

44. Deny.

45. Deny.

46. Deny.

47. The Defendant affirmatively alleges that Plaintiffs are not entitled to any of the relief requested.

48. Defendant incorporates its responses to the preceding paragraphs 1-47 as if set forth fully here.

50. Admit that Article 15 § 16 of the Nevada Constitution does not contain a statute of limitations. Deny that the Nevada Constitution is an “instrument in writing” pursuant to NRS 11.190(1).

52. Deny.

53. Deny.

54. The Defendant affirmatively alleges that Plaintiffs are not entitled to any of the relief requested.

Fourth Cause of Action

55. Defendant incorporates its responses to the preceding paragraphs 1-54 as if set forth fully here.

56. Deny.

57. Deny.

58. Deny.

59. Deny.

60. Deny.

61. The Defendant affirmatively alleges that Plaintiffs are not entitled to any of the relief requested.

Prayer for Relief

The Defendant affirmatively alleges that Plaintiffs are not entitled to any of the relief requested.

**AFFIRMATIVE DEFENSES**

1. Plaintiffs' complaint fails to state a claim upon which relief can be granted.

2. Defendant at all relevant times acted in good faith toward Plaintiffs. Therefore, Defendant is entitled to qualified good faith immunity from damages.

3. Defendant is immune from liability as a matter of law.

4. Defendant acted at all relevant times in accordance with applicable law and prison procedures that are constitutionally required.

5. Plaintiffs' damages, if any, are the result of their own intentional and/or negligent acts and they are solely responsible for the matters alleged.

6. The negligence of the Plaintiffs caused or contributed to any injuries or damages which Plaintiffs may have sustained, and the negligence of this Defendant, if any, requires that the damages of Plaintiffs be denied or diminished in proportion to the amount of negligence attributable to Plaintiffs.

7. The Plaintiffs have failed to mitigate their losses and damages, if any there were.

///

1           8. Any and all claims which occurred prior to two (2) years of the filing of Plaintiff's  
2 complaint are barred by the statute of limitations.

3           9. The damages sustained by Plaintiffs, if any, were accomplished with the full  
4 consent of Plaintiffs.

5           10. No award of punitive damages can be awarded against these answering  
6 defendants under the facts and circumstances alleged in Plaintiffs' complaint.

7           11. Any job action or inaction in relation to Plaintiffs was in conformity with the  
8 statutes, rules, regulations, and agreements governing Plaintiffs' employment relationship, if  
9 any, with this answering defendant.

10           12. The loss, injuries, and damages which Plaintiffs allege, if any, were directly and  
11 proximately caused by the negligence, carelessness, recklessness, or intentional acts of the  
12 Plaintiffs, which are greater than any alleged negligence, carelessness, recklessness or fault  
13 of these answering defendants, and therefore, Plaintiffs' claims against these answering  
14 defendants are barred.

15           13. Defendant has, at all times, acted in good faith and without intent to pay its  
16 classified employees improperly.

17           14. Plaintiffs have failed to exhaust administrative, contractual, or statutory  
18 remedies.

19           15. Plaintiffs may not be appointed, paid, transferred, promoted, demoted or  
20 discharged except through the action of Chapter 284 of the Nevada Revised Statutes.

21           16. At all times relevant hereto, the actions or omissions of the Defendant, if any  
22 there were, were privileged either absolutely or conditionally and thus plaintiffs' complaint fails  
23 to state a cause of action in this regard.

24           17. Plaintiff's claims are barred by *res judicata*: i.e., issue preclusion and/or claim  
25 preclusion.

26           18. Plaintiff's claims are barred by laches.

27           19. Plaintiff's claims are barred by the doctrine of unclean hands.

28   ///

1           20.    The claims must be dismissed because Defendant exercised reasonable care to  
2 prevent and to promptly correct any alleged pay irregularities in its workplace.

3           21.    The claims must be dismissed because Defendant did not aid, abet, ratify,  
4 condone, encourage or acquiesce in any alleged unlawful conduct.

5           22.    Defendant has a clearly communicated policy set forth in statute and regulation  
6 which entitles it to safe harbor.

7           23.    Defendants paid to each Plaintiff the hours worked as each submitted on their  
8 timesheet.

9           24.    Any time which Plaintiffs allege to be non-compensated meets the definition of  
10 *de minimus* and Defendant is not liable pursuant to this exception.

11          25.    Correctional officers donning and doffing of protective gear does not qualify for  
12 overtime because the equipment is not integral to the work.

13          26.    If Plaintiffs arrived early at their previously bid and assigned post, Plaintiffs were  
14 waiting to be engaged, not engaged to be waiting.

15          27.    Plaintiffs cannot demonstrate that they are similarly situated to the proposed  
16 class of collective plaintiffs as each prison and post has its own procedures.

17          28.    The FLSA does not preempt state statutes concerning classified employees  
18 which require prior requests, approval, and documentation of overtime work.

19          29.    Plaintiffs cannot establish a common question which predominates for  
20 certification of a class.

21          30.    There is no policy, practice or custom sufficient to establish liability pursuant to  
22 29 U.S.C. § 201 *et seq.*, and Plaintiffs' Complaint should be dismissed.

23          31.    The State of Nevada's wage and overtime policies set forth in statute for  
24 persons in the classified service of the State are not unlawful.

25          32.    The State of Nevada maintains an appropriate system of record keeping,  
26 providing for employees to submit their time worked and assent to its correctness.

27          33.    Defendant reserves the right to amend its reply to allege additional defenses, if  
28 subsequent discovery so warrants.

WHEREFORE, Defendants pray as follows:

1. That Plaintiffs take nothing by virtue of their Complaint.

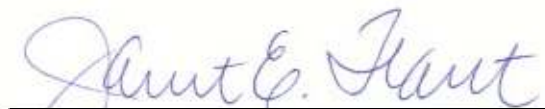
2. That the Defendant have judgment for its costs and attorney fees as determined by law.

3. For such other and further relief as the Court may deem just and proper.

Dated this 24th day of June, 2014.

CATHERINE CORTEZ MASTO  
Attorney General

By:



ANN M. McDERMOTT  
Chief Deputy Attorney General  
JANET E. TRAUT  
Superv. Sr. Deputy Attorney General  
Bureau of Litigation  
Personnel Division  
*Attorneys for Defendant*

**CERTIFICATE OF SERVICE**

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on this 24<sup>th</sup> day of June, 2014, I served a copy of the foregoing ANSWER, by U.S. District Court CM/ECF Electronic Filing and by providing a true and correct copy via U.S. Mail first class postage fully paid to the following:

Mark R. Thierman, Esq.  
Thierman Law Firm, P.C.  
7287 Lakeside Drive  
Reno, Nevada 89511  
[mark@thiermanlaw.com](mailto:mark@thiermanlaw.com)

Joshua D. Buck, Esq.  
Thierman Law Firm, P.C.  
7287 Lakeside Drive  
Reno, Nevada 89511  
[josh@thiermanlaw.com](mailto:josh@thiermanlaw.com)

Leah L. Jones, Esq.  
Thierman Law Firm, P.C.  
7287 Lakeside Drive  
Reno, Nevada 89511  
[leah@thiermanlaw.com](mailto:leah@thiermanlaw.com)

*/s/ Shirley J. Susich*

An Employee of the Office of the Attorney General

**THIERMAN LAW FIRM, PC**  
7287 Lakeside Drive  
Reno, NV 89511  
(775) 284-1500 Fax (775) 703-5027  
Email laborlawyer@pacbell.net www.laborlawyer.net

Mark R. Thierman, Nev. Bar No. 8285  
mark@thiermanlaw.com  
Joshua D. Buck, Nev. Bar No. 12187  
josh@thiermanlaw.com  
Leah L. Jones, Nev. Bar. No. 13161  
leah@thiermanlaw.com  
THIERMAN LAW FIRM, P.C.  
7287 Lakeside Drive  
Reno, Nevada 89511  
Tel. (775) 284-1500  
Fax. (775) 703-5027

*Attorneys for Plaintiffs*

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

DONALD WALDEN JR., NATHAN  
ECHEVERRIA, AARON DICUS, BRENT  
EVERIST, TRAVIS ZUFELT, TIMOTHY  
RIDENOUR, and DANIEL TRACY on  
behalf of themselves and all other similarly  
situated,

Plaintiffs,

v.

STATE OF NEVADA, *EX. REL.* ITS  
DEPARTMENT OF CORRECTIONS, and  
DOES 1-50,

Defendant(s).

Case No.: 3:14-cv-00320-LRH-WGC

**PLAINTIFFS' MOTION FOR  
CIRCULATION OF NOTICE  
PURSUANT TO 29 U.S.C. § 216(b)**

Pursuant to 29 U.S.C. § 216(b) of the Fair Labor Standards Act ("FLSA"), Plaintiffs DONALD WALDEN JR., NATHAN ECHEVERRIA, AARON DICUS, BRENT EVERIST, TRAVIS ZUFELT, TIMOTHY RIDENOUR, and DANIEL TRACY, (collectively, "Plaintiffs") through their attorneys, hereby move the Court for an Order directing that other persons similarly situated to Plaintiffs be given notice of the pendency of this action and an opportunity to file

THIERMAN LAW FIRM, PC  
 7287 Lakeside Drive  
 Reno, NV 89511  
 (775) 284-1500 Fax (775) 703-5027  
 Email laborlawyer@pacbell.net www.laborlawyer.net

written consents with the Court to join this action as party plaintiffs and for other associated relief including a toll of the statute of limitations.

Plaintiffs' motion is based on this Motion, the memorandum of points and authorities in support thereof, the proposed Notice of pendency of FLSA collective action lawsuit against Defendants STATE OF NEVADA, *ex. rel.* its DEPARTMENT OF CORRECTIONS ("Defendant") and DOES 1 through 50, inclusive (collectively, "Defendants"), (attached to this motion as Exhibit "A"), the proposed Consent to Join (attached to this motion as Exhibit "B"), the Declarations filed in support of this motion and all accompanying exhibits, pleadings, papers, and records on file herein, all matters upon which judicial notice may be taken, any oral argument that may be presented, and upon such other matters the Court deems just and necessary. Plaintiffs believe the sending of preliminary notice under the FLSA will materially advance the litigation but reserves its motion for class certification under Rule 23 of the Federal Rules of Civil Procedure ("FRCP"), and the pendant state law claims alleged herein, to a time when the record can be more fully developed.

For all the reasons expressed herein, Plaintiffs respectfully request that the Court grant their Motion for circulation of notice of the pendency of the federal FLSA collective action only.

Dated this 6<sup>th</sup> day of August, 2014.

Respectfully submitted,

THIERMAN LAW FIRM

By: /s/Joshua D. Buck  
 Mark R. Thierman  
 Joshua D. Buck  
 Leah L. Jones  
*Attorneys for Plaintiffs*



**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

The Fair Labor Standards Act (“FLSA”) provides for a unique mechanism to allow other individuals who may be the “victims of a single [employer] decision, policy, or plan” to receive notice of the legal action and decide, for themselves, whether they would like to participate in the action as a so-call “opt-in plaintiff”. *See* 29 U.S.C. § 216(b); *Sarviss v. Gen. Dynamics Information Tech., Inc.*, 663 F. Supp. 2d 883, 903 (C.D. Cal. 2009). Because an opt-in plaintiff’s statute of limitations continues to run until he or she affirmative submits a “consent to join” in the legal action, courts routinely authorize notice to be sent out to all persons who may have an interest in the legal action and defer on making the more stringent inquiry into whether the opt-in plaintiffs are “similarly situated” to the named-plaintiffs until after discovery has been completed. *See Sargent v. HG Staffing, LLC*, 3:13-CV-00453-LRH, 2014 WL 1796271 (D. Nev. May 6, 2014); *Lewis v. Nevada Property 1, LLC, d/b/a the Cosmopolitan of Las Vegas*, 2013 U.S. Dist. LEXIS 8945, \*17-20 (Jan. 22, 2013); *Edwards v. City of Long Beach*, 467 F. Supp. 2d 986, 989-90 (C.D. Cal. 2006) (recognizing that the standard for making this determination is “fairly lenient” and “typically results in conditional class certification.”). Specifically, “[a] named plaintiff seeking to create a § 216(b) opt-in class need only show that his/her position is similar, but not identical, to the positions held by putative class members. ” *Sargent v. HG Staffing, LLC*, 3:13-CV-00453-LRH, 2014 WL 1796271 (D. Nev. May 6, 2014) quoting *Lewis*, 2013 WL 237098, at \*7, which itself was quoting *Davis v. Westgate Planet Hollywood Las Vegas*, No. 2:08-cv-00722-RCJPAL, 2009 WL 102735, at \*9 (D.Nev. Jan. 12, 2009)) (internal quotation marks omitted).

Here, Plaintiffs’ Motion should be granted because all proposed class members were subjected to a common plan, policy and practice of requiring Defendants’ employees to perform various activities “off-the-clock” and without compensation. Defendant enshrined this policy in regulations, operating procedures, and communications applicable to all its hourly paid correctional officer employees. The testimony of Nevada Correctional Association (“NCA”)

THIERMAN LAW FIRM, PC  
7287 Lakeside Drive  
Reno, NV 89511  
(775) 284-1500 Fax (775) 703-5027  
Email laborlawyer@pacbell.net www.laborlawyer.net

President Gene Columbus (“Columbus Dec.”) that this practice is ubiquitous<sup>1</sup> to all Defendant’s facilities statewide is based upon his own personal knowledge derived from his responsibilities both as an employee who has worked at several facilities and as the union representative for correctional officers at each of the state’s facilities.<sup>2</sup> “In addition, selected declarants confirm that this rule exists everywhere. In all cases, Defendant requires its hourly paid employees to attend “roll call” and similar meetings “off the clock” before their shift begins without compensation, despite the clear directive in 29 C.F.R. 553, 221(b).<sup>3</sup> 29 C.F.R. 553.211(f) specifically includes all members of the proposed class subject to the “roll call” compensation requirement of subsection (b) above.<sup>4</sup>

<sup>1</sup>Columbus Dec at page 3, lines 14-19 states: “More specifically, I can attest that NDOC policies and procedures of requiring Correctional Officers to show up before their regularly schedule shift to check in and perform work activities without compensation has been a longstanding practice at NDOC. The same is true at the end of the day, whereby Correctional Officers are required to perform work activities without compensation after the end of their regularly scheduled shift.

<sup>2</sup> Columbus Dec at page 2, lines 26-28, and page 3, lines 7-9. “Currently NCA has approximately 300 members at various NDOC facilities across the state of Nevada. We have members who work at all the Correctional Facilities in the state of Nevada. . . Being President of the NCA, I have knowledge of all NDOC’s statewide policies and procedures and the policies and procedures of each particular facility.”

<sup>3</sup> 29 C.F.R. 221(b) states (with emphasis supplied): “Compensable hours of work generally include all of the time during which an employee is on duty on the employer's premises or at a prescribed workplace, as well as all other time during which the employee is suffered or permitted to work for the employer. Such time includes all pre-shift and post-shift activities which are an integral part of the employee's principal activity or which are closely related to the performance of the principal activity, such as attending roll call, writing up and completing tickets or reports, and washing and re-racking fire hoses.”

<sup>4</sup> 29 C.F.R. 553.221(f) states: “(f) The term ‘any employee in law enforcement activities’ also includes, by express reference, “security personnel in correctional institutions.” A correctional institution is any government facility maintained as part of a penal system for the incarceration or detention of persons suspected or convicted of having breached the peace or committed some other crime. Typically, such facilities include penitentiaries, prisons, prison farms, county, city and village jails, precinct house lockups and reformatories. Employees of correctional institutions who qualify as security personnel for purposes of the section 7(k) exemption are those who have responsibility for controlling and maintaining custody of inmates and of safeguarding them from other inmates or for supervising such functions, regardless of whether their duties are performed inside the correctional institution or outside the institution (as in the case of road gangs). These employees are considered to be engaged in law enforcement activities regardless of their rank (e.g., warden, assistant warden or guard) or of their status as “trainee,” “probationary,” or “permanent,” and regardless of their assignment to duties incidental to the performance of their

**THIERMAN LAW FIRM, PC**  
 7287 Lakeside Drive  
 Reno, NV 89511  
 (775) 284-1500 Fax (775) 703-5027  
 Email laborlawyer@pacbell.net www.laborlawyer.net

This Motion is brought so that other employees of Defendants that have been the victims of these common plans, policies, and practices, have an opportunity to preserve their statute of limitations and participate in this action. Indeed, the remaining hundreds of employees who have not received notice of this action should be given an opportunity to participate and attempt to recover at least a part of their unpaid wages for years spent working off-the-clock and not being paid the correct hourly rates of pay.

## **II. BACKGROUND**

### **A. The Current Procedural Posture**

Plaintiffs filed this collective and class action complaint against Defendants in the First Judicial District Court for the State of Nevada in and for the City of Carson. *See generally* Doc. 1-1 (Plaintiffs' Complaint). Plaintiffs allege various causes of action for unpaid wages on behalf of themselves and all similarly situated individuals under both the FLSA and the Nevada Constitution. Specifically, Plaintiffs allege that Defendant failed to (1) pay wages for all hours worked in violation of 29 U.S.C. § 201, et. seq; (2) pay overtime in violation of 29 U.S.C. § 207; (3) pay minimum wages in violation of the Nevada Constitution; and that (4) Defendant breached its contract with Plaintiffs. Plaintiffs bring their FLSA causes of action as a collective action and their state law causes of action as a class action under Rule 23 of the Federal Rules of Civil Procedure ("FRCP"), and do so on behalf of the following class of individuals: "All persons who were employed by Defendants as correctional officers at any time during the applicable statute of limitations period." Doc. 1, at ¶ 25. Defendant filed its Notice of Removal to this Court on June 17, 2014 and answered Plaintiffs' Complaint on June 24, 2014. *See* Docs. 1 and 3. Procedurally, this case is in its infancy.

### **B. Common Facts Supporting Plaintiffs' Collective Claims**

Defendant maintains a common plan, policy, or practice that violates the FLSA and therefore requires notice to be sent out to other similarly situated employees. Specifically, notice

---

law enforcement activities, or to support activities of the type described in paragraph (g) of this section, whether or not such assignment is for training or familiarization purposes or for reasons of illness, injury or infirmity."

**THIERMAN LAW FIRM, PC**  
 7287 Lakeside Drive  
 Reno, NV 89511  
 (775) 284-1500 Fax (775) 703-5027  
 Email laborlawyer@pacbell.net www.laborlawyer.net

1 should be sent regarding Defendant's policy of requiring non-exempt hourly employees to work  
 2 without being paid (i.e., off-the-clock) performing such tasks as attending roll call, picking up  
 3 and dropping off equipment, and providing or receiving work related information and  
 4 communications prior to or after each shift. Despite having been employed at different facilities,  
 5 Plaintiffs' experiences with regard to the claims alleged in the Complaint are similar, common,  
 6 and typical of all other correctional officers employed by Defendants throughout the State during  
 7 the relevant time period.

8 Defendant extracted additional work from employees without having to pay them for the  
 9 work being performed by maintaining a policy of requiring employees to perform work activities  
 10 before and after their regularly scheduled shifts "off-the-clock" for which they were not  
 11 compensated. *See, e.g.*, Columbus Dec. at ¶¶ 6-9; Declaration of Donald Walden ("Walden Dec.")  
 12 at ¶¶ 8-9; Declaration of Nathan Echeverria ("Echeverria Dec.") at ¶¶ 9-10; Declaration of Brent  
 13 Everist ("Everist Dec.") at ¶¶ 7-8; Declaration of Tim Ridenour ("Ridenour Dec.") at ¶¶ 8-9;  
 14 Declaration of Daniel Tracy ("Tracy Dec.") at ¶¶ 8-9. Although Defendant accomplished this  
 15 unlawful practice in a variety of ways (e.g., by requiring employees to report to a supervisor,  
 16 complete debriefing, pick up and drop off necessary work equipment, and transit to and from  
 17 work stations), the overall policy was uniformly applied to limit the accumulation of overtime  
 18 hours and work employees off-the-clock. *See, e.g.*, Walden Dec. at ¶¶ 5-9; Echeverria Dec. at ¶¶  
 19 5-10; Everist Dec. at ¶¶ 5-8; Ridenour Dec. at ¶¶ 5-9; Tracy Dec. at ¶¶ 5-9.

20 Defendant memorialized this policy in various regulations, operating procedures, and  
 21 communications sent to its employees. In particular, NDOC's Administrative Regulations  
 22 mandate that correctional staff must attend roll call and report in prior to the start of their regular  
 23 scheduled shift: "All correctional staff will report to the shift supervisor/shift sergeant upon  
 24 arrival to ensure their status if required to work mandatory overtime." *See*  
 25 <http://www.doc.nv.gov/sites/doc/files/pdf/AR326.pdf> (last visited Feb. 25, 2014). Local  
 26 operational procedures further outline NDOC's requirements. As stated by NCA President Gene  
 27 Columbus, all of these operational procedures are essentially the same:

THIERMAN LAW FIRM, PC  
 7287 Lakeside Drive  
 Reno, NV 89511  
 (775) 284-1500 Fax (775) 703-5027  
 Email laborlawyer@pacbell.net www.laborlawyer.net

All of the policies and procedures of NDOC facilities requiring work activities to pre and post-shift are essentially the same. Each facility requires Correctional Officers to report to their sergeant on-duty pre shift for roll call, to have their uniforms checked, to get their assignment for the day, attain any tools they may need to perform their assignment for that day (e.g., radio, tear gas, handcuffs). After engaging in these pre-shift activities, Correctional Officers are then required to proceed to their assigned post to then conduct a debriefing with the outgoing officer. All of this time has been and continues to be non-compensable pursuant to NDOC's policies, procedures, rules and regulations. At the end of the shift, Correctional Offices are supposed to engage in many of the same pre-shift activities, but in reverse order.

See Columbus Dec." at ¶ 7. Indeed, SDCC Operational Procedure 326.03 requires the following activities be conducted off-the-clock:

1. All Staff shall report for duty fully prepared for any work assignment
  - Uniform and equipment shall be in accordance with A.R. 350
2. Staff will report to the shift supervisor in the muster room for posting of their assignment.
  - Staff will report early enough to be on their post by the beginning of their shift.
  - Staff will report in person
    - Areas of assignment or working hours do no exempt the staff from reporting for duty to the Shift Supervisor
3. All Staff shall check their respective mailboxes prior to reporting for duty.

Walden Dec. at ¶ 7; Echeverria Dec. at ¶ 7; Ridenour Dec. at ¶ 7; Tracy Dec. at ¶ 7. NDOC Administrative Regulation 326 states, in relevant part, that "All correctional staff will report to the shift supervisor/shift sergeant upon arrival . . . ." Walden Dec. at ¶ 6; Echeverria Dec. at ¶ 6; Everist Dec. at ¶ 6; Ridenour Dec. at ¶ 6; Tracy Dec. at ¶ 6.

NDOC supervisors routinely enforce these written policies and procedures:

A few people need to be reminded. You need to arrive on your post by the start of your shift (OP 032). It is approx. 10-15 minute walk from Operations to 9/12 quad. You need to incorporate this walk in your travel to work to ensure you arrive on time.

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 7287 Lakeside Drive  
 Reno, NV 89511  
 (775) 284-1500 Fax (775) 703-5027  
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Echeverria Dec. at ¶ 8. Defendant's unlawful practice of requiring non-exempt hourly employees to work without being paid forced its employees to work off-the-clock and without compensation for approximately 30 to 45 minutes of each and every workday that the employees were employed by the NDOC. *See, e.g.*, Walden Dec. at ¶ 10; Echeverria Dec. at ¶ 11; Everist Dec. at ¶ 9; Ridenour Dec. at ¶ 10; Tracy Dec. at ¶ 10.

Plaintiffs will adequately provide representative testimony applicable to the entire class. Plaintiffs' counsel has the necessary resources and expertise to prosecute this case (and the resulting Rule 23 Class to be addressed later in this action). *See* Declaration of Mark R. Thierman ("Thierman Dec."); Declaration of Joshua D. Buck ("Buck Dec.") at ¶ 4-5. Indeed, Plaintiffs lead counsel has over 35 years of experience handling labor and employment matters, 15 of which have been focused on the prosecution of wage/hour collective and class action cases. Thierman Dec. at ¶ 6 and 10.

### III. ARGUMENT

#### A. **Introduction: The Class Plaintiffs Seek To Have Conditionally Certified.**

Because all the hourly paid non-exempt guard employees of Defendants are, or were, victims of the same allegations in the complaint, Plaintiffs seeks to represent the following class of similarly situated individuals (hereinafter the "FLSA Class"):

All persons who were employed by Defendants as correctional officers at any time during the applicable statute of limitations period."<sup>5</sup> Doc. 1, at ¶ 25.

As demonstrated by the pleadings on file in this action and the evidence submitted in support of this Motion, the Class represents a group of similarly situated individuals who were all victims of the same policy and procedure of requiring employees perform work without compensation. But the ultimate question of liability as to these allegedly unlawful policies is not before this court at this time. The Court is only asked to determine that Plaintiffs and the other Proposed Class Members they seek to represent in this action are "similarly situated"—i.e., they

---

<sup>5</sup> The relevant time period here is three years from the date of the original filing of the complaint—May 12, 2014.



are “victims of a single [employer] decision, policy, or plan.” *Sarviss v. Gen. Dynamics Information Tech., Inc.*, 663 F. Supp. 2d 883, 903 (C.D. Cal. 2009).

**B. Plaintiff and Proposed Class Members Are Similarly Situated and Thus Notice Should Be Sent To Potential Opt-In Plaintiffs To Decide Whether To Join This Action.**

Similar to other courts in this Circuit, this Court takes a two-tier approach to certifying a collective action under the FLSA. *Sargent v. HG Staffing*, supra. See e.g., *Lewis v. Nevada Property 1, LLC, d/b/a the Cosmopolitan of Las Vegas*, 2013 U.S. Dist. LEXIS 8945, \*17-20 (Jan. 22, 2013); *Lucas v. Bell Trans*, 2010 U.S. Dist. LEXIS 110815, \*7-8 (D. Nev. Sept. 30, 2010).

The first tier is the so-called “notice stage.” At this stage, the Court’s sole concern is whether the named-plaintiff and the proposed opt-in plaintiffs are “similarly situated.” *Lewis*, 2013 U.S. Dist. LEXIS 8945 at \*19-20; *Lucas*, 2010 U.S. Dist. LEXIS 110815, at \*10-11; 29 U.S.C. § 216(b) (An action “may be maintained against any employer . . . 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.”).

As *Lewis* Court recognized,

“At the first stage, the court relies “primarily on the pleadings and any affidavits submitted by the parties,” [to decide] “whether the potential class should be given notice of the action.”” 2013 U.S. Dist. LEXIS 8945 at \*19-20 (citations omitted). “A fairly lenient standard is applied at this stage because the court has “minimal evidence” to make its determination.” *Id.* (citing *Mooney v. Aramco Services, Co.*, 54 F.3d 1207, 1213-14 (5th Cir.1995); *Kane v. Gage*, 138 F.Supp.2d 212, 214 (D. Mass. 2001)). The *Lewis* Court further acknowledged that “[a] plaintiff need only make substantial allegations that the putative class members were subject to a single decision, policy, or plan that violated the law.” *Id.* Although the plaintiff bears the burden of establishing that he and the proposed opt-in plaintiffs are similarly situated, this determination is made “under a fairly lenient standard and typically results in conditional class certification.” See *Edwards v. City of Long Beach*, 467 F. Supp. 2d 986, 989-90 (C.D. Cal. 2006).

**THIERMAN LAW FIRM, PC**  
 7287 Lakeside Drive  
 Reno, NV 89511  
 (775) 284-1500 Fax (775) 703-5027  
 Email laborlawyer@pacbell.net www.laborlawyer.net

This standard requires ““nothing more than substantial allegations that the putative class members were together the victims of a single decision, policy, or plan.”” *Thiessen v. Gen. Elec. Capital Corp.*, 267 F.3d 1095, 1102 (10th Cir. 2001) (internal quotation marks and citation omitted); accord *Hoffman-La Roche, Inc. v. Sperling*, 493 U.S. 165, 170 (1989); *Sarviss v. Gen. Dynamics Information Tech., Inc.*, 663 F. Supp. 2d 883, 903 (C.D. Cal. 2009). The issues considered in a Rule 23 class certification motion—i.e., numerosity, typicality, commonalty and representativeness—are not considered on a motion to circulate notice of the pendency of an action. *Scholtisek v. Eldre Corp.*, 229 F.R.D. 381, 386 (W.D.N.Y. 2005); see also *Mitchell v. Acosta Sales, LLC*, 2011 U.S. Dist. LEXIS 152235, 36-38 (C.D. Cal. Dec. 16, 2011) (rejecting defendant’s invitation to apply a more heightened standard of proof in analyzing whether plaintiffs have proved similarity, à la the commonality requirement under Rule 23 and the recent supreme court decision of *Wal-Mart v. Dukes*, 131 S. Ct. 2541, 180 L. Ed. 2d 374 (2011)).

The reason for such a lenient standard during the notice stage is simple—the court is merely deciding whether the potential class should be notified of the pending action. See *Leuthold*, 2274 F.R.D. 462 at 467. Indeed, this is a procedural motion to determine whether Notice should be sent out to absent class members so that they can decide whether to participate in this action. Only after the parties have had a full opportunity to exhaust the discovery process will the legal and factual issues be put before this Court of whether Plaintiffs and the Proposed Class should be paid for alleged work they performed off-the-clock.<sup>6</sup> Therefore, opt-in plaintiffs who share common issues of law and fact must be given an opportunity to participate in the action and be bound by the result. *Id.* at 468 (“Bypassing the notice stage altogether would deprive the court of this information and might deprive some plaintiffs of a meaningful opportunity to participate.”).

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<sup>6</sup> Each of these claims also generates a state law cause of action, which will be later subject to a motion under Rule 23 the Federal Rules of Civil Procedure. However, opt out type FRCP Rule 23 class claims may be brought within the same action that alleges an opt in collective action. *Busk v. Integrity Staffing Solutions, Inc.*, 713 F.3d 525 (9<sup>th</sup> Cir. 2013). Because of the lack of a tolling agreement at this point, this motion is limited only to the notification under the reduced standards of the Fair Labor Standards Act. Plaintiffs reserve their right to bring a Rule 23 class certification motion at a later time.



**THIERMAN LAW FIRM, PC**  
 7287 Lakeside Drive  
 Reno, NV 89511  
 (775) 284-1500 Fax (775) 703-5027  
 Email laborlawyer@pacbell.net www.laborlawyer.net

1 The more rigorous second-tier analysis, or the so-called “decertification stage,” does not  
 2 apply until after the close of discovery when the case is ready for trial. *See, e.g., Labrie v. UPS*  
 3 *Supply Chain Solutions, Inc.*, 2009 U.S. Dist. LEXIS 25210, at \*3 (N.D. Cal. March 18, 2009);  
 4 *Edwards*, 467 F. Supp. 2d at 990 n.1. Otherwise, the liberal “notice stage” standard remains in  
 5 effective so long as discovery on collective certification continues. *See Kress v.*  
 6 *PricewaterhouseCoopers, LLP*, 263 F.R.D. 623, 629 (E.D. Cal. 2009) (“Courts in this Circuit  
 7 refuse to depart from the notice stage analysis prior to the close of discovery.”); *Goudie v. Cable*  
 8 *Communications, Inc.*, 2008 U.S. Dist. LEXIS 83382, at \*5 (D. Or. Oct. 14, 2008).

9 The complaint in this case was just recently filed on May 12, 2014. Despite the procedural  
 10 infancy of this case, the statute of limitations continues to run for all employees who have not  
 11 filed a consent to join in this action. This is precisely why courts routinely grant conditional  
 12 certification and allow plaintiffs to send out notice to potential opt-ins—to gather additional  
 13 collective-wide facts. *Leuthold*, 2274 F.R.D. 462 at 468 (recognizing that when relevant facts  
 14 have not been fully explored the court should defer to the first-tier analysis). After Plaintiffs are  
 15 provided with the list of potential opt-ins, and notices are sent out, the parties will be able to more  
 16 fully explore the factual and employment situation of the now “potential” opt-ins that will be  
 17 appropriate for the more searching “similarly situated” requirement under the second tier  
 18 analysis. *See id.* (“The number and type of plaintiffs who choose to opt into the class may affect  
 19 the court’s second tier inquiry regarding the disparate factual and employment situations of the  
 20 opt-in plaintiffs, as well as fairness and procedural issues.”). Indeed, as adeptly noted by the  
 21 *Leuthold* court, “[b]ypassing the notice stage altogether would deprive the court of this  
 22 information and might deprive some plaintiffs of a meaningful opportunity to participate.” *Id.*

23 This case concerns a common policy or policies of Defendant requiring employees to  
 24 work without compensation and for failing to pay the appropriate overtime rate. As demonstrated  
 25 by the declarations submitted in support of this Motion, Defendant maintained a policy of  
 26 requiring employees to perform work activities before and after their regularly scheduled shifts  
 27 “off-the-clock” for which they were not compensated. *See, e.g., Columbus Dec.* at ¶¶ 6-9; *Walden*  
 28 *Dec.* at ¶¶ 8-9; *Echeverria Dec.* at ¶¶ 9-10; *Everist Dec.* at ¶¶ 7-8; *Ridenour Dec.* at ¶¶ 8-9; *Tracy*

**THIERMAN LAW FIRM, PC**  
 7287 Lakeside Drive  
 Reno, NV 89511  
 (775) 284-1500 Fax (775) 703-5027  
 Email laborlawyer@pacbell.net www.laborlawyer.net

Dec. at ¶¶ 8-9. Defendant accomplished this unlawful practice by requiring employees to report to a supervisor, complete debriefing, pick up and drop off necessary work equipment, and transit to and from work stations and the overall policy was uniformly applied to limit the accumulation of overtime hours and work employees off-the-clock. *See, e.g.,* Walden Dec. at ¶¶ 5-9; Echeverria Dec. at ¶¶ 5-10; Everist Dec. at ¶¶ 5-8; Ridenour Dec. at ¶¶ 5-9; Tracy Dec. at ¶¶ 5-9. Based on this common evidence, notice should be sent out immediately so that Class Members can protect their rights to participate in this litigation.

**C. The Attached Notice And Consent Adequately Inform Prospective Opt-In Plaintiffs Of Their Right To Participate (Or Refrain From Participation) In This Action.**

A proposed Notice of Pendency of FLSA Collective Action Lawsuit Against STATE OF NEVADA, *ex. rel.* its DEPARTMENT OF CORRECTIONS (“NDOC”) is attached to this memorandum as Exhibit “A”. A proposed Consent to Join is attached as Exhibit “B”.

This Notice neutrally describes the lawsuit, Plaintiffs’ claims and Defendants’ anticipated defenses. *See* Ex. A., at 2. The Notice identifies who may participate in the action, states that participation is completely voluntary, and states that if a party decides to participate, he or she will be bound by the decision of the court, whether it is favorable or unfavorable. *See* Ex. A, at 4 (“You do not have to join this lawsuit.”); Ex., A, at 3 (“To participate in this lawsuit, you must be a current or former non-exempt hourly paid employee who was or is employed by the State of Nevada, *ex. rel.* its Department of Corrections (“NDOC”) as a correctional officer at any time from May 12, 2011 to the present”); Ex. A, at 3 (“If you choose to join this case, you will be bound by the decision of the court, whether it is favorable or unfavorable.”).

This Notice of Pendency is based in large part upon a form approved for use by this Court in other cases. *See Sargant v. HG Staffing, LLC, supra.; Morales v. Allied Building Crafts*, CV-S04-1365-LRH-LRL (Order of Magistrate Judge Lawrence R. Leavitt of October 6, 2005); *Westerfield v. Fairfield Resorts, Inc., CV-S05-1264-JCM-RJJ* (Minute Order of District Judge James C. Mahan of March 29, 2006). Even though this form of notice has been approved by this Court in previous cases, Plaintiffs are not wed to the Notice in its current form and are amenable to any modifications the Court deems proper.

**D. The Court Should Toll The Statute Of Limitations In This Action For The Period Of Time That This Motion Is Pending.**

Under the FLSA the statute of limitations on each individual “opt in” plaintiff’s claim continues to run until their consent to joinder is filed with the court. *See* 29 U.S.C. § 256 (“[A]n action . . . shall be considered commenced [by an “opt-in” plaintiff] . . . in the case of a collective or class action under the [FLSA] . . . (b) . . . on the subsequent date on which such written consent is filed in the court in which the action was commenced.”). Unlike Rule 23 class actions, there is no class-wide toll on the running of the statute of limitations.

A toll on the statute of limitations would prevent Defendants from receiving any benefit from unsuccessfully opposing Plaintiffs’ Motion to circulate notice. Indeed, allowing the FLSA’s statute of limitations for potential plaintiffs to continue running while a motion for FLSA is being decided encourages a defendant to oppose such motions irrespective of the merits of the motion, because even if the defendant loses and notice is ultimately sent out, defendant will be subject to a shorter liability period as a result of its opposition.

For these reasons, equity demands that a toll be instated. *Partlow v. Jewish Orphans’ Home of Southern California, Inc.*, 645 F.2d 757, 760 (9th Cir. 1981) (“We find that the FLSA does not bar the district court-imposed suspension of the statute of limitations and that such tolling is supported by substantial policy reasons.” (abrogated on other grounds by *Hoffmann-La Roche v. Sperling*, 493 U.S. 165, 167 (1989))). Moreover, Defendants will not be prejudiced by such a tolling. If Defendants’ opposition fails, Defendants are no worse off than if they had never opposed the motion in the first place. The only difference is that Defendants are denied any benefit from unsuccessfully opposing the motion. Thus, as this Court has done in previous cases, Plaintiffs request that the statute of limitations be tolled while this motion is pending and during the notice period. *See Lucas v. Bell Trans*, 2010 U.S. Dist. LEXIS 110815, \*13 (D. Nev. Sept. 30, 2010) (granting Plaintiffs’ request to toll the statute of limitations during the notice period).

**IV. CONCLUSION**

For all the foregoing reasons, Plaintiffs’ Motion to send out notice of the pendency of this action should be granted in its entirety and the statute of limitations should be tolled with any other further relief that the Court deems proper.

THIERMAN LAW FIRM, PC  
7287 Lakeside Drive  
Reno, NV 89511  
(775) 284-1500 Fax (775) 703-5027  
Email laborlawyer@pacbell.net www.laborlawyer.net

**THIERMAN LAW FIRM, PC**  
7287 Lakeside Drive  
Reno, NV 89511  
(775) 284-1500 Fax (775) 703-5027  
Email laborlawyer@pacbell.net www.laborlawyer.net

Dated this 6th day of August, 2014.

THIERMAN LAW FIRM

By: /s/Joshua D. Buck  
Mark R. Thierman  
Joshua D. Buck  
Leah L. Jones  
Attorneys for Plaintiffs

**THIERMAN LAW FIRM, PC**  
7287 Lakeside Drive  
Reno, NV 89511  
(775) 284-1500 Fax (775) 703-5027  
Email laborlawyer@pacbell.net www.laborlawyer.net

**CERTIFICATE OF SERVICE**

I hereby certify that, on July \_\_, 2014, I served a copy of this **PLAINTIFF'S MOTION FOR CIRCULATION OF NOTICE PURSUANT TO 29 U.S.C. § 216(b)** via electronic means in accordance with the court's order requiring electronic service in this case, and that it was served on all parties registered with the Court's CM/ECF system of electronic service.

\_\_\_\_\_/s/Tamara Toles

# **EXHIBIT A**

# **EXHIBIT A**

**THIERMAN LAW FIRM, PC**  
7287 Lakeside Drive  
Reno, NV 89511  
(775) 284-1500 Fax (775) 703-5027  
Email laborlawyer@pacbell.net www.laborlawyer.net

Mark R. Thierman, Nev. Bar No. 8285  
mark@thiermanlaw.com  
Joshua D. Buck, Nev. Bar No. 12187  
josh@thiermanlaw.com  
Leah L. Jones, Nev. Bar. No. 13161  
leah@thiermanlaw.com  
THIERMAN LAW FIRM, P.C.  
7287 Lakeside Drive  
Reno, Nevada 89511  
Tel. (775) 284-1500  
Fax. (775) 703-5027

*Attorneys for Plaintiffs*

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

DONALD WALDEN JR., NATHAN  
ECHEVERRIA, AARON DICUS, BRENT  
EVERIST, TRAVIS ZUFELT, TIMOTHY  
RIDENOUR, and DANIEL TRACY on  
behalf of themselves and all other similarly  
situated,

Plaintiffs,

v.

STATE OF NEVADA, *EX REL.* ITS  
DEPARTMENT OF CORRECTIONS, and  
DOES 1-50,

Defendant(s).

Case No.: 3:14-cv-00320-LRH-WGC

**[PROPOSED] NOTICE OF PENDENCY  
OF FLSA COLLECTIVE ACTION  
LAWSUIT**

TO: All current and former non-exempt hourly paid employees who were employed by the State of Nevada, *ex rel.* its Department of Corrections (“NDOC”) as correctional officers at any time from May 12, 2011 to the present.

RE: Fair Labor Standards Act lawsuit filed against the STATE OF NEVADA, *EX REL.* ITS DEPARTMENT OF CORRECTIONS.

### **INTRODUCTION**

The purpose of this notice is to:

- 1) inform you of the existence of a lawsuit seeking recovery of unpaid overtime compensation under the Fair Labor Standards Act (“FLSA”) in which you may be “similarly situated” to named-Plaintiffs DONALD WALDEN JR., NATHAN ECHEVERRIA, AARON DICUS, BRENT EVERIST, TRAVIS ZUFELT, TIMOTHY RIDENOUR, and DANIEL TRACY;
- 2) advise you of how your rights may be affected by this lawsuit; and
- 3) instruct you on the procedure for participating in this lawsuit, if you choose to do so.

This Notice is not an expression by the court of any opinion as to the merits of any claims or defenses asserted by any party to this action.

### **DESCRIPTION OF THE LAWSUIT**

On May 12, 2014, Plaintiffs DONALD WALDEN JR., NATHAN ECHEVERRIA, AARON DICUS, BRENT EVERIST, TRAVIS ZUFELT, TIMOTHY RIDENOUR, and DANIEL TRACY (“Plaintiffs”) filed a class and collective action complaint against the STATE OF NEVADA, *EX REL.* ITS DEPARTMENT OF CORRECTIONS, and DOES 1 through 50, inclusive (referred to throughout the rest of this Notice as “NDOC” or “Defendant”). Plaintiffs filed the class and collective action lawsuit on behalf of themselves and all other similarly situated employees, for unpaid wages under the FLSA and Nevada state law. Specifically, Plaintiffs claim that NDOC forced employees to work without overtime compensation. Plaintiffs seek to recover back pay in an amount equal to the alleged unpaid overtime wages and liquidated damages (double damages) on behalf of themselves and all other similarly situated individuals resulting from NDOC’s alleged unlawful conduct as well as other damages provided by law. Plaintiffs have also brought various state law claims arising out of the same behavior but those claims are not at issue in this Notice.

Defendant denies Plaintiffs’ claims and denies that it is liable to Plaintiffs for any damages resulting from this lawsuit.





1 These decisions and agreements made and entered into by the representative Plaintiffs  
2 will be binding on you if you join this lawsuit. However, the court has jurisdiction to determine  
3 the reasonableness of any settlement with NDOC, and any agreement concerning the  
4 reasonableness of any attorneys' fees and costs that are to be paid to the Plaintiffs' counsel.

5 The attorney for the Plaintiffs class is being paid on a contingency fee basis, which means  
6 that if there is no recovery there will be no attorneys' fee. If Plaintiffs prevail in this litigation,  
7 the attorneys for the class will request that the court either determine or approve the amount of  
8 attorneys' fee and costs they are entitled to receive for their services. The FLSA provides only  
9 for attorney fees for the Plaintiffs, if successful, and not for NDOC, although a Court could award  
10 NDOC attorneys' fees for misconduct or other reasons not covered by this statute.

### 11 **LEGAL EFFECT IN NOT JOINING THIS SUIT**

12 You do not have to join this lawsuit. If you do not wish to participate in this lawsuit, then  
13 do nothing. If you choose not to join this lawsuit, you will not be affected by any judgment,  
14 dismissal, or settlement rendered in this lawsuit, whether favorable or unfavorable to the class.  
15 This means that if Plaintiffs win, you will not collect any money from this lawsuit; if Plaintiffs  
16 lose, you will not lose any claims you may or may not have under the FLSA. If you choose not  
17 to join this lawsuit you are free to file your own lawsuit.

### 18 **STATUTE OF LIMITATIONS ON POTENTIAL CLAIMS**

19 The maximum period of time that you can collect unpaid wages under the FLSA is three  
20 (3) years from when you worked the hours, but were not paid at least minimum wage, your regular  
21 rate, or the legally correct overtime rate. If the Plaintiffs cannot prove NDOC acted willfully, the  
22 statute of limitations is two years. The statute of limitations continues to expire until you file with  
23 the court a written consent to join this lawsuit, or initiate your own lawsuit to collect your unpaid  
24 wages.

### 25 **NO RETALIATION PERMITTED**

26 Federal Law prohibits Defendant from discharging you or in any other manner  
27 discriminating against you if you exercise your rights under the FLSA to seek compensation.  
28 *Participation in this lawsuit is not related or affected by any offer of severance benefits or  
release you may have recently signed.*

### **YOUR IMMIGRATION STATUS DOES NOT MATTER IN THIS CASE**

You are entitled to back pay for the alleged unpaid wages and liquidated damages under  
the FLSA even if you are not otherwise legally entitled to work in the United States. Bringing a  
claim in the court for unpaid wages is not a basis for you to be deported from the United States.

**YOUR LEGAL REPRESENTATION IF YOU JOIN**

If you choose to join this lawsuit and agree to be represented by the named Plaintiffs through their attorneys, your counsel in this action will be:

**Mark R. Thierman and Joshua D. Buck**  
**Thierman Law Firm**  
**7287 Lakeside Drive**  
**Reno, NV 89511**  
**775-284-1500**

**Email: [info@thiermanlaw.com](mailto:info@thiermanlaw.com)**  
**[www.thiermanlaw.com](http://www.thiermanlaw.com)**

**FURTHER INFORMATION**

Further information about this Notice, the deadline for filing a “Consent to Join” form, or questions about this lawsuit may be obtained by contacting the Thierman Law Firm at the contact information listed immediately above.

The court has taken no position in this case regarding the merits of the Plaintiffs’ claims or of the Defendant’s defenses.

**DO NOT CONTACT THE CLERK OF THE COURT**

DATED:

\_\_\_\_\_  
U.S. DISTRICT COURT JUDGE

**THIERMAN LAW FIRM, PC**  
7287 Lakeside Drive  
Reno, NV 89511  
(775) 284-1500 Fax (775) 703-5027  
Email [lablawyer@pacbell.net](mailto:lablawyer@pacbell.net) [www.laborlawyer.net](http://www.laborlawyer.net)

# **EXHIBIT B**

# **EXHIBIT B**

**THIERMAN LAW FIRM, PC**  
7287 Lakeside Drive  
Reno, NV 89511  
(775) 284-1500 Fax (775) 703-5027  
Email laborlawyer@pacbell.net www.laborlawyer.net

1 Mark R. Thierman, Nev. Bar No. 8285  
mark@thiermanlaw.com  
2 Joshua D. Buck, Nev. Bar No. 12187  
josh@thiermanlaw.com  
3 Leah L. Jones, Nev. Bar. No. 13161  
leah@thiermanlaw.com  
4 THIERMAN LAW FIRM, P.C.  
7287 Lakeside Drive  
5 Reno, Nevada 89511  
Tel. (775) 284-1500  
6 Fax. (775) 703-5027

7 *Attorneys for Plaintiffs*

8  
9 UNITED STATES DISTRICT COURT  
10 DISTRICT OF NEVADA  
11

12 DONALD WALDEN JR., NATHAN  
13 ECHEVERRIA, AARON DICUS, BRENT  
14 EVERIST, TRAVIS ZUFELT, TIMOTHY  
15 RIDENOUR, and DANIEL TRACY on  
behalf of themselves and all other similarly  
situated,

16 Plaintiffs,

17 v.  
18

19 STATE OF NEVADA, *EX REL.* ITS  
20 DEPARTMENT OF CORRECTIONS, and  
DOES 1-50,

21 Defendant(s).  
22  
23  
24  
25  
26  
27  
28

Case No.: 3:14-cv-00320-LRH-WGC

**CONSENT TO JOIN**

Pursuant to the Fair Labor Standards Act, 29 U.S.C.S. § 216(b), the undersigned hereby consents in writing to become a party plaintiff against my Employer, Former Employer, and/or any and all its affiliated entities. I authorize the filing of a copy of this consent form with this Court in this action or any related or successor actions. I further consent to join this and/or any subsequent or amended suit against the same or related defendant for wage and hour violations.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2014

Name: \_\_\_\_\_  
(Please Print)

Signature: \_\_\_\_\_

Employer: \_\_\_\_\_

In the last 6 years, I worked as a Correctional Officer for the State of Nevada at the following locations:

	FACILITY	APPROXIMATE DATES
1.		
2.		
3.		
4.		
5.		

The following contact information below will be redacted before filing with the Court:

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Email: \_\_\_\_\_

Telephone: \_\_\_\_\_

Are you a member of any Labor Organization, and if so, which: \_\_\_\_\_

Please return via Fax, Email or U.S. Mail to:

Thierman Law Firm  
7287 Lakeside Drive  
Reno, NV 89511  
Phone: 775-284-1500  
Fax: 775-703-5027  
Email: [info@thiermanlaw.com](mailto:info@thiermanlaw.com)

**THIERMAN LAW FIRM, PC**  
7287 Lakeside Drive  
Reno, NV 89511  
(775) 284-1500 Fax (775) 703-5027  
Email laborlawyer@pacbell.net www.laborlawyer.net

1 Mark R. Thierman, Nev. Bar No. 8285  
mark@thiermanlaw.com  
2 Joshua D. Buck, Nev. Bar No. 12187  
josh@thiermanlaw.com  
3 Leah L. Jones, Nev. Bar. No. 13161  
leah@thiermanlaw.com  
4 THIERMAN LAW FIRM, P.C.  
7287 Lakeside Drive  
5 Reno, Nevada 89511  
Tel. (775) 284-1500  
6 Fax. (775) 703-5027

7 *Attorneys for Plaintiffs*  
8  
9

10 **UNITED STATES DISTRICT COURT**  
11 **DISTRICT OF NEVADA**  
12

13 DONALD WALDEN JR, NATHAN  
14 ECHEVERRIA, AARON DICUS, BRENT  
15 EVERIST, TRAVIS ZUFELT, TIMOTHY  
16 RIDENOUR, and DANIEL TRACY on  
behalf of themselves and all others similarly  
situated,

17 Plaintiffs,  
18

19 v.

20 THE STATE OF NEVADA, NEVADA  
21 DEPARTMENT OF CORRECTIONS, and  
DOES 1-50,  
22

23 Defendants.  
24  
25  
26  
27  
28

Case No.: 3:14-cv-00320-LRH-WGC

**DECLARATION OF NATHAN  
ECHEVERRIA**

**THIERMAN LAW FIRM, PC**  
 7287 Lakeside Drive  
 Reno, NV 89511  
 (775) 284-1500 Fax (775) 703-5027  
 Email laborlawyer@pacbell.net www.laborlawyer.net

I, Nathan Echeverria, hereby declare and state as follows:

1. I am over the age of eighteen and I have personal knowledge of the facts and circumstances set forth in this declaration. If I were called as a witness I would and could competently testify to the matters set forth herein.

2. I have been employed by Defendant THE STATE OF NEVADA, NEVADA DEPARTMENT OF CORRECTIONS ("Defendant" or "NDOC") as a Correctional Officer at the Southern Desert Correctional Center ("SDCC") from on or about May 1, 2006 to the present. My current rate of pay is approximately \$23.50 per hour as of the last day I worked prior to the date of this declaration.

3. During my eight year career with NDOC I have worked a variety of different shifts and was assigned to a variety of different job posts. For instance, I have held the following job posts and worked the following shifts dating back to 2011:

i. Currently, as of the date of this declaration, I am assigned to Unit 5 B and am scheduled to work a 14-day variable work schedule of 80 hours during that work period. I routinely work at least 80 hours a work period (not counting the hours I worked without pay as set forth below).

ii. In 2013, I was assigned to Visitation and was scheduled to work a 14-day variable work schedule of 80 hours during that work period. I routinely worked at least 80 hours a work period (not counting the hours I worked without pay as set forth below).

iii. In 2012, I was assigned to Visitation and was scheduled to work a 14-day variable work schedule of 80 hours during that work period. I routinely worked at least 80 hours a work period (not counting the hours I worked without pay as set forth below).

iv. In 2011, I was assigned to Unit 7 A and was scheduled to work a standard workweek of 40 hours a week. I routinely worked at least 40 hours a week (not counting the hours I worked without pay as set forth below).

4. When I work a standard 40 hour workweek, pursuant to the NDOC Administrative Regulation 320, my contract, and state and federal law, I should be compensated at my overtime rate for all hours I work that exceed 40 hours during that workweek. When I



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 7287 Lakeside Drive  
 Reno, NV 89511  
 (775) 284-1500 Fax (775) 703-5027  
 Email laborlawyer@pacbell.net www.laborlawyer.net

work a 14-day variable work schedule, pursuant to the NDOC Administrative Regulation 320 and my contract, I should be compensated at my overtime rate for all hours I work that exceed 80 hours during that work period.

5. As a NDOC Correctional Officer, I am required to be at my post at the start of my regularly scheduled shift. Upon my own information and belief, all NDOC Correctional Officers across the state of Nevada are similarly required to be at their post at the start of their respective shift.

6. Attached to this declaration as Exhibit A is a true and correct copy of NDOC Administrative Regulation 326, which states, in relevant part, that "All correctional staff will report to the shift supervisor/shift sergeant upon arrival . . . ."

7. Attached to this declaration as Exhibit B is a true and correct copy of SDCC Operational Procedure 326.03, which states the following:

1. All Staff shall report for duty fully prepared for any work assignment
  - Uniform and equipment shall be in accordance with A.R. 350
2. Staff will report to the shift supervisor in the muster room for posting of their assignment.
  - Staff will report early enough to be on their post by the beginning of their shift.
  - Staff will report in person
    - Areas of assignment or working hours do no exempt the staff from reporting for duty to the Shift Supervisor
3. All Staff shall check their respective mailboxes prior to reporting for duty.

8. Attached to this declaration as Exhibit C is a true and correct copy of an email from Lieutenant McKeehan, which reaffirms the department's policy or requiring Correctional Officers to be at their post by the start of their shift:

A few people need to be reminded. You need to arrive on your post by the start of your shift (OP 032). It is approx. 10-15 minute walk from Operations to 9/12 quad. You need to incorporate this walk in your travel to work to ensure you arrive on time.

**THIERMAN LAW FIRM, PC**  
 7287 Lakeside Drive  
 Reno, NV 89511  
 (775) 284-1500 Fax (775) 703-5027  
 Email laborlawyer@pacbell.net www.laborlawyer.net

1           9.       Even though I am required to be at my post at the start of my regularly scheduled  
 2 shift, I am not compensated for all the work activities that I perform prior to arriving at my post.  
 3 Prior to proceeding to my assigned post for the day, I must report to the muster room to report  
 4 to the shift sergeant/shift supervisor, receive my assignment, get debriefed as to any new  
 5 developments at the facility or issues relating to my employment, check my mail box, and be  
 6 checked for proper uniform attire. Depending on my assignment, I may also be required to pick  
 7 up keys, radios, tear gas equipment, weapons, and handcuffs. Only after I have completed all  
 8 these tasks am I able to proceed to my assigned post for the day. Given the size of the  
 9 correctional facility, walking to my designated post could take me approximately 15-minutes.  
 10 When I arrive at my post I typically relieve an outgoing officer and am debriefed by that officer.  
 11 I am not compensated for performing any of these activities prior to my regularly scheduled shift.  
 12 Upon my own information and belief, I understand that all NDOC Correctional Officers across  
 13 the state of Nevada are similarly required to perform these work activities prior to the start of  
 14 their regularly scheduled shift and are not compensated for doing so.

15           10.     In addition for not being paid for the pre-shift activities described above, I'm  
 16 likewise denied compensation for engaging in post-shift activities. Even though I'm only  
 17 compensated until the end of my scheduled shift, I'm required to conduct debriefing sessions  
 18 with oncoming officers after the end of my shift, walk back to the facility's main office, and  
 19 return the various tools (*i.e.*, keys, radios, tear gas equipment, weapons, and handcuffs) that I  
 20 was required to use during the workday. I am not compensated for performing any of these  
 21 activities after my regularly scheduled shift. Upon my own information and belief, I understand  
 22 that all NDOC Correctional Officers across the state of Nevada are similarly required to perform  
 23 these work activities after the end of their regularly scheduled shift and are not compensated for  
 24 doing so.

25           11.     I estimate that I have worked off-the-clock and without compensation  
 26 approximately 30 to 45 minutes each and every workday during my employment with NDOC.  
 27  
 28

1 11. I estimate that I have worked off-the-clock and without compensation  
2 approximately 30 to 45 minutes each and every workday during my employment with NDOC.

3 12. Upon my own information and belief, NDOC has been failing to pay  
4 Correctional Officers for years. I want to be paid all my wages and associated penalties, costs,  
5 and fees, in full for having to work for free all these years.

6 I declare under the penalty of perjury under the laws of the United States of America  
7 and the State of Nevada that the foregoing is true and correct.

8 Executed this 30<sup>th</sup> day of June, 2014, at Las Vegas, Nevada.

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12 NATHAN ECHEVERRIA  
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# **EXHIBIT A**

# **EXHIBIT A**

**NEVADA DEPARTMENT OF CORRECTIONS  
ADMINISTRATIVE REGULATION  
326**

**POSTING OF SHIFTS/OVERTIME**

**Supersedes:** AR 326 (Temporary, 05/02/10)  
**Effective Date:** 08/13/10

**AUTHORITY:** NRS 284.055; 284.155; 284.175; 284.180 NAC 284.242; 284.245; 284.250

**RESPONSIBILITY:**

Wardens/ Facility Managers are responsible to ensure there is sufficient staff on duty to safely operate their institutions and facilities.

An Associate Warden/facility manager are responsible to document attendance, management of relief factor usage by all uniformed staff, and ensure proper documentation is maintained.

**326.01 STAFFING**

**1. NORMAL OPERATIONS**

A. Normal operation staffing is utilized during the normal operations of an institution. This pattern will identify the staff required to run a specified post when all positions are utilized.

B. An Associate Warden will create a written staffing pattern identifying and prioritizing specific posts operating within the institution as either a pull position or a shut down position.

(1) A pull position is identified as a position in which the assigned officer may be pulled from that position and assigned elsewhere in the institution during their assigned shift.

(2) A shut down position is identified as a position in which the assigned officer may be pulled from his assigned post and the post closed with the officer being assigned elsewhere in the institution for their entire assigned shift.

C. Shift Sergeants reporting for their scheduled shifts will adjust the shift roster and fill all positions mandated to fulfill the minimum staffing requirements.

D. The shift sergeant will use all Sick/Annual positions first, and then use pull/shutdown positions as appropriate, in the order as listed by the institution.

E. If the minimum staffing has not been met, the on duty Shift Supervisor will contact an Associate Warden and request the minimum amount of overtime hours needed. The Associate Warden will then notify the Warden for approval of the decision/overtime approved.

F. Only when all pull positions and shutdown positions have been utilized will overtime be considered.

## 2. EMERGENCY OPERATIONS

A. Emergency operation staff is the staffing pattern that identifies posts that must meet minimal requirements for officer and inmate safety. This pattern will identify those posts that are critical for running a specific area of the institution.

B. An Associate Warden will create a written staffing pattern identifying additional specific posts within the institution either as pull or shutdown positions; this staffing pattern will prioritize these positions in the order they are to be pulled / shut down in the event of an emergency or staff shortage.

C. Staffing will also be evaluated as to the absolute minimum required to safely operate a particular shift.

D. It may be necessary to modify or cancel some activities as a result of emergency staffing. The Warden/Associate Warden will be notified of the cancellation of any activity or program.

E. Only when all pull positions and shutdown positions have been utilized only then will overtime be considered. Authorization is only granted by the Warden/Designee.

### **326.02 RELIEF FACTOR MANAGEMENT (RFM)**

1. Relief Factor Management (RFM) positions are to be:

A. Used for unscheduled annual leave relief to cover greater than normal sick leave, if it is available.

B. Used for pull and shutdown posts to cover greater than expected sick leave.

2. No more annual leave will be scheduled than there are relief factor management positions available to support the requested leave without overtime.

A. Staff should request annual leave per the requirements of AR 322 Types of Leave and Leave Procedure

B. Leave requests submitted without sufficient notice will not be granted if there is no relief factor to accommodate the leave without overtime except in a case of a personal emergency.

3. To the degree possible, Lieutenants and Sergeants should not be replaced, however, these positions may be used as a pull/shutdown position if designated by the institutional staff procedure,

4. Shift rosters for each institution and facility are to be organized so the components of the relief factor can be combined to identify specific staff to occupy RFM positions.

5. Relief factor for regular days off, sick leave, annual leave, or training, will not be combined in order to create new positions.

6. Days off are assigned to the post and not the person.

### **326.03 MANAGEMENT OF OVERTIME**

1. Overtime is not guaranteed for any employee.

A. Institutional/facility requirements will determine all overtime hired.

B. All staff overtime requires the completion of DOC Form 1000, Authorization for Leave and Overtime Request Form.

C. Staff can not work more than two (2) consecutive double shifts.

D. Unless an emergency situation occurs, no staff can work than more than a 16 hour shift in a 24 hour period.

2. Assigned staff may be reassigned when an institutional need exists.

3. Employees on modified duty assignments are not authorized to work overtime.

4. Correctional officers may be used to fill Senior Correctional Officer positions on a case by case basis. However Senior Correctional Officers may not be utilized to fill a Correctional Officer position.

5. A voluntary overtime list will be established and used prior to utilizing mandatory overtime. This voluntary overtime list will be re-started when exhausted

A. No employee who calls in sick or utilizes sick leave during any given pay period will be allowed to work voluntary overtime.

B. If an employee accrues overtime during the first week of the pay period and then utilizes sick leave, that employee will not be permitted any voluntary overtime in the next pay period.

C. No employee who must provide "proof" may work voluntary overtime until this status is modified.

D. Employees who are in AWOL or LWOP status will not to be allowed to volunteer/eligible for overtime in the same pay period.

(1) If overtime is accrued during the first week of the pay period and then LWOP or AWOL is accrued, that employee will not be permitted to work voluntary overtime in the entire following pay period.

6. If overtime is required to maintain a safe and secure operation and insufficient staff voluntarily agrees to work, mandatory overtime will be initiated.

A. A list of Senior Correctional Officers, Correctional Officers, and Correctional Officer Trainees will be establish by based on least seniority in their hire date and last involuntary, i.e. mandatory, overtime date, will be established for each shift.

- B. The mandatory overtime list will be restarted once exhausted or every 45 days.
- C. Adjustments will be made when an officer is reassigned to a new shift. That officer will be added to the mandatory list according to their last mandatory date.
- D. Based on the least seniority the first time after shift bidding, staff will be selected by their last involuntary overtime date. Once completed, the employee will move to the bottom of the involuntary overtime list.
- E. All correctional staff will report to the shift supervisor/shift sergeant upon arrival to ensure their status if required to work mandatory overtime.

(1) If an employee is required to work mandatory overtime, that employee may be allowed to solicit a volunteer to work in his/her place.

(a) If a volunteer is found, the shift supervisor/shift sergeant must approve the substitution prior to the person being allowed to work.

(b) If the substitution is approved, the Officer originally scheduled to work the mandatory overtime will remain at the top of the mandatory overtime list until he/she actually works it.

(2) The employee has 1 hour to find a substitute whenever possible.

7. A written overtime tracking log must be approved by the appropriate Deputy Director.

A. All overtime will be entered into the NSIS Computer Roster.

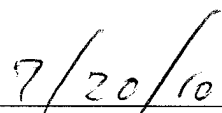
B. Verification will be made that the timesheet entry is properly coded and hours are correctly entered by viewing the timesheet of the staff member.

C. A written overtime tracking log will be utilized to ensure proper utilization of overtime and entry into the computer.

#### **APPLICABILITY**

- 1. This regulation requires an Operational Procedure for every institution and facility.
- 2. This regulation requires an audit.

  
Howard Skolnik, Director

  
Date



# **EXHIBIT B**

# **EXHIBIT B**

### 326.03 STAFF RESPONSIBILITY

1. All staff shall report for duty fully prepared for any work assignment.
  - Uniform and equipment shall be in accordance with A.R. 350.
2. Staff will report to the shift supervisor in the muster room for posting of their assignment.
  - Staff will report early enough to be on their post by the beginning of their shift.
  - Staff will report in person.
    - Areas of assignment or working hours do not exempt the staff from reporting for duty to the Shift Supervisor.
3. All staff shall check their respective mailboxes prior to reporting for duty.

### 326.04 SHIFT ROSTERS

1. To efficiently utilize assigned staff, shift supervisors must plan in advance the work week, schedule and take into account changes in the workload such as, transportation, hospital coverage or parole boards.
  - Shift Supervisors must staff all mandatory positions.
  - Shift rosters will be reviewed one (1) week in advance.
    - Final review and adjustments to shift rosters will be completed by end of shift each day.

### 326.05 CALL-INS

1. A call-in shall only be accepted by a shift sergeant or above.
2. Call-ins shall be documented in NSIS
  - Shift supervisors shall enter the appropriate leave code in NSIS.
  - The shift supervisor shall make adjustments to ensure proper staff coverage.
3. A DOC 1000 Authorization for Leave and Overtime request form shall be completed for all used leaves and overtime.

### 326.06 IDENTIFIED SHUTDOWN AND PULL POSITIONS BY SHIFT

1. Day Shift supervisors will utilize the below listed shutdown and pull positions to ensure mandatory positions are staffed prior to hiring overtime.
  - The Warden or Associate Warden of Operations shall be notified and must approve all overtime.
  - Shift supervisors should refrain from repeatedly pulling the same personnel and should take work load into consideration.
  - Day shift A, B, (0500 hrs – 1700 hrs) and C (0500 hrs – 1300 hrs) has Sixty (60) legislatively approved posts. Prior to requesting the use of overtime, the shift Supervisor must utilize all pull and shut down posts as defined below:

# EXHIBIT C

# EXHIBIT C

**Nathan Echeverria - Fwd: 9/12 quad brief**

---

**From:** Aaron Dicus  
**To:** Nathan Echeverria  
**Date:** 5/10/2014 8:34 AM  
**Subject:** Fwd: 9/12 quad brief  
**Attachments:** Night Time Yard Schedule 05-06-14.pdf

---

>>> Brandon Badger 5/8/2014 7:43 AM >>>



Senior Correctional Officer  
Brandon Badger  
Nevada Department of Corrections  
HDSP

>>> Keith McKeehan 5/7/2014 11:37 AM >>>  
Good morning,

**Morning feeding**

Grave staff should have the food already in the warmers to be ready for the 5am shift. Day shift needs to get the porters working and start serving trays no later than 0530 hrs. Unit 11 has been doing this religiously for some time. I know the rest of us can get it done. This ensures that the carts are loaded and ready to go by the time culinary staff picks up the dirties at 0700 hrs.

**Tardy**

A few people need to be reminded. You need to arrive on your post by the start of your shift (OP.032). It is approx 10-15 minute walk from Operations to 9/12 quad. You need to incorporate this walk time in your travel to work to ensure you arrive on time.

**Night yard**

See attached night yard schedule. Night yard begins on Memorial Day and continues thru Labor Day.

Be safe.

Lt. McKeehan

**THIERMAN LAW FIRM, PC**  
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7 *Attorneys for Plaintiffs*  
8  
9

10 **UNITED STATES DISTRICT COURT**  
11 **DISTRICT OF NEVADA**  
12

13 DONALD WALDEN JR, NATHAN  
14 ECHEVERRIA, AARON DICUS, BRENT  
15 EVERIST, TRAVIS ZUFELT, TIMOTHY  
16 RIDENOUR, and DANIEL TRACY on  
behalf of themselves and all others similarly  
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17 Plaintiffs,  
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19 v.

20 THE STATE OF NEVADA, NEVADA  
21 DEPARTMENT OF CORRECTIONS, and  
DOES 1-50,  
22

23 Defendants.  
24  
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26  
27  
28

Case No.: 3:14-cv-00320-LRH-WGC

**DECLARATION OF TRAVIS ZUFELT**

1 I, Travis Zufelt, hereby declare and state as follows:

2 1. I am over the age of eighteen and I have personal knowledge of the facts and  
3 circumstances set forth in this declaration. If I were called as a witness I would and could  
4 competently testify to the matters set forth herein.

5 2. I have been employed by Defendant THE STATE OF NEVADA, NEVADA  
6 DEPARTMENT OF CORRECTIONS ("Defendant" or "NDOC") as a Correctional Officer at  
7 the Northern Nevada Correctional Center ("NNCC") from on or about January 2010 to the  
8 present. My current rate of pay is approximately \$22.00 per hour as of the last day I worked  
9 prior to the date of this declaration.

10 3. During my five year career with NDOC I have worked a variety of different shifts  
11 and was assigned to a variety of different job posts. For instance, I have held the following job  
12 posts and worked the following shifts dating back to 2011:

13 i. Currently, as of the date of this declaration, I am assigned to B-Team Days  
14 Central Control and am scheduled to work a 14-day variable work schedule of 80 hours  
15 during that work period. I routinely work at least 80 hours a work period (not counting  
16 the hours I worked without pay as set forth below).

17 ii. In 2013, I was assigned to Unit 3 B-Team Nights and was scheduled to  
18 work a 14-day variable work schedule of 80 hours during that work period. I routinely  
19 worked at least 80 hours a work period (not counting the hours I worked without pay as  
20 set forth below).

21 iii. In 2012, I was assigned to Graveyard S&E and was scheduled to work a  
22 5 days a week work schedule of 40 hours during that work week. I routinely worked at  
23 least 80 hours a work period (not counting the hours I worked without pay as set forth  
24 below).

25 iv. In 2011, I was assigned to Graveyard 8 Hours Unit 7B and was scheduled  
26 to work a standard workweek of 40 hours a week. I routinely worked at least 40 hours  
27 a week (not counting the hours I worked without pay as set forth below).  
28

THIERMAN LAW FIRM, PC  
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1           4.       When I work a standard 40 hour workweek, pursuant to the NDOC  
 2 Administrative Regulation 320, my contract, and state and federal law, I should be compensated  
 3 at my overtime rate for all hours I work that exceed 40 hours during that workweek. When I  
 4 work a 14-day variable work schedule, pursuant to the NDOC Administrative Regulation 320  
 5 and my contract, I should be compensated at my overtime rate for all hours I work that exceed  
 6 80 hours during that work period.

7           5.       As a NDOC Correctional Officer, I am required to be at my post at the start of  
 8 my regularly scheduled shift. Upon my own information and belief, all NDOC Correctional  
 9 Officers across the state of Nevada are similarly required to be at their post at the start of their  
 10 respective shift.

11           6.       Attached to this declaration as Exhibit A is a true and correct copy of NDOC  
 12 Administrative Regulation 326, which states, in relevant part, that “All correctional staff will  
 13 report to the shift supervisor/shift sergeant upon arrival . . . .”

14           7.       Even though I am required to be at my post at the start of my regularly scheduled  
 15 shift, I am not compensated for all the work activities that I perform prior to arriving at my post.  
 16 Prior to proceeding to my assigned post for the day, I must report to the muster room to report  
 17 to the shift sergeant/shift supervisor, receive my assignment, get debriefed as to any new  
 18 developments at the facility or issues relating to my employment, check my mail box, and be  
 19 checked for proper uniform attire. Depending on my assignment, I may also be required to pick  
 20 up keys, radios, tear gas equipment, weapons, and handcuffs. Only after I have completed all  
 21 these tasks am I able to proceed to my assigned post for the day. Given the size of the  
 22 correctional facility, walking to my designated post could take me approximately 15-minutes.  
 23 When I arrive at my post I typically relieve an outgoing officer and am debriefed by that officer.  
 24 I am not compensated for performing any of these activities prior to my regularly scheduled shift.  
 25 Upon my own information and belief, I understand that all NDOC Correctional Officers across  
 26 the state of Nevada are similarly required to perform these work activities prior to the start of  
 27 their regularly scheduled shift and are not compensated for doing so.  
 28

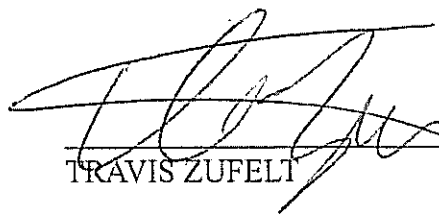
8. In addition for not being paid for the pre-shift activities described above, I'm likewise denied compensation for engaging in post-shift activities. Even though I'm only compensated until the end of my scheduled shift, I'm required to conduct debriefing sessions with oncoming officers after the end of my shift, walk back to the facility's main office, and return the various tools (*i.e.*, keys, radios, tear gas equipment, weapons, and handcuffs) that I was required to use during the workday. I am not compensated for performing any of these activities after my regularly scheduled shift. Upon my own information and belief, I understand that all NDOC Correctional Officers across the state of Nevada are similarly required to perform these work activities after the end of their regularly scheduled shift and are not compensated for doing so.

9. I estimate that I have worked off-the-clock and without compensation approximately 30 to 45 minutes each and every workday during my employment with NDOC.

10. Upon my own information and belief, NDOC has been failing to pay Correctional Officers for years. I want to be paid all my wages and associated penalties, costs, and fees, in full for having to work for free all these years.

I declare under the penalty of perjury under the laws of the United States of America and the State of Nevada that the foregoing is true and correct.

Executed this 22 day of July, 2014, at Las Vegas, Nevada.

  
\_\_\_\_\_  
TRAVIS ZUFELT



# **EXHIBIT A**

# **EXHIBIT A**

**NEVADA DEPARTMENT OF CORRECTIONS  
ADMINISTRATIVE REGULATION  
326**

**POSTING OF SHIFTS/OVERTIME**

**Supersedes:** AR 326 (Temporary, 05/02/10)  
**Effective Date:** 08/13/10

**AUTHORITY:** NRS 284.055; 284.155; 284.175; 284.180 NAC 284.242; 284.245; 284.250

**RESPONSIBILITY:**

Wardens/ Facility Managers are responsible to ensure there is sufficient staff on duty to safely operate their institutions and facilities.

An Associate Warden/facility manager are responsible to document attendance, management of relief factor usage by all uniformed staff, and ensure proper documentation is maintained.

**326.01 STAFFING**

**1. NORMAL OPERATIONS**

A. Normal operation staffing is utilized during the normal operations of an institution. This pattern will identify the staff required to run a specified post when all positions are utilized.

B. An Associate Warden will create a written staffing pattern identifying and prioritizing specific posts operating within the institution as either a pull position or a shut down position.

(1) A pull position is identified as a position in which the assigned officer may be pulled from that position and assigned elsewhere in the institution during their assigned shift.

(2) A shut down position is identified as a position in which the assigned officer may be pulled from his assigned post and the post closed with the officer being assigned elsewhere in the institution for their entire assigned shift.

C. Shift Sergeants reporting for their scheduled shifts will adjust the shift roster and fill all positions mandated to fulfill the minimum staffing requirements.

D. The shift sergeant will use all Sick/Annual positions first, and then use pull/shutdown positions as appropriate, in the order as listed by the institution.

E. If the minimum staffing has not been met, the on duty Shift Supervisor will contact an Associate Warden and request the minimum amount of overtime hours needed. The Associate Warden will then notify the Warden for approval of the decision/overtime approved.

F. Only when all pull positions and shutdown positions have been utilized will overtime be considered.

## 2. EMERGENCY OPERATIONS

A. Emergency operation staff is the staffing pattern that identifies posts that must meet minimal requirements for officer and inmate safety. This pattern will identify those posts that are critical for running a specific area of the institution.

B. An Associate Warden will create a written staffing pattern identifying additional specific posts within the institution either as pull or shutdown positions; this staffing pattern will prioritize these positions in the order they are to be pulled / shut down in the event of an emergency or staff shortage.

C. Staffing will also be evaluated as to the absolute minimum required to safely operate a particular shift.

D. It may be necessary to modify or cancel some activities as a result of emergency staffing. The Warden/Associate Warden will be notified of the cancellation of any activity or program.

E. Only when all pull positions and shutdown positions have been utilized only then will overtime be considered. Authorization is only granted by the Warden/Designee.

### **326.02 RELIEF FACTOR MANAGEMENT (RFM)**

1. Relief Factor Management (RFM) positions are to be:

A. Used for unscheduled annual leave relief to cover greater than normal sick leave, if it is available.

B. Used for pull and shutdown posts to cover greater than expected sick leave.

2. No more annual leave will be scheduled than there are relief factor management positions available to support the requested leave without overtime.

A. Staff should request annual leave per the requirements of AR 322 Types of Leave and Leave Procedure

B. Leave requests submitted without sufficient notice will not be granted if there is no relief factor to accommodate the leave without overtime except in a case of a personal emergency.

3. To the degree possible, Lieutenants and Sergeants should not be replaced, however, these positions may be used as a pull/shutdown position if designated by the institutional staff procedure,

4. Shift rosters for each institution and facility are to be organized so the components of the relief factor can be combined to identify specific staff to occupy RFM positions.

5. Relief factor for regular days off, sick leave, annual leave, or training, will not be combined in order to create new positions.

6. Days off are assigned to the post and not the person.

### **326.03 MANAGEMENT OF OVERTIME**

1. Overtime is not guaranteed for any employee.

A. Institutional/facility requirements will determine all overtime hired.

B. All staff overtime requires the completion of DOC Form 1000, Authorization for Leave and Overtime Request Form.

C. Staff can not work more than two (2) consecutive double shifts.

D. Unless an emergency situation occurs, no staff can work than more than a 16 hour shift in a 24 hour period.

2. Assigned staff may be reassigned when an institutional need exists.

3. Employees on modified duty assignments are not authorized to work overtime.

4. Correctional officers may be used to fill Senior Correctional Officer positions on a case by case basis. However Senior Correctional Officers may not be utilized to fill a Correctional Officer position.

5. A voluntary overtime list will be established and used prior to utilizing mandatory overtime. This voluntary overtime list will be re-started when exhausted

A. No employee who calls in sick or utilizes sick leave during any given pay period will be allowed to work voluntary overtime.

B. If an employee accrues overtime during the first week of the pay period and then utilizes sick leave, that employee will not be permitted any voluntary overtime in the next pay period.

C. No employee who must provide "proof" may work voluntary overtime until this status is modified.

D. Employees who are in AWOL or LWOP status will not to be allowed to volunteer/eligible for overtime in the same pay period.

(1) If overtime is accrued during the first week of the pay period and then LWOP or AWOL is accrued, that employee will not be permitted to work voluntary overtime in the entire following pay period.

6. If overtime is required to maintain a safe and secure operation and insufficient staff voluntarily agrees to work, mandatory overtime will be initiated.

A. A list of Senior Correctional Officers, Correctional Officers, and Correctional Officer Trainees will be establish by based on least seniority in their hire date and last involuntary, i.e. mandatory, overtime date, will be established for each shift.

- B. The mandatory overtime list will be restarted once exhausted or every 45 days.
- C. Adjustments will be made when an officer is reassigned to a new shift. That officer will be added to the mandatory list according to their last mandatory date.
- D. Based on the least seniority the first time after shift bidding, staff will be selected by their last involuntary overtime date. Once completed, the employee will move to the bottom of the involuntary overtime list.
- E. All correctional staff will report to the shift supervisor/shift sergeant upon arrival to ensure their status if required to work mandatory overtime.

(1) If an employee is required to work mandatory overtime, that employee may be allowed to solicit a volunteer to work in his/her place.

(a) If a volunteer is found, the shift supervisor/shift sergeant must approve the substitution prior to the person being allowed to work.

(b) If the substitution is approved, the Officer originally scheduled to work the mandatory overtime will remain at the top of the mandatory overtime list until he/she actually works it.

(2) The employee has 1 hour to find a substitute whenever possible.

7. A written overtime tracking log must be approved by the appropriate Deputy Director.

A. All overtime will be entered into the NSIS Computer Roster.

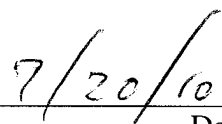
B. Verification will be made that the timesheet entry is properly coded and hours are correctly entered by viewing the timesheet of the staff member.

C. A written overtime tracking log will be utilized to ensure proper utilization of overtime and entry into the computer.

#### APPLICABILITY

- 1. This regulation requires an Operational Procedure for every institution and facility.
- 2. This regulation requires an audit.

  
\_\_\_\_\_  
Howard Skolnik, Director

  
\_\_\_\_\_  
Date

**THIERMAN LAW FIRM, PC**  
7287 Lakeside Drive  
Reno, NV 89511  
(775) 284-1500 Fax (775) 703-5027  
Email laborlawyer@pacbell.net www.laborlawyer.net

1 Mark R. Thierman, Nev. Bar No. 8285  
mark@thiermanlaw.com  
2 Joshua D. Buck, Nev. Bar No. 12187  
josh@thiermanlaw.com  
3 Leah L. Jones, Nev. Bar. No. 13161  
leah@thiermanlaw.com  
4 THIERMAN LAW FIRM, P.C.  
7287 Lakeside Drive  
5 Reno, Nevada 89511  
Tel. (775) 284-1500  
6 Fax. (775) 703-5027

7 *Attorneys for Plaintiffs*  
8  
9

10 **UNITED STATES DISTRICT COURT**  
11 **DISTRICT OF NEVADA**  
12

13 DONALD WALDEN JR, NATHAN  
14 ECHEVERRIA, AARON DICUS, BRENT  
15 EVERIST, TRAVIS ZUFELT, TIMOTHY  
16 RIDENOUR, and DANIEL TRACY on  
behalf of themselves and all others similarly  
situated,

17 Plaintiffs,  
18

19 v.

20 THE STATE OF NEVADA, NEVADA  
21 DEPARTMENT OF CORRECTIONS, and  
DOES 1-50,  
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23 Defendants.  
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Case No.: 3:14-cv-00320-LRH-WGC

**DECLARATION OF TIMOTHY  
RIDENOUR**

**THIERMAN LAW FIRM, PC**  
 7287 Lakeside Drive  
 Reno, NV 89511  
 (775) 284-1500 Fax (775) 703-5027  
 Email laborlawyer@pacbell.net www.laborlawyer.net

I, Timothy Ridenour, hereby declare and state as follows:

1. I am over the age of eighteen and I have personal knowledge of the facts and circumstances set forth in this declaration. If I were called as a witness I would and could competently testify to the matters set forth herein.

2. I have been employed by Defendant THE STATE OF NEVADA, NEVADA DEPARTMENT OF CORRECTIONS ("Defendant" or "NDOC") as a Correctional Officer at the Southern Desert Correctional Center ("SDCC") from on or about March 2007 to the present. My current rate of pay is approximately \$20.00 per hour as of the last day I worked prior to the date of this declaration.

3. During my seven year career with NDOC I have worked a variety of different shifts and was assigned to a variety of different job posts. For instance, I have held the following job posts and worked the following shifts dating back to 2011:

i. Currently, as of the date of this declaration, I am assigned to Search and Escort B, days B shift, and am scheduled to work a 14-day variable work schedule of 80 hours during that work period. I routinely work at least 80 hours a work period (not counting the hours I worked without pay as set forth below).

ii. In 2013, I was assigned to Search and Escort B, days B shift and was scheduled to work a 14-day variable work schedule of 80 hours during that work period. I routinely worked at least 80 hours a work period (not counting the hours I worked without pay as set forth below).

iii. In 2012, I was assigned to Unit 2 A Officer, days B shift and then Search and Escort B, days B shift and was scheduled to work a 14-day variable work schedule of 80 hours during that work period. I routinely worked at least 80 hours a work period (not counting the hours I worked without pay as set forth below).

iv. In 2011, I was assigned to the swing shift. I do not recall whether I was working Search and Escort or as a Unit Officer during this time. I was scheduled to work a standard workweek of 40 hours a week. I routinely worked at least 40 hours a week (not counting the hours I worked without pay as set forth below).

**THIERMAN LAW FIRM, PC**  
 7287 Lakeside Drive  
 Reno, NV 89511  
 (775) 284-1500 Fax (775) 703-5027  
 Email laborlawyer@pacbell.net www.laborlawyer.net

4. When I work a standard 40 hour workweek, pursuant to the NDOC Administrative Regulation 320, my contract, and state and federal law, I should be compensated at my overtime rate for all hours I work that exceed 40 hours during that workweek. When I work a 14-day variable work schedule, pursuant to the NDOC Administrative Regulation 320 and my contract, I should be compensated at my overtime rate for all hours I work that exceed 80 hours during that work period.

5. As a NDOC Correctional Officer, I am required to be at my post at the start of my regularly scheduled shift. Upon my own information and belief, all NDOC Correctional Officers across the state of Nevada are similarly required to be at their post at the start of their respective shift.

6. Attached to this declaration as Exhibit A is a true and correct copy of NDOC Administrative Regulation 326, which states, in relevant part, that "All correctional staff will report to the shift supervisor/shift sergeant upon arrival . . . ."

7. Attached to this declaration as Exhibit B is a true and correct copy of SDCC Operational Procedure 326.03, which states the following:

1. All Staff shall report for duty fully prepared for any work assignment
  - Uniform and equipment shall be in accordance with A.R. 350
2. Staff will report to the shift supervisor in the muster room for posting of their assignment.
  - Staff will report early enough to be on their post by the beginning of their shift.
  - Staff will report in person
    - Areas of assignment or working hours do no exempt the staff from reporting for duty to the Shift Supervisor
3. All Staff shall check their respective mailboxes prior to reporting for duty.

8. Even though I am required to be at my post at the start of my regularly scheduled shift, I am not compensated for all the work activities that I perform prior to arriving at my post. Prior to proceeding to my assigned post for the day, I must report to the muster room to report to the shift sergeant/shift supervisor, receive my assignment, get debriefed as to any new



THIERMAN LAW FIRM, PC  
7287 Lakeside Drive  
Reno, NV 89511  
(775) 284-1500 Fax (775) 703-5027  
Email laborlawyer@pacbell.net www.laborlawyer.net

1 developments at the facility or issues relating to my employment, check my mail box, and be  
2 checked for proper uniform attire. Depending on my assignment, I may also be required to pick  
3 up keys, radios, tear gas equipment, weapons, and handcuffs. Only after I have completed all  
4 these tasks am I able to proceed to my assigned post for the day. Given the size of the  
5 correctional facility, walking to my designated post could take me approximately 15-minutes.  
6 When I arrive at my post I typically relieve an outgoing officer and am debriefed by that officer.  
7 I am not compensated for performing any of these activities prior to my regularly scheduled shift.  
8 Upon my own information and belief, I understand that all NDOC Correctional Officers across  
9 the state of Nevada are similarly required to perform these work activities prior to the start of  
10 their regularly scheduled shift and are not compensated for doing so.

11 9. In addition for not being paid for the pre-shift activities described above, I'm  
12 likewise denied compensation for engaging in post-shift activities. Even though I'm only  
13 compensated until the end of my scheduled shift, I'm required to conduct debriefing sessions  
14 with oncoming officers after the end of my shift, walk back to the facility's main office, and  
15 return the various tools (*i.e.*, keys, radios, tear gas equipment, weapons, and handcuffs) that I  
16 was required to use during the workday. I am not compensated for performing any of these  
17 activities after my regularly scheduled shift. Upon my own information and belief, I understand  
18 that all NDOC Correctional Officers across the state of Nevada are similarly required to perform  
19 these work activities after the end of their regularly scheduled shift and are not compensated for  
20 doing so.

21 10. I estimate that I have worked off-the-clock and without compensation  
22 approximately 30-45 minutes each and every workday during my employment with NDOC.

23 11. Upon my own information and belief, NDOC has been failing to pay Correctional  
24 Officers for years. I want to be paid all my wages and associated penalties, costs, and fees, in  
25 full for having to work for free all these years.  
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1 I declare under the penalty of perjury under the laws of the United States of America  
2 and the State of Nevada that the foregoing is true and correct.

3 Executed this 29 day of June, 2014, at Las Vegas, Nevada.

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TIMOTHY RIDENOUR

THIERMAN LAW FIRM, PC

7287 Lakeside Drive

Reno, NV 89511

(775) 284-1500 Fax (775) 703-5027

Email laborlawyer@pacbell.net www.laborlawyer.net

# **EXHIBIT A**

# **EXHIBIT A**

**NEVADA DEPARTMENT OF CORRECTIONS  
ADMINISTRATIVE REGULATION  
326**

**POSTING OF SHIFTS/OVERTIME**

**Supersedes:** AR 326 (Temporary, 05/02/10)  
**Effective Date:** 08/13/10

**AUTHORITY:** NRS 284.055; 284.155; 284.175; 284.180 NAC 284.242; 284.245; 284.250

**RESPONSIBILITY:**

Wardens/ Facility Managers are responsible to ensure there is sufficient staff on duty to safely operate their institutions and facilities.

An Associate Warden/facility manager are responsible to document attendance, management of relief factor usage by all uniformed staff, and ensure proper documentation is maintained.

**326.01 STAFFING**

**1. NORMAL OPERATIONS**

A. Normal operation staffing is utilized during the normal operations of an institution. This pattern will identify the staff required to run a specified post when all positions are utilized.

B. An Associate Warden will create a written staffing pattern identifying and prioritizing specific posts operating within the institution as either a pull position or a shut down position.

(1) A pull position is identified as a position in which the assigned officer may be pulled from that position and assigned elsewhere in the institution during their assigned shift.

(2) A shut down position is identified as a position in which the assigned officer may be pulled from his assigned post and the post closed with the officer being assigned elsewhere in the institution for their entire assigned shift.

C. Shift Sergeants reporting for their scheduled shifts will adjust the shift roster and fill all positions mandated to fulfill the minimum staffing requirements.

D. The shift sergeant will use all Sick/Annual positions first, and then use pull/shutdown positions as appropriate, in the order as listed by the institution.

E. If the minimum staffing has not been met, the on duty Shift Supervisor will contact an Associate Warden and request the minimum amount of overtime hours needed. The Associate Warden will then notify the Warden for approval of the decision/overtime approved.

F. Only when all pull positions and shutdown positions have been utilized will overtime be considered.

## 2. EMERGENCY OPERATIONS

A. Emergency operation staff is the staffing pattern that identifies posts that must meet minimal requirements for officer and inmate safety. This pattern will identify those posts that are critical for running a specific area of the institution.

B. An Associate Warden will create a written staffing pattern identifying additional specific posts within the institution either as pull or shutdown positions; this staffing pattern will prioritize these positions in the order they are to be pulled / shut down in the event of an emergency or staff shortage.

C. Staffing will also be evaluated as to the absolute minimum required to safely operate a particular shift.

D. It may be necessary to modify or cancel some activities as a result of emergency staffing. The Warden/Associate Warden will be notified of the cancellation of any activity or program.

E. Only when all pull positions and shutdown positions have been utilized only then will overtime be considered. Authorization is only granted by the Warden/Designee.

## 326.02 RELIEF FACTOR MANAGEMENT (RFM)

1. Relief Factor Management (RFM) positions are to be:

A. Used for unscheduled annual leave relief to cover greater than normal sick leave, if it is available.

B. Used for pull and shutdown posts to cover greater than expected sick leave.

2. No more annual leave will be scheduled than there are relief factor management positions available to support the requested leave without overtime.

A. Staff should request annual leave per the requirements of AR 322 Types of Leave and Leave Procedure

B. Leave requests submitted without sufficient notice will not be granted if there is no relief factor to accommodate the leave without overtime except in a case of a personal emergency.

3. To the degree possible, Lieutenants and Sergeants should not be replaced, however, these positions may be used as a pull/shutdown position if designated by the institutional staff procedure,

4. Shift rosters for each institution and facility are to be organized so the components of the relief factor can be combined to identify specific staff to occupy RFM positions.

5. Relief factor for regular days off, sick leave, annual leave, or training, will not be combined in order to create new positions.

6. Days off are assigned to the post and not the person.

### **326.03 MANAGEMENT OF OVERTIME**

1. Overtime is not guaranteed for any employee.

A. Institutional/facility requirements will determine all overtime hired.

B. All staff overtime requires the completion of DOC Form 1000, Authorization for Leave and Overtime Request Form.

C. Staff can not work more than two (2) consecutive double shifts.

D. Unless an emergency situation occurs, no staff can work than more than a 16 hour shift in a 24 hour period.

2. Assigned staff may be reassigned when an institutional need exists.

3. Employees on modified duty assignments are not authorized to work overtime.

4. Correctional officers may be used to fill Senior Correctional Officer positions on a case by case basis. However Senior Correctional Officers may not be utilized to fill a Correctional Officer position.

5. A voluntary overtime list will be established and used prior to utilizing mandatory overtime. This voluntary overtime list will be re-started when exhausted

A. No employee who calls in sick or utilizes sick leave during any given pay period will be allowed to work voluntary overtime.

B. If an employee accrues overtime during the first week of the pay period and then utilizes sick leave, that employee will not be permitted any voluntary overtime in the next pay period.

C. No employee who must provide "proof" may work voluntary overtime until this status is modified.

D. Employees who are in AWOL or LWOP status will not to be allowed to volunteer/eligible for overtime in the same pay period.

(1) If overtime is accrued during the first week of the pay period and then LWOP or AWOL is accrued, that employee will not be permitted to work voluntary overtime in the entire following pay period.

6. If overtime is required to maintain a safe and secure operation and insufficient staff voluntarily agrees to work, mandatory overtime will be initiated.

A. A list of Senior Correctional Officers, Correctional Officers, and Correctional Officer Trainees will be establish by based on least seniority in their hire date and last involuntary, i.e. mandatory, overtime date, will be established for each shift.

- B. The mandatory overtime list will be restarted once exhausted or every 45 days.
- C. Adjustments will be made when an officer is reassigned to a new shift. That officer will be added to the mandatory list according to their last mandatory date.
- D. Based on the least seniority the first time after shift bidding, staff will be selected by their last involuntary overtime date. Once completed, the employee will move to the bottom of the involuntary overtime list.
- E. All correctional staff will report to the shift supervisor/shift sergeant upon arrival to ensure their status if required to work mandatory overtime.

(1) If an employee is required to work mandatory overtime, that employee may be allowed to solicit a volunteer to work in his/her place.

(a) If a volunteer is found, the shift supervisor/shift sergeant must approve the substitution prior to the person being allowed to work.

(b) If the substitution is approved, the Officer originally scheduled to work the mandatory overtime will remain at the top of the mandatory overtime list until he/she actually works it.

(2) The employee has 1 hour to find a substitute whenever possible.

7. A written overtime tracking log must be approved by the appropriate Deputy Director.

A. All overtime will be entered into the NSIS Computer Roster.

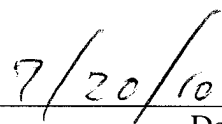
B. Verification will be made that the timesheet entry is properly coded and hours are correctly entered by viewing the timesheet of the staff member.

C. A written overtime tracking log will be utilized to ensure proper utilization of overtime and entry into the computer.

#### APPLICABILITY

- 1. This regulation requires an Operational Procedure for every institution and facility.
- 2. This regulation requires an audit.

  
\_\_\_\_\_  
Howard Skolnik, Director

  
\_\_\_\_\_  
Date

# **EXHIBIT B**

# **EXHIBIT B**



### 326.03 STAFF RESPONSIBILITY

1. All staff shall report for duty fully prepared for any work assignment.
  - Uniform and equipment shall be in accordance with A.R. 350.
2. Staff will report to the shift supervisor in the muster room for posting of their assignment.
  - Staff will report early enough to be on their post by the beginning of their shift.
  - Staff will report in person.
    - Areas of assignment or working hours do not exempt the staff from reporting for duty to the Shift Supervisor.
3. All staff shall check their respective mailboxes prior to reporting for duty.

### 326.04 SHIFT ROSTERS

1. To efficiently utilize assigned staff, shift supervisors must plan in advance the work week, schedule and take into account changes in the workload such as, transportation, hospital coverage or parole boards.
  - Shift Supervisors must staff all mandatory positions.
  - Shift rosters will be reviewed one (1) week in advance.
    - Final review and adjustments to shift rosters will be completed by end of shift each day.

### 326.05 CALL-INS

1. A call-in shall only be accepted by a shift sergeant or above.
2. Call-ins shall be documented in NSIS
  - Shift supervisors shall enter the appropriate leave code in NSIS.
  - The shift supervisor shall make adjustments to ensure proper staff coverage.
3. A DOC 1000 Authorization for Leave and Overtime request form shall be completed for all used leaves and overtime.

### 326.06 IDENTIFIED SHUTDOWN AND PULL POSITIONS BY SHIFT

1. Day Shift supervisors will utilize the below listed shutdown and pull positions to ensure mandatory positions are staffed prior to hiring overtime.
  - The Warden or Associate Warden of Operations shall be notified and must approve all overtime.
  - Shift supervisors should refrain from repeatedly pulling the same personnel and should take work load into consideration.
  - Day shift A, B, (0500 hrs – 1700 hrs) and C (0500 hrs – 1300 hrs) has Sixty (60) legislatively approved posts. Prior to requesting the use of overtime, the shift Supervisor must utilize all pull and shut down posts as defined below:

**THIERMAN LAW FIRM, PC**  
7287 Lakeside Drive  
Reno, NV 89511  
(775) 284-1500 Fax (775) 703-5027  
Email laborlawyer@pacbell.net www.laborlawyer.net

1 Mark R. Thierman, Nev. Bar No. 8285  
mark@thiermanlaw.com  
2 Joshua D. Buck, Nev. Bar No. 12187  
josh@thiermanlaw.com  
3 Leah L. Jones, Nev. Bar. No. 13161  
leah@thiermanlaw.com  
4 THIERMAN LAW FIRM, P.C.  
7287 Lakeside Drive  
5 Reno, Nevada 89511  
Tel. (775) 284-1500  
6 Fax. (775) 703-5027

7 *Attorneys for Plaintiffs*  
8  
9

10 **UNITED STATES DISTRICT COURT**  
11 **DISTRICT OF NEVADA**  
12

13 DONALD WALDEN JR, NATHAN  
14 ECHEVERRIA, AARON DICUS, BRENT  
15 EVERIST, TRAVIS ZUFELT, TIMOTHY  
16 RIDENOUR, and DANIEL TRACY on  
behalf of themselves and all others similarly  
situated,

17 Plaintiffs,  
18

19 v.

20 THE STATE OF NEVADA, NEVADA  
21 DEPARTMENT OF CORRECTIONS, and  
DOES 1-50,  
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23 Defendants.  
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Case No.: 3:14-cv-00320-LRH-WGC

**DECLARATION OF DONALD  
WALDEN**

**THIERMAN LAW FIRM, PC**  
7287 Lakeside Drive  
Reno, NV 89511  
(775) 284-1500 Fax (775) 703-5027  
Email laborlawyer@pacbell.net www.laborlawyer.net

1 I, Donald Walden, hereby declare and state as follows:

2 1. I am over the age of eighteen and I have personal knowledge of the facts and  
3 circumstances set forth in this declaration. If I were called as a witness I would and could  
4 competently testify to the matters set forth herein.

5 2. I was employed by Defendant THE STATE OF NEVADA, NEVADA  
6 DEPARTMENT OF CORRECTIONS ("Defendant" or "NDOC") as a Correctional Officer at  
7 the Southern Desert Correctional Center ("SDCC") from on or about February 24, 2003 to  
8 February 14, 2013. My rate of pay was approximately \$23.00 or \$24.00 per hour as of the last  
9 day I worked prior to the date of this declaration.

10 3. During my ten year career with NDOC I have worked a variety of different shifts  
11 and was assigned to a variety of different job posts. For instance, I have held the following job  
12 posts and worked the following shifts dating back to 2011:

13 i. In 2013, I was on medical leave due to an incident where I was hurt on  
14 the job in May of 2012. I was formally separated from NDOC on February 14, 2013.

15 ii. In 2012, I was the Senior Officer assigned to Search and Escort on swing  
16 shift, until I was hurt on the job in May, and was scheduled to work a 14-day variable  
17 work schedule of 80 hours during that work period. I routinely worked at least 80 hours  
18 a work period (not counting the hours I worked without pay as set forth below).

19 iii. In 2011, I was the Senior Officer for Unit 8 (lock down unit) on day shift  
20 and was scheduled to work a standard workweek of 40 hours a week. I routinely worked  
21 at least 40 hours a week (not counting the hours I worked without pay as set forth below).

22 4. When I work a standard 40 hour workweek, pursuant to the NDOC  
23 Administrative Regulation 320, my contract, and state and federal law, I should be compensated  
24 at my overtime rate for all hours I work that exceed 40 hours during that workweek. When I  
25 work a 14-day variable work schedule, pursuant to the NDOC Administrative Regulation 320  
26 and my contract, I should be compensated at my overtime rate for all hours I work that exceed  
27 80 hours during that work period.

**THIERMAN LAW FIRM, PC**  
 7287 Lakeside Drive  
 Reno, NV 89511  
 (775) 284-1500 Fax (775) 703-5027  
 Email laborlawyer@pacbell.net www.laborlawyer.net

5. As a NDOC Correctional Officer, I am required to be at my post at the start of my regularly scheduled shift. Upon my own information and belief, all NDOC Correctional Officers across the state of Nevada are similarly required to be at their post at the start of their respective shift.

6. Attached to this declaration as Exhibit A is a true and correct copy of NDOC Administrative Regulation 326, which states, in relevant part, that “All correctional staff will report to the shift supervisor/shift sergeant upon arrival . . . .”

7. Attached to this declaration as Exhibit B is a true and correct copy of SDCC Operational Procedure 326.03, which states the following:

1. All Staff shall report for duty fully prepared for any work assignment
  - Uniform and equipment shall be in accordance with A.R. 350
2. Staff will report to the shift supervisor in the muster room for posting of their assignment.
  - Staff will report early enough to be on their post by the beginning of their shift.
  - Staff will report in person
    - Areas of assignment or working hours do no exempt the staff from reporting for duty to the Shift Supervisor
3. All Staff shall check their respective mailboxes prior to reporting for duty.

8. Even though I am required to be at my post at the start of my regularly scheduled shift, I am not compensated for all the work activities that I perform prior to arriving at my post. Prior to proceeding to my assigned post for the day, I must report to the muster room to report to the shift sergeant/shift supervisor, receive my assignment, get debriefed as to any new developments at the facility or issues relating to my employment, check my mail box, and be checked for proper uniform attire. Depending on my assignment, I may also be required to pick up keys, radios, tear gas equipment, weapons, and handcuffs. Only after I have completed all these tasks am I able to proceed to my assigned post for the day. Given the size of the correctional facility, walking to my designated post could take me approximately 15-minutes. When I arrive at my post I typically relieve an outgoing officer and am debriefed by that officer.

1 I am not compensated for performing any of these activities prior to my regularly scheduled shift.  
 2 Upon my own information and belief, I understand that all NDOC Correctional Officers across  
 3 the state of Nevada are similarly required to perform these work activities prior to the start of  
 4 their regularly scheduled shift and are not compensated for doing so.

5 9. In addition for not being paid for the pre-shift activities described above, I'm  
 6 likewise denied compensation for engaging in post-shift activities. Even though I'm only  
 7 compensated until the end of my scheduled shift, I'm required to conduct debriefing sessions  
 8 with oncoming officers after the end of my shift, walk back to the facility's main office, and  
 9 return the various tools (*i.e.*, keys, radios, tear gas equipment, weapons, and handcuffs) that I  
 10 was required to use during the workday. I am not compensated for performing any of these  
 11 activities after my regularly scheduled shift. Upon my own information and belief, I understand  
 12 that all NDOC Correctional Officers across the state of Nevada are similarly required to perform  
 13 these work activities after the end of their regularly scheduled shift and are not compensated for  
 14 doing so.

15 10. I estimate that I have worked off-the-clock and without compensation  
 16 approximately 30 to 45 minutes each and every workday during my employment with NDOC.

17 11. Upon my own information and belief, NDOC has been failing to pay Correctional  
 18 Officers for years. I want to be paid all my wages and associated penalties, costs, and fees, in  
 19 full for having to work for free all these years.

20 I declare under the penalty of perjury under the laws of the United States of America and  
 21 the State of Nevada that the foregoing is true and correct.

22 Executed this 18 day of July, 2014, at Las Vegas, Nevada.

23  
 24   
 25 DONALD WALDEN  
 26  
 27  
 28

# **EXHIBIT A**

# **EXHIBIT A**

**NEVADA DEPARTMENT OF CORRECTIONS  
ADMINISTRATIVE REGULATION  
326**

**POSTING OF SHIFTS/OVERTIME**

**Supersedes:** AR 326 (Temporary, 05/02/10)  
**Effective Date:** 08/13/10

**AUTHORITY:** NRS 284.055; 284.155; 284.175; 284.180 NAC 284.242; 284.245; 284.250

**RESPONSIBILITY:**

Wardens/ Facility Managers are responsible to ensure there is sufficient staff on duty to safely operate their institutions and facilities.

An Associate Warden/facility manager are responsible to document attendance, management of relief factor usage by all uniformed staff, and ensure proper documentation is maintained.

**326.01 STAFFING**

**1. NORMAL OPERATIONS**

A. Normal operation staffing is utilized during the normal operations of an institution. This pattern will identify the staff required to run a specified post when all positions are utilized.

B. An Associate Warden will create a written staffing pattern identifying and prioritizing specific posts operating within the institution as either a pull position or a shut down position.

(1) A pull position is identified as a position in which the assigned officer may be pulled from that position and assigned elsewhere in the institution during their assigned shift.

(2) A shut down position is identified as a position in which the assigned officer may be pulled from his assigned post and the post closed with the officer being assigned elsewhere in the institution for their entire assigned shift.

C. Shift Sergeants reporting for their scheduled shifts will adjust the shift roster and fill all positions mandated to fulfill the minimum staffing requirements.

D. The shift sergeant will use all Sick/Annual positions first, and then use pull/shutdown positions as appropriate, in the order as listed by the institution.

E. If the minimum staffing has not been met, the on duty Shift Supervisor will contact an Associate Warden and request the minimum amount of overtime hours needed. The Associate Warden will then notify the Warden for approval of the decision/overtime approved.

F. Only when all pull positions and shutdown positions have been utilized will overtime be considered.

## 2. EMERGENCY OPERATIONS

A. Emergency operation staff is the staffing pattern that identifies posts that must meet minimal requirements for officer and inmate safety. This pattern will identify those posts that are critical for running a specific area of the institution.

B. An Associate Warden will create a written staffing pattern identifying additional specific posts within the institution either as pull or shutdown positions; this staffing pattern will prioritize these positions in the order they are to be pulled / shut down in the event of an emergency or staff shortage.

C. Staffing will also be evaluated as to the absolute minimum required to safely operate a particular shift.

D. It may be necessary to modify or cancel some activities as a result of emergency staffing. The Warden/Associate Warden will be notified of the cancellation of any activity or program.

E. Only when all pull positions and shutdown positions have been utilized only then will overtime be considered. Authorization is only granted by the Warden/Designee.

### **326.02 RELIEF FACTOR MANAGEMENT (RFM)**

1. Relief Factor Management (RFM) positions are to be:

A. Used for unscheduled annual leave relief to cover greater than normal sick leave, if it is available.

B. Used for pull and shutdown posts to cover greater than expected sick leave.

2. No more annual leave will be scheduled than there are relief factor management positions available to support the requested leave without overtime.

A. Staff should request annual leave per the requirements of AR 322 Types of Leave and Leave Procedure

B. Leave requests submitted without sufficient notice will not be granted if there is no relief factor to accommodate the leave without overtime except in a case of a personal emergency.

3. To the degree possible, Lieutenants and Sergeants should not be replaced, however, these positions may be used as a pull/shutdown position if designated by the institutional staff procedure,

4. Shift rosters for each institution and facility are to be organized so the components of the relief factor can be combined to identify specific staff to occupy RFM positions.

5. Relief factor for regular days off, sick leave, annual leave, or training, will not be combined in order to create new positions.



6. Days off are assigned to the post and not the person.

### **326.03 MANAGEMENT OF OVERTIME**

1. Overtime is not guaranteed for any employee.

A. Institutional/facility requirements will determine all overtime hired.

B. All staff overtime requires the completion of DOC Form 1000, Authorization for Leave and Overtime Request Form.

C. Staff can not work more than two (2) consecutive double shifts.

D. Unless an emergency situation occurs, no staff can work than more than a 16 hour shift in a 24 hour period.

2. Assigned staff may be reassigned when an institutional need exists.

3. Employees on modified duty assignments are not authorized to work overtime.

4. Correctional officers may be used to fill Senior Correctional Officer positions on a case by case basis. However Senior Correctional Officers may not be utilized to fill a Correctional Officer position.

5. A voluntary overtime list will be established and used prior to utilizing mandatory overtime. This voluntary overtime list will be re-started when exhausted

A. No employee who calls in sick or utilizes sick leave during any given pay period will be allowed to work voluntary overtime.

B. If an employee accrues overtime during the first week of the pay period and then utilizes sick leave, that employee will not be permitted any voluntary overtime in the next pay period.

C. No employee who must provide "proof" may work voluntary overtime until this status is modified.

D. Employees who are in AWOL or LWOP status will not to be allowed to volunteer/eligible for overtime in the same pay period.

(1) If overtime is accrued during the first week of the pay period and then LWOP or AWOL is accrued, that employee will not be permitted to work voluntary overtime in the entire following pay period.

6. If overtime is required to maintain a safe and secure operation and insufficient staff voluntarily agrees to work, mandatory overtime will be initiated.

A. A list of Senior Correctional Officers, Correctional Officers, and Correctional Officer Trainees will be establish by based on least seniority in their hire date and last involuntary, i.e. mandatory, overtime date, will be established for each shift.

- B. The mandatory overtime list will be restarted once exhausted or every 45 days.
- C. Adjustments will be made when an officer is reassigned to a new shift. That officer will be added to the mandatory list according to their last mandatory date.
- D. Based on the least seniority the first time after shift bidding, staff will be selected by their last involuntary overtime date. Once completed, the employee will move to the bottom of the involuntary overtime list.
- E. All correctional staff will report to the shift supervisor/shift sergeant upon arrival to ensure their status if required to work mandatory overtime.

(1) If an employee is required to work mandatory overtime, that employee may be allowed to solicit a volunteer to work in his/her place.

(a) If a volunteer is found, the shift supervisor/shift sergeant must approve the substitution prior to the person being allowed to work.

(b) If the substitution is approved, the Officer originally scheduled to work the mandatory overtime will remain at the top of the mandatory overtime list until he/she actually works it.

(2) The employee has 1 hour to find a substitute whenever possible.

7. A written overtime tracking log must be approved by the appropriate Deputy Director.

A. All overtime will be entered into the NSIS Computer Roster.

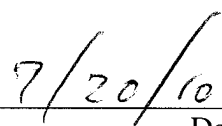
B. Verification will be made that the timesheet entry is properly coded and hours are correctly entered by viewing the timesheet of the staff member.

C. A written overtime tracking log will be utilized to ensure proper utilization of overtime and entry into the computer.

#### **APPLICABILITY**

- 1. This regulation requires an Operational Procedure for every institution and facility.
- 2. This regulation requires an audit.

  
\_\_\_\_\_  
Howard Skolnik, Director

  
\_\_\_\_\_  
Date

# **EXHIBIT B**

# **EXHIBIT B**

### 326.03 STAFF RESPONSIBILITY

1. All staff shall report for duty fully prepared for any work assignment.
  - Uniform and equipment shall be in accordance with A.R. 350.
2. Staff will report to the shift supervisor in the muster room for posting of their assignment.
  - Staff will report early enough to be on their post by the beginning of their shift.
  - Staff will report in person.
    - Areas of assignment or working hours do not exempt the staff from reporting for duty to the Shift Supervisor.
3. All staff shall check their respective mailboxes prior to reporting for duty.

### 326.04 SHIFT ROSTERS

1. To efficiently utilize assigned staff, shift supervisors must plan in advance the work week, schedule and take into account changes in the workload such as, transportation, hospital coverage or parole boards.
  - Shift Supervisors must staff all mandatory positions.
  - Shift rosters will be reviewed one (1) week in advance.
    - Final review and adjustments to shift rosters will be completed by end of shift each day.

### 326.05 CALL-INS

1. A call-in shall only be accepted by a shift sergeant or above.
2. Call-ins shall be documented in NSIS
  - Shift supervisors shall enter the appropriate leave code in NSIS.
  - The shift supervisor shall make adjustments to ensure proper staff coverage.
3. A DOC 1000 Authorization for Leave and Overtime request form shall be completed for all used leaves and overtime.

### 326.06 IDENTIFIED SHUTDOWN AND PULL POSITIONS BY SHIFT

1. Day Shift supervisors will utilize the below listed shutdown and pull positions to ensure mandatory positions are staffed prior to hiring overtime.
  - The Warden or Associate Warden of Operations shall be notified and must approve all overtime.
  - Shift supervisors should refrain from repeatedly pulling the same personnel and should take work load into consideration.
  - Day shift A, B, (0500 hrs – 1700 hrs) and C (0500 hrs – 1300 hrs) has Sixty (60) legislatively approved posts. Prior to requesting the use of overtime, the shift Supervisor must utilize all pull and shut down posts as defined below:

**THIERMAN LAW FIRM, PC**  
7287 Lakeside Drive  
Reno, NV 89511  
(775) 284-1500 Fax (775) 703-5027  
Email laborlawyer@pacbell.net www.laborlawyer.net

1 Mark R. Thierman, Nev. Bar No. 8285  
mark@thiermanlaw.com  
2 Joshua D. Buck, Nev. Bar No. 12187  
josh@thiermanlaw.com  
3 Leah L. Jones, Nev. Bar. No. 13161  
leah@thiermanlaw.com  
4 THIERMAN LAW FIRM, P.C.  
7287 Lakeside Drive  
5 Reno, Nevada 89511  
Tel. (775) 284-1500  
6 Fax. (775) 703-5027

7 *Attorneys for Plaintiffs*  
8  
9

10 **UNITED STATES DISTRICT COURT**  
11 **DISTRICT OF NEVADA**  
12

13 DONALD WALDEN JR, NATHAN  
14 ECHEVERRIA, AARON DICUS, BRENT  
15 EVERIST, TRAVIS ZUFELT, TIMOTHY  
16 RIDENOUR, and DANIEL TRACY on  
behalf of themselves and all others similarly  
situated,

17 Plaintiffs,  
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19 v.

20 THE STATE OF NEVADA, NEVADA  
21 DEPARTMENT OF CORRECTIONS, and  
DOES 1-50,  
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23 Defendants.  
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Case No.: 3:14-cv-00320-LRH-WGC

**DECLARATION OF DANIEL TRACY**

**THIERMAN LAW FIRM, PC**  
 7287 Lakeside Drive  
 Reno, NV 89511  
 (775) 284-1500 Fax (775) 703-5027  
 Email laborlawyer@pacbell.net www.laborlawyer.net

I, Daniel Tracy, hereby declare and state as follows:

1. I am over the age of eighteen and I have personal knowledge of the facts and circumstances set forth in this declaration. If I were called as a witness I would and could competently testify to the matters set forth herein.

2. I have been employed by Defendant THE STATE OF NEVADA, NEVADA DEPARTMENT OF CORRECTIONS (“Defendant” or “NDOC”) as a Correctional Officer at the Southern Desert Correctional Center (“SDCC”) from on or about October 9<sup>th</sup>, 2000 to the present. My current rate of pay is approximately \$26.00 per hour as of the last day I worked prior to the date of this declaration.

3. During my fourteen year career with NDOC I have worked a variety of different shifts and was assigned to a variety of different job posts. For instance, I have held the following job posts and worked the following shifts dating back to 2011:

i. Currently, as of the date of this declaration, I am assigned as Gym Officer and am scheduled to work an 8 hour shift, 5 days a week. I routinely work at least 40 hours a work period (not counting the hours I worked without pay as set forth below).

ii. In 2013, I was assigned as Gym Officer and was scheduled to work an 8 hour shift, 5 days a week. I routinely worked at least 40 hours a work period (not counting the hours I worked without pay as set forth below).

iii. In 2012, I was assigned to K Officer for part of the year and was scheduled to work a 12 hour shift work schedule of 80 hours during that work period. I routinely worked at least 80 hours a work period (not counting the hours I worked without pay as set forth below). I was also assigned as Lead Officer for Units One and Two for part of the year, and was scheduled to work an 8 hour shift, 5 days a week. I routinely worked at least 40 hours a work period (not counting the hours I worked without pay as set forth below).

iv. In 2011, I was assigned to the Women’s Correctional Center and was scheduled to work a standard workweek of 40 hours a week. I routinely worked at least 40 hours a week (not counting the hours I worked without pay as set forth below).

**THIERMAN LAW FIRM, PC**  
 7287 Lakeside Drive  
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4. When I work a standard 40 hour workweek, pursuant to the NDOC Administrative Regulation 320, my contract, and state and federal law, I should be compensated at my overtime rate for all hours I work that exceed 40 hours during that workweek. When I work a 14-day variable work schedule, pursuant to the NDOC Administrative Regulation 320 and my contract, I should be compensated at my overtime rate for all hours I work that exceed 80 hours during that work period.

5. As a NDOC Correctional Officer, I am required to be at my post at the start of my regularly scheduled shift. Upon my own information and belief, all NDOC Correctional Officers across the state of Nevada are similarly required to be at their post at the start of their respective shift.

6. Attached to this declaration as Exhibit A is a true and correct copy of NDOC Administrative Regulation 326, which states, in relevant part, that "All correctional staff will report to the shift supervisor/shift sergeant upon arrival . . . ."

7. Attached to this declaration as Exhibit B is a true and correct copy of SDCC Operational Procedure 326.03, which states the following:

1. All Staff shall report for duty fully prepared for any work assignment
  - Uniform and equipment shall be in accordance with A.R. 350
2. Staff will report to the shift supervisor in the muster room for posting of their assignment.
  - Staff will report early enough to be on their post by the beginning of their shift.
  - Staff will report in person
    - Areas of assignment or working hours do no exempt the staff from reporting for duty to the Shift Supervisor
3. All Staff shall check their respective mailboxes prior to reporting for duty.

8. Even though I am required to be at my post at the start of my regularly scheduled shift, I am not compensated for all the work activities that I perform prior to arriving at my post. Prior to proceeding to my assigned post for the day, I must report to the muster room to report to the shift sergeant/shift supervisor, receive my assignment, get debriefed as to any new

**THIERMAN LAW FIRM, PC**  
 7287 Lakeside Drive  
 Reno, NV 89511  
 (775) 284-1500 Fax (775) 703-5027  
 Email laborlawyer@pacbell.net www.laborlawyer.net

1 developments at the facility or issues relating to my employment, check my mail box, and be  
 2 checked for proper uniform attire. Depending on my assignment, I may also be required to pick  
 3 up keys, radios, tear gas equipment, weapons, and handcuffs. Only after I have completed all  
 4 these tasks am I able to proceed to my assigned post for the day. Given the size of the  
 5 correctional facility, walking to my designated post could take me approximately 15-minutes.  
 6 When I arrive at my post I have turn on lights, unlock doors and perform administrative tasks  
 7 such as booting up my computer. I am not compensated for performing any of these activities  
 8 prior to my regularly scheduled shift. Upon my own information and belief, I understand that  
 9 all NDOC Correctional Officers across the state of Nevada are similarly required to perform  
 10 these work activities prior to the start of their regularly scheduled shift and are not compensated  
 11 for doing so.

12 9. In addition for not being paid for the pre-shift activities described above, I'm  
 13 likewise denied compensation for engaging in post-shift activities. Even though I'm only  
 14 compensated until the end of my scheduled shift, I'm required to conduct debriefing sessions  
 15 with oncoming officers after the end of my shift, walk back to the facility's main office, and  
 16 return the various tools (*i.e.*, keys, radios, tear gas equipment, weapons, and handcuffs) that I  
 17 was required to use during the workday. I am not compensated for performing any of these  
 18 activities after my regularly scheduled shift. Upon my own information and belief, I understand  
 19 that all NDOC Correctional Officers across the state of Nevada are similarly required to perform  
 20 these work activities after the end of their regularly scheduled shift and are not compensated for  
 21 doing so.

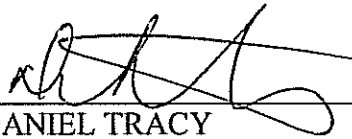
22 10. I estimate that I have worked off-the-clock and without compensation  
 23 approximately 30 to 45 minutes each and every workday during my employment with NDOC.

24 11. Upon my own information and belief, NDOC has been failing to pay Correctional  
 25 Officers for years. I want to be paid all my wages and associated penalties, costs, and fees, in  
 26 full for having to work for free all these years.  
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1 I declare under the penalty of perjury under the laws of the United States of America and  
2 the State of Nevada that the foregoing is true and correct.

3 Executed this 30<sup>th</sup> day of June, 2014, at Las Vegas, Nevada.

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7 DANIEL TRACY

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# **EXHIBIT A**

# **EXHIBIT A**

**NEVADA DEPARTMENT OF CORRECTIONS  
ADMINISTRATIVE REGULATION  
326**

**POSTING OF SHIFTS/OVERTIME**

**Supersedes:** AR 326 (Temporary, 05/02/10)  
**Effective Date:** 08/13/10

**AUTHORITY:** NRS 284.055; 284.155; 284.175; 284.180 NAC 284.242; 284.245; 284.250

**RESPONSIBILITY:**

Wardens/ Facility Managers are responsible to ensure there is sufficient staff on duty to safely operate their institutions and facilities.

An Associate Warden/facility manager are responsible to document attendance, management of relief factor usage by all uniformed staff, and ensure proper documentation is maintained.

**326.01 STAFFING**

**1. NORMAL OPERATIONS**

A. Normal operation staffing is utilized during the normal operations of an institution. This pattern will identify the staff required to run a specified post when all positions are utilized.

B. An Associate Warden will create a written staffing pattern identifying and prioritizing specific posts operating within the institution as either a pull position or a shut down position.

(1) A pull position is identified as a position in which the assigned officer may be pulled from that position and assigned elsewhere in the institution during their assigned shift.

(2) A shut down position is identified as a position in which the assigned officer may be pulled from his assigned post and the post closed with the officer being assigned elsewhere in the institution for their entire assigned shift.

C. Shift Sergeants reporting for their scheduled shifts will adjust the shift roster and fill all positions mandated to fulfill the minimum staffing requirements.

D. The shift sergeant will use all Sick/Annual positions first, and then use pull/shutdown positions as appropriate, in the order as listed by the institution.

E. If the minimum staffing has not been met, the on duty Shift Supervisor will contact an Associate Warden and request the minimum amount of overtime hours needed. The Associate Warden will then notify the Warden for approval of the decision/overtime approved.

F. Only when all pull positions and shutdown positions have been utilized will overtime be considered.

## 2. EMERGENCY OPERATIONS

A. Emergency operation staff is the staffing pattern that identifies posts that must meet minimal requirements for officer and inmate safety. This pattern will identify those posts that are critical for running a specific area of the institution.

B. An Associate Warden will create a written staffing pattern identifying additional specific posts within the institution either as pull or shutdown positions; this staffing pattern will prioritize these positions in the order they are to be pulled / shut down in the event of an emergency or staff shortage.

C. Staffing will also be evaluated as to the absolute minimum required to safely operate a particular shift.

D. It may be necessary to modify or cancel some activities as a result of emergency staffing. The Warden/Associate Warden will be notified of the cancellation of any activity or program.

E. Only when all pull positions and shutdown positions have been utilized only then will overtime be considered. Authorization is only granted by the Warden/Designee.

### **326.02 RELIEF FACTOR MANAGEMENT (RFM)**

1. Relief Factor Management (RFM) positions are to be:

A. Used for unscheduled annual leave relief to cover greater than normal sick leave, if it is available.

B. Used for pull and shutdown posts to cover greater than expected sick leave.

2. No more annual leave will be scheduled than there are relief factor management positions available to support the requested leave without overtime.

A. Staff should request annual leave per the requirements of AR 322 Types of Leave and Leave Procedure

B. Leave requests submitted without sufficient notice will not be granted if there is no relief factor to accommodate the leave without overtime except in a case of a personal emergency.

3. To the degree possible, Lieutenants and Sergeants should not be replaced, however, these positions may be used as a pull/shutdown position if designated by the institutional staff procedure,

4. Shift rosters for each institution and facility are to be organized so the components of the relief factor can be combined to identify specific staff to occupy RFM positions.

5. Relief factor for regular days off, sick leave, annual leave, or training, will not be combined in order to create new positions.

6. Days off are assigned to the post and not the person.

### **326.03 MANAGEMENT OF OVERTIME**

1. Overtime is not guaranteed for any employee.

A. Institutional/facility requirements will determine all overtime hired.

B. All staff overtime requires the completion of DOC Form 1000, Authorization for Leave and Overtime Request Form.

C. Staff can not work more than two (2) consecutive double shifts.

D. Unless an emergency situation occurs, no staff can work than more than a 16 hour shift in a 24 hour period.

2. Assigned staff may be reassigned when an institutional need exists.

3. Employees on modified duty assignments are not authorized to work overtime.

4. Correctional officers may be used to fill Senior Correctional Officer positions on a case by case basis. However Senior Correctional Officers may not be utilized to fill a Correctional Officer position.

5. A voluntary overtime list will be established and used prior to utilizing mandatory overtime. This voluntary overtime list will be re-started when exhausted

A. No employee who calls in sick or utilizes sick leave during any given pay period will be allowed to work voluntary overtime.

B. If an employee accrues overtime during the first week of the pay period and then utilizes sick leave, that employee will not be permitted any voluntary overtime in the next pay period.

C. No employee who must provide "proof" may work voluntary overtime until this status is modified.

D. Employees who are in AWOL or LWOP status will not to be allowed to volunteer/eligible for overtime in the same pay period.

(1) If overtime is accrued during the first week of the pay period and then LWOP or AWOL is accrued, that employee will not be permitted to work voluntary overtime in the entire following pay period.

6. If overtime is required to maintain a safe and secure operation and insufficient staff voluntarily agrees to work, mandatory overtime will be initiated.

A. A list of Senior Correctional Officers, Correctional Officers, and Correctional Officer Trainees will be establish by based on least seniority in their hire date and last involuntary, i.e. mandatory, overtime date, will be established for each shift.

- B. The mandatory overtime list will be restarted once exhausted or every 45 days.
- C. Adjustments will be made when an officer is reassigned to a new shift. That officer will be added to the mandatory list according to their last mandatory date.
- D. Based on the least seniority the first time after shift bidding, staff will be selected by their last involuntary overtime date. Once completed, the employee will move to the bottom of the involuntary overtime list.
- E. All correctional staff will report to the shift supervisor/shift sergeant upon arrival to ensure their status if required to work mandatory overtime.

(1) If an employee is required to work mandatory overtime, that employee may be allowed to solicit a volunteer to work in his/her place.

(a) If a volunteer is found, the shift supervisor/shift sergeant must approve the substitution prior to the person being allowed to work.

(b) If the substitution is approved, the Officer originally scheduled to work the mandatory overtime will remain at the top of the mandatory overtime list until he/she actually works it.

(2) The employee has 1 hour to find a substitute whenever possible.

7. A written overtime tracking log must be approved by the appropriate Deputy Director.

A. All overtime will be entered into the NSIS Computer Roster.

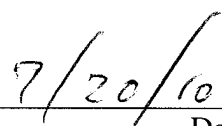
B. Verification will be made that the timesheet entry is properly coded and hours are correctly entered by viewing the timesheet of the staff member.

C. A written overtime tracking log will be utilized to ensure proper utilization of overtime and entry into the computer.

#### APPLICABILITY

- 1. This regulation requires an Operational Procedure for every institution and facility.
- 2. This regulation requires an audit.

  
\_\_\_\_\_  
Howard Skolnik, Director

  
\_\_\_\_\_  
Date

# **EXHIBIT B**

# **EXHIBIT B**

### 326.03 STAFF RESPONSIBILITY

1. All staff shall report for duty fully prepared for any work assignment.
  - Uniform and equipment shall be in accordance with A.R. 350.
2. Staff will report to the shift supervisor in the muster room for posting of their assignment.
  - Staff will report early enough to be on their post by the beginning of their shift.
  - Staff will report in person.
    - Areas of assignment or working hours do not exempt the staff from reporting for duty to the Shift Supervisor.
3. All staff shall check their respective mailboxes prior to reporting for duty.

### 326.04 SHIFT ROSTERS

1. To efficiently utilize assigned staff, shift supervisors must plan in advance the work week, schedule and take into account changes in the workload such as, transportation, hospital coverage or parole boards.
  - Shift Supervisors must staff all mandatory positions.
  - Shift rosters will be reviewed one (1) week in advance.
    - Final review and adjustments to shift rosters will be completed by end of shift each day.

### 326.05 CALL-INS

1. A call-in shall only be accepted by a shift sergeant or above.
2. Call-ins shall be documented in NSIS
  - Shift supervisors shall enter the appropriate leave code in NSIS.
  - The shift supervisor shall make adjustments to ensure proper staff coverage.
3. A DOC 1000 Authorization for Leave and Overtime request form shall be completed for all used leaves and overtime.

### 326.06 IDENTIFIED SHUTDOWN AND PULL POSITIONS BY SHIFT

1. Day Shift supervisors will utilize the below listed shutdown and pull positions to ensure mandatory positions are staffed prior to hiring overtime.
  - The Warden or Associate Warden of Operations shall be notified and must approve all overtime.
  - Shift supervisors should refrain from repeatedly pulling the same personnel and should take work load into consideration.
  - Day shift A, B, (0500 hrs – 1700 hrs) and C (0500 hrs – 1300 hrs) has Sixty (60) legislatively approved posts. Prior to requesting the use of overtime, the shift Supervisor must utilize all pull and shut down posts as defined below:



**THIERMAN LAW FIRM, PC**  
7287 Lakeside Drive  
Reno, NV 89511  
(775) 284-1500 Fax (775) 703-5027  
Email laborlawyer@pacbell.net www.laborlawyer.net

1 Mark R. Thierman, Nev. Bar No. 8285  
mark@thiermanlaw.com  
2 Joshua D. Buck, Nev. Bar No. 12187  
josh@thiermanlaw.com  
3 Leah L. Jones, Nev. Bar. No. 13161  
leah@thiermanlaw.com  
4 THIERMAN LAW FIRM, P.C.  
7287 Lakeside Drive  
5 Reno, Nevada 89511  
Tel. (775) 284-1500  
6 Fax. (775) 703-5027

7 *Attorneys for Plaintiffs*  
8  
9

10 **UNITED STATES DISTRICT COURT**  
11 **DISTRICT OF NEVADA**  
12

13 DONALD WALDEN JR, NATHAN  
14 ECHEVERRIA, AARON DICUS, BRENT  
15 EVERIST, TRAVIS ZUFELT, TIMOTHY  
16 RIDENOUR, and DANIEL TRACY on  
behalf of themselves and all others similarly  
situated,

17 Plaintiffs,  
18

19 v.

20 THE STATE OF NEVADA, NEVADA  
21 DEPARTMENT OF CORRECTIONS, and  
DOES 1-50,  
22

23 Defendants.  
24  
25  
26  
27  
28

Case No.: 3:14-cv-00320-LRH-WGC

**DECLARATION OF BRENT EVERIST**

**THIERMAN LAW FIRM, PC**  
 7287 Lakeside Drive  
 Reno, NV 89511  
 (775) 284-1500 Fax (775) 703-5027  
 Email laborlawyer@pacbell.net www.laborlawyer.net

I, Brent Everist, hereby declare and state as follows:

1. I am over the age of eighteen and I have personal knowledge of the facts and circumstances set forth in this declaration. If I were called as a witness I would and could competently testify to the matters set forth herein.

2. I have been employed by Defendant THE STATE OF NEVADA, NEVADA DEPARTMENT OF CORRECTIONS (“Defendant” or “NDOC”) as a Correctional Officer at the High Desert State Prison (“HDSP”) from on or about May 1, 2006 to the present. My current rate of pay is approximately \$22.80 per hour as of the last day I worked prior to the date of this declaration.

3. During my eight year career with NDOC I have worked a variety of different shifts and was assigned to a variety of different job posts. For instance, I have held the following job posts and worked the following shifts dating back to 2011:

i. Currently, as of the date of this declaration, I am assigned to Housing Unit 1 CD Control and am scheduled to work 5 days a week 8 hours a day work schedule of 40 hours during the work week. I routinely work at least 80 hours a work period (not counting the hours I worked without pay as set forth below).

ii. In 2013, I was assigned to Housing Unit 1 CD Control and was scheduled to work a 5 days a week 8 hours a day work schedule of 40 hours during the work week. I routinely worked at least 80 hours a work period (not counting the hours I worked without pay as set forth below).

iii. In 2012, I was assigned to Housing Unit 4 AB Floor and was scheduled to work a 14-day variable work schedule of 80 hours during that work period. I routinely worked at least 80 hours a work period (not counting the hours I worked without pay as set forth below).

iv. In 2011, I was assigned to Housing Unit 3 AB Control and was scheduled to work a standard workweek of 40 hours a week. I routinely worked at least 40 hours a week (not counting the hours I worked without pay as set forth below).

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1           4.       When I work a standard 40 hour workweek, pursuant to the NDOC  
 2 Administrative Regulation 320, my contract, and state and federal law, I should be compensated  
 3 at my overtime rate for all hours I work that exceed 40 hours during that workweek. When I  
 4 work a 14-day variable work schedule, pursuant to the NDOC Administrative Regulation 320  
 5 and my contract, I should be compensated at my overtime rate for all hours I work that exceed  
 6 80 hours during that work period.

7           5.       As a NDOC Correctional Officer, I am required to be at my post at the start of  
 8 my regularly scheduled shift. Upon my own information and belief, all NDOC Correctional  
 9 Officers across the state of Nevada are similarly required to be at their post at the start of their  
 10 respective shift.

11           6.       Attached to this declaration as Exhibit A is a true and correct copy of NDOC  
 12 Administrative Regulation 326, which states, in relevant part, that “All correctional staff will  
 13 report to the shift supervisor/shift sergeant upon arrival . . . .”

14           7.       Even though I am required to be at my post at the start of my regularly scheduled  
 15 shift, I am not compensated for all the work activities that I perform prior to arriving at my post.  
 16 Prior to proceeding to my assigned post for the day, I must report to the muster room to report  
 17 to the shift sergeant/shift supervisor, receive my assignment, get debriefed as to any new  
 18 developments at the facility or issues relating to my employment, check my mail box, and be  
 19 checked for proper uniform attire. Depending on my assignment, I may also be required to pick  
 20 up keys, radios, tear gas equipment, weapons, and handcuffs. Only after I have completed all  
 21 these tasks am I able to proceed to my assigned post for the day. Given the size of the  
 22 correctional facility, walking to my designated post could take me approximately 15-minutes.  
 23 When I arrive at my post I typically relieve an outgoing officer and am debriefed by that officer.  
 24 I am not compensated for performing any of these activities prior to my regularly scheduled shift.  
 25 Upon my own information and belief, I understand that all NDOC Correctional Officers across  
 26 the state of Nevada are similarly required to perform these work activities prior to the start of  
 27 their regularly scheduled shift and are not compensated for doing so.  
 28

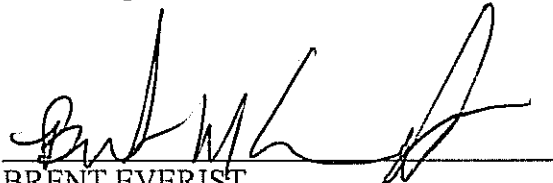
1           8.     In addition for not being paid for the pre-shift activities described above, I'm  
2 likewise denied compensation for engaging in post-shift activities. Even though I'm only  
3 compensated until the end of my scheduled shift, I'm required to conduct debriefing sessions  
4 with oncoming officers after the end of my shift, walk back to the facility's main office, and  
5 return the various tools (*i.e.*, keys, radios, tear gas equipment, weapons, and handcuffs) that I  
6 was required to use during the workday. I am not compensated for performing any of these  
7 activities after my regularly scheduled shift. Upon my own information and belief, I understand  
8 that all NDOC Correctional Officers across the state of Nevada are similarly required to perform  
9 these work activities after the end of their regularly scheduled shift and are not compensated for  
10 doing so.

11           9.     I estimate that I have worked off-the-clock and without compensation  
12 approximately 30 to 45 minutes each and every workday during my employment with NDOC.

13           10.    Upon my own information and belief, NDOC has been failing to pay Correctional  
14 Officers for years. I want to be paid all my wages and associated penalties, costs, and fees, in  
15 full for having to work for free all these years.

16           I declare under the penalty of perjury under the laws of the United States of America and  
17 the State of Nevada that the foregoing is true and correct.

18           Executed this 16 day of July, 2014, at Las Vegas, Nevada.

19  
20  
21             
22           BRENT EVERIST

# **EXHIBIT A**

# **EXHIBIT A**

**NEVADA DEPARTMENT OF CORRECTIONS  
ADMINISTRATIVE REGULATION  
326**

**POSTING OF SHIFTS/OVERTIME**

**Supersedes:** AR 326 (Temporary, 05/02/10)  
**Effective Date:** 08/13/10

**AUTHORITY:** NRS 284.055; 284.155; 284.175; 284.180 NAC 284.242; 284.245; 284.250

**RESPONSIBILITY:**

Wardens/ Facility Managers are responsible to ensure there is sufficient staff on duty to safely operate their institutions and facilities.

An Associate Warden/facility manager are responsible to document attendance, management of relief factor usage by all uniformed staff, and ensure proper documentation is maintained.

**326.01 STAFFING**

**1. NORMAL OPERATIONS**

A. Normal operation staffing is utilized during the normal operations of an institution. This pattern will identify the staff required to run a specified post when all positions are utilized.

B. An Associate Warden will create a written staffing pattern identifying and prioritizing specific posts operating within the institution as either a pull position or a shut down position.

(1) A pull position is identified as a position in which the assigned officer may be pulled from that position and assigned elsewhere in the institution during their assigned shift.

(2) A shut down position is identified as a position in which the assigned officer may be pulled from his assigned post and the post closed with the officer being assigned elsewhere in the institution for their entire assigned shift.

C. Shift Sergeants reporting for their scheduled shifts will adjust the shift roster and fill all positions mandated to fulfill the minimum staffing requirements.

D. The shift sergeant will use all Sick/Annual positions first, and then use pull/shutdown positions as appropriate, in the order as listed by the institution.

E. If the minimum staffing has not been met, the on duty Shift Supervisor will contact an Associate Warden and request the minimum amount of overtime hours needed. The Associate Warden will then notify the Warden for approval of the decision/overtime approved.

F. Only when all pull positions and shutdown positions have been utilized will overtime be considered.

## 2. EMERGENCY OPERATIONS

A. Emergency operation staff is the staffing pattern that identifies posts that must meet minimal requirements for officer and inmate safety. This pattern will identify those posts that are critical for running a specific area of the institution.

B. An Associate Warden will create a written staffing pattern identifying additional specific posts within the institution either as pull or shutdown positions; this staffing pattern will prioritize these positions in the order they are to be pulled / shut down in the event of an emergency or staff shortage.

C. Staffing will also be evaluated as to the absolute minimum required to safely operate a particular shift.

D. It may be necessary to modify or cancel some activities as a result of emergency staffing. The Warden/Associate Warden will be notified of the cancellation of any activity or program.

E. Only when all pull positions and shutdown positions have been utilized only then will overtime be considered. Authorization is only granted by the Warden/Designee.

### **326.02 RELIEF FACTOR MANAGEMENT (RFM)**

1. Relief Factor Management (RFM) positions are to be:

A. Used for unscheduled annual leave relief to cover greater than normal sick leave, if it is available.

B. Used for pull and shutdown posts to cover greater than expected sick leave.

2. No more annual leave will be scheduled than there are relief factor management positions available to support the requested leave without overtime.

A. Staff should request annual leave per the requirements of AR 322 Types of Leave and Leave Procedure

B. Leave requests submitted without sufficient notice will not be granted if there is no relief factor to accommodate the leave without overtime except in a case of a personal emergency.

3. To the degree possible, Lieutenants and Sergeants should not be replaced, however, these positions may be used as a pull/shutdown position if designated by the institutional staff procedure,

4. Shift rosters for each institution and facility are to be organized so the components of the relief factor can be combined to identify specific staff to occupy RFM positions.

5. Relief factor for regular days off, sick leave, annual leave, or training, will not be combined in order to create new positions.

6. Days off are assigned to the post and not the person.

### **326.03 MANAGEMENT OF OVERTIME**

1. Overtime is not guaranteed for any employee.

A. Institutional/facility requirements will determine all overtime hired.

B. All staff overtime requires the completion of DOC Form 1000, Authorization for Leave and Overtime Request Form.

C. Staff can not work more than two (2) consecutive double shifts.

D. Unless an emergency situation occurs, no staff can work than more than a 16 hour shift in a 24 hour period.

2. Assigned staff may be reassigned when an institutional need exists.

3. Employees on modified duty assignments are not authorized to work overtime.

4. Correctional officers may be used to fill Senior Correctional Officer positions on a case by case basis. However Senior Correctional Officers may not be utilized to fill a Correctional Officer position.

5. A voluntary overtime list will be established and used prior to utilizing mandatory overtime. This voluntary overtime list will be re-started when exhausted

A. No employee who calls in sick or utilizes sick leave during any given pay period will be allowed to work voluntary overtime.

B. If an employee accrues overtime during the first week of the pay period and then utilizes sick leave, that employee will not be permitted any voluntary overtime in the next pay period.

C. No employee who must provide "proof" may work voluntary overtime until this status is modified.

D. Employees who are in AWOL or LWOP status will not to be allowed to volunteer/eligible for overtime in the same pay period.

(1) If overtime is accrued during the first week of the pay period and then LWOP or AWOL is accrued, that employee will not be permitted to work voluntary overtime in the entire following pay period.

6. If overtime is required to maintain a safe and secure operation and insufficient staff voluntarily agrees to work, mandatory overtime will be initiated.

A. A list of Senior Correctional Officers, Correctional Officers, and Correctional Officer Trainees will be establish by based on least seniority in their hire date and last involuntary, i.e. mandatory, overtime date, will be established for each shift.



- B. The mandatory overtime list will be restarted once exhausted or every 45 days.
- C. Adjustments will be made when an officer is reassigned to a new shift. That officer will be added to the mandatory list according to their last mandatory date.
- D. Based on the least seniority the first time after shift bidding, staff will be selected by their last involuntary overtime date. Once completed, the employee will move to the bottom of the involuntary overtime list.
- E. All correctional staff will report to the shift supervisor/shift sergeant upon arrival to ensure their status if required to work mandatory overtime.

(1) If an employee is required to work mandatory overtime, that employee may be allowed to solicit a volunteer to work in his/her place.

(a) If a volunteer is found, the shift supervisor/shift sergeant must approve the substitution prior to the person being allowed to work.

(b) If the substitution is approved, the Officer originally scheduled to work the mandatory overtime will remain at the top of the mandatory overtime list until he/she actually works it.

(2) The employee has 1 hour to find a substitute whenever possible.

7. A written overtime tracking log must be approved by the appropriate Deputy Director.

A. All overtime will be entered into the NSIS Computer Roster.

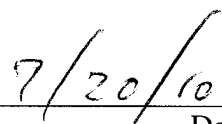
B. Verification will be made that the timesheet entry is properly coded and hours are correctly entered by viewing the timesheet of the staff member.

C. A written overtime tracking log will be utilized to ensure proper utilization of overtime and entry into the computer.

#### APPLICABILITY

- 1. This regulation requires an Operational Procedure for every institution and facility.
- 2. This regulation requires an audit.

  
Howard Skolnik, Director

  
Date

**THIERMAN LAW FIRM, PC**  
7287 Lakeside Drive  
Reno, NV 89511  
(775) 284-1500 Fax (775) 703-5027  
Email laborlawyer@pacbell.net www.laborlawyer.net

1 Mark R. Thierman, Nev. Bar No. 8285  
mark@thiermanlaw.com  
2 Joshua D. Buck, Nev. Bar No. 12187  
josh@thiermanlaw.com  
3 Leah L. Jones, Nev. Bar. No. 13161  
leah@thiermanlaw.com  
4 THIERMAN LAW FIRM, P.C.  
7287 Lakeside Drive  
5 Reno, Nevada 89511  
Tel. (775) 284-1500  
6 Fax. (775) 703-5027

7 *Attorneys for Plaintiffs*  
8  
9

10 **UNITED STATES DISTRICT COURT**  
11 **DISTRICT OF NEVADA**  
12

13 DONALD WALDEN JR, NATHAN  
14 ECHEVERRIA, AARON DICUS, BRENT  
15 EVERIST, TRAVIS ZUFELT, TIMOTHY  
16 RIDENOUR, and DANIEL TRACY on  
behalf of themselves and all others similarly  
situated,

17 Plaintiffs,  
18

19 v.

20 THE STATE OF NEVADA, NEVADA  
21 DEPARTMENT OF CORRECTIONS, and  
DOES 1-50,  
22

23 Defendants.  
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Case No.: 3:14-cv-00320-LRH-WGC

**DECLARATION OF GENE  
COLUMBUS**

**THIERMAN LAW FIRM, PC**  
 7287 Lakeside Drive  
 Reno, NV 89511  
 (775) 284-1500 Fax (775) 703-5027  
 Email laborlawyer@pacbell.net www.laborlawyer.net

I, Gene Columbus, hereby declare and state as follows:

1. I am over the age of eighteen and I have personal knowledge of the facts and circumstances set forth in this declaration. If I were called as a witness I would and could competently testify to the matters set forth herein.

2. I have been employed by Defendant THE STATE OF NEVADA, NEVADA DEPARTMENT OF CORRECTIONS ("Defendant" or "NDOC") as a Correctional Officer since June 1996. I currently work at the Northern Nevada Correctional Center ("NNCC"). My rate of pay was approximately \$29.00 per hour as of the last day I worked prior to the date of this declaration.

3. During my 18 year career with NDOC I have worked a variety of different shifts and was assigned to a variety of different job posts. For instance, I have held the following job posts and worked the following shifts dating back to 2011:

i. Currently, dating back to 2012, I have been scheduled to work a 14-day variable work schedule. I routinely worked at least 80 hours a work period (not counting the hours I worked without pay as set forth below).

ii. In 2011, I was scheduled to work a standard workweek of 40 hours a week. I routinely worked at least 40 hours a week (not counting the hours I worked without pay as set forth below).

4. In addition to my duties as a correctional officer with NDOC, I am also the President of the Nevada Corrections Association ("NCA"). The NCA is employee organization made up of correctional staff in Nevada. Our mission is to represent all of our member's interests, ensuring that their voices are heard whenever there are concerns regarding safety, security, fair treatment and compliance with laws and regulations. The NCA strives to work together with state agencies to fairly and equitably resolve issues that matter most to both our membership and state agencies, in order to create a more harmonious work place; so together we can better protect the citizens of Nevada. Currently NCA has approximately 300 members at various NDOC facilities across the state of Nevada. We have members who work at all the Correctional Facilities in the state of Nevada: Ely State Prison (ESP), Florence McClure Women's

**THIERMAN LAW FIRM, PC**  
 7287 Lakeside Drive  
 Reno, NV 89511  
 (775) 284-1500 Fax (775) 703-5027  
 Email laborlawyer@pacbell.net www.laborlawyer.net

1 Correctional Center (FMWCC), High Desert State Prison (HDSP), Lovelock Correctional  
 2 Center (LCC), Northern Nevada Correctional Center (NNCC), Southern Desert Correctional  
 3 Center (SDCC), Springs Correctional Center (WCCC). We also have members NDOC  
 4 Conservation Camps, Restitution Centers, and Transitional Housing Centers across the state.

5 5. As NCA President, I represent the association's key issues before the state  
 6 Legislature and the Executive branch, deal with membership workplace complaints and issues,  
 7 preside over association meetings, and run the day to day operations. Being President of the  
 8 NCA, I have knowledge of all NDOC's statewide policies and procedures and the policies and  
 9 procedures of each particular facility.

10 6. I have reviewed the complaint filed by DONALD WALDEN JR, NATHAN  
 11 ECHEVERRIA, AARON DICUS, BRENT EVERIST, TRAVIS ZUFELT, TIMOTHY  
 12 RIDENOUR, and DANIEL TRACY on behalf of themselves and all others similarly situated,  
 13 against the State of Nevada and NDOC. I believe that everything stated in the complaint is true  
 14 and accurately reflects the realities faced by Correctional Officers in the state of Nevada. More  
 15 specifically, I can attest that NDOC policies and procedures of requiring Correctional Officers  
 16 to show up before their regularly schedule shift to check in and perform work activities without  
 17 compensation has been a longstanding practice at NDOC. The same is true at the end of the day,  
 18 whereby Correctional Officers are required to perform work activities without compensation  
 19 after the end of their regularly scheduled shift.

20 7. Indeed, NDOC's own Administrative Regulations require Correctional Officers  
 21 to report in for duty prior to their regularly scheduled shift. Attached to this declaration as  
 22 Exhibit A is a true and correct copy of NDOC Administrative Regulation 326, which states, in  
 23 relevant part, that "All correctional staff will report to the shift supervisor/shift sergeant upon  
 24 arrival . . . ." All of the policies and procedures of NDOC facilities requiring work activities to  
 25 pre and post-shift are essentially the same. Each facility requires Correctional Officers to report  
 26 to their sergeant on-duty pre shift for roll call, to have their uniforms checked, to get their  
 27 assignment for the day, attain any tools they may need to perform their assignment for that day  
 28 (e.g., radio, tear gas, handcuffs). After engaging in these pre-shift activities, Correctional

**THIERMAN LAW FIRM, PC**  
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1 Officers are then required to proceed to their assigned post to then conduct a debriefing with the  
2 outgoing officer. All of this time has been and continues to be non-compensable pursuant to  
3 NDOC's policies, procedures, rules and regulations. At the end of the shift, Correctional Offices  
4 are supposed to engage in many of the same pre-shift activities, but in reverse order.

5 8. In addition to believing that all NDOC Correctional Officers should have been  
6 paid for the time they spent engaging in these work activities without compensation, I also  
7 believe that I am entitled to recover back wages and associated penalties, costs, and fees, in full  
8 for having to work for free all these years. I estimate that I have worked off-the-clock and  
9 without compensation approximately 30 to 45 minutes each and every workday during my  
10 employment with NDOC. Even though I am required to be at my post at the start of my regularly  
11 scheduled shift, I am not compensated for all the work activities that I perform prior to arriving  
12 at my post. Prior to proceeding to my assigned post for the day, I must report to the muster room  
13 to report to the shift sergeant/shift supervisor, receive my assignment, get debriefed as to any  
14 new developments at the facility or issues relating to my employment, check my mail box, and  
15 be checked for proper uniform attire. Depending on my assignment, I may also be required to  
16 pick up keys, radios, tear gas equipment, weapons, and handcuffs. Only after I have completed  
17 all these tasks am I able to proceed to my assigned post for the day. Given the size of the  
18 correctional facility, walking to my designated post could take me approximately 15-minutes.  
19 When I arrive at my post I typically relieve an outgoing officer and am debriefed by that officer.  
20 I am not compensated for performing any of these activities prior to my regularly scheduled shift.

21 9. In addition for not being paid for the pre-shift activities described above, I'm  
22 likewise denied compensation for engaging in post-shift activities. Even though I'm only  
23 compensated until the end of my scheduled shift, I'm required to conduct debriefing sessions  
24 with oncoming officers after the end of my shift, walk back to the facility's main office, and  
25 return the various tools (*i.e.*, keys, radios, tear gas equipment, weapons, and handcuffs) that I  
26 was required to use during the workday. I am not compensated for performing any of these  
27 activities after my regularly scheduled shift.  
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1 I declare under the penalty of perjury under the laws of the United States of America and  
2 the State of Nevada that the foregoing is true and correct.

3 Executed this 4th day of August, 2014, at Washoe Valley, Nevada.  
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6 GENE COLUMBUS  
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THIERMAN LAW FIRM, PC  
7287 Lakeside Drive  
Reno, NV 89511  
(775) 284-1506 Fax (775) 703-5027  
Email laborlawyer@patchell.net www.laborlawyer.net

# **EXHIBIT A**

# **EXHIBIT A**

**NEVADA DEPARTMENT OF CORRECTIONS  
ADMINISTRATIVE REGULATION  
326**

**POSTING OF SHIFTS/OVERTIME**

**Supersedes:** AR 326 (Temporary, 05/02/10)  
**Effective Date:** 08/13/10

**AUTHORITY:** NRS 284.055; 284.155; 284.175; 284.180 NAC 284.242; 284.245; 284.250

**RESPONSIBILITY:**

Wardens/ Facility Managers are responsible to ensure there is sufficient staff on duty to safely operate their institutions and facilities.

An Associate Warden/facility manager are responsible to document attendance, management of relief factor usage by all uniformed staff, and ensure proper documentation is maintained.

**326.01 STAFFING**

**1. NORMAL OPERATIONS**

A. Normal operation staffing is utilized during the normal operations of an institution. This pattern will identify the staff required to run a specified post when all positions are utilized.

B. An Associate Warden will create a written staffing pattern identifying and prioritizing specific posts operating within the institution as either a pull position or a shut down position.

(1) A pull position is identified as a position in which the assigned officer may be pulled from that position and assigned elsewhere in the institution during their assigned shift.

(2) A shut down position is identified as a position in which the assigned officer may be pulled from his assigned post and the post closed with the officer being assigned elsewhere in the institution for their entire assigned shift.

C. Shift Sergeants reporting for their scheduled shifts will adjust the shift roster and fill all positions mandated to fulfill the minimum staffing requirements.

D. The shift sergeant will use all Sick/Annual positions first, and then use pull/shutdown positions as appropriate, in the order as listed by the institution.

E. If the minimum staffing has not been met, the on duty Shift Supervisor will contact an Associate Warden and request the minimum amount of overtime hours needed. The Associate Warden will then notify the Warden for approval of the decision/overtime approved.



F. Only when all pull positions and shutdown positions have been utilized will overtime be considered.

## 2. EMERGENCY OPERATIONS

A. Emergency operation staff is the staffing pattern that identifies posts that must meet minimal requirements for officer and inmate safety. This pattern will identify those posts that are critical for running a specific area of the institution.

B. An Associate Warden will create a written staffing pattern identifying additional specific posts within the institution either as pull or shutdown positions; this staffing pattern will prioritize these positions in the order they are to be pulled / shut down in the event of an emergency or staff shortage.

C. Staffing will also be evaluated as to the absolute minimum required to safely operate a particular shift.

D. It may be necessary to modify or cancel some activities as a result of emergency staffing. The Warden/Associate Warden will be notified of the cancellation of any activity or program.

E. Only when all pull positions and shutdown positions have been utilized only then will overtime be considered. Authorization is only granted by the Warden/Designee.

### **326.02 RELIEF FACTOR MANAGEMENT (RFM)**

1. Relief Factor Management (RFM) positions are to be:

A. Used for unscheduled annual leave relief to cover greater than normal sick leave, if it is available.

B. Used for pull and shutdown posts to cover greater than expected sick leave.

2. No more annual leave will be scheduled than there are relief factor management positions available to support the requested leave without overtime.

A. Staff should request annual leave per the requirements of AR 322 Types of Leave and Leave Procedure

B. Leave requests submitted without sufficient notice will not be granted if there is no relief factor to accommodate the leave without overtime except in a case of a personal emergency.

3. To the degree possible, Lieutenants and Sergeants should not be replaced, however, these positions may be used as a pull/shutdown position if designated by the institutional staff procedure,

4. Shift rosters for each institution and facility are to be organized so the components of the relief factor can be combined to identify specific staff to occupy RFM positions.

5. Relief factor for regular days off, sick leave, annual leave, or training, will not be combined in order to create new positions.

6. Days off are assigned to the post and not the person.

### **326.03 MANAGEMENT OF OVERTIME**

1. Overtime is not guaranteed for any employee.

A. Institutional/facility requirements will determine all overtime hired.

B. All staff overtime requires the completion of DOC Form 1000, Authorization for Leave and Overtime Request Form.

C. Staff can not work more than two (2) consecutive double shifts.

D. Unless an emergency situation occurs, no staff can work than more than a 16 hour shift in a 24 hour period.

2. Assigned staff may be reassigned when an institutional need exists.

3. Employees on modified duty assignments are not authorized to work overtime.

4. Correctional officers may be used to fill Senior Correctional Officer positions on a case by case basis. However Senior Correctional Officers may not be utilized to fill a Correctional Officer position.

5. A voluntary overtime list will be established and used prior to utilizing mandatory overtime. This voluntary overtime list will be re-started when exhausted

A. No employee who calls in sick or utilizes sick leave during any given pay period will be allowed to work voluntary overtime.

B. If an employee accrues overtime during the first week of the pay period and then utilizes sick leave, that employee will not be permitted any voluntary overtime in the next pay period.

C. No employee who must provide "proof" may work voluntary overtime until this status is modified.

D. Employees who are in AWOL or LWOP status will not to be allowed to volunteer/eligible for overtime in the same pay period.

(1) If overtime is accrued during the first week of the pay period and then LWOP or AWOL is accrued, that employee will not be permitted to work voluntary overtime in the entire following pay period.

6. If overtime is required to maintain a safe and secure operation and insufficient staff voluntarily agrees to work, mandatory overtime will be initiated.

A. A list of Senior Correctional Officers, Correctional Officers, and Correctional Officer Trainees will be establish by based on least seniority in their hire date and last involuntary, i.e. mandatory, overtime date, will be established for each shift.

- B. The mandatory overtime list will be restarted once exhausted or every 45 days.
- C. Adjustments will be made when an officer is reassigned to a new shift. That officer will be added to the mandatory list according to their last mandatory date.
- D. Based on the least seniority the first time after shift bidding, staff will be selected by their last involuntary overtime date. Once completed, the employee will move to the bottom of the involuntary overtime list.
- E. All correctional staff will report to the shift supervisor/shift sergeant upon arrival to ensure their status if required to work mandatory overtime.

(1) If an employee is required to work mandatory overtime, that employee may be allowed to solicit a volunteer to work in his/her place.

(a) If a volunteer is found, the shift supervisor/shift sergeant must approve the substitution prior to the person being allowed to work.

(b) If the substitution is approved, the Officer originally scheduled to work the mandatory overtime will remain at the top of the mandatory overtime list until he/she actually works it.

(2) The employee has 1 hour to find a substitute whenever possible.

7. A written overtime tracking log must be approved by the appropriate Deputy Director.

A. All overtime will be entered into the NSIS Computer Roster.

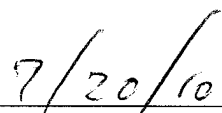
B. Verification will be made that the timesheet entry is properly coded and hours are correctly entered by viewing the timesheet of the staff member.

C. A written overtime tracking log will be utilized to ensure proper utilization of overtime and entry into the computer.

#### **APPLICABILITY**

- 1. This regulation requires an Operational Procedure for every institution and facility.
- 2. This regulation requires an audit.

  
Howard Skolnik, Director

  
Date

**THIERMAN LAW FIRM, PC**  
7287 Lakeside Drive  
Reno, NV 89511  
(775) 284-1500 Fax (775) 703-5027  
Email laborlawyer@pacbell.net www.laborlawyer.net

1 Mark R. Thierman, Nev. Bar No. 8285  
mark@thiermanlaw.com  
2 Joshua D. Buck, Nev. Bar No. 12187  
josh@thiermanlaw.com  
3 Leah L. Jones, Nev. Bar. No. 13161  
leah@thiermanlaw.com  
4 THIERMAN LAW FIRM, P.C.  
7287 Lakeside Drive  
5 Reno, Nevada 89511  
Tel. (775) 284-1500  
6 Fax. (775) 703-5027

7 *Attorneys for Plaintiffs*  
8  
9

10 **UNITED STATES DISTRICT COURT**  
11 **DISTRICT OF NEVADA**  
12

13 DONALD WALDEN JR, NATHAN  
14 ECHEVERRIA, AARON DICUS, BRENT  
15 EVERIST, TRAVIS ZUFELT, TIMOTHY  
16 RIDENOUR, and DANIEL TRACY on  
behalf of themselves and all others similarly  
situated,

17 Plaintiffs,  
18

19 v.

20 THE STATE OF NEVADA, *EX REL.* ITS  
21 DEPARTMENT OF CORRECTIONS, and  
DOES 1-50,

22 Defendants.  
23

Case No.: 3:14-cv-00320-LRH-WGC

**DECLARATION OF MARK R.  
THIERMAN IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
CIRCULATION OF NOTICE  
PURSUANT TO 29 U.S.C. § 216(b)**

24  
25 I, Mark R. Thierman, hereby declare and state as follows:

26 1. The facts stated herein are based upon my own personal knowledge and  
27 observation, and if called upon to testify, I could and would competently do so.  
28

THIERMAN LAW FIRM, PC  
 7287 Lakeside Drive  
 Reno, NV 89511  
 (775) 284-1500 Fax (775) 703-5027  
 Email laborlawyer@pacbell.net www.laborlawyer.net

2. I am an attorney at law admitted to practice before the Supreme Court of the State of California and the State of Nevada and all federal district courts located in California and Nevada, as well as the United States Court of Appeals for the Second, DC, Eighth and Ninth Circuits, in addition to admissions pro hoc elsewhere. I am attorney of record and on October 8, 2014, will argue for the Respondents in the Supreme Court of the United States in the case of *Integrity Staffing Solutions, Inc., v. Busk*, Supreme Court docket No. 13-433.

3. I am serving as lead counsel and attorney of record for Plaintiffs DONALD WALDEN JR, NATHAN ECHEVERRIA, AARON DICUS, BRENT EVERIST, TRAVIS ZUFELT, TIMOTHY RIDENOUR, and DANIEL TRACY ("Plaintiffs") in this action against Defendants THE STATE OF NEVADA, *EX REL.* ITS DEPARTMENT OF CORRECTIONS ("Defendant" or "NDOC"). My associate Joshua D. Buck is also one of the attorneys of record in this case. In the Integrity case, Mr. Buck was the primary author on all the briefing and argued the case in the Ninth Circuit sub nom *Busk v. Integrity Staffing Solutions, Inc.*, 713 F.3d 525 (9th Cir. 2013) *cert. granted*, 134 S. Ct. 1490, 188 L. Ed. 2d 374 (U.S. 2014).

### **BACKGROUND AND QUALIFICATIONS**

4. My background and qualifications are set forth hereinafter. I received my Bachelors of Arts degree Magna Cum Laude from New York University in 1973, and was Phi Beta Kappa, Founders Day Award and Class Representative at Graduation. I also receive the Mr. Justice Bloustein law award and the Adolph Ochs Adler (NY Times) award for community service for instituting the pre-law student paralegal program at Office of Economic Opportunity, Queens Legal Services, Inc.

5. In 1976, I graduated from the Harvard Law School and was admitted to practice in the State of California. I was admitted to practice in the state of Nevada in 2002, shortly after moving to Reno and passing the Nevada Bar exam.

6. Since 1977, I have generally limited my practice to the area of Labor and Employment law, with an emphasis on traditional labor law subjects like apprenticeship, overtime compensation, prevailing wage, Labor Management (Taft Hartley) trust funds, and unfair labor practice litigation before agencies like the National Labor Relations Board, Nevada Labor

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 7287 Lakeside Drive  
 Reno, NV 89511  
 (775) 284-1500 Fax (775) 703-5027  
 Email laborlawyer@pacbell.net www.laborlawyer.net

Commissioner, the California Division of Labor Standards Enforcement and the United States Department of Labor.

7. I have authored and co-authored books and articles on the topic of labor relations law. I am co-author of the book entitled "Lowest Responsible Bidder- A Guide to Merit Shop Construction," and the content of "Safety Plan Builder" a software product published by Jian with a 300-page book on OSHA safety law. I am the co-author of the chapter in a previous edition of the CEB text "Advising California Employers" on workplace safety. I have written many articles that have appeared in both industry publications and the magazine for the Labor Law Section of the California Bar.

8. I was a guest speaker on radio, an ABA "web cast" and at numerous seminars on class action wage hour cases under both federal and Nevada and California law.

9. I have represented parties in over 100 reported cases, not including numerous administrative proceedings. I also have extensive trial and other courtroom experience.

10. I have been counsel or lead counsel in over 250 cases which have been conditionally certified under 29 U.S.C. §216(b), certified under Rule 23 or certified for settlement purposes only. I estimate that I have secured over a three quarters of a billion dollars in restitution for class members in wage and hour class actions since 1997.

11. I was the cover story in the October 2007 edition of Bloomberg's "BusinessWeek" Magazine article entitled "Wage Wars" written by Michael Orey, and the May 1, 2006 edition of Registered Rep. article entitled Wall Street Wage Fight by Halah Touryalai, among others.

I have read the forgoing declaration consisting of this page and two (2) others and declare under penalty of perjury under the laws of the United States of America and the State of Nevada that the foregoing is true and correct.

Executed on August 6, 2014, in Reno, Nevada.

/s/Mark R. Thierman

Mark R. Thierman

**THIERMAN LAW FIRM, PC**  
7287 Lakeside Drive  
Reno, NV 89511  
(775) 284-1500 Fax (775) 703-5027  
Email laborlawyer@pacbell.net www.laborlawyer.net

1 Mark R. Thierman, Nev. Bar No. 8285  
mark@thiermanlaw.com  
2 Joshua D. Buck, Nev. Bar No. 12187  
josh@thiermanlaw.com  
3 Leah L. Jones, Nev. Bar. No. 13161  
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4 THIERMAN LAW FIRM, P.C.  
7287 Lakeside Drive  
5 Reno, Nevada 89511  
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6 Fax. (775) 703-5027

7 *Attorneys for Plaintiffs*  
8  
9

10 **UNITED STATES DISTRICT COURT**  
11 **DISTRICT OF NEVADA**  
12

13 DONALD WALDEN JR, NATHAN  
14 ECHEVERRIA, AARON DICUS, BRENT  
15 EVERIST, TRAVIS ZUFELT, TIMOTHY  
16 RIDENOUR, and DANIEL TRACY on  
behalf of themselves and all others similarly  
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17 Plaintiffs,  
18

19 v.

20 THE STATE OF NEVADA, *EX REL.* ITS  
21 DEPARTMENT OF CORRECTIONS, and  
DOES 1-50,

22 Defendants.  
23

Case No.: 3:14-cv-00320-LRH-WGC

**DECLARATION OF JOSHUA D. BUCK  
IN SUPPORT OF PLAINTIFFS'  
MOTION FOR CIRCULATION OF  
NOTICE PURSUANT TO 29 U.S.C. §  
216(b)**

24  
25 I, Joshua D. Buck, hereby declare and state as follows:

26 1. The following declaration is based upon my own personal observation and  
27 knowledge, and if called upon to testify to the things contained herein, I could competently so  
28 testify.



THIERMAN LAW FIRM, PC  
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 Reno, NV 89511  
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 Email laborlawyer@pacbell.net www.laborlawyer.net

2. I am an associate attorney with the Thierman Law Firm and I am admitted to practice law in the states of California and Nevada, and the United States District Court District of Nevada, Northern District of California, Southern District of California, Central District of California, and the Ninth Circuit Court of Appeals.

3. I am the attorney of record for Plaintiffs DONALD WALDEN JR, NATHAN ECHEVERRIA, AARON DICUS, BRENT EVERIST, TRAVIS ZUFELT, TIMOTHY RIDENOUR, and DANIEL TRACY ("Plaintiffs") in this action against Defendants THE STATE OF NEVADA, *EX REL.* ITS DEPARTMENT OF CORRECTIONS ("Defendant" or "NDOC").

### **QUALIFICATIONS**

4. I graduated *cum laude* from Southwestern School of Law in Los Angeles, California, in 2008 and co-authored an article published in the Southwestern Law Review entitled *Employer-Sponsored Wellness Programs: Should Your Employer Be The Boss of More Than Your Work Life?*, 38 Sw. L. Rev. 465 (2009). Immediately following law school, I served as a judicial clerk for Honorable Ron D. Parraguirre at the Nevada Supreme Court for two (2) years from 2008 to 2010.

5. I have been a licensed attorney since 2008 and have dedicated my practice to representing employees in wage and hour class actions since 2010. During this time I have been actively involved as counsel of record in numerous wage an hour cases in California and Nevada where the Thierman Law Firm has been designated as Class Counsel. The following is a list of the most recent cases and class action settlements that I have been involved in: *Busk v. Integrity Staffing Solutions, Inc.*, 713 F.3d 525 (9th Cir. Nev. Apr. 12, 2013), *cert. granted* 2014 WL 801096 (Mar. 3, 2014); *Pablo Martinez, et. al. v. Victoria Partners dba Monte Carlo Resort and Casino*, Case No. 2:14-cv-00144-APG-NJK (D. Nev.) (tentative settlement pending preliminary approval on behalf of employees who use a cash bank); *Raymond Sullivan, et. al. v. Riviera Holdings Corp. dba Riviera Hotel and Casino*, Case No. 2:14-cv-00165-APG-VCF (D. Nev.) (collective and class action case seeking unpaid wages on behalf of employees who use a cash bank); *Tiffany Sargant, et. al. v. HG Staffing, LLC, MEI-GSR Holdings LLC dba Grand Sierra Resort*, Case No. 3:13-cv-453-LRH-WGC (D. Nev.) (conditionally certified class of employees



**THIERMAN LAW FIRM, PC**  
 7287 Lakeside Drive  
 Reno, NV 89511  
 (775) 284-1500 Fax (775) 703-5027  
 Email laborlawyer@pacbell.net www.laborlawyer.net

1 who worked off-the-clock, including employees who use a cash bank); *Danielle Ficken, et. al. v.*  
 2 *New Castle Corp. dba Excalibur Hotel and Casino*, Case No. 2:13-cv-00600-APG-GWF (D.  
 3 Nev.) (\$1.1 million collective and class settlement on behalf of employees who use a cash bank);  
 4 *Tenisha Martin, et. al. v. Ramparts, Inc. dba Luxor Hotel and Casino*, 2:13-cv-00736-APG-VCF  
 5 (D. Nev.) (\$1.3 million collective and class settlement on behalf of employees who use a cash  
 6 bank); *Dorothy Turk-Mayfield v. Wynn Las Vegas, LLC*, Case No. A-13-683389-C (Clark County,  
 7 Nevada, District Court) (\$1.8 million dollar class action settlement for off-the-clock banking  
 8 activities); *Darlene Lewis v. ARIA Resort & Casino, LLC*, Case No. A-12-663812-C (Clark  
 9 County, Nevada, District Court) (\$1.39 million dollar class action settlement for off-the-clock  
 10 banking activities); *Natalie Antionett Garcia, et. al. v. American General Finance Management*  
 11 *Corporation, et. al.*, Case No. 09-CV-1916-DMG (OPx) (\$1.7 million dollar class settlement  
 12 improper payment of wages); *Jeffrey Clewell v. Heavenly Valley Ltd*, Case No. 12-CV-00282-  
 13 DC (Douglas County, Nevada, District Court) (\$625,000 class settlement for unpaid overtime and  
 14 waiting time penalties); *Salvador Duarte, et. al. v. General Parts, Inc., et al.*, Case No. RG-13-  
 15 670382 (Alameda County, California, Superior Court) (\$650,000 class action settlement for  
 16 alleged off-the-clock violations); *Victor Zapata v. M.C. Gill Corporation*, Case No. BC409066  
 17 (Los Angeles County, California, Superior Court) (reaching a \$1 million dollar class settlement  
 18 for improper rounding).

19 I have read the forgoing declaration consisting of this page and two (2) others and declare  
 20 under penalty of perjury under the laws of the United States of America and the State of Nevada  
 21 that the foregoing is true and correct.

22 Executed on August 6, 2014, in Reno, Nevada.

23 /s/Joshua D. Buck

24 Joshua D. Buck

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

DONALD WALDEN JR., NATHAN  
ECHEVERRIA, AARON DICUS, BRENT  
EVERIST, TRAVIS ZUFELT, TIMOTHY  
RIDENOUR, and DANIEL TRACY, on behalf  
of themselves and others similarly situated,

Plaintiffs,

v.

STATE OF NEVADA, ex rel. DEPARTMENT  
OF CORRECTIONS,

Defendant.

3:14-CV-0320-LRH-WGC

ORDER

Before the court is plaintiffs Donald Walden Jr., Nathan Echeverria, Aaron Dicus, Brent Everist, Travis Zufelt, Timothy Ridenour, and Daniel Tracy's (collectively "plaintiffs") motion for circulation of notice pursuant to 29 U.S.C. § 216(b). Doc. #7.<sup>1</sup> Defendant the State of Nevada, *ex rel.* the Nevada Department of Corrections ("NDOC") filed an opposition (Doc. #28) to which plaintiffs replied (Doc. #36).

**I. Factual Background**

On May 12, 2014, plaintiffs filed the present collective and class action complaint against defendant NDOC. Doc. #1, Exhibit A. In their complaint, plaintiffs allege various causes of action for unpaid wages on behalf of themselves and all similarly situated individuals under both the Fair Labor Standards Act ("FLSA") and the Nevada Revised Statutes. *Id.*

<sup>1</sup> Refers to the Court's docket number.

1 On August 6, 2014, plaintiffs filed the present motion for circulation of notice directing that  
 2 other persons similarly situated to plaintiffs be given notice of the pendency of this action and an  
 3 opportunity to file written consents to join this action as party plaintiffs, as well as for other  
 4 associated relief including a toll of the statute of limitations. Doc. #7.

## 5 **II. Legal Standard**

6 The Fair Labor Standards Act (“FLSA”) provides that a collective action may be maintained  
 7 where the claimants are “similarly situated.” 29 U.S.C. § 216(b); *Sarviss v. Gen. Dynamics Info.*  
 8 *Tech., Inc.*, 663 F. Supp. 2d 883, 902 (C.D. Cal. 2009). Claimants must opt-in to the litigation  
 9 because “[n]o employee shall be a party plaintiff to any such action unless he gives his consent in  
 10 writing to become such a party and such consent is filed in the court in which such action is  
 11 brought.” 29 U.S.C. § 216(b). The requirements for class action certification under Federal Rule of  
 12 Civil Procedure 23(a) do not apply to claims arising under the FLSA. *Kinney Shoe Corp. v. Vorhes*,  
 13 564 F.2d 859, 862 (9th Cir. 1977). Instead, the majority of courts in the Ninth Circuit and the  
 14 District of Nevada have adopted a two-step approach to certification of collective actions pursuant  
 15 to section 216(b). *See Sarviss*, 663 F. Supp. 2d at 903 (collecting cases); *see also Lewis v. Nevada*  
 16 *Property I, LLC*, No. 2:12-cv-01564-MMD-GWF, 2013 WL 237098, at \*7 (D. Nev. Jan. 22,  
 17 2013); *Lucas v. Bell Trans*, No. 2:08-cv-01792-RCJ-RJJ, 2010 WL 3895924, at \*3-4 (D. Nev.  
 18 Sept. 30, 2010); *see also* Newberg on Class Actions § 24:3 (4th ed. 2008) (“[m]ost courts have  
 19 interpreted § 216(b) as requiring an analysis of whether plaintiffs are ‘similarly situated’ at two  
 20 stages in the litigation: when notice to prospective class members is initially sought and then  
 21 following discovery”).

22 At the initial stage of the inquiry, “the court considers whether to certify a collective action  
 23 and permit notice to be distributed to putative class members.” *Sarviss*, 663 F. Supp. 2d at 903  
 24 (citing *Thiessen v. Gen. Elec. Capital Corp.*, 267 F.3d 1095, 1102 (10th Cir. 2001)). A fairly  
 25 lenient standard applies and “typically results in ‘conditional class certification’ of a representative  
 26 class.” *Lucas*, 2010 WL 3895924, at \*4. Specifically, “[a] named plaintiff seeking to create a

§ 216(b) opt-in class need only show that his/her position is similar, but not identical, to the positions held by putative class members.” *Lewis*, 2013 WL 237098, at \*7. In order to demonstrate that the proposed opt-in plaintiffs are similarly situated, a named plaintiff need only make “substantial allegations that the putative class members were subject to a single decision, policy, or plan that violated the law.” *Id.* (citing *Mooney v. Aramco Services, Co.*, 54 F.3d 1207, 1214 n. 8 (5th Cir. 1995)). In making a determination as to whether certification is appropriate at the initial stage, “[t]he court relies primarily on the pleadings and any affidavits submitted by the parties.” *Id.* (quoting *Davis v. Westgate Planet Hollywood Las Vegas*, No. 2:08-cv-00722-RCJ-PAL, 2009 WL 102735, at \*9 (D. Nev. Jan. 12, 2009)) (internal quotation marks omitted).

The second stage of the inquiry takes place at the conclusion of discovery.<sup>2</sup> *Sarviss*, 663 F. Supp. 2d at 903. At that point, courts conduct a more exacting review of whether the putative class members are “similarly situated” for purposes of certification under section 216(b). *Id.* Specifically, “the court makes ‘a factual determination regarding the propriety and scope of the class.’” *Davis*, 2009 WL 102735, at \*9 (quoting *Leuthold v. Destination America, Inc.*, 224 F.R.D. 462, 466 (N.D. Cal. 2004)). In making its factual determination, courts consider “(1) the disparate factual and employment settings of the individual plaintiffs; (2) the various defenses available to the defendants with respect to the individual plaintiffs; and (3) fairness and procedural considerations.” *Id.* (quoting *Leuthold*, 224 F.R.D. at 467).

### III. Discussion

At the notice stage, the court’s sole concern is whether the named-plaintiffs and the proposed opt-in plaintiffs are “similarly situated.” This standard requires nothing more than “substantial allegations that the putative class members were subject to a single decision, policy, or plan that violated the law.” *Lewis*, 2013 WL 237098, at \*7. The issues generally considered in a Rule 23 class certification motion - numerosity, typicality, commonalty, and representativeness -

---

<sup>2</sup> To trigger this inquiry, the party opposing class certification must move to decertify the class. *Davis*, 2009 WL 102735, at \*9.

1 are not considered on a motion to circulate notice. Rather, the court is merely deciding whether the  
2 potential class should be notified of the pending action.

3 Here, plaintiffs bring their FLSA claims on behalf of “[a]ll persons who were employed by  
4 Defendant as correctional officers at any time during the applicable statute of limitations period.”  
5 Plaintiffs contend that this class represents a group of similarly situated individuals who were  
6 victims of the same policy and procedure of requiring employees to perform work without  
7 compensation.

8 The court has reviewed the documents and pleadings on file in this matter and finds that  
9 plaintiffs have sufficiently alleged that they are “similarly situated” to the proposed opt-in plaintiffs  
10 to grant circulation of notice. Plaintiffs have sufficiently alleged that all proposed class members  
11 were subjected to a common plan, policy, or practice requiring NDOC employees to perform  
12 various activities “off-the-clock” and without compensation allegedly in violation of the FLSA.  
13 Plaintiffs further allege that NDOC enshrined this policy in regulations, operating procedures, and  
14 communications applicable to all its hourly paid correctional officer employees. These various  
15 uncompensated tasks allegedly included attending roll-call, picking up and dropping off equipment,  
16 and providing or receiving work related information and communications prior to each shift, all  
17 allegedly in violation of the FLSA. Therefore, the court shall grant plaintiffs’ motion for circulation  
18 of notice.

#### 19 **IV. Form of Notice**

20 The Court’s purpose in overseeing the notification process is to ensure that notice is timely,  
21 accurate, and informative. *Hoffman-LaRoche, Inc. v. Sperling*, 493 U.S. 165, 172 (1989). The  
22 United States Supreme Court has abstained from reviewing the contents of a proposed notice under  
23 the FLSA, noting that such “details” should be left to the broad discretion of the trial court. *Id.* at  
24 170.

25 A proposed notice is attached to plaintiffs’ motion as Exhibit A. *See* Doc. #7, Exhibit A. A  
26 proposed consent to join form is also attached to plaintiffs’ motion as Exhibit B. *See* Doc. #7,

1 Exhibit B. The proposed notice and consent to join form neutrally describe the lawsuit, plaintiffs'  
 2 claims, and NDOC's anticipated defenses. The notice also identifies who may participate in this  
 3 action; states that participation is completely voluntary; and states that if a party decides to  
 4 participate, he or she will be bound by the decision of the court, whether it is favorable or  
 5 unfavorable.

6 Although the proposed notice is based in large part upon other forms approved for use by  
 7 this court in other cases, NDOC raises several objections to the proposed notice. The court shall  
 8 address each objection below:

- 9 • First, NDOC objects to the proposed identification of the class and argues that it should  
 10 comport with the Nevada statute that creates the specific employee class. NDOC  
 11 proposes a class along the lines of "[a]ll persons currently or formerly holding a position  
 12 in the public service in the class of employees identified at 13.313 Correctional Officers  
 13 at any time from May 12, 2011 to the present. This does not include persons holding  
 14 positions as Correctional Sergeants or Correction Lieutenants, or associate wardens,  
 15 during the applicable time period." The court finds that there is no basis to include  
 16 NDOC's statutory language or limit the class claims to individuals that are not sergeants  
 17 or lieutenants. NDOC sergeants and lieutenants are non-exempt hourly employees just  
 18 like correctional officers and thus, they should be included in the proposed class.  
 19 Therefore, the court shall overrule this objection.
- 20 • Second, NDOC requests a specific date be set under the heading "YOUR RIGHT TO  
 21 PARTICIPATE IN THIS LAWSUIT" rather than the language "in time for it to be filed  
 22 with the Federal Court." *See* Doc. #7, Exhibit A, p.3:11-12. The court agrees and finds  
 23 that the notice should be amended to include the date June 30, 2015. The appropriate  
 24 sentence should be amended to read: "If you do not return the 'Consent to Join' form by  
 25 June 30, 2015, you may not be able to participate in this lawsuit."

26 ///

- 1 • Third, NDOC argues that the information included under the heading “EFFECT OF

2 JOINING THIS LAWSUIT” does not include relevant information related to certain

3 disciplinary issues which NDOC argues should be made transparent to class members

4 before they opt-in. Although NDOC does not propose any specific language, the court

5 finds that such “disciplinary issue” information is relevant to the class and should be

6 included in the proposed notice. Therefore, the court shall sustain this objection.

7 Plaintiffs’ proposed notice should be amended to include the necessary and relevant

8 information.
- 9 • Fourth, NDOC argues that the second full paragraph under the heading “EFFECT OF

10 JOINING THIS LAWSUIT” should be amended to include the following language:

11 “ . . . to the Plaintiffs’ counsel. Additionally, any settlement amount that exceeds the

12 State statutory cap currently in effect pursuant to NRS 41.034 must be presented to the

13 Board of Examiners of the State of Nevada for their approval. This is not to say that the

14 cap applies in this action, but that certain settlement amounts which exceed the cap

15 require approval.” The court approves of the proposed language and finds that it

16 provides relevant information to the class. Therefore, the proposed notice should be

17 amended to include this language.
- 18 • Fifth, NDOC argues that in the consent to join form, the phrase “and/or any and all its

19 affiliated entities” should be removed from the third line on page two because the

20 statement makes no sense in the context of this action. The court agrees. The relevant

21 sentence should be amended to read: “Pursuant to the Fair Labor Standards Act,

22 29 U.S.C. § 216(b), the undersigned hereby consents in writing to become a party

23 plaintiff against my Employer, or Former Employer.”
- 24 • Finally, NDOC argues that the notice improperly references a six-year statute of

25 limitations period which is not the appropriate statute of limitations period in this

26 action. The court has reviewed the notice and finds that there is no improper reference

1 to a six-year statute of limitations period. Therefore, the court shall overrule this  
 2 objection.

### 3 **V. Tolling of the Statute of Limitations**

4 Under the FLSA, the statute of limitations on each individual plaintiff's claim continues to  
 5 run until his or her consent to joinder is filed with the court. 29 U.S.C. § 256. Nevertheless, courts  
 6 have found that section 256 is a merely a procedural limitation that may be tolled when equity  
 7 warrants. *See Partlow v. Jewish Orphans' Home of So. Cal., Inc.*, 645 F.2d 757, 761 (9th Cir.  
 8 1981), abrogated on other grounds by *Hoffman-La Roche*, 493 U.S. at 167, ("the FLSA does not bar  
 9 the district court-imposed suspension of the statute of limitations [where] such tolling is supported  
 10 by substantial policy reasons"). Because the delay on this motion was not caused by the parties, the  
 11 court finds that equity warrants that the statute of limitations be tolled for the time that has elapsed  
 12 while the present motion has been pending before the court.<sup>3</sup> *See Lucas*, 2010 WL 3895924, at \*5  
 13 (granting plaintiffs' request to toll the statute of limitations where delay was not caused by the  
 14 parties); *see also Lee*, 236 F.R.D. at 200 (tolling the statute of limitations during the pendency of  
 15 the motion).

16  
 17 IT IS THEREFORE ORDERED that plaintiffs' motion for circulation of notice pursuant to  
 18 29 U.S.C. § 216(b) (Doc. #7) is GRANTED.

19 IT IS FURTHER ORDERED that plaintiffs shall have ten (10) days after entry of this order  
 20 to submit amended proposed notice and consent to join forms that incorporate the aforementioned  
 21 changes for signature.

22 ///

---

23  
 24 <sup>3</sup> Plaintiffs request that the statute of limitations also be tolled during the notice period. However,  
 25 *Lucas* does not lend support for that proposition. Moreover, the case on which *Lucas* relies, *Lee v. ABA Carpet*  
 26 *& Home*, explains that tolling is appropriate "[w]here parties are ordered . . . to suspend proceedings" or  
 otherwise "prevented from obtaining legal relief." 236 F.R.D. 193, 199-200 (S.D.N.Y. 2006). Accordingly,  
 the Court finds that such relief is not warranted under the circumstances.



1 IT IS FURTHER ORDERED that notice of this lawsuit shall be sent to all current and  
2 former non-exempt hourly paid employees, including sergeants and lieutenants, who were  
3 employed by NDOC as correctional officers at any time from May 12, 2011, to the present.

4 IT IS FURTHER ORDERED that, within twenty-one (21) days of the issuance of this order,  
5 defendant shall provide plaintiffs' counsel with a list in computer-readable format of: (a) the full  
6 name; (b) current home address or last known address; (c) telephone number; and (d) email address  
7 of each person who falls within the definition set forth in the above paragraph. Plaintiffs shall treat  
8 this information as confidential and shall not disclose it to third parties.

9 IT IS FURTHER ORDERED that, within twenty-eight (28) days of the issuance of this  
10 order, plaintiffs' counsel or a claims administration company that plaintiffs' counsel selects to  
11 process the mailing and opt-in forms (hereinafter collectively referred to as "Claims  
12 Administrator") shall mail the approve notice, consent to join form, and a postage pre-paid  
13 envelope to each person identified on the list disclosed in the above paragraph.

14 IT IS FURTHER ORDERED that any person who wishes to opt into this lawsuit shall  
15 properly complete the consent to join form and return it to plaintiffs' counsel.

16 IT IS FURTHER ORDERED that, in the event any package is returned undeliverable, the  
17 Claims Administrator shall, within fourteen (14) days thereafter, notify the court and take the  
18 requisite steps to obtain an alternate address for that addressee and mail the notice package to that  
19 alternate address. The Claims Administrator shall keep a record of: (a) the date on which any notice  
20 package is returned undeliverable; (b) the date on which the undeliverable notice package is sent to  
21 an alternate address; and (c) any updated addresses.

22 IT IS FURTHER ORDERED that plaintiffs' counsel shall date-stamp and number each  
23 properly completed consent to join form and accompanying envelope that is received. Plaintiffs'  
24 counsel shall send a copy of the consent to join forms it receives to defendant's counsel on each  
25 Friday after the initial mailing.

26 ///

1 IT IS FURTHER ORDERED that plaintiffs' counsel shall file the list of people who timely  
2 return their consent to join forms identified above along with a copy of the timely consent to join  
3 forms with the court within thirty (30) days after their receipt, or earlier. Plaintiffs' counsel shall  
4 retain a copy of the list and the envelopes in which the consent to join forms were received.

5 IT IS SO ORDERED.

6 DATED this 16th day of March, 2015.

7   
8 LARRY R. HICKS  
9 UNITED STATES DISTRICT JUDGE  
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Office of the Attorney General  
5420 Kietzke Lane, Suite 202  
Reno, NV 89511

ADAM PAUL LAXALT  
Attorney General  
ANN M. McDERMOTT  
Chief Deputy Attorney General  
Nevada Bar No. 8180  
JANET E. TRAUT  
Senior Deputy Attorney General  
Nevada Bar No. 8695  
BRANDON R. PRICE  
Deputy Attorney General  
Nevada Bar No. 11686  
Bureau of Litigation  
Personnel Division  
5420 Kietzke Lane, Suite 202  
Reno, Nevada 89511  
Tele: (775) 850-4107  
Fax: (775) 688-1822

*Attorneys for Defendant*

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

DONALD WALDEN JR., NATHAN  
ECHEVERRIA, AARON DICUS, BRENT  
EVERIST, TRAVIS ZUFELT, TIMOTHY  
RIDENOUR, and DANIEL TRACY on  
behalf of themselves and all other similarly  
situated,

Plaintiffs,

vs.

STATE OF NEVADA, NEVADA  
DEPARTMENT OF CORRECTIONS, and  
DOES 1-50,

Defendant.

Case No. 3:14-cv-00320-LRH-WGC

**DEFENDANT'S MOTION FOR  
JUDGMENT ON THE PLEADINGS**

COMES NOW Defendant, State of Nevada, *ex rel.* its Department of Corrections, by and through its attorneys, ADAM PAUL LAXALT, Attorney General for the State of Nevada, ANN M. McDERMOTT, Chief Deputy Attorney General, JANET E. TRAUT, Supervising Senior Deputy Attorney General, and BRANDON R. PRICE, Deputy Attorney General, and pursuant to Fed. R. Civ. P. 12(c), hereby moves this Court for judgment in its favor as to all of Plaintiffs' claims because no relief is possible under the facts alleged in their Complaint.

///

1 This motion is made and based upon the pleadings and papers on file herein and the  
2 memorandum of points and authorities submitted herewith.

3 Dated this 3<sup>rd</sup> day of April, 2015.

4 ADAM PAUL LAXALT  
5 Attorney General

6 By: /s/ Janet E. Traut  
7 ANN M. McDERMOTT, NV Bar No. 8180  
8 Chief Deputy Attorney General  
9 JANET E. TRAUT, NV Bar No. 8695  
10 Senior Deputy Attorney General  
11 BRANDON R. PRICE, NV Bar No. 11686  
12 Deputy Attorney General  
13 Bureau of Litigation  
14 Personnel Division  
15 *Attorneys for Defendant*

## 12 **MEMORANDUM OF POINTS AND AUTHORITIES**

### 13 **I. INTRODUCTION**

14 This action arises out of an employment dispute regarding the payment of wages to  
15 correctional officers by the State of Nevada. When reduced to its basic form, the above-  
16 named Plaintiffs contend that they are not properly compensated for work performed before  
17 and after their scheduled shifts at various correctional facilities throughout the State of  
18 Nevada. On May 12, 2014, Plaintiffs, Donald Walden Jr., Nathan Echeverria, Aaron Dicus,  
19 Brent Everist, Travis Zufelt, Timothy Ridenour, and Daniel Tracy (collectively referred to as  
20 "Plaintiffs") initiated a civil lawsuit against the State of Nevada, Department of Corrections  
21 ("NDOC"), by filing a Collective and Class Action Complaint ("Complaint") in the First Judicial  
22 District Court in and for Carson City. See Plaintiffs' Complaint, #1<sup>1</sup>. In their Complaint,  
23 Plaintiffs assert various claims under both federal and state law. *Id.* at pp. 8-14. More  
24 specifically, Plaintiffs assert the following causes of action against NDOC: (1) failure to pay  
25 wages in violation of the Fair Labor Standards Act ("FLSA"); (2) failure to pay overtime wages  
26 in violation of the FLSA; (3) failure to pay minimum wages in violation of Article 15, Section 16

27  
28 <sup>1</sup> This represents the Court's docket number throughout.

1 of the Nevada Constitution; and (4) breach of contract under Nevada law. *Id.* Plaintiffs have  
 2 filed the instant lawsuit on behalf of themselves and other correctional officers. *Id.* at 6.  
 3 Plaintiffs' causes of action premised upon violations of the FLSA have been characterized as  
 4 a collective action, whereas the state law claims have been characterized as a class action.  
 5 *Id.*

6 NDOC removed Plaintiffs' action to this Court on June 17, 2014. See Notice of  
 7 Removal, #1. On June 24, 2014, NDOC filed its Answer to Plaintiffs' Complaint. See Answer,  
 8 #3. On August 6, 2014, Plaintiffs filed a motion for conditional certification of the FLSA  
 9 collective action pursuant to 29 U.S.C. § 216(b). See Plaintiffs' Motion for Circulation of  
 10 Notice Pursuant to 29 U.S.C. § 216(b), #7. By way of that motion, Plaintiffs are seeking that  
 11 all correctional officers employed by the State within three years from the date the Complaint  
 12 was filed receive notice of the pending FLSA action. *Id.* NDOC filed its opposition to  
 13 Plaintiffs' motion on September 15, 2014, #28. Plaintiffs filed their reply brief on October 1,  
 14 2014, #36. This Court granted Plaintiffs' motion on March 16, 2014, #45.

15 NDOC now files this Motion for Judgment on the Pleadings because no relief is  
 16 possible under the facts alleged by Plaintiffs in their Complaint. For the reasons discussed  
 17 below, Plaintiffs' claims are simply not viable, and should therefore be dismissed with  
 18 prejudice.

## 19 II. RELEVANT FACTS

20 The named Plaintiffs consist of former and current classified employees of the State of  
 21 Nevada who have served, or are currently serving, as correctional officers. See #1, ¶¶ 5-12.  
 22 Correctional officers are peace officers pursuant to NRS 289.220 "whose primary  
 23 responsibilities are: (a) The supervision, custody, security, discipline, safety and transportation  
 24 of an offender; (b) The security and safety of the staff; and (c) The security and safety of an  
 25 institution or facility of the Department." NRS 209.131(5). Plaintiffs have worked at various  
 26 facilities throughout the State, all of which are operated by NDOC. *Id.*, NRS 209.065. At least  
 27 one of the named Plaintiffs has worked at multiple facilities during his service as a correctional  
 28 officer. See #1, at ¶ 11. Plaintiffs are compensated for their work by payment of an hourly

1 wage in accordance with the State Personnel System. *Id.* at ¶ 15. Plaintiffs are subject to a  
2 14-day work period. *Id.*

3 Nevada has a statutory and regulatory scheme which sets forth the terms and  
4 conditions of employment for state employees. See e.g. NRS 284.010. Plaintiffs, and other  
5 correctional officers throughout the State, are subject to the provisions of the State's  
6 Personnel System as promulgated in Chapter 284 of the Nevada Revised Statutes. See NRS  
7 284.013. As state employees, Plaintiffs must "[c]onform to, comply with and aid in all proper  
8 ways in carrying out the provisions of [Chapter 284] and the regulations prescribed under it."  
9 NRS 284.020(1)(a).

10 Plaintiffs' claims are based upon circumstances surrounding their arrival to and  
11 departure from the NDOC institution in which they are assigned to work during their shifts.  
12 See #1, at ¶¶ 17-18. Plaintiffs allege that upon arrival to their assigned correctional institution,  
13 they are required to pass through security. *Id.* at ¶ 17. After passing through security,  
14 Plaintiffs are allegedly required to report to the supervisor or sergeant on duty, at which time  
15 they receive their assignments for the day, undergo a uniform inspection, and collect any  
16 equipment needed for their assignment. *Id.* According to Plaintiffs, they then proceed to their  
17 post, where they receive a briefing on the day's events from the correctional officer who  
18 worked the previous shift. *Id.* Plaintiffs claim that they are required to perform these activities  
19 without compensation. *Id.* It is worth noting that Plaintiffs admit that the time spent passing  
20 through security does not constitute compensable time. *Id.*

21 Plaintiffs also contend that they are required to perform certain activities after their  
22 scheduled shift without compensation. *Id.* at ¶ 18. According to Plaintiffs, after the conclusion  
23 of their shift they are required to brief the arriving correctional officer who relieves them of duty  
24 from their post, and return any equipment to the main office. *Id.* The correctional officers then  
25 proceed through security and are free to leave the institution. *Id.*

26 In their Complaint, Plaintiffs do not acknowledge any distinctions in the procedures or  
27 activities that take place at the various correctional institutions and facilities throughout the  
28 State upon a correctional officer's arrival to and departure from their place of employment. It

1 is worth noting that the procedures or events that take place upon the arrival and departure of  
 2 correctional officers are in fact unique to each specific institution. The reason for the  
 3 difference in procedure across institutions is that each one is different in a variety of ways,  
 4 including, but not limited to, the level of security provided, the actual size of the facility, the  
 5 number of employees, the technology used at each facility, the type of equipment used by  
 6 correctional officers, and the type of weapons used by correctional officers. That being said,  
 7 even if the procedures or activities were the same for every correctional facility at each  
 8 institution across the State, NDOC would still be entitled to judgment in its favor as a matter of  
 9 law with respect to Plaintiffs' Fair Labor Standards Act and state law claims because the  
 10 pleadings provide no basis for relief.

### 11 III. LEGAL ARGUMENT

#### 12 A. Standard for Judgment on the Pleadings under Fed. R. Civ. P. 12(c).

13 Judgment on the pleadings under Rule 12(c) of the Federal Rules of Civil Procedure is  
 14 properly granted when, even if all material allegations in the non-moving party's pleadings are  
 15 taken as true, the moving party is entitled to judgment as a matter of law. *Fajardo v. County*  
 16 *of Los Angeles*, 179 F.3d 698, 699 (9th Cir. 1999); *Nelson v. City of Irvine*, 143 F.3d 1196,  
 17 1200 (9th Cir. 1998). In reviewing motions filed under Rule 12(c), the Court must assume the  
 18 truthfulness of the material facts alleged in the complaint and draw all reasonable inferences  
 19 in favor of the non-moving party. See *Nelson*, 143 F.3d at 1200. Thus, a moving party is not  
 20 entitled to judgment on the pleadings if the complaint raises issues of fact which, if proven,  
 21 would support recovery. *Gen. Conference Corp. of Seventh-Day Adventists v. Seventh-Day*  
 22 *Adventist Congregational Church*, 887 F.2d 228, 230 (9th Cir. 1989). The motion should be  
 23 denied unless it appears "to a certainty" that no relief is possible under any set of facts the  
 24 plaintiff could prove in support of his or her claim. *Mostowy v. U.S.*, 966 F.2d 668, 672 (Fed.  
 25 Cir. 1992).

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**B. Plaintiffs' First Cause of Action Premised upon Failure to Pay Minimum Wages in Violation of the FLSA, 29 U.S.C. § 201, et seq., and Plaintiffs' Second Cause of Action Premised upon Failure to Pay Overtime Wages in Violation of the FLSA, 29 U.S.C. § 201, et seq., should be Dismissed Because the Portal-to-Portal Act, 29 U.S.C. § 251, et seq., Exempts Compensation for Activity of the Kind at Issue Here.**

The Fair Labor Standards Act ("FLSA") was enacted in 1938, and established the 40-hour workweek as we know it, by requiring pay at time and one-half for any hours worked in excess of 40 hours per week. 29 U.S.C. § 201 *et seq.*; *IBP, Inc. v. Alvarez*, 546 U.S. 21, 25 (2005). Simply put, the FLSA sets out requirements for when employees must be paid, and for when they must be paid overtime. *Id.* The FLSA contains no definition of "work." *Id.* Early on, the Supreme Court ruled the time that miners spent between entering mine openings and arriving at the underground work location was compensable. *Tennessee Coal, Iron, & R. Co. v. Muscoda Local No. 123*, 321 U.S. 590 (1944). Similarly, the Supreme Court held "the time necessarily spent by the employees in walking to work on the employer's premises, following the punching of the time clocks, was working time within the scope of [section] 7(a)." *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680, 691 (1946).

These decisions led to Congress amending the FLSA by the Portal-to-Portal Act ("PPA"), 29 U.S.C. §§ 251-262, which provided for both existing and future claims in 1947. 29 U.S.C. §§ 252 and 254. "Future claims" would arise from activities "engaged in on or after May 14, 1947." 29 U.S.C. § 254(a).

The Portal-to-Portal Act reads in pertinent part:

(a) except as provided in subsection (b) of this section, no employer shall be subject to any liability or punishment under the Fair Labor Standards Act of 1938, as amended, the Walsh-Healey Act, or the Bacon-Davis Act, on account of the failure of such employer to pay an employee minimum wages, or to pay an employee overtime compensation, for or on account of any of the following activities of such employee engaged in on or after May 14, 1947—

(1) Walking, riding, or traveling to and from the actual place of performance of the principal activity or activities which such employee is employed to perform, and

(2) activities which are preliminary to or postliminary to said principal activity or activities, which occur either prior to the time on



any particular workday at which such employee commences, or subsequent to the time on any particular workday at which he ceases, such principal activity or activities.

(b) Notwithstanding the provisions of subsection (a) of this section which relieve an employer from liability and punishment with respect to an activity, the employer shall not be so relieved if such activity is compensable by either—

(1) an express provision of a written or nonwritten contract in effect, at the time of such activity, between such employee, his agent, or collective-bargaining representative and his employer; or

(2) a custom or practice in effect, at the time of such activity, at the establishment or other place where such employee is employed, covering such activity, nor inconsistent with a written or nonwritten contract, in effect at the time of such activity, between such employee, his agent, or collective-bargaining representative and his employer.

29 U.S.C. § 254. “[T]he Portal-to-Portal Act of 1947 is primarily concerned with defining the beginning and end of the workday.” *Integrity Staffing Solutions, Inc. v. Busk*, \_\_\_\_ U.S. \_\_\_\_, 135 S.Ct. 513, 520 (2014), *concurrency* Sotomayor, J. Travel to and from the place where a principal activity is done is not compensable. 29 U.S.C. § 254(a)(1). Preliminary or postliminary activities which are not integral and indispensable to the principal activity are not compensable. 29 U.S.C. § 254(a)(2). “Interpretations of the FLSA and its regulations are questions of law.” *Bamonte v. City of Mesa*, 598 F.3d 1217, 1220 (9th Cir. 2010).

The FLSA did not apply to the public sector prior to 1974. *National League of Cities v. Usery*, 426 U.S. 833, 836 (1976). In 1974, the FLSA was amended, but those amendments to the FLSA were held to be beyond the authority of Congress and unconstitutional as to “traditional governmental functions.” *Id.* at 852. After several years of conflicting court decisions, the Supreme Court overruled *National League of Cities* and applied the FLSA to governments. *Garcia v. San Antonio Metro. Transit Auth.*, 469 U.S. 528, 531 (1985).

Analysis of whether both travel and activities outside the scheduled shift should be compensable depends upon the principal activity.

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(1) No employer shall be subjected to any liability or punishment under the FLSA for failing to compensate an employee for getting to and from the actual place of performance of the work pursuant to 29 U.S.C. § 254(a)(1); travel as work.

Plaintiffs' FLSA claims fail as a matter of law because no employer is subject to liability for failing to compensate an employee for travel. To determine whether "time spent in travel is working time depends on the kind of travel involved." 29 C.F.R. § 785.33.

The "principal" activities referred to in the statute are activities which the employee is "employed to perform;" they do not include noncompensable "walking, riding, or traveling" of the type referred to in section 4 of the Act.

29 C.F.R. § 790.8(a). "[T]ravelttime at the commencement or cessation of the workday which was originally considered as working time under the Fair Labor Standards Act (such as underground travel in mines or walking from time clock to work-bench) need not be counted as working time unless it is compensable by contract, custom or practice." 29 C.F.R. § 785.34. Travel to the "actual place of performance" includes travel "within the employer's [physical] plant, mine, building . . . irrespective of whether such . . . traveling occur[s] . . . before or after the employee has checked in or out." 29 C.F.R. § 790.7(e).

The phrase, [sic] actual place of performance," as used in section 4(a), thus emphasizes that the ordinary travel at the beginning and end of the workday to which this section relates includes the employee's travel on the employer's premises until he reaches his workbench or other place where he commences the performance of the principal activity or activities, and the return travel from that place at the end of the workday.

*Id.* Travel based on carrying tools is similarly explicated. Regulations illustrate that "the carrying of a logger of a portable power saw or other heavy equipment (as distinguished from ordinary hand tools) on his trip into the woods to the cutting area" would be compensable. 29 C.F.R. § 790.7(d). As noted, hand tools are distinguished from compensable tools such as a power saw or "heavy equipment." *Id.*

Here, the Plaintiffs assert generally that they are entitled to be compensated for the time that it takes them to walk from the gatehouse of a facility to their assigned post. Their claim in this regard is set forth in paragraph 17 of their complaint. #1, 11:1-16. Plaintiffs first

1 assert that they “must report to the supervisor or sergeant on duty for roll-call/check-in.” *Id.*, I.  
 2 3. “Plaintiffs and putative class members would then proceed to their designated work station,  
 3 which, given the size of the correctional facilities involved, could take up to 15-minutes or  
 4 more per employee per shift.” *Id.*, II. 9-11. Plaintiffs also assert that “this pre-shift requirement  
 5 is specifically set forth in the NDOC’s Administrative Regulations.” #1, 11:5-6.

6 Under Fed. R. Evid. 201 (b) (2), “The court may judicially notice a fact that is not  
 7 subject to reasonable dispute because it can be accurately and readily determined from  
 8 sources whose accuracy cannot reasonably be questioned.” The court may take judicial  
 9 notice of matters of public record without converting a motion to dismiss into a motion for  
 10 summary judgment as long as the facts noticed are not subject to reasonable dispute. See  
 11 *Skilstaf v. CVS Caremark*, 669 F.3d 1005, 1016 (9th Cir. 2012). A regulation not included in  
 12 the Nevada Administrative Code if adopted in accordance with law and brought to the  
 13 attention of the court” is a “law[s] subject to judicial notice.” NRS 47.140(6). NDOC requests  
 14 that the court take judicial notice of the Administrative Regulations attached as Appendices A-  
 15 D.

16 Administrative Regulation (“AR”) 326 addresses posting of shifts and mandatory  
 17 overtime. #1, 11:8; App’x A, AR 326. These regulations, as “rules, mandated by the  
 18 legislature and adopted in accordance with statutory procedures, have the force and effect of  
 19 law.” *Turk v. Nevada State Prison*, 94 Nev. 101, 104, 575 P.2d 599, 601 (1978), citing *Oliver*  
 20 *v Spitz*, 76 Nev. 5, 8, 328 P.2d 158 (1960) and *State ex rel. Richardson v. Board of Regents*,  
 21 70 Nev. 144, 150, 261 P.2d 515, 518 (1953). The one line cited for establishing the pre-shift  
 22 requirements listed states only, “[a]ll correctional staff will report to the shift supervisor/shift  
 23 sergeant upon arrival to ensure their status if required to work mandatory overtime,” *Id.* at II. 6-  
 24 8. This is a part of one section of the regulation addressing the procedure used when  
 25 overtime work is needed and no correctional officer has volunteered to cover the overtime  
 26 shift. The AR actually reads:

27 ///

28 ///

## 326.03 Management of Overtime

6. If overtime is required to maintain a safe and secure operation and insufficient staff voluntarily agrees to work, mandatory overtime will be initiated.

A. A list of Senior Correctional Officers, Correctional Officers, and Correctional Officer Trainees will be establish[sic] by based on least seniority in their hire date and last involuntary, i.e. mandatory, overtime date, will be established for each shift.

B. The mandatory overtime list will be restarted once exhausted or every 45 days.

C. Adjustments will be made when an officer is reassigned to a new shift. That officer will be added to the mandatory list according to their last mandatory date.

D. Based on the least seniority the first time after shift bidding, staff will be selected by their last involuntary overtime date. Once completed, the employee will move to the bottom of the involuntary overtime list.

E. All correctional staff will report to the shift supervisor/shift sergeant upon arrival to ensure their status if required to work mandatory overtime.

(1) If an employee is required to work mandatory overtime, that employee may be allowed to solicit a volunteer to work in his/her place.

(a) If a volunteer is found, the shift supervisor /shift sergeant must approve the substitution prior to the person being allowed to work.

(b) If the substitution is approved, the officer originally scheduled to work the mandatory overtime will remain at the top of the mandatory overtime list until he/she actually works it.

(2) The employee has 1 hour to find a substitute whenever possible.

App'x A, pp. 3-4, 326.03. The NDOC establishes a list of correctional officers at each institution based on seniority. *Id.* Officers must only check their position on the list and initial, signifying that they are aware of their position on the list that day, i.e. a correctional officer in the top position or top three positions is more likely to be required to work overtime that day than a correctional officer who is in the twentieth position. *Id.* Although the Plaintiffs allege that AR 326 supports their claims of roll call and receiving their assignments for the day, it does not.

Indeed, the most notable part of this regulation is that it does not require "roll call." *Id.* Correctional officers must only check their status, i.e. whether they are likely to be subject to mandatory overtime after their shift that day; it has nothing to do with the work they perform. This type of activity has been determined to be non-compensable in similar situations. In the

*Panama Canal* case, operators were assigned to a locomotive, but did not know its location at the time they arrived at the locks. *Carter v. Panama Canal Co.*, 314 F. Supp. 386, 387 (D.D.C. 1970), *aff'd* 463 F.2d 1289 (D.C. Cir. 1972), *cert. denied* 409 U.S. 1012 (1972). The duty station was the locomotive. *Id.* They were required to check in at an assignment board, leave a mark by their name, and then walk to the location where the locomotive was left waiting for them. *Id.* The court ruled that “passing an assignment board and walking 2 to 15 minutes to a locomotive is not an ‘integral part of an [sic] indispensable to’ the principal activity of operating a locomotive.” *Id.* at 391. This accords the more recent 29 C.F.R. § 790.8 (“[A]ctivities such as checking in and out and waiting in line to do so would not ordinarily be regarded as integral parts of the principal activity or activities.”).

In an early post-PPA case, the court examined actions done by security guards in a battery factory which parallel some of the general functions of correctional officers:

In the present case the plaintiff's claim for overtime as to each guard is made up by aggregating three different kinds of activities: (1) ‘On guard: duties—standing at a fixed post or making rounds through the plant— (2) changing into and out of uniform, (3) reporting to the captain's office to pick up equipment and receive instructions, walking to and from the post, turning in equipment and waiting in the locker room to punch out at the end of the shift.

*Battery Workers' Union Local 113, United Elec., Radio & Mach. Workers of Am., C. I. O. v. Electric Storage Battery Co.*, 78 F. Supp. 947, 949 (E.D. Pa. 1948). In *Battery Workers'*, guards were required to report to the captain's office where they received instructions and some had to check out weapons. *Id.* Once checked in, guards had to walk to their post, which was identified as being as little as 100 yards, or as much as four city blocks away. *Id.* at 948. The guards' claim for overtime was denied as being non-compensable. *Id.*

Prior court decisions instruct the NDOC that this is not compensable time and no liability should be imposed under the facts as alleged.

**(2) No employer shall be subjected to any liability or punishment under the FLSA for failing to compensate for preliminary or postliminary activities pursuant to 29 U.S.C. § 254(a)(2).**

In 2005, the Supreme Court stated that the *Steiner* case had “made it clear that § 4 of the Portal-to-Portal Act does not remove activities which are ‘integral and indispensable’ to

1 ‘principal activities’” from liability for compensation. *IBP*, 546 U.S. at 33. The IBP Court held  
 2 that “any activity that is ‘integral and indispensable’ to a ‘principal activity’ is itself a ‘principal  
 3 activity’ under § 4(a).” *Id.* at 37. But the Court has recently clarified that “The integral and  
 4 indispensable test is tied to the productive work that the employee is *employed to perform*.”  
 5 *Integrity Staffing Solutions, Inc. v. Busk*, \_\_\_\_ U.S. \_\_\_\_, 135 S.Ct. 513, 519 (2014); See,  
 6 e.g., *IBP*, 546 U.S. at 42; *Mitchell*, *supra*, at 262; *Steiner v. Mitchell*, 350 U.S. 247, 249–251  
 7 (1956). See also 29 C.F.R. § 790.8(a). An activity is integral and indispensable to a principal  
 8 activity “if it is an intrinsic element of those activities and one with which the employee cannot  
 9 dispense if he is to perform his principal activities.” *Integrity Staffing* 135 S.Ct. at 517. This  
 10 can be characterized as a two part test including (1) whether the activity is an intrinsic element  
 11 of the principal activities; and (2) whether the employee can dispense with the activity and still  
 12 perform the principal activities. *Id.*; *Bamonte v. City of Mesa*, 598 F.3d 1217, 1225 (9th Cir.  
 13 2010). The Ninth Circuit’s analyses of whether the activity was “required by the employer”  
 14 and “for the benefit of the employer” are overbroad tests which cannot determine  
 15 compensability. *Integrity Staffing*, 135 S.Ct. at 519.

16 Department of Labor regulations are in general accord. The “principal” activities  
 17 referred to in the statute are activities which the employee is “employed to perform.” 29  
 18 C.F.R. § 790.8(a). The words “principal activities” “should ‘be interpreted with due regard to  
 19 generally established compensation practices in the particular industry and trade.’” *Id.*  
 20 Principal activities “includes all activities which are an integral part of a principal activity.” 29  
 21 C.F.R. § 790.8(b).

22 While Plaintiffs characterize certain security items as “tools,” the NDOC proffers that  
 23 these items are more properly related to donning and doffing of safety gear. In the first  
 24 instance, a regulatory definition of “tools” found in NAC 284.294(5) related to reimbursement  
 25 for tool usage specifically excludes “weapons or other protective equipment.” In the second  
 26 instance, the NDOC specifically regulates tools. Appendix B, AR 411 Tool Control. This 20-  
 27 page regulation identifies, classifies, inventories, and audits tools. None of the gear listed in  
 28 the Plaintiffs’ allegations are included as a “tool” in this regulation. Similarly, the NDOC



1 regulates the use of handcuffs and other restraints in AR 407, the use of chemical agents in  
2 AR 406, and the control of keys in AR 410. Appendix C. Additionally, weapons are  
3 maintained in an armory pursuant to AR 412 Armory Weapons and Control. *Id.*

4 Regardless of whether the items addressed are tools or gear, the Plaintiffs address  
5 both pre-shift and post-shift activities in their Complaint, as paragraphs 17 and 18  
6 respectively. #1, 11:1-25. Their only allegation in support of compensability for these  
7 activities is that they are “required.” *Id.*, ll. 3, 6, and 18-19.

8 In the *Bamonte* case, Mesa, Arizona’s police officers activities were at issue. The Ninth  
9 Circuit reviewed and relied upon both the Supreme Court’s IBP<sup>2</sup> and Steiner cases from 2005  
10 and 1956. The Mesa officers had the ability to don and doff uniforms and gear at home. Gear  
11 specifically included: items of clothing, “a badge, a duty belt, a service weapon, a holster,  
12 handcuffs, chemical spray, a baton, and a portable radio.” *Bamonte*, 598 F.3d at 1227 *citing*  
13 *Abbe v. City of San Diego*, 2007 WL 4146696, at \*7 (S.D. Cal. Nov. 9, 2007). The Ninth  
14 Circuit further instructed:

15 It is important to note . . . that the relevant inquiry is not whether  
16 the uniform *itself* or the safety gear *itself* is indispensable to the job  
17 – they most certainly are – but rather, the relevant inquiry is  
18 whether the nature of the work requires the donning and doffing  
19 process to be done on the employer’s premises . . .

20 *Id.* (emphasis in the original).<sup>3</sup>

21 In another case from within the Ninth Circuit, deputies, including those working in  
22 corrections, sought compensation for donning and doffing uniforms and gear. *Reed v. County*  
23 *of Orange*, 716 F. Supp. 2d 876, 877 (C.D. Cal. 2010). Summary judgment was granted to  
24 Orange County based on opinions where the Supreme Court and the Ninth Circuit have  
25 previously “considered whether donning and doffing clothing and protective gear is integral  
26 and indispensable.” *Id.* at 880, *citing Steiner v. Mitchell*, 350 U.S. 247 (1956); *Bamonte v. City*

27 <sup>2</sup> The Ninth Circuit’s decision below in IBP was affirmed.

28 <sup>3</sup> A large part of the analysis by the *Bamonte* court was based on its note that it “defined ‘work’ as  
‘physical or mental exertion . . . controlled or required by the employer and pursued necessarily and primarily for  
the benefit of the employer.’” *Bamonte* at 1224; accord *Tennessee Coal*, 321 U.S. at 598. But reliance on this  
definition “would sweep into ‘principal activities’ the very activities that the Portal-to-Portal Act was designed to  
address.” *Integrity Staffing* 135 S.Ct. at 519. The call here to focus on the “nature of the work” accords *Integrity*  
*Staffing*.

1 of *Mesa*, 598 F.3d 1217 (9th Cir. 2010); *Ballaris v. Wacker Siltronic Corp.*, 370 F.3d 901, 903  
 2 (9th Cir. 2004); and *Alvarez v. IBP, Inc.*, 339 F.3d 894. The court found that “there is no  
 3 department-wide policy that requires all deputies to don and doff their uniforms at work.” *Id.* at  
 4 883. “There is also no evidence to suggest that the uniform and gear are any less effective if  
 5 they are donned at home versus at work.” *Id.*, citing *Abbe v. City of San Diego*, 2007 WL  
 6 4146696, at \*6 (S.D. Cal., 2007) (holding that there was nothing about the process of donning  
 7 and doffing the uniform that must be done at work in order for the officer to safely and  
 8 effectively carry out law enforcement duties). The court concluded “no deputy dons and doffs  
 9 his or her uniform at work because the nature of the work demands it.” *Id.* at 884.

10 Similarly, in the Third Circuit, correctional officers were not paid for their time to change  
 11 into and out of their uniforms, although required to do so on the premises. *Turner v. City of*  
 12 *Philadelphia*, 262 F.3d 222 (3d Cir. 2001). Although the case does not include any inventory  
 13 of the uniform, an average of 15 minutes per change would assume more than a shirt and  
 14 pants. *Turner v. City of Philadelphia*, 96 F. Supp. 2d 460, 461 (E.D. Pa. 2000) *aff'd*, 262 F.3d  
 15 222 (3d Cir. 2001) (“Plaintiffs spent or spend two and one-half hours per week on average  
 16 changing into and out of their uniforms.”) These cases demonstrate that in the industry and  
 17 trade of corrections, compensation has not been established for donning and doffing of  
 18 uniforms and gear. 29 C.F.R. § 790.8(a).

19 Additionally, Plaintiffs later cite to 29 U.S.C. [sic] § 553.221(b) for the requirement that  
 20 pre-shift activities “which are an integral part of the employee’s principal activity or which are  
 21 closely related to the performance of the principal activity, such as attending roll call” are  
 22 compensable. #1, 15:7-12. The Ninth Circuit determined that this regulation “in no way  
 23 establishes that the donning and doffing of uniforms and gear are compensable activities.  
 24 Rather, the regulation merely provides that once work activities are defined, the employee  
 25 must be compensated for the performance of all those defined work activities.” *Bamonte* at  
 26 1230, n. 14.

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28 ///



1 NDOC correctional officers have no requirement to don or doff their uniforms and gear  
2 at their assigned facility or institution.<sup>4</sup> While the several prisons may have differing methods  
3 for issuing handcuffs to correctional officers, no prison has a policy or procedure requiring all  
4 correctional officers to check out and return handcuffs each day as they report for duty. In  
5 accord with *Integrity Staffing*, whether a correctional officer has handcuffs available to her as  
6 she goes through security, whether a correctional officer grabs a set of handcuffs from a  
7 counter while walking to his post, whether a more formal check-out procedure is followed, or  
8 whether handcuffs are waiting for the correctional officer at “their designated work station,” the  
9 nature of the work only requires that a correctional officer have appropriate restraint  
10 mechanisms available to her at the time she must use them, that is to say, at the assigned  
11 post. Again, “no deputy dons and doffs his or her uniform at work because the nature of the  
12 work demands it.” *Reed, supra*, at 884. This same analysis also applies to allegations  
13 regarding radios, weapons, and tear gas. #1, 11:5. None of these are compensable activities  
14 under existing authority, and NDOC is entitled to judgment as a matter of law.

15 Plaintiffs also allege that before their shift begins, they “would be briefed by the  
16 outgoing correctional officer.” #1, 11:12-13. This allegation of “briefing” by itself cannot lead  
17 to liability. Where employees claimed to be required to read log books and exchange  
18 information as compensable pre-shift activities, the Ninth Circuit held that the time was not  
19 compensable. *Lindow v. United States*, 738 F.2d 1057, 1060 (9th Cir. 1984). Shifts could,  
20 and did, begin without employees reviewing the log books; the logs books were available and  
21 provided all the necessary information. *Id.*

22 Moreover, there is no allegation that any of the activities listed in paragraphs 17 and 18  
23 of their Complaint were “primarily for the benefit of the employer.” #1. Neither is there an  
24 allegation that the activities alleged to be compensable are “integral and indispensable” to the  
25 work of correctional officers.

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27 \_\_\_\_\_  
28 <sup>4</sup> Noting again that the Plaintiffs cited to AR 326 in support of this allegation, but AR 326 includes no such direction.

1 While the former test for compensability included whether the activity was required by  
 2 the employer and was done primarily for the benefit of the employer, the Supreme Court  
 3 overruled the Ninth Circuit because it “erred by focusing on whether an employer *required* a  
 4 particular activity. *Integrity Staffing* 135 S.Ct. at 519. The Court added: “A test that turns on  
 5 whether the activity is for the benefit of the employer is similarly overbroad.” *Id.* Under the  
 6 *Integrity Staffing* opinion, without any allegation beyond the activities being required, Plaintiffs  
 7 fail to state a claim of compensability and therefore NDOC is entitled to judgment as a matter  
 8 of law.

9 Even under the pre-*Integrity Staffing* opinion, the Ninth Circuit test was in the  
 10 conjunctive, so that both elements of “controlled or required by the employer” and “pursued  
 11 necessarily and primarily for the benefit of the employer” must be met. In the absence of an  
 12 allegation that the activities primarily benefitted the employer, this, too, fails to state a claim.  
 13 Since there is no allegation that the activities listed are otherwise integral and indispensable to  
 14 the work of correctional officers, #1, NDOC is entitled to judgment as a matter of law.

15 NDOC additionally points out that the allegation by Plaintiffs that they “were required to  
 16 stay past their scheduled shift to conduct the mandatory de-briefing with the oncoming  
 17 correctional officer,” #1, 11:19-20, is a *non sequitur*. If the correctional officers are all  
 18 reporting for duty early to accommodate this briefing, as alleged, then it does not follow that all  
 19 of those same officers also have to stay past the end of their shift, because they would  
 20 necessarily be relieved on time by the next correctional officer who is also reporting early.  
 21 Plaintiffs cannot have it both ways; when alleged facts are contradictory so as to cast doubt as  
 22 to their plausibility, judgment is appropriate. *Rojas v. Roman Catholic Diocese of Rochester*,  
 23 660 F.3d 98 (2d Cir. 2011) *cert. denied*, 132 S.Ct. 1744 (2012). The only way that the facts as  
 24 alleged can be true is if the named Plaintiffs are the only correctional officers who are  
 25 reporting early; this necessarily defeats the collective action.

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**(3) There is no allegation that Defendant knew or showed reckless disregard for the FLSA and their employees' compensable time, so any time period of liability should be limited to two years**

The FLSA includes a two-year limitations period for general claims, but includes a three-year period of time where willful violations are determined. 29 U.S.C. § 255(a).

An employer will be found in willful violation of the FLSA only if it can be determined that the employer knew or showed reckless disregard as to whether it was violating the statute. The fact that an employer acts unreasonably in determining its legal obligations is not sufficient to show that the employer acted recklessly.

*Huss v. City of Huntington Beach*, 317 F. Supp. 2d 1151, 1160 (C.D. Cal. 2000) *citing* *McLaughlin v. Richland Shoe Co.*, 486 U.S. 128 (1988). Although the willful nature of an alleged FLSA violation is generally a question of fact, "where an employer has relied on substantial legal authority or upon the advice of counsel, a finding of willfulness may be precluded as a matter of law." *Id.* at 1161, *citing* *Service Employees Int'l Union, Local 102 v. County of San Diego*, 60 F.3d 1346, 1355-56 (9th Cir. 1994).

Here, there is no allegation that the NDOC was reckless in determining its legal obligations. As detailed in the preceding sections, controlling authority shows that the time for which Plaintiffs allege they were working but not paid was not compensable time. The only way that Plaintiffs have been able to allege any compensable time was for holding of "roll call," #1, 11:3, 15:12 and 17:9, but the regulation they have identified which requires "roll call," #1, 11:5-9, does not. App'x A. No allegation other than a bald assertion that NDOC "knew or should have known" supports their claims. Vague allegations amounting to recitation of the elements supported by conclusory statements are not sufficient to survive a motion to dismiss. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). No valid claim is presented and NDOC is entitled to judgment as a matter of law.

**(4) No contract, written or unwritten, contains an express provision making the alleged activity compensable. 29 U.S.C. § 254(b)(1).**

The PPA reverses the exemption for certain employment activities if an express, written or unwritten contract provision has made those activities compensable.

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Notwithstanding the provisions of subsection (a) of this section which relieve an employer from liability and punishment with respect to any activity, the employer shall not be so relieved if such activity is compensable by either--

(1) an express provision of a written or nonwritten contract in effect, at the time of such activity, between such employee, his agent, or collective-bargaining representative and his employer.

29 U.S.C. § 254(b)(1). Even a non-written contract must demonstrate “both the intent of the parties to contract with respect to the activity in question and their intent to provide compensation for the employee's performance of the activity must satisfactorily appear from the express terms of the agreement.” 29 C.F.R. § 790.9(c). The contract must be one “making the activity compensable.” 29 C.F.R. § 790.9(d).

State of Nevada employees and employers are expressly prohibited from entering into contracts which result in “personal profit or compensation of any kind resulting from any contract or other significant transaction.” NRS 281.230(1).

Contracts with State. An employee shall not enter into a private contract with the State in any capacity that may be construed as an extension of his or her assigned duties or responsibilities to the State.

NAC 284.754. A State employee contract entered into in violation of NRS 281.230 is void. NRS 281A.540(2).

While these exclusions from the right to contract by Nevada State employees are all clear and unambiguous on their face, it bears repeating that where, as here (in chapter 284 of the Nevada Revised Statutes), government employees are governed by statute, they are not controlled by a contract. In discussing federal employees and overtime compensation, the court noted that federal employees do not work under a “negotiated contract but a statute giving federal workers a right to overtime compensation. A statute is clearly not a contract.” *Panama Canal*, 314 F. Supp. at 392. The court in the *Panama Canal* case ultimately found that the statutory requirement to pay overtime did not negate the PPA relief provided. There is no reason why a different conclusion should be reached concerning Nevada State employees governed by NRS 284.010 *et seq.* and its related regulations.

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Beyond this, there is no express contract or contract provision which provides that correctional officers are to be paid for any of the activities alleged to be compensable in paragraphs 17 and 18 their Complaint, #1, 11:1-25. To the extent that the recitation that NDOC and Plaintiffs had an agreement to use a 14-day work period and establish a variable work schedule encompassing 80 hours is an allegation, #1, 10:11-15 and n. 1, no specific work activity is alleged to be addressed in that “agreement.” Without express identification of the employee’s work activity, compensation is not required pursuant to 29 C.F.R. § 790.9(d). No pay liability is identified in a contract, written or not, and no wages are owing in this respect, and NDOC is entitled to judgment as a matter of law.

**C. Plaintiffs’ Third Cause of Action Premised Upon Violation of Article 15, Section 16 of the Nevada Constitution Should be Dismissed Because the Amendment Does Not Provide a Private Right of Action for State Employees.**

In their third cause of action, Plaintiffs assert that NDOC violated the minimum wage requirements set forth in Article 15, Section 16 of the Nevada Constitution by not compensating Plaintiffs and other correctional officers for activities occurring before and after their regularly scheduled shifts. A determination of whether a private right of action exists is a question of law. See *e.g. Townsend v. University of Alaska*, 543 F.3d 478, 482 (9th Cir. 2008). Plaintiffs’ third cause of action is not viable because Article 15, Section 16 of the Nevada Constitution does not confer on state employees a private right of action against state employers like NDOC.

Plaintiffs correctly state in their Complaint that Article 15, Section 16 of the Nevada Constitution establishes a minimum wage that must be paid by employers. See Nev. Const. art. 15, § 16(A).<sup>5</sup> Plaintiffs also correctly state that an “employee” claiming a violation of this constitutional amendment may file a court action to enforce the requirements set forth therein. *Id.* However, Plaintiffs fail to recognize that they have no private right of action to enforce the provisions of Article 15, Section 16 of the Nevada Constitution because they do not constitute “employees” as that term has been defined. Section 16(C) defines “employee” as “any person

<sup>5</sup> Section 16 of Article 15 is a constitutional amendment that was proposed by initiative petition and ratified by the citizens of Nevada in 2006.

1 who is employed by an employer as defined herein . . . .” Nev. Const. art. 15, § 16(C).  
 2 “Employer” is defined as “any individual, proprietorship, partnership, joint venture, corporation,  
 3 limited liability company, trust, association, or other entity that may employ individuals or enter  
 4 into contracts of employment.” *Id.* Section 16(C) does not include the State of Nevada, its  
 5 agencies, or departments when defining “employer.” Indeed, Section 16(C) contains no  
 6 reference whatsoever to any governmental entity. Because the State is specifically excluded  
 7 from the definition of “employer,” it is not subject to the provisions of Article 15, Section 16.  
 8 This being so, individuals who are employed by the State have no basis for enforcing the  
 9 requirements set forth in amendment.

10 Based upon the allegations contained in the Complaint, it is anticipated that Plaintiffs  
 11 will attempt to argue that Article 15, Section 16 gives rise to a private right of action because  
 12 NDOC constitutes an “employer” under the amendment. More specifically, it is anticipated  
 13 that Plaintiffs will argue that NDOC constitutes an “employer” because it is an “entity that may  
 14 employ individuals.” #1, ¶ 12. Such an argument would be completely without merit. When  
 15 the definition of “employer” is read as a whole and in the context of Section 16 in its entirety, it  
 16 becomes clear that the term was not meant to include the State or its agencies. The first  
 17 portion of the definition which enumerates specific classes or types of employers identifies  
 18 only those subjects that are involved in private enterprise. See Nev. Const. art. 15, § 16(C)  
 19 (identifying “individual, proprietorship, partnership, joint venture, corporation, limited liability  
 20 company, trust, association”). The catch-all clause in the definition includes, “other entit[ies]  
 21 that may employ individuals or enter into contracts of employment.” Despite what Plaintiffs  
 22 would like the Court to believe, this catch-all clause cannot be construed to include NDOC  
 23 because the department does not enter into contracts of employment with its correctional  
 24 officers or any other employees. Instead, it hires individuals through the process outlined in  
 25 the State’s personnel system, and the terms and conditions of employment are fixed by  
 26 statute.

27 It is apparent that the State, its agencies, and departments were excluded from the  
 28 definition of “employer” in Section 16(C) because Nevada already had a comprehensive

1 statutory and regulatory scheme which set the terms and conditions of state employees,  
2 including matters pertaining to compensation, at the time the constitutional amendment was  
3 ratified. See NRS 281.005 to 281.671, inclusive; and NRS 284.010 to 284.430, inclusive.  
4 The Nevada Legislature created the State Personnel System, which is codified in Chapter 284  
5 of the Nevada Revised Statutes. As part of that system, the Legislature created the  
6 Personnel Commission and granted it the authority to adopt rules and regulations to  
7 implement the provisions of Chapter 284. See NRS 284.030-284.065. These regulations are  
8 contained in Chapter 284 of the Nevada Administrative Code. See NAC 284.010 to 284.894,  
9 inclusive. In fact, the Nevada Administrative Code contains an entire section which solely  
10 addresses matters related to compensation of state employees. See NAC 284.158-284.294,  
11 inclusive. Some of the terms and conditions of employment for correctional officers like  
12 Plaintiffs are contained in the Administrative Regulations adopted by NDOC. See NRS  
13 209.131(6); AR 300-364, inclusive. For example, AR 320 Salary Administration, specifically  
14 addresses the procedures for overtime requests and approvals by NDOC employees.  
15 Appendix D.

16 In the instant matter, it is undisputed that Plaintiffs are current and former classified  
17 employees of the State of Nevada. See NRS 284.150, 284.171(13), 289.220 and 289.480.  
18 Therefore, matters pertaining to Plaintiffs' employment are specifically governed by the  
19 provisions of Chapter 284 of the Nevada Revised Statutes and Chapter 284 of the Nevada  
20 Administrative Code. See NRS 284.013(1), 284.065(2)(d). The mere existence of a  
21 comprehensive personnel system which addresses employment related matters which are  
22 specific to state employees, including the manner in which they are compensated for work  
23 performed during regularly scheduled shifts and overtime, demonstrates that the provisions of  
24 Article 15, Section 16 of the Nevada Constitution are inapplicable to state employers such as  
25 NDOC. Accordingly, state employees have no basis for asserting a claim premised upon a  
26 violation of Article 15, Section 16. Plaintiffs' remedies, if any, are confined to those provided  
27 in statute and regulation.

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1 It is worth noting that the section of Article 15 which immediately precedes the  
2 constitutional amendment at issue in this case shows that the terms and conditions of state  
3 employees are addressed by laws which are separate and apart from those that pertain to  
4 private sector employees. Article 15, Section 15 of the Nevada Constitution specifically grants  
5 the Nevada Legislature with the authority to create a merit system for state employees. See  
6 Nev. Const. art. 15, § 15. The fact that the Nevada Constitution contains a separate section  
7 which specifically mandates a merit system for state employees is compelling.

8 The recent Nevada Supreme Court decision of *Thomas v. Nev. Yellow Cab Corp.*, \_\_\_\_  
9 Nev. \_\_\_\_, 327 P.3d 518 (2014), provides additional support that Article 15, Section 16 of the  
10 Nevada Constitution does not apply to NDOC and other state agencies. In *Thomas*, the  
11 Nevada Supreme Court was charged with determining whether the minimum wage  
12 amendment of Article 15, Section 16 supersedes the exception for taxicab drivers as provided  
13 for in the minimum wage statute of NRS 608.250(2)(e). *Id.* at 520. In so doing, the Court  
14 stated that Article 15, Section 16 addresses the “same subject matter” as NRS Chapter 608.  
15 *Id.* at 523. A cursory review of Chapter 608 reveals that it addresses conditions of  
16 employment in **private enterprise**. See NRS 608.005. The legislative declaration for NRS  
17 Chapter 608 provides as follows:

18 [t]he Legislature hereby finds and declares that the health and  
19 welfare of workers and the employment of persons in **private**  
20 **enterprise** in this State are of concern to the State and that the  
21 health and welfare of persons required to earn their livings by their  
own endeavors require certain safeguards as to hours of service,  
working conditions and compensation therefor.

22 *Id.* (emphasis added). The Nevada Supreme Court’s acknowledgement in *Thomas* that  
23 Article 15, Section 16 of the Nevada Constitution addresses the same subject matter as  
24 Chapter 608 of the Nevada Revised Statutes indicates that it applies only to employers and  
25 employees doing business in the private sector. Furthermore, this accords the Nevada  
26 Supreme Court’s longstanding opinion that “NRS Chapter 608 is not applicable to a situation  
27 involving a public employee.” *State, Dep’t of Human Res., Welfare Div. v. Fowler*, 109 Nev.  
28 782, 788, 858 P.2d 375, 378 (1993).



Finally, the waiver provision contained in Section 16 militates in favor of a finding that Article 15, Section 16 is inapplicable to NDOC. Pursuant to subsection “B,” the provisions of § 16, including the minimum wage requirement, “may be waived by a bona fide collective bargaining agreement. . . .” Nev. Const. art. 15, § 16(C). An interpretation of “employer” which includes the State and its agencies would be at odds with the waiver provision contained in § 16(B). Common sense dictates that the waiver provision would not be included in Article 15, Section 16 if the State and its agencies did, in fact, constitute “employers” under § 16(C) because it is well settled law that collective bargaining between the State and its employees is prohibited. *See Nev. Highway Patrol Ass’n v. State, Dep’t of Mtr. Veh.*, 107 Nev. 547, 550, 815 P.2d 608, 610-11 (1991) (holding that the State and its agencies do not have the authority to enter into collective bargaining agreements with employees).

Plain and simply, Plaintiffs and the alleged class members are not employed by an entity that is subject to the minimum wage requirements set forth in Article 15, Section 16 of the Nevada Constitution. Those provisions strictly benefit individuals who are employed in the private sector. As such, Plaintiffs have no private right of action to enforce the provisions of Article 15, Section 16. Accordingly, Plaintiffs’ third cause of action fails as a matter of law, and should therefore be dismissed with prejudice.

**D. Plaintiffs’ Fourth Cause of Action for Breach of Contract Must be Dismissed for Failing to State a Claim Upon Which Relief May be Granted.**

Plaintiffs also assert a cause of action against NDOC for breach of contract in violation of Nevada law. #1, ¶¶ 55-61. In order to prevail on a claim for breach of contract under Nevada law, Plaintiffs are required to allege and prove the following elements: (1) the existence of a valid contract, (2) a breach of the contract by NDOC, and (3) that the breach resulted in damages to Plaintiffs. *See Saini v. Int’l Game Tech.*, 434 F. Supp. 2d 913, 920 (D. Nev. 2006). Plaintiffs’ claim for breach of contract must be dismissed because no relief is possible under the facts alleged in the Complaint.

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**(1) Plaintiffs' complaint fails to sufficiently plead a claim for breach of contract.**

Plaintiffs' claim for breach of contract fails because the Complaint does not contain sufficient factual matter to state a viable claim for relief which is plausible on its face. Pursuant to Rule 8(a)(2) of the Federal Rules of Civil Procedure, a pleading must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." In the case of *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009), the United States Supreme Court determined that "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Where a complaint pleads facts that are merely consistent with a defendant's liability, it stops short of demonstrating that a claim is plausible. *Id.* The Court, in *Iqbal*, stated that "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements do not suffice." *Id.*

In the case at bar, Plaintiffs' claim for breach of contract is supported by nothing more than conclusory allegations. More importantly, Plaintiffs' Complaint fails to allege specific facts demonstrating that Plaintiffs and NDOC entered into a contract. It is noteworthy that no contract is identified or attached to Plaintiffs' Complaint. Because Plaintiffs' claim for breach of contract is not sufficiently pled in the Complaint, said claim must be dismissed.

**(2) No contract exists between Plaintiffs and NDOC.**

Even if the Court were to determine that a claim for breach of contract was adequately pled in the Complaint, Plaintiffs' claim would still fail as a matter of law because no valid contract exists between Plaintiffs and NDOC. The existence of a valid enforceable contract is an essential element for establishing a claim for breach of contract under Nevada law. See *Saini*, 434 F. Supp. 2d at 919-20. In the instant matter, Plaintiffs' claim fails because it cannot be established that Plaintiffs entered into a contract with NDOC concerning wages and/or the manner in which they would be compensated for work performed as a correctional officer.

In Nevada, the employment relationship between the State and its employees is derived from statute, not contract. See *Shamberger v. Ferrari*, 73 Nev. 201, 207-209, 314 P.2d 384, 387-88 (1957) (recognizing that the statutory abolishment of office of surveyor

1 general did not deprive respondent of either a contractual right or a property right). As  
 2 previously discussed, Plaintiffs are state employees whose terms and conditions of  
 3 employment, including compensation, are controlled by statute and regulation. See NRS  
 4 284.010 - 284.430, inclusive; NAC 284.010 to 284.894, inclusive. These statutory and  
 5 regulatory conditions of state employment are not contractual. Furthermore, there is no  
 6 procedure whereby the terms and conditions of employment can be altered or customized for  
 7 specific employees. Nevada's personnel system is specifically designed to govern and  
 8 protect the interests of state employees like Plaintiffs. See NRS 284.010(1). NRS 284.010  
 9 provides, in pertinent part, as follows:

- 10 1. The Legislature declares that the purpose of this chapter is:
- 11 (a) To provide all citizens a fair and equal opportunity for public  
service;
- 12 (b) To establish conditions of service which will attract officers  
and employees of character and ability;
- 13 (c) To establish uniform job and salary classifications; . . . .

14 NRS 284.010(1). NRS Chapter 284 applies to all officers and employees of any agency of the  
 15 executive department of the State government unless specifically exempted by statute. See  
 16 NRS 284.013(1)(c). In addition to setting out the manner in which state employees are  
 17 compensated for their work, the personnel system contains procedures whereby employees  
 18 can initiate proceedings or file grievances to resolve wage-related disputes with their  
 19 employer. See e.g. NRS 284.073 (establishing the duties of the Employee-Management  
 20 Committee).

21 No reasonable argument can be made that the terms and conditions of Plaintiffs'  
 22 employment are contractual. NDOC does not even have the ability to enter into a contract  
 23 with its employees for the purpose of addressing terms of employment such as compensation  
 24 and other wage related matters. This is best illustrated by the fact that state agencies in  
 25 Nevada do not have authority to enter into collective bargaining agreements with public  
 26 employees. See *Nev. Highway Patrol Ass'n v. State, Dep't of Mtr. Veh.*, 107 Nev. 547, 551,  
 27 815 P.2d 608, 610-11 (1991). Furthermore, as argued in section III. B(4) above, State of  
 28 Nevada executive branch employees may not contract regarding "personal profit or

1 compensation.” NRS 281.230(1). Any such contract under the facts alleged, “is void.” NRS  
2 281A.540(2).

3 Moreover, courts have specifically held that public employees do not have a private  
4 right of action for breach of contract because public employment is derived by statute, not  
5 contract. See *Gibson v. Office of the Attorney General*, 561 F.3d 920, 929 (9th Cir. 2009);  
6 *Bernstein v. Lopez*, 321 F.3d 903, 905-06 (9th Cir. 2003); *Wright v. Kansas Water Office*, 881  
7 P.2d 567, 571 (Kan. 1994); *Personnel Div. of the Exec. Dept. v. St. Clair*, 498 P.2d 809, 811  
8 (Or. App. 1972). The United States Supreme Court has held that a statute fixing salaries of  
9 state officers creates no contract in their favor. *Dodge v. Board of Educ. of City of Chicago*,  
10 302 U.S. 74, 78 (1937).

11 In the case of *Wright v. Kansas Water Office*, 881 P.2d 567 (Kan. 1994), the Kansas  
12 Supreme Court considered the question of whether a state classified employee was employed  
13 pursuant to a written contract. The court ultimately held that the employment relationship  
14 between a classified employee and the State of Kansas did not arise out of contract. *Id.* at  
15 571. In so holding, the court determined that the employment relationship was fixed by a  
16 statute referred to as the “Kansas Civil Service Act.” The Kansas Civil Service Act discussed  
17 in *Wright* is very similar to the State Personnel System set forth in Chapter 284 of the Nevada  
18 Revised Statutes. Like Nevada’s personnel system, the Kansas Legislature adopted the  
19 KCSA “to provide all citizens an equal opportunity for public service” and to “establish  
20 conditions of service.” *Wright*, 881 P.2d at 572; NRS 18.010.

21 Like public employees in Kansas, the terms and conditions of Plaintiffs’ employment  
22 are fixed by statute. As a result, there is simply no basis to conclude that the employment  
23 relationship between Plaintiffs and NDOC arose out of a contract or agreement. Because no  
24 contractual relationship exists between Plaintiffs and NDOC, Plaintiffs cannot state an  
25 actionable claim for breach of contract. Accordingly, Plaintiffs’ fourth cause of action should  
26 be dismissed with prejudice.

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#### IV. CONCLUSION

Based upon the foregoing, NDOC is entitled to judgment in its favor as a matter of law with respect to Plaintiffs' federal and state law claims because no relief is possible under any set of facts that Plaintiffs could prove in support of their claims. Plaintiffs' first cause of action for failure to pay minimum wages and Plaintiffs' second cause of action for failure to pay overtime wages fail as a matter of law because the Portal-to-Portal Act makes time spent getting to and from the place of performance of work non-compensable, because preliminary and postliminary activities are non-compensable, and because no express provision of a contract makes any of the activities noted in the Complaint compensable. Plaintiffs' third cause of action for violation of Article 15, Section 16 of the Nevada Constitution is not viable because the amendment does not confer on state employees a private right of action to enforce its provisions against State employers. Plaintiffs' cause of action for breach of contract fails as a matter of law because it is insufficiently pled in the Complaint, and Plaintiffs cannot demonstrate that they had a contractual relationship with NDOC. As previously discussed, the terms and conditions of Plaintiffs' employment are fixed by statute, not contract. For the reasons discussed herein, the NDOC respectfully requests the Court to dismiss Plaintiffs' Complaint with prejudice.

Dated this 3<sup>rd</sup> day of April, 2015.

ADAM PAUL LAXALT  
Attorney General

By: /s/ Janet E. Traut  
ANN M. McDermott, NV Bar No. 8180  
Chief Deputy Attorney General  
JANET E. TRAUT, NV Bar No. 8695  
Senior Deputy Attorney General  
BRANDON R. PRICE, NV Bar No. 11686  
Deputy District Attorney  
Bureau of Litigation  
Personnel Division  
*Attorneys for Defendant*

**CERTIFICATE OF SERVICE**

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and on this day, I have caused a copy of the forgoing **DEFENDANT'S MOTION FOR JUDGMENT ON THE PLEADINGS** to be served by CM-ECF e-mailing a true copy to:

Mark R. Thierman, Esq.  
[laborlawyer@pacbell.net](mailto:laborlawyer@pacbell.net)

Joshua D. Buck, Esq.  
[josh@thiermanlaw.com](mailto:josh@thiermanlaw.com)

Leah L. Jones, Esq.  
[leah@thiermanlaw.com](mailto:leah@thiermanlaw.com)

DATED this 3<sup>rd</sup> day of April, 2015.

/s/ Ginny Brownell  
An employee of the  
Office of the Attorney General

ADAM PAUL LAXALT  
Attorney General  
ANN M. McDERMOTT  
Chief Deputy Attorney General  
Nevada Bar No. 8180  
JANET E. TRAUT  
Senior Deputy Attorney General  
Nevada Bar No. 8695  
BRANDON R. PRICE  
Deputy Attorney General  
Nevada Bar No. 11686  
Bureau of Litigation  
Personnel Division  
5420 Kietzke Lane, Suite 202  
Reno, Nevada 89511  
Tele: (775) 850-4117  
Fax: (775) 688-1822

*Attorneys for Defendant*

**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEVADA**

DONALD WALDEN JR., NATHAN  
ECHEVERRIA, AARON DICUS, BRENT  
EVERIST, TRAVIS ZUFELT, TIMOTHY  
RIDENOUR, and DANIEL TRACY on  
behalf of themselves and all other similarly  
situated,

Plaintiffs,

vs.

STATE OF NEVADA, NEVADA  
DEPARTMENT OF CORRECTIONS, and  
DOES 1-50,

Defendant.

Case No. 3:14-cv-00320-LRH-WGC

**INDEX OF APPENDICES  
TO  
DEFENDANT'S MOTION FOR  
JUDGMENT ON THE PLEADINGS**

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APPENDIX B	AR 411 Tool Control
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# APPENDIX “A”

# APPENDIX “A”



**NEVADA DEPARTMENT OF CORRECTIONS  
ADMINISTRATIVE REGULATION  
326**

**POSTING OF SHIFTS/OVERTIME**

**Supersedes:** AR 326 (08/13/10); and AR 326 (Temporary, 07/14/14)  
**Effective Date:** 09/16/14

**AUTHORITY:** NRS 284.055; 284.155; 284.175; 284.180 NAC 284.242; 284.245; 284.250 and C.F.R. Part 115

**RESPONSIBILITY:**

Wardens/Facility Managers are responsible to ensure there is sufficient staff on duty to safely operate their institutions and facilities.

An Associate Warden/facility manager are responsible to document attendance, management of relief factor usage by all uniformed staff, and ensure proper documentation is maintained.

**326.01 STAFFING**

**1. NORMAL OPERATIONS**

A. Normal operation staffing is utilized during the normal operations of an institution. This pattern will identify the staff required to run a specified post when all positions are utilized.

B. An Associate Warden will create a written staffing pattern identifying and prioritizing specific posts operating within the institution as either a pull position or a shut down position.

(1) A pull position is identified as a position in which the assigned officer may be pulled from that position and assigned elsewhere in the institution during their assigned shift.

(2) A shut down position is identified as a position in which the assigned officer may be pulled from his assigned post and the post closed with the officer being assigned elsewhere in the institution for their entire assigned shift.

C. Shift Sergeants reporting for their scheduled shifts will adjust the shift roster and fill all positions mandated to fulfill the minimum staffing requirements.

D. The shift sergeant will use all Sick/Annual positions first, and then use pull/shutdown positions as appropriate, in the order as listed by the institution.

E. If the minimum staffing has not been met, the on duty Shift Supervisor will contact an Associate Warden and request the minimum amount of overtime hours needed. The Associate Warden will then

notify the Warden for approval of the decision/overtime approved.

F. Only when all pull positions and shutdown positions have been utilized will overtime be considered.

## **2. EMERGENCY OPERATIONS**

A. Emergency operation staff is the staffing pattern that identifies posts that must meet minimal requirements for officer and inmate safety. This pattern will identify those posts that are critical for running a specific area of the institution.

B. An Associate Warden will create a written staffing pattern identifying additional specific posts within the institution either as pull or shutdown positions; this staffing pattern will prioritize these positions in the order they are to be pulled / shut down in the event of an emergency or staff shortage.

C. Staffing will also be evaluated as to the absolute minimum required to safely operate a particular shift.

D. It may be necessary to modify or cancel some activities as a result of emergency staffing. The Warden/Associate Warden will be notified of the cancellation of any activity or program.

E. Only when all pull positions and shutdown positions have been utilized only then will overtime be considered. Authorization is only granted by the Warden/Designee.

### **326.02 RELIEF FACTOR MANAGEMENT (RFM)**

#### **1. Relief Factor Management (RFM) positions are to be:**

A. Used for unscheduled annual leave relief to cover greater than normal sick leave, if it is available.

B. Used for pull and shutdown posts to cover greater than expected sick leave.

#### **2. No more annual leave will be scheduled than there are relief factor management positions available to support the requested leave without overtime.**

A. Staff should request annual leave per the requirements of AR 322 Types of Leave' and Leave Procedure.

B. Leave requests submitted without sufficient notice will not be granted if there is no relief factor to accommodate the leave without overtime except in a case of a personal emergency.

#### **3. To the degree possible, Lieutenants and Sergeants should not be replaced, however, these positions may be used as a pull/shutdown position if designated by the institutional staff procedure,**

#### **4. Shift rosters for each institution and facility are to be organized so the components of the relief factor can be combined to identify specific staff to occupy RFM positions.**

#### **5. Relief factor for regular days off, sick leave, annual leave, or training, will not be combined in order to create new positions.**

6. Days off are assigned to the post and not the person.

### **326.03 MANAGEMENT OF OVERTIME**

1. Overtime is not guaranteed for any employee.

- A. Institutional/facility requirements will determine all overtime hired.
- B. All staff overtime requires the completion of DOC Form 1000, Authorization for Leave and Overtime Request Form,
- C. Staff cannot work more than two (2) consecutive double shifts.
- D. Unless an emergency situation occurs, no staff can work than more than a 16 hour shift in a 24 hour period.

2. Assigned staff may be reassigned when an institutional need exists.

3. Employees on modified duty assignments are not authorized to work overtime.

4. Correctional officers may be used to fill Senior Correctional Officer positions on a case by case basis. However Senior Correctional Officers may not be utilized to fill a Correctional Officer position.

5. A voluntary overtime list will be established and used prior to utilizing mandatory overtime. This voluntary overtime list will be re-started when exhausted.

- A. No employee who calls in sick or utilizes sick leave during any given pay period will be allowed to work voluntary overtime.
- B. If an employee accrues overtime during the first week of the pay period and then utilizes sick leave, that employee will not be permitted any voluntary overtime in the next pay period.
- C. No employee who must provide "proof" may work voluntary overtime until this status is modified.
- D. Employees who are in AWOL or LWOP status will not to be allowed to volunteer/eligible for overtime in the same pay period.

(1) If overtime is accrued during the first week of the pay period and then LWOP or AWOL is accrued, that employee will not be permitted to work voluntary overtime in the entire following pay period.

6. If overtime is required to maintain a safe and secure operation and insufficient staff voluntarily agrees to work, mandatory overtime will be initiated.

A. A list of Senior Correctional Officers, Correctional Officers, and Correctional Officer Trainees will be establish by based on least seniority in their hire date and last involuntary, i.e. mandatory, overtime date, will be established for each shift.

- B. The mandatory overtime list will be restarted once exhausted or every 45 days.
- C. Adjustments will be made when an officer is reassigned to a new shift. That officer will be added to the mandatory list according to their last mandatory date.
- D. Based on the least seniority the first time after shift bidding, staff will be selected by their last involuntary overtime date. Once completed, the employee will move to the bottom of the involuntary overtime list.
- E. All correctional staff will report to the shift supervisor/shift sergeant upon arrival to ensure their status if required to work mandatory overtime.
  - (1) If an employee is required to work mandatory overtime, that employee may be allowed to solicit a volunteer to work in his/her place.
    - (a) If a volunteer is found, the shift supervisor/shift sergeant must approve the substitution prior to the person being allowed to work.
    - (b) If the substitution is approved, the Officer originally scheduled to work the mandatory overtime will remain at the top of the mandatory overtime list until he/she actually works it.
  - (2) The employee has 1 hour to find a substitute whenever possible.

7. A written overtime tracking log must be approved by the appropriate Deputy Director.

- A. All overtime will be entered into the NSIS Computer Roster.
- B. Verification will be made that the timesheet entry is properly coded and hours are correctly entered by viewing the timesheet of the staff member.
- C. A written overtime tracking log will be utilized to ensure proper utilization of overtime and entry into the computer.


**326.04 ANNUAL STAFFING REVIEW**


- 1. At least once every year the institutions and facilities in collaboration with the PREA Coordinator, review the staffing plan to see whether adjustments are needed in the following areas:
  - A. The staffing plan.
  - B. The deployment of monitoring technology.
  - C. The allocation of Agency/Institution or Facility resources to commit to the staffing plan to ensure PREA compliance.
- 2. The Staffing Review will be submitted to the Deputy Director of Operations who will provide a copy to the PREA Coordinator for review. This Staffing Review will be submitted for all Institutions and Facilities

in the manner described in AR 301, "Shift Bidding", Section 301.01.

**APPLICABILITY**

1. This regulation requires an Operational Procedure for every institution and facility.
2. This regulation requires an audit.

  
\_\_\_\_\_  
Director

  
\_\_\_\_\_  
Date

# APPENDIX “B”

# APPENDIX “B”




## Nevada Department Of Corrections

### Administrative Regulation Control Sheet

AR Number:	AR 411
AR Title:	Tool Control

### AR Revision History

Revision Details	Effective Date
This AR was reviewed by the Subject Matter Expert and it was determined that no changes are required as of this date.	10/20/14
No Additional revisions beyond this line.	---

  
 Director

10/20/14  
 Date

**NEVADA DEPARTMENT OF CORRECTIONS  
ADMINISTRATIVE REGULATION  
411**

**TOOL CONTROL**

**Supersedes:** AR 411 (Temporary, 04/28/11)  
**Effective Date:** 06/17/12

**AUTHORITY:** NRS 209.131

**RESPONSIBILITY**

1. Wardens/Facility Managers will ensure that procedures are established to carefully control the use, distribution and storage of tools to minimize the potential danger to staff, inmates and facility security that may be caused by their misuse.
2. Wardens/Facility Managers are responsible for the implementation of this regulation.
3. It shall be the responsibility of all staff to ensure and maintain compliance with this procedure on a regular and daily basis.

**411.01 PROCEDURE**

1. Each Warden or facility manager shall establish a comprehensive operational procedure which clearly defines each issue listed in this regulation, to include requiring that all personnel having access to tools familiarize themselves with the institution's or facility's operational procedure.
2. Institution/facility operational procedures will be adhered to by all work areas identified within the institution/facility who use and/or store tools.
  - A. Work areas include, but are not limited to:
    - (1) Food Service
    - (2) Maintenance
    - (3) Medical
    - (4) Yard Labor
    - (5) Prison Industries
    - (6) Vocational Programs
    - (7) Education



(8) Private or contract repair or maintenance personnel

3. Institution/facility operational procedures will include the following definitions:

A. Tool – Any instrument or minor piece of equipment requiring manual operation such as but not limited to, knives, scissors, long handled utensils, letter openers, maintenance tools, extension cords or water hoses.

B. Class “A” Tools (Extremely Hazardous) – Tools that can be used as weapons, to facilitate an escape or in an escape or to fabricate weapons.

C. Class “B” Tools (Hazardous) – A tool in its present state that can be conveniently used as a weapon and/or easily concealed.

D. Class “C” Tools (Non-hazardous) – A tool which in its present state can be used as a weapon only with difficulty; which must be extensively altered to be used as a weapon; or which cannot be easily concealed.

E. Shadow Board – a storage board upon which tools are stored, bearing a painted image or outline of each tool stored thereon and the corresponding code number.

F. Tool Control Coordinator – A person designated by the Warden or Facility Manager to coordinate the tool control plan at the facility.

(1) This need not be a full time assignment, but for the purpose of accountability the individual must have sufficient time to accomplish designated tasks.

4. Institution/facility operational procedures shall describe in detail procedures for:

A. Tool Request

B. Tool Add-on

C. Tool Turn-in, to include tool disposal

D. Lost Tools

E. Tool Inventory

F. Tool Quotas

G. Tool Check-in/Check-out

H. Tool Storage

I. Tool Identification, to include classification.

J. Tool Audits

#### **411.02 TOOL REQUESTS**

1. Work area supervisors, to include Maintenance, Prison Industries, School District and outside vendors, requesting to receive a new tool will complete a Tool Request Form (Attachment A) to be submitted to the Tool Control Coordinator and designated Associate Warden for approval.

A. No tools shall be procured or delivered to the job site without the prior approval of the Tool Control Coordinator or designated Associate Warden.

B. The Tool Control Coordinator will review the area's existing tool inventory prior to approving/denying any request to ensure there is not an excess of the same tool.

C. A copy of the Tool Request Form will be forwarded to the area supervisor and Warehouse Manager upon approval.

(1) All denied requests will be sent to the area supervisor with the reasons for denial.

D. All approved tools will be delivered to the Warehouse.

(1) The warehouse supervisor will notify the Tool Control Coordinator that the tool(s) are in.

(2) No tool will be issued by warehouse staff.

#### **411.03 TOOL ADD-ON**

1. The Tool Control Coordinator will be responsible for the classification of each new tool.

A. The Tool Control Coordinator will ensure each new tool has been properly etched, color coded and added to the appropriate inventory.

2. The Tool Control Coordinator will complete a Tool Add-on Form (Attachment B) for each tool added to an area's inventory.

A. Copies of this form will be distributed and maintained by the area supervisor and Tool Control Coordinator.

B. No tool will enter the facility without a copy of the completed and signed Tool Add-on Form.

#### **411.04 TOOL TURN-IN RECEIPT**

1. Area supervisors will complete a Tool Turn-in Form (Attachment C) for all unserviceable tools.

A. Broken or worn out tools will be given to the Tool Control Coordinator for proper disposal and removal from area inventory.

B. Broken or worn tools will be removed from the institution by the Tool Control Coordinator and destroyed in a manner that prevents them from being used for any purpose.

(1) This responsibility can not be delegated.

C. Area supervisors and the Tool Control Coordinator will maintain a copy of the Tool Turn-in Form for their records.

#### **411.05 LOST TOOL REPORT**

1. Any lost tool will be immediately reported to the on duty supervisor.

A. All inmates will remain at that location until a thorough search can be completed.

2. The area supervisor is responsible for completing a Lost Tool Report (Attachment D).

A. Copies of this report will be maintained by the area supervisor and forwarded to the designated Associate Warden and Tool Control Coordinator.

3. The Tool Control Coordinator will maintain a separate file of all missing tools.

A. All contraband/unauthorized tools discovered will be checked against this list and retained by the Tool Control Coordinator for re-issue or disposal.

#### **411.06 TOOL INVENTORIES**

1. A complete inventory of all tools and their location will be maintained by the area supervisor, Tool Control Coordinator and designated Associate Warden or facility manager.

A. Area supervisors will maintain a current and readily available copy of their complete tool inventory in a loose leaf binder.

2. Work area supervisors will conduct a tool inventory at the beginning and end of their shift.

- A. The supervisor shall indicate by signature that all tools are present at the end of each day.
  - B. Inmates can not complete a tool inventory.
3. A Weekly Tool Report (Attachment E) will be completed by the area supervisor.
- A. This report will be completed by the end of the business week.
  - B. A copy of this report will be forwarded to the Tool Control Coordinator.
  - C. Inmates can not complete a tool inventory.
4. A monthly tool audit will be conducted by the Tool Control Coordinator.
- A. This audit will relate to inventories, proper identification and storage of tools.
5. When inmates are assigned to tool cribs such as, Maintenance department, Vocational shops or Prison Industry, the inmate will be under the direct supervision of an employee assigned to the specific area.
- A. The employee shall conduct a sight inventory (an observation of all tool shadows to ensure every tool is present) at the beginning and end of each work day and before and after the inmates enter or leave their work areas. These inventories must be documented.
  - B. In addition, the supervising employee shall conduct spot checks of tools in use to ensure they are being used only by the individuals to whom they were assigned.
    - (1) In Prison Industries only, a tool may be shared in a common work-area when the tool has been identified as appropriate for such sharing by Prison Industry supervisors and the designated Associate Warden.
    - (2) The responsibility for returning the tool remains with the inmate who originally signed the tool out.
6. Tool control in the medical and dental departments will be accomplished as follows:
- A. The Director of Nursing Services shall maintain an accurate inventory of instruments such as scalpels and other tools.
  - B. These tools will be inventoried daily.
  - C. A complete inventory will be maintained in quadruplicate:
    - (1) One copy to be conspicuously displayed in storage area.

(2) One copy with the Director of Nursing Services.

(3) One copy to the Tool Control Coordinator.

(4) One copy with the designated Associate Warden.

D. Each shift will maintain a daily perpetual inventory of all needles and syringes by sizes.

#### **411.07 TOOL REQUIREMENTS/QUANTITY**

1. Each work area supervisor shall establish tool requirements/quantity for their area of responsibility.

2. Work area supervisors shall maintain and account for all tools within their area of responsibility.

3. All tools found in excess of need or not on the existing area inventory will be turned over to the Tool Control Coordinator with a completed tool turn-in receipt.

A. Tool(s) will be stored in a secured area for disposal by the Tool Control Coordinator.

#### **411.08 TOOL CHECK-IN AND CHECK-OUT**

1. All tools removed from their storage area will be logged out by the work area supervisor using a tool check-out log.

A. A log book or log sheet will be maintained for documenting the issuance and the return of tools.

B. The log shall include:

(1) The date issued

(2) Receiving inmate's name and NDOC number; or employee's name and the tool number

(3) Tool description, to include number

(4) Time checked out

(5) Issuing employee's name

(6) Time returned

(7) Name of the employee receiving the returned tools.

C. Inmates receiving tools will surrender their identification card to the work area supervisor.

(1) Work area supervisors will positively identify the inmate receiving the tool.

D. Work area supervisors will ensure the inmate(s) has been instructed in the proper use and understand all safety procedures for that tool.

(1) Documentation of the training must be maintained.

E. Inmates will be allowed to possess or use tools only when supervised.

F. Tools turned in upon completion of their use will be signed in by the work area supervisor.

(1) Work area supervisors will ensure the tool(s) is clean, undamaged and all parts of the tool are accounted for.

(2) Work area supervisors will note the time the tool was returned and who received the tool.

(3) After ensuring all the tools checked out by an inmate are returned, the inmate's identification card will be returned to the inmate.

#### **411.09 TOOL STORAGE**

1. All tools shall be stored in a steel cage/cabinet with a shadow board or tarp (tool boxes) and a secure locking device.

2. Tool storage cage/cabinet will be equipped with a shadow board.

A. Class "A" Tools will be stored over a red shadow.

B. Class "B" and Class "C" Tools over a Black shadow.

3. Over sized equipment such as, ladders will be under lock and chain or stored in a locked storage area when not in use, and will be inventoried daily.

4. Surgical, dental and other medical equipment shall be maintained in the safest manner possible in keeping with medical practice.

5. Reserve stock of hypodermic needles and syringes shall be kept in a locked and secure area and an accurate and current inventory maintained.

A. Only the minimum number of syringes and needles for proper operation of the medical department shall be available for daily use.

(1) All used and unserviceable syringes and needles shall be crushed or disposed of by some safe and secure manner designed to keep them out of inmate possession.

#### **411.10 TOOL IDENTIFICATION**

1. All tools will be etched to identify the tool and area where they are assigned.

A. Letter abbreviations for each facility and number of the tool will be etched on all institutional tools.

(1) Tools belonging to other entities (i.e. White Pines County-WPCSD, Carson County-CCSD, Clark County-CCSD) will be etched with the appropriate abbreviation.

B. All tools will be marked with an identification number.

C. Medical/Dental tools will not be marked because of size and character.

2. Tools will further be identified by color banding.

A. Class "A" tools will be visually identified by a red band at least ½ inch wide at the point of the least wear.

B. Class "B" tools will be visually identified by a blue band at least ½ inch wide at the point of the least wear.

C. Class "C" tools will be visually identified by a green band at least ½ inch wide at the point of least wear.

#### **411.11 TOOL CLASSIFICATION**

1. Class "A" tools are tools readily available to be used as weapons or used to facilitate an escape.

A. These tools are considered critical.

(1) All critical tools require direct supervision of an inmate in possession of these tools.

(2) A critical tool can not be removed from the area of intended use.

**B. Critical tools include, but are not limited to the following:**

- (1) Large Wire Cutters
- (2) Knives/Cleaver/Ice Picks
- (3) Hacksaws/Hacksaw Blades
- (4) Drill Bits/Grinder Wheels
- (5) Cutting Torches
- (6) Power Actuated Tools
- (7) Axes
- (8) Bolt Cutters
- (9) Hammers.
- (10) Scissors.
- (11) Large Wrenches (more than 8 inches)
- (12) Files/Rasps.
- (13) Dough Cutters.
- (14) Meat Forks.
- (15) Scalpels.
- (16) Screw Drivers/Chisels.
- (17) Ladders

**C. Critical tools include those stated above in class "A", as well as additional tools, which are considered dangerous to the institution or inmate's well being as determined by the Warden/designee.**

**2. Class "B" tools: require direct observation of an inmate in possession of a Class "B" tool.**

**A. Class "B" tools include, but are not limited to the following:**

- (1) Spatulas



(2) Small Wrenches (less than 8 inches)

(3) Serving Spoons

(4) Ladles

(5) Engravers

(6) Ropes

(7) Extension Cords

(8) Hoses

(9) Picks

(10) Wood Saws

B. Special events that require plastic utensils such as, spoons or spatulas, used by various inmate religious groups will be checked out from the culinary upon approval from the Warden/designee.

(1) These items will be added to the appropriate culinary tool inventory and ensure accountability.

3. Class "C" tools: require intermittent observation of an inmate in possession of a Class "C" tool.

A. Class "C" tools include but are not limited to the following:

(1) Shovels

(2) Rakes

(3) Push Brooms

(4) Mop Ringers

B. Any tool not listed above will be categorized by the Tool Coordinator and approved by the Warden or designee.

#### **411.12 TOOL AUDITS**

1. All correctional institutions/facilities will conduct an internal audit of their tool control procedure at least once per month.

A. Wardens or facility managers will designate staff to complete required monthly audits.

B. Audits will assess the strengths and/or weaknesses in the following areas:

- (1) Tool Request
- (2) Tool Add-on
- (3) Tool Turn-in, to include tool disposal
- (4) Lost Tools
- (5) Tool Inventory
- (6) Tool Quotas
- (7) Tool Check-in/Check-out
- (8) Tool Storage
- (9) Tool Identification, to include classification.
- (10) Tool Audits

#### **411.13 OTHER SENSITIVE TOOLS AND EQUIPMENT**

1. Ladders:

A. Inmates will not be allowed to use ladders without direct supervision.

B. All ladders will be under lock and chain or stored in a locked storage area when not in use, and they will be inventoried daily.

2. Scaffolds or Man Lift:

A. When it is necessary to leave scaffold at a site overnight, it shall be placed in an area, which provides adequate security and will be chained and padlocked.

(1) To prevent the scaffold from being easily freed, the chain will encompass more than one rung.

B. When not in use, all scaffolding will be broken down and stored.

C. As with other prison equipment, scaffolds will be checked and inventoried on a daily basis, unless stored in an outer warehouse.

D. Man lifts must have the approval of the Warden or Associate Warden to be brought onto the facility.

(1) It must be under custody escort for the entire time it is within the perimeter.

(2) It must not be stored within the perimeter.

(3) Operators must be properly trained and certified to use this equipment.

3. Ropes:

A. All ropes and cables will be safely stored and inventoried daily.

B. They will be transported and used only under the direct supervision of an employee.

4. Scissors:

A. Shears and scissors are considered extremely hazardous tools and will be issued on check-in/check-out basis.

(1) Only those scissors which are needed to complete a job will be issued.

(2) Spot inspections will be made of inmates who are using the scissors in designated industrial areas.

B. A daily inventory of all shears and scissors will be made, noting the condition of all items and how they are disposed of, if broken.

(1) All pieces of a broken tool must be turned in and lost or stolen tools will be reported to the shift supervisor, followed by a complete written report.

(2) The supervising employee is responsible for the issue, use and return of all shears and scissors.

(3) Only designated staff approved by the Warden or above will be allowed to have scissors in their work areas.

**5. Grinders:**

**A. The use of grinding wheels is necessary in the operation of the maintenance division in an institution. SUCH EQUIPMENT CAN BE USED TO MAKE WEAPONS AND KEYS, SO STRICT SUPERVISION OF GRINDERS WILL BE MAINTAINED AT ALL TIMES.**

**B. Inmates will be allowed to use the equipment when authorized and under direct supervision of an employee.**

**C. When not in use, grinders will be kept locked, with the electrical power off. Portable grinders will be similarly restricted.**

**6. Hacksaws, reciprocating saws, Jig Saws, Band Saws, Saw Blades and Files**

**A. When hacksaws, reciprocating saws, jig saws, saw blades or files arrive at the institution, the Tool Control Coordinator will be notified to ensure proper handling and storage.**

**B. Hacksaws, reciprocating saws and jig saw blades and files will be in a locked steel cabinet/cage.**

**C. Employees checking out these items are to return them before going off duty.**

**D. All parts or broken tools are to be turned in by the employee that checked out the tool along with a tool Turn-in Receipt.**

**E. Missing blades or files will be reported immediately to the on duty shift supervisor, followed by a written report.**

**F. The report will explain the circumstances under which the blade or file was lost, efforts made to retrieve the missing item and a recommendation to prevent any future loss.**

**G. Security measures must start immediately if a loss is reported.**

**H. All hacksaws, reciprocating saws and jig saw blades and files will be etched with identifying marks on each side.**

**I. Inmate use will be strictly supervised.**

**J. The supervisor must maintain an inventory and procedure for handling all tools.**

**K. Band saw blades will be maintained on the band saw.**

**L. Replacement blades will be kept in a steel cabinet/cage.**

M. Replacement blades will be kept to a minimum.

**7. Gunpowder Actuated Tools**

A. Gunpowder actuated tools, such as ramset guns and loads, will be stored in the institution armory along with weapons.

B. Such tools and loads will be issued only to the Maintenance supervisor after receiving the approval of the Warden or facility manager.

C. Custody staff will escort the user and be present during its use.

D. Under no circumstance will inmates be allowed to use this tool.

E. Inventory of loads will be maintained.

F. The inventory will be checked and adjusted whenever an inventory issue is made.

G. The person drawing the tool will verify the number of loads he/she is receiving, and will save the empty cartridge cases as they are used.

H. When the job is completed, verification of the exact numbers of live and expended loads will be made.

I. If there is any discrepancy, the on duty shift supervisor or facility manager will be immediately informed so that a search can be started for the missing loads.

**8. Pneumatic/Electric Nail Guns**

A. Nail guns require the Warden/Facility Manager's approval.

B. Only nail guns that require the compression tip to be compressed prior to pulling the trigger will be allowed.

C. Nail guns will only be issued to inmates after having received documented training in the proper use of the nail gun.

D. This training will also include safety procedures.

E. Nail guns that do not require the compression tip to be compressed to fire will not be allowed.

F. Institution/facility Operational Procedures are required to detail the use of pneumatic/electric nail guns with specifics unique to the needs of their institution/facility.

**9. Acetylene Cutting Torches**

- A. All cutting tips shall be stored in a steel cabinet/cage and accounted for on a daily log indicating the name of employee(s) using the tips.
- B. The log shall indicate date, time of issue and return, and shall be signed by the issuing employee, as well as the employee to whom the tips have been issued.
- C. Tips will be included in the monthly audit of tools as well as in the daily tool inspection.
- D. Employees checking out these items are to return them before going off duty.

**10. Shop Equipment**

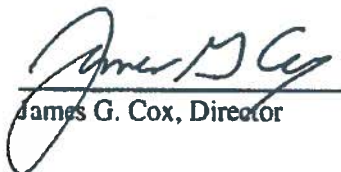
- A. Lathes, presses, sheet metal cutters and any type of shop equipment will only be used by inmates under direct observation of an employee.
- B. Inmates must be trained in the safe and proper use of shop equipment.
  - (1) Documentation of the training will be maintained by the supervisor.
- C. When not in use, such machines will have their power supply off by locked switches or master switch.
- D. To ensure the safety of inmates and employees, the working parts of shop equipment will be checked daily.

**APPLICABILITY**

- 1. This AR requires an Operational Procedure at all institutions/facilities.
- 2. This AR requires an audit.

**ATTACHMENTS**

Attachment A - DOC 1632 – Equipment, Tools or Material Transfer  
Attachment B - DOC 1698 – Tool Add-on Form  
Attachment C - DOC 1700 – Tool Turn-in Receipt  
Attachment D - DOC 1701 – Lost Tool Report  
Attachment E - DOC 1699 – Weekly Tool Report

  
James G. Cox, Director

5/30/12  
Date

EQUIPMENT, TOOLS OR MATERIAL TRANSFER

DATE: \_\_\_\_\_

Shipped this date from: \_\_\_\_\_,

For delivery to: \_\_\_\_\_,

The following item(s):

QTY	DESCRIPTION
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Transfer Requested by: \_\_\_\_\_

Transfer Approved by: \_\_\_\_\_

\_\_\_\_\_  
(Picked up by) DATE: \_\_\_\_\_

\_\_\_\_\_  
(Delivered by) DATE: \_\_\_\_\_

\_\_\_\_\_  
(Received by) DATE: \_\_\_\_\_

CC: Sending Location / Originator  
Receiving Location  
Carrier

**TOOL ADD-ON FORM**

To: \_\_\_\_\_  
(Area supervisor)

From: Tool Control Coordinator

Date: \_\_\_\_\_

The below listed tool(s) have been added to your tool inventory maintained by the Tool Control Coordinator and Associate Warden. It is your responsibility to add this tool(s) to your daily, weekly and master inventory. This tool(s) has been etched and color coded.

Name and description of tool(s) (to include tool numbers):

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_
6. \_\_\_\_\_
7. \_\_\_\_\_
8. \_\_\_\_\_
9. \_\_\_\_\_
10. \_\_\_\_\_

\_\_\_\_\_  
Tool Control Coordinator

\_\_\_\_\_  
Date

Cc: File

DOC 1698 (rev 9/09)



### TOOL TURN-IN RECEIPT

To: Tool Control Coordinator

From:  
(Area supervisor)

Date:

The below listed tool(s) are being turned-in for disposal and/or removal from area inventory.

Name and description (to include tool number):

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_
6. \_\_\_\_\_
7. \_\_\_\_\_
8. \_\_\_\_\_
9. \_\_\_\_\_
10. \_\_\_\_\_

\_\_\_\_\_  
Work area supervisor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Received by (Tool Control Coordinator)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Disposal date

\_\_\_\_\_  
Tool Control Signature

cc: File

DOC 1700 (rev 9/09)

### LOST TOOL REPORT

To: Associate Warden

Via: Tool Control Coordinator

From: \_\_\_\_\_  
(Area supervisor)

Date:

On \_\_\_\_\_ the below listed tool(s) was discovered missing/stolen from the  
(Date & time)  
\_\_\_\_\_  
(Work area)

This tool was last checked out to \_\_\_\_\_ at  
(Name) (Inmate's back number)  
\_\_\_\_\_  
(Time)

Description of tool (to include tool number):

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_

Circumstances surrounding the loss/stolen tool: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Name and time shift supervisor notified of missing tool(s): \_\_\_\_\_  
\_\_\_\_\_

Cc: Shift Supervisor  
Tool Control Coordinator  
Associate Warden  
File

DOC 1701 (rev 9/09)

**WEEKLY TOOL REPORT**

**To: Tool Control Coordinator**

**Via: Associate Warden**

**From: \_\_\_\_\_**  
**(Area Supervisor)**

**Date: \_\_\_\_\_**

**Department: \_\_\_\_\_**

**I have verified the presence of all tools assigned to my area/shop and that these tools are properly stored in the approved/prescribed manner as of the end of my workday on:**

**\_\_\_\_\_**

**Tool storage areas identified for warehousing of tool stocks are excluded from the daily accountability except when there is evidence of tampering.**

**NOTE: Reference Lost Tool Report**

**When ANY TOOL is missing, the Associate Warden, Tool Control Coordinator and Shift Supervisor shall be notified immediately by telephone.**

**A written report covering the details of the loss of tools will be submitted prior to the employee departing the institution. Forward the report to the Associate Warden with copies to the Tool Control Coordinator and Shift Supervisor. (See Lost Tool Report Form).**

# APPENDIX “C”

# APPENDIX “C”



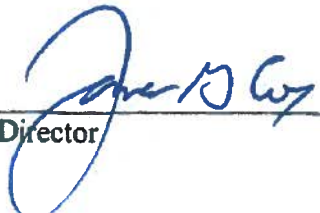
## Nevada Department Of Corrections

### Administrative Regulation Control Sheet

AR Number:	AR 406
AR Title:	Use of Chemical Agents

### AR Revision History

Revision Details	Effective Date
This AR was reviewed by the Subject Matter Expert and it was determined that no changes are required as of this date.	04/28/14
No Additional revisions beyond this line.	---

  
 Director

5/6/14  
 Date

**NEVADA DEPARTMENT OF CORRECTIONS  
ADMINISTRATIVE REGULATION  
406**

**USE OF CHEMICAL AGENTS**

**Supersedes:** AR 406 (Temporary, 06/23/11)  
**Effective Date:** 01/05/12

**AUTHORITY**

NRS 209.131

**RESPONSIBILITY**

The Warden/Facility Manager and appropriate Division Administrators shall establish and maintain a procedure for the use of chemical agents on institutional grounds within the parameters set forth in Operational Procedures.

**406.01 USE OF CHEMICAL AGENTS**

1. Chemical agents should be used only in emergency situations. The proper use of chemical agents depends upon:

- A. The exercise of good judgment.
- B. A verbal warning of the intended action which precedes the use.
- C. The Warden, Associate Warden, Deputy Director, or Director authorizing its use.
- D. The Shift Supervisor may authorize use of chemical agents in emergencies when time does not permit obtaining prior approval.
- E. If part of a planned use of force, the incident will be videotaped.

2. The Warden shall establish and maintain an operational procedure for the use of chemical agents on institutional grounds within the following parameters:

- A. Chemical agents are to be used only when less serious methods of regaining control have not been successful or when such methods have been determined to be ineffective in resolving an emergency situation.
- B. Chemical agents shall never be used for the punishment of inmates.

C. Only properly trained and certified personnel may apply chemical agents.

(1) All officers working lockdown units will be properly trained in the use of chemical agents.

(2) Training shall be conducted yearly.

D. Using chemical agents in place of other methods of control is acceptable if the chemical agent is less likely to cause injury to the inmate(s) involved.

E. If possible, before chemical agents may be used, proper precautions must be taken in advance to minimize injury to inmates, especially those who are not involved in the immediate situation.

***F. Each institution will maintain an up-to-date list of staff authorized and that are trained to deploy chemical agents. This list will be included in the Emergency Response Manuals available to Shift Supervisors, Incident Commanders, Associate Wardens and Wardens.***

G. A current inventory shall be maintained of all chemical agents on hand.

H. A NOTIS entry is mandatory any time chemical agents are used. All appropriate documentation will be collected.

#### **406.02 APPROVED CHEMICAL AGENTS**

1. Approved chemical agents authorized to be used.

A. C/S (Orthochlorbenzalmalononitrile)

B. O/C (Oleoresin capsicum)

C. Pepper/Mace

D. Smoke

E. And any other chemicals as approved by the Director.

2. At no time will chemical agents be stored that are not on the approved list.

3. All outdated/obsolete chemical agents will be disposed of in an appropriate manner.

A. Documentation will be maintained on date, time, type, location, and method of disposal.

#### **406.03 DECONTAMINATION**

1. Following the use of chemical agents and the containment of the existing incident, the following actions will be taken:

A. Inmates or staff exposed to chemical agents will receive an immediate medical examination, which may include flushing of eyes, use of oxygen, and a check of vital signs and respiratory problems.

B. All inmates/staff exposed to chemical agents will receive a shower, unclothed and a change of clothes. Staff will be provided *a change of clothes* if needed.

2. If necessary, all contaminated or affected areas will be cleaned with soap and water solution. Inmate property, bedding and cell supplies are to be removed and cleaned prior to reissue.

#### **APPLICABILITY**

1. This regulation applies to all employees of the Department.
2. This Administrative Regulation requires an Operational Procedure.
2. This Administrative Regulation requires an audit.

#### **REFERENCES**

ACA Standards, 4-4199 through 4-4203

  
\_\_\_\_\_  
James G. Cox, Director

  
\_\_\_\_\_  
Date



**NEVADA DEPARTMENT OF CORRECTIONS  
ADMINISTRATIVE REGULATION  
407**

**USE OF HANDCUFFS AND RESTRAINTS**

**Supersedes:** AR 407 (10/15/13); and AR 407 (Temporary, 02/18/14)  
**Effective Date:** 03/18/14

**AUTHORITY**

NRS 209.131; NRS 209.376

**RESPONSIBILITY**

1. The respective Warden/Division Head is responsible for the overall operation of this regulation. Direct supervision of this regulation is the responsibility of the Shift Supervisor (Institution/facilities) or the Transportation Lieutenant/Sergeant (Central Transportation).
2. The Warden at each institution will:
  - A. Develop an Operational Procedure (OP) which lists the restraints authorized at that institution.
  - B. Ensure that the OP lists under what conditions each restraint can be applied.
  - C. Ensure that the OP identifies the authorization needed to use a particular restraint.
  - D. Ensure Custody Staff are trained to use restraints available at that institution.
  - E. Authorize Custody Staff to use selected restraints under the conditions listed in the OP.
3. All Custody personnel are responsible to use restraints only when authorized to do so and only when they have been trained on that particular type of restraint.

#### **407.01 RESTRAINT DETERMINATION**

1. All restraints will be used humanely, and restraining equipment will never be used as punishment or in any way that causes undue physical pain or restricts the blood circulation or breathing of an inmate.

2. The degree and duration of the use of a restraint device should be limited to the minimum necessary to control the situation or the offender and should never be used as punishment on an offender. The criteria for determining the degree of restraint will include the following:

A. Custody classification. Offenders will be restrained according to their classification unless they are being transported with a higher classification inmate, then all offenders will be restrained according to the highest level of custody designation in the transporting vehicle. For example: If a Minimum security inmate is being transported along with a Maximum security inmate, then both of them will be restrained in full restraints (leg irons, belly chains, and handcuffs).

B. Classification - review Pre-Sentence Investigation and Judgment of Conviction - regarding other co-defendants, witnesses and victims.

C. Violence potential as determined by criminal history and disciplinary record in regards to imminent threat of bodily harm to staff or other persons;

D. Escape potential or past or present threat of escape;

E. Nature and purpose of movement;

F. Assessment of the circumstances happening at the time;

G. The existence of potential threats by outside forces.

#### **407.02 AUTHORIZED RESTRAINT EQUIPMENT**

1. Only that equipment authorized by the Department shall be used on inmates during any transportation or movement. Application of mechanical restraint equipment shall conform to approved methods.

2. Authorized restraint equipment includes:

A. Handcuffs and Handcuffs with Waist Chain. Handcuffs and Handcuffs with Waist Chain are the standard items of restraint and will be the only restraint used unless specific authorization has been provided for additional restraint, an emergency exists or custody designations specify otherwise. Exceptions will be approved by the Warden or designee.

**B. Leg Restraints.** Leg restraints are to be used on inmates requiring maximum restraint or in instances to control acts of violence or escape. Leg restraints will be placed on the inmate with him/her kneeling and facing away from the Officer. In the case of an inmate with large legs that regular leg restraints will not work on, the Associate Warden or designee will approve the use of restraints designed for this type of application.

**C. Control Chain.** Control chains shall be used while escorting Maximum security or High Risk Potential inmates. This device is attached to the back of the waist chain. It should never be used to cause undue physical pain or restrict the blood circulation or breathing of an inmate.

**D. Handcuff Cover.** Each Institution will have hard plastic handcuff covers (black boxes) for the transporting of inmates who pose extreme escape risks. This device covers and shields the handcuff key openings.

**E. Plastic Flex Cuffs.** Plastic flex cuffs are authorized during an emergency situation. Caution must be used and recognition that these are only a temporary restraint and not to be inter-changed with use of the handcuff. There are also possibilities of swelling and care must be exercised in application of these devices. Some swelling will be noted the next day after prolonged use of the flex cuff. Flex cuffs must be applied tight enough to secure the wrists but not so tight they cause a constriction in blood flow. Inmates under restraint with flex cuffs must be under direct supervision and the cuffs checked every fifteen (15) minutes to ensure proper application.

#### **407.03 DEGREES OF RESTRAINT**

1. Inmates will be placed in restraint equipment when their behavior or security falls within the Department's policies or guidelines. The degree of restraint shall be determined by established criteria relevant to the safety of the individual inmate and other persons involved. Restraining equipment will never be used for punishment or in any way that causes undue physical pain or restricts the blood circulation or breathing of an inmate.

2. Degree of restraint during movements within the Institution:

**A.** Restraint equipment will be used according to the dictates of the institutional operational procedure and Post Orders. Post Orders will address specific requirements, if necessary.

**B.** The escorting officer as dictated by the institutional operational procedure and Post Orders will carry a set of handcuffs on his person for emergency use. An inmate may be placed in handcuffs at any time by an escorting officer when there is reason to believe there is imminent danger to the inmate or others. However, such action must be reported to the Shift Supervisor and written documentation completed.

**C.** If additional restraints are deemed necessary, the Shift Supervisor may authorize that a control chain, handcuff cover, or leg irons be used. The Shift Supervisor may determine that all

of the devices are necessary.

D. Use of restraints on pregnant offenders is governed by Administrative Regulation 455 and NRS 209.376.

3. Degree of restraint when transporting inmates outside of an Institution/Facility:

A. Maximum and Close Custody Inmates. At no time will an inmate of maximum or close custody status be transported without restraints. The types of restraints to be used are waist restraints and leg irons.

B. Medium Custody Inmates. Inmates of medium custody status are to be transported in waist and leg restraints.

C. Minimum Custody Inmates. Inmates of minimum custody status do not need restraints during transport.

D. Mixed Custody Levels. When transporting inmates with mixed custody levels, all inmates will be restrained according to the custody level of the highest risk inmate being transported.

E. Use of restraints on pregnant offenders is governed by Administrative Regulation 455 and NRS 209.376.

4. The power of decision regarding additional restraints is granted to the transporting officers. The transporting officers must use good judgment in the use of additional restraints in accordance with NRS 209.376. All restraints will be used humanely and restraining equipment will never be used as punishment or in any way that causes undue physical pain or restricts the blood circulation or breathing of an inmate.

#### **407.04 MEDICAL**

1. Legitimate medical conditions which do not permit the full utilization of routine restraint apparatuses will be evaluated on a case-by-case basis. To the extent possible, the arrangement of restraints will be modified to accommodate the medical condition. In any event, public safety should remain the overriding concern.

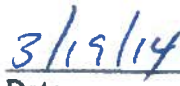
#### **APPLICABILITY**

1. This AR requires an Operational Procedure for each institution and facility.
2. This regulation requires an audit.

**REFERENCES**

ACA Standard, 4th Edition, 4-4405

  
\_\_\_\_\_  
Director

  
\_\_\_\_\_  
Date



## Nevada Department Of Corrections

### Administrative Regulation Control Sheet

AR Number:	410
AR Title:	Key Control

### AR Revision History

Revision Details	Effective Date
This AR was reviewed by the Subject Matter Expert and it was determined that no changes are required as of this date.	01/26/15
No Additional revisions beyond this line.	---

  
 Director

  
 Date

**NEVADA DEPARTMENT OF CORRECTIONS  
ADMINISTRATIVE REGULATION  
410**

**KEY CONTROL**

**Supersedes:** AR 410 (08/14/09)  
**Effective Date:** 04/08/11

**AUTHORITY:** NRS 209.131

**RESPONSIBILITY**

1. Wardens/Facility Managers will ensure that an operational procedure is established to control the use, distribution, storage and inventory of keys to minimize the threat to facility security and misuse.
2. Wardens/Facility Managers are responsible for the implementation of this regulation.
  - A. Institutional Wardens may designate an Associate Warden to be responsible for the key control function.
3. All staff are responsible to have knowledge of and to comply with this regulation.

**410.01 PROCEDURES**

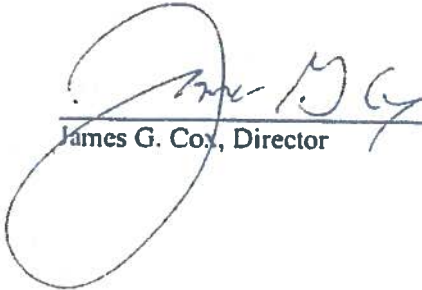
1. The Department of Corrections will develop and maintain a system of key control which will indicate the location of every key and lock at any hour at each institution/facility.
2. The Department will establish a confidential manual outlining specific key control procedures.
3. Staff will be allowed to bring personal keys into institution/facilities.

**APPLICABILITY**

1. This regulation requires an Operational Procedure for all institutions/facilities.
2. The regulation requires annual audit by Department Administrators.

**REFERENCES**

ACA Standards: 4<sup>th</sup> Edition, 4-4195

  
\_\_\_\_\_  
James G. Cox, Director

3/14/11  
Date



**NEVADA DEPARTMENT OF CORRECTIONS  
ADMINISTRATIVE REGULATION  
412**

**ARMORY WEAPONS AND CONTROL**

**Supersedes:** AR 412 (04/08/11); and AR 412 (Temporary, 08/11/14)  
**Effective Date:** 09/16/14

**AUTHORITY**

NRS 209.131

**RESPONSIBILITY**

The Designated Associate Warden is responsible for the availability, control and use of all security equipment.

The Armory Officer is responsible for the day-to-day operation of the Armory.

**412.01 ARMORY PROCEDURES**

1. Only employees qualified to carry firearms shall be assigned to positions that are not accessible to inmates, i.e., towers, gun walks, mobile patrols, etc., except in emergencies.
2. An Armory Officer will be designated by the Warden to maintain Armory Operations.
3. When weapons or ammunition are delivered to the armory, the armory officer will receive and sign for the number of boxes or packages.
  - A. Packages or boxes will remain unopened.
  - B. The armory officer will notify the Warden and designated Associate Warden of the arrival.
  - C. The Warden/designee will designate representatives to jointly receive and cause the weapons and ammunition to be properly inventoried.
  - D. When weapons and/or ammunition are delivered to, or unloaded at the supply warehouse, they will immediately be placed in a secured area and a call will be placed to the designated Associate Warden who will immediately send a qualified post certified officer to pick up the property and lock it in the armory.

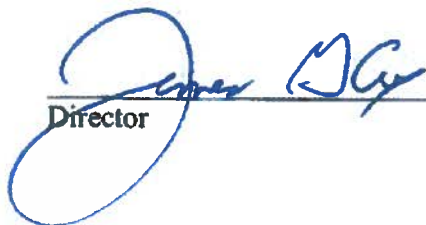
4. A monthly inventory will be conducted at all institutional Armory's and Post where weapons and ammunition is stored or maintained. The inventory will be sent to and reviewed by the Warden of the institution and copies will be retained on file.
5. The Warden will immediately report to the appropriate Deputy Director any weapons reported missing, broken, damaged, lost or stolen. Follow-up written documentation will also be sent to the Director via the appropriate Deputy Director as well as the Office of the Inspector General using the NOTIS incident function.
6. A classified manual has been developed to provide details of the operation of the armory.
7. All institutions will develop written procedures that are in compliance with the regulation for the handling, storage, and issuing of weapons.

#### **APPLICABILITY**

1. This Administrative Regulation is applicable to all employees of the Department.
2. This Administrative Regulation requires an audit.

#### **REFERENCES**

ACA Standards, 4<sup>th</sup> Edition, 4-4200, 4-4201

  
\_\_\_\_\_  
Director

  
\_\_\_\_\_  
Date

# APPENDIX “D”

# APPENDIX “D”

**NEVADA DEPARTMENT OF CORRECTIONS  
ADMINISTRATIVE REGULATION  
320**

**SALARY ADMINISTRATION**

**Supersedes:** AR 320 (03/19/13); and AR 320 (Temporary, 05/06/14)  
**Effective Date:** 09/16/14

**AUTHORITY**

NRS 236.015, 284.065, 284.155, 284.175, 284.180  
NAC 284.0663, 284.067, 284.071, 284.072, 284.0742, 284.100, 284.194, 284.210, 284.214,  
284.218, 284.255, 284.256, 284.257, 284.292, 284.5255, 284.5895, 284.650

**RESPONSIBILITY**

All employees are responsible to have knowledge of and comply with this regulation.

**320.01 OVERTIME**

1. Overtime must be authorized by the Director, appropriate Deputy Director, Division Head, Warden, or their designees.
2. An employee who works overtime, must document this time on an Authorization for Leave and Overtime Request form (DOC-1000).
3. Non-exempt employees, as specified in the State Classification and Compensation Plan, shall earn overtime at the rate of time and one-half.
  - A. Exempt classified and unclassified employees are not entitled to compensation for overtime.
4. As a condition of employment, employees may be required to work overtime as required by a supervisor and as stated in AR 326, Posting of Shifts/Overtime.
5. Overtime is considered working in excess of eight hours in one calendar day for employees who are standard or non-standard.
  - A. A standard workweek is a work schedule of five shifts with the same number of hours each day and a maximum of 40 hours per week. The work schedule is Monday through Friday.

B. A non-standard workweek is a work schedule of five shifts with the same number of hours each day and a maximum of 40 hours per week. The work schedule is other than Monday through Friday.

6. Employees who have elected to work a variable work schedule (innovative) do not accrue overtime until either, 1) they have worked the 41<sup>st</sup> hour, if they have signed a 40-hour variable agreement, or 2) they have worked the 81<sup>st</sup> hour, if they have signed the 80-hour variable agreement.

A. An innovative work schedule is a work schedule that differs from a standard or non-standard work week.

B. All employees shall sign a Variable Work Schedule Request form (DOC-1043). Employees electing such a schedule must do so prior to working a variable schedule.

C. Employees who do not elect a variable work schedule shall write "declined" through the variable section they are declining on the DOC-1043.

D. Employees noting "declined" on the DOC-1043, may not be scheduled to work a variable schedule (i.e., 12-hour or 10-hour shifts).

E. The variable work schedule agreement will remain in effect for Custody staff who bid for shifts that require a variable schedule (i.e., 12- hour shifts) until the next shift bidding cycle. Any subsequent change must be approved mutually by the Warden and the employee.

F. Each time an employee's schedule changes, a new Variable Work Schedule shall be completed identifying the employee's shift and regular days off.

7. Paid status is considered as time worked in calculating overtime.

8. To qualify for Post and Shift bidding an employee must be willing to sign a variable agreement.

### **320.02 SHIFT DIFFERENTIAL**

1. Employees who work 8 hours or more, of which four consecutive hours must fall within the hours from 6 p.m. to 7 a.m. Employees are entitled to the differential pay for the amount of hours they work during that time period.

2. Shift differential rate is an adjustment of pay equivalent to 5% of the employee's normal rate of pay when working a qualifying shift.

3. The shift differential rate will apply during the periods of time when an employee is on sick leave, annual leave, holidays and other leave with pay as long as the employee is still assigned to that shift when the leave is taken.

4. Employees that are assigned to attend training classes during a non-qualifying shift do not receive

shift differential while in training.

### **320.03 CALL BACK PAY**

1. Each time a full time classified employee is called back to work on an unscheduled basis by their supervisor, they shall be credited with a minimum of two hours work at the rate of time and one-half.

- A. The work must begin more than one hour after completion of the regularly scheduled shift.
- B. The employee is called back to work without having been notified prior to the completion of their normal working day.
- C. The employee is called back to work on their regularly scheduled day/time off.
- D. The employee is called back on a holiday.

2. Call back pay shall not apply to employees receiving standby premium pay.

3. Employees with a PERS (Public Employees' Retirement System) membership date prior to December 31, 2009 will use the established call back codes:

- A. PCALL-Callback Pay
- B. ACALL-Callback Comp

4. Employees with a PERS (Public Employees' Retirement System) membership date of January 1, 2010 or later will use the following call back codes:

- A. PCALX-Callback Pay/NO Ret
- B. ACALX-Callback Comp/NO Ret

### **320.04 STANDBY STATUS**

1. A non-exempt classified employee shall receive additional pay or compensatory time of 5% of their normal hourly rate for every hour they are on standby status outside of the parameters of their regular assigned shift.

2. An employee is on standby status when they are:

- A. Directed to remain available for immediate contact during specified hours.
- B. Prepared to work as the need arises, although the need to work might not arise.
- C. Able to report to work within a reasonable time, usually within one-half hour.

D. Allowed to use the time waiting for notification to work for personal pursuits.

3. Any class designated in the NRS as a 24-hour class does not automatically qualify for standby premium pay.

### **320.05 HOLIDAYS**

1. The rules for holiday pay apply only to the legal day of observance. The following days are declared legal holidays:

- A. January 1 (New Year's Day)
- B. Third Monday in January (Martin Luther King, Jr.'s Birthday)
- C. Third Monday in February (Presidents' Day)
- D. Last Monday in May (Memorial Day)
- E. July 4<sup>th</sup> (Independence Day)
- F. First Monday in September (Labor Day)
- G. Last Friday in October (Nevada Day)
- H. November 11 (Veterans' Day)
- I. Fourth Thursday in November (Thanksgiving Day)
- J. Friday following the fourth Thursday in November (Family Day)
- K. December 25 (Christmas Day)

2. When January 1, July 4, November 11 or December 25 falls upon a:

- A. Sunday, the Monday following shall be observed as the legal holiday; and
- B. Saturday, the Friday preceding shall be observed as the legal holiday.

3. Full time employees working a non-standard workweek are entitled to the same number of paid holidays as full time employees working a standard workweek.

4. A full time employee who works 40 hours per week, who does not work on a holiday, and is in paid leave status during any portion of their scheduled shift immediately before the holiday, is entitled to eight hours of holiday pay.

5. A full time employee whose regular work schedule is more than eight hours, but who has the day off because of a holiday, may use annual leave, compensatory time, have their schedule adjusted or, with approval of the appointing authority, be placed on leave of absence without pay to make up the difference of time in excess of the holiday pay.
6. The salary of an excluded classified or excluded unclassified employee must not be reduced solely because a holiday occurs on a scheduled workday.
7. An employee, other than excluded employees, must receive either: 1) cash payment, or 2) compensatory time, at employee's straight-time rate of pay for hours worked in addition to their regular pay if they work on the holiday.
8. An appointing authority may credit an employee for a holiday which occurs on the employee's regular day off by one of the following options:
  - A. Adjust the employee's schedule of work for the week during which the holiday occurs;
  - B. Credit the employee with day-off holiday pay for 8 hours if they are a full time employee and in a paid status during their scheduled shift preceding the holiday.
9. When an employee works their regular day off and that day off is a holiday, they are entitled to day-off holiday pay for 8 hours. The employee is entitled to receive paid overtime, or compensatory time, for the number of hours worked.
10. If an employee has an innovative work agreement on file and the holiday falls on his regular day off and the employee works the holiday, the employee is entitled to receive day-off holiday pay on an hour-for-hour basis not to exceed the number of hours of his established workday. The employee is also entitled to receive paid overtime, or compensatory time for the number of hours worked.

#### **320.06 TIMESHEETS**

1. Except as otherwise provided in subsection 2, an employee shall provide an accurate accounting of the hours worked and leave used during a pay period in the NEATS Timekeeping System, to include the specific times at which their shift starts and ends and regular days off.
2. Exception reporters must account for all exceptions in the pay period. Positive reporters must account for all hours worked in the pay period.
3. Employee exceptions or hours worked for positive reporters shall be reported on timesheets at beginning of shift.
4. The employee shall input and submit the timesheet in the NEATS system at the conclusion of each reporting cycle (pay period), no later than 12 PM, Wednesday, of the non-pay week for each pay period.



5. An exempt, classified or exempt, unclassified employee shall provide an accurate accounting of leave used when they are full-day exceptions.
6. An employee who falsifies their timesheet, or who causes or attempts to cause another employee to falsify a timesheet, will be subject to disciplinary action pursuant to AR 339.
7. Supervisors shall approve employee's NEATS timesheets under their authority, no later than 5 PM, Wednesday, of the non-pay week for each pay period.
8. A supervisor or payroll representative may change an entry on an employee's timesheet in accordance with the policy for the correction of errors on timesheet.
  - A. If the supervisor or payroll representative changes an entry on the employee's timesheet, the employee must be notified of the change and sign a copy of the timesheet. The signed timesheet shall be sent to the department's payroll office in Carson City via the facility's timekeeper.
  - B. If the employee contests the change to an entry on their timesheet, the employee is entitled only to their base pay for the workweek in question, until resolved.
  - C. The contested entry must be resolved as soon as practicable and any adjustment must be made during the next pay period following the resolution of the contested entry.
9. A supervisor who is negligent in reviewing and certifying the accuracy of an employee's timesheet may be subject to disciplinary action.

#### **320.07 PAYCHECKS**

1. Pay dates are on Friday, every other week. Pay dates which fall on a holiday will be paid the working day prior.
2. Payroll checks are not authorized for early distribution without approval by the Human Resources Division Administrator.
  - A. Early distribution may be requested by completing the Early Paycheck Distribution Request (DOC-1003).
3. Early distribution and/or cashing of paychecks without proper authorization may result in disciplinary action.
4. Direct Deposit of employee paychecks is mandatory, unless an exception is granted by the State Controller.

### **320.08 PAYMENT OF ACCUMULATED COMPENSATORY TIME**

1. Payment of accumulated compensatory time will only be allowed with the approval of the Director or Deputy Director.

A. Individual requests for payment of accumulated compensatory time will be submitted in writing and forwarded to the appropriate Warden or Division Head, who will initial and forward to the Department Human Resources Payroll Office.

B. The Department Human Resources Payroll Office shall verify the balance and forward the request to the Deputy Director of Support Services to determine if the Department has sufficient funding available prior to final approval.

C. Payment shall be made depending upon the date of receipt in conjunction with payroll deadlines.

D. Compensatory time should not be accrued in excess of 120 hours.

E. Compensatory time incurred in excess of the 120-hour limit must be paid, unless the employee has written approval by the Director or designee.

2. Employees transferring from one budget account within the Department to another shall have their compensatory time paid off, unless the Deputy Director of Support Services informs the Department Payroll Office that the Department does not have the available funding.

3. Non-exempt employees transferring out of the Department, who have accrued compensatory time, shall have their compensatory time paid off unless the employee provides written approval from the receiving Department agreeing to assume the liability for the compensatory time and the employee concurs.

4. Employees terminating employment shall be paid for accrued compensatory time.

5. Involuntary compensatory time payment for employees may occur at the end of each fiscal year.

6. Employees must have a signed compensatory time election agreement (DOC-1048) on file prior to accumulating compensatory time.

### **320.09 MERIT PAY ADJUSTMENT**

1. An employee whose last performance evaluation was standard or above and who has not attained the top step of their grade, shall receive a merit pay increase of one step on the pay progression date. The only exception to this would be through legislative action.

2. An employee whose last performance evaluation did not meet standard is not eligible for a merit pay increase until their overall performance evaluation is at least standard.

3. A subsequent, special evaluation not filed within 90 days, shall be deemed to be standard and the employee will be entitled to the merit pay increase, effective on the date on which the subsequent performance evaluation was due.

#### **320.10 OVERPAYMENTS**

1. Once an overpayment is discovered the active employee or inactive employee will be sent a Notification of Payroll Overpayment Letter.

2. The active employee or inactive employee will be given 10 working days to return the Acknowledgement of Overpayment/Agreement to Repay form.

3. For an active employee a repayment plan is negotiated and payment is set-up as a payroll deduction. For an inactive employee, repayment must be paid by personal check or money order.

4. If the inactive employee defaults on an agreement to repay an overpayment he will receive a Default on Agreement letter and be given ten working days to remit the amount due. Failure to provide the amount due will result in the employee being turned over to the State Controller's Office for collection.

5. Should employee refuse to acknowledge or repay the overpayment, the State Controller's Office will be notified through Central Payroll and legal action may be taken.

#### **APPLICABILITY**

1. This AR applies to all Department employees.

2. This AR requires an Operational Procedure for each institution, facility, and each Division.

3. This regulation does not require an audit.

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Director

Date 9/17/14