

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

DAVID A. GONZALEZ,
Appellant,

v.

STATE OF NEVADA; et al.,
Respondents.

No.

82762

DOCKETING STATEMENT
CIVIL APPEALS

Electronically Filed
May 05 2021 04:58 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department Fourteen
County Clark Judge Adriana Escobar
District Ct. Case No. A-20-820596-C

2. Attorney filing this docketing statement:

Attorney Nathan E. Lawrence, Esq. Telephone 702-892-3500
Firm Gallian Welker & Beckstrom, L.C.
Address 540 East St. Louis Avenue,
Las Vegas, Nevada 89104

Client(s) David A. Gonzalez

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Anthony J. Walsh, Esq. Telephone 775-684-1213
Firm Aaron D. Ford, Attorney General
Address 100 North Carson Street
Carson City, NV 89701-4717

Client(s) State of Nevada (and all named Defendants / Respondents)

Attorney _____ Telephone _____
Firm _____
Address _____

Client(s) _____

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|-------------------------------------------------------------|-------------------------------------------------------------------------|
| <input type="checkbox"/> Judgment after bench trial | <input checked="" type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input checked="" type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify): _____ |

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

No other proceedings before this Court

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

Other than the underlying Eighth Judicial District Court Case No. A-20-820596-C, dismissed on February 24, 2021 (Notice of Entry of Order filed on March 11, 2021), there are no other proceedings related to this appeal.

8. Nature of the action. Briefly describe the nature of the action and the result below:

Appellant argues that Article 15, Section 16 of the Constitution of the State of Nevada provides a **minimum** wage for all non-excluded employees in the State of Nevada and that the broad purposes and text of Article 15, Section 16, as well as other considerations implicated by relevant caselaw, include and apply to inmates working out of Nevada Department of Corrections conservation camps, such that Appellant is entitled to receive the minimum wage and to an award of economic damages.

Respondents argue, inter alia, that the “economic realities” caselaw doctrine is the controlling definition for entitled employees and that, under the **economic realities** test, inmates are not employees and are not, therefore, entitled to receipt of minimum wage. On February 24, 2021, pursuant to a Motion to Dismiss filed by Respondents’ counsel, the District Court entered its Order of Dismissal (Notice filed on March 11, 2021).

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

Whether or not Article 15, Section 16 of the Constitution of the State of Nevada provides a minimum wage for all non-excluded employees in the State of Nevada, to include inmates broadly and more specifically, as is the case with the **Appellant**, those working out of Nevada Department of Corrections conservation camps for the Nevada Division of Forestry.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

Appellant is unaware of any such same or similar proceedings before the Court.

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☒ An issue arising under the United States and/or Nevada Constitutions

☒ A substantial issue of first impression

☒ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain:

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes ~~that~~ the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

Appellant believes that the Supreme Court should retain jurisdiction in this matter pursuant to NRAP 17(a)(11) for a matter of first impression involving the Nevada Constitution. Alternatively and/or additionally, the Supreme Court should retain jurisdiction pursuant to NRAP 17(a)(12) for an issue of statewide public importance.

14. Trial. If this action proceeded to trial, how many days did the trial last? 0 _____

Was it a bench or jury trial? _____ Did not proceed to trial _____

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

There is no intention to file any such motion.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from Feb 24, 2021

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served Mar 11, 2021

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed Apr 8, 2021

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a)(1)

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

☒ NRAP 3A(b)(1)

☐ NRS 38.205

☐ NRAP 3A(b)(2)

☐ NRS 233B.150

☐ NRAP 3A(b)(3)

☐ NRS 703.376

☐ Other (specify) _____

(b) Explain how each authority provides a basis for appeal from the judgment or order:

The District Court entered a final judgment (Order Granting Motion to Dismiss the case) on Mr. Gonzalez' Complaint.

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Plaintiff / Appellant: David A. Gonzalez

Defendants / Respondents: State of Nevada, Nevada Department of
Conservation and Natural Resources,
Nevada Division of Forestry, Stephen F. Sisolak,
Bradley Crowell, Kacey KC (latter three in their
official capacity)

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, e.g., formally dismissed, not served, or other:

All parties in the District Court action are parties to this appeal.

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Appellant presented four (4) causes of action, namely, Substantive and Procedural Due Process Violation, Equal Protection Violation, Declaratory Relief, and Injunctive Relief, seeking economic damages as well as declaratory judgment and injunctive relief. There are no counter-, cross-, or third-party claims. All claims were disposed of by the Order dismissing the case.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☒ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☒ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

N/A

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

David A. Gonzalez
Name of appellant

May 5, 2021
Date

Clark County, Nevada
State and county where signed

Nathan E. Lawrence, Esq.
Name of counsel of record


Signature of counsel of record

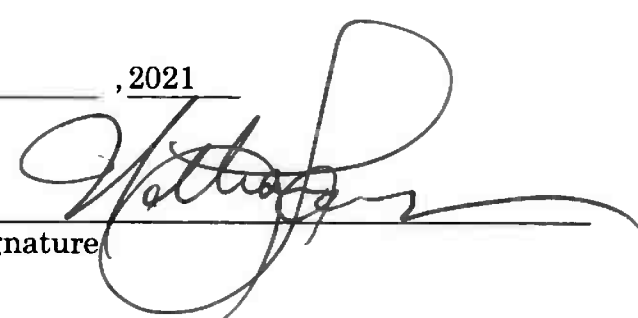
CERTIFICATE OF SERVICE

I certify that on the 5th day of May, 2021, I served a copy of this completed docketing statement upon all counsel of record:

- ☐ By personally serving it upon him/her; or
- ☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

AARON D. FORD, Attorney General
Anthony Walsh, SBN 14128
Deputy Attorney General
100 North Carson Street
Carson City, NV 89701-4717

Dated this 5th day of May, 2021


Signature



1 **COMP**

2 **GALLIAN WELKER & BECKSTROM, L.C.**

3 **Nathan E. Lawrence, SBN 15060**

4 **Travis N. Barrick, SBN 9257**

5 **540 East St. Louis Avenue**

6 **Las Vegas, Nevada 89104**

7 **Telephone: (702) 892-3500**

8 **Facsimile: (702) 386-1946**

9 **nlawrence@vegascase.com**

10 **Attorneys for Plaintiff David A. Gonzalez**

CASE NO: A-20-820596-C
Department 14

DISTRICT COURT
CLARK COUNTY, NEVADA

11 **DAVID A. GONZALEZ, an individual,**

12 **Plaintiff,**

13 **v.**

14
15 **STATE OF NEVADA; NEVADA**
16 **DEPARTMENT OF CONSERVATION**
17 **AND NATURAL RESOURCES; NEVADA**
18 **DIVISION OF FORESTRY; STEPHEN F.**
19 **SISOLAK, in his official capacity as**
20 **Governor of Nevada; BRADLEY**
21 **CROWELL, in his official capacity as**
22 **Director of Nevada Department of**
23 **Conservation and Natural Resources; and**
24 **KACEY KC, in her official capacity as**
25 **Nevada State Forester Firewarden;**
26 **collectively,**

27 **Defendants**

Case No.:

Dept. No.:

COMPLAINT

EXEMPT FROM ARBITRATION
pursuant to NAR 3(A) and NAR 5:

- Action seeking judicial review of administrative decisions;
- Action for declaratory relief;
- Action presenting significant issues of public policy.

26 **Plaintiff DAVID A. GONZALEZ, by and through his attorneys of the law firm of**
27 **GALLIAN WELKER & BECKSTROM, L.C, and in support of his claims against the Defendants,**
28 **hereby avers and alleges as follows:**

JURISDICTION AND VENUE

1. At all times relevant hereto, Plaintiff **DAVID A. GONZALEZ** ("Mr. Gonzalez" or "Plaintiff") is and was an individual domiciled in Clark County, Nevada; specifically, from December 9, 2018, to present, Mr. Gonzalez is and was an inmate in the Nevada Department of Corrections ("NDOC"), housed at Three Lakes Valley Conservation Camp ("TLVCC"), P.O. Box 208, Indian Springs, Nevada 89070.

2. Defendant **NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES** ("NDCNR") is and was at all times relevant hereto a legal entity and, pursuant to NRS 232.010 to 232.162, inclusive, a duly authorized Department of the State of Nevada.

3. Defendant **NEVADA DIVISION OF FORESTRY** ("NDF") is and was at all times relevant hereto, a legal entity and, pursuant to NRS 232.090, a duly authorized Division of the NDCNR.

4. Defendant **STEPHEN F. SISOLAK** ("Governor Sisolak") is the Governor of the State of Nevada and, pursuant to NRS 232.050(1), is responsible for appointment and oversight of the Director of the NDCNR.

5. Defendant **BRADLEY CROWELL** ("Director Crowell") is the Director of the NDCNR and, pursuant to NRS 232.120(1), is responsible for appointment and oversight of the State Forester Firewarden of the NDF.

6. Defendant **KACEY KC** ("State Forester Firewarden KC") is the State Forester Firewarden of the NDF, and, pursuant to NRS 232.120(2), exercises such powers and performs such duties as are conferred upon her pursuant to NRS 472, 528 and other applicable provisions of the NRS and the Nevada Administrative Code ("NAC").

7. The acts or omissions of the Defendants giving rise to Plaintiff's injuries and claims occurred in Clark County, Nevada.

8. Jurisdiction over Plaintiff's claims in this Court is proper and is predicated upon Nev. Const. Art. 6, Sec. 6, and Nev. Const. Art. 15, Sec. 16(B).

9. Venue over Plaintiff's claims in this Court is proper and is predicated upon Nev. Rev. Stat. § 13.020.

10. The amount in controversy exceeds \$15,000.00.

GENERAL FACTUAL ALLEGATIONS

11. Plaintiff reasserts and realleges allegations 1 through 10 of this Complaint and incorporates them herein as if set forth in full.

12. From December 18, 2018, to present, Mr. Gonzalez was and is a member of a TLVCC "project crew" and has been employed by the NDF "to perform work related to firefighting... and other work projects" in accordance with NRS 209.457(2)(a). Specifically, Mr. Gonzalez, is employed primarily in the performance of project work for vegetation management and beautification of highways, pursuant, upon information and belief, to contracts for such services between the NDF and Lake Mead National Recreational Area, Nevada Department of Transportation, various water districts, and such other contracts as authorized under NRS 209.457(3)(a).

13. As a project crew member regularly employed to perform such work and having received additional training for the utilization of a chainsaw, Mr. Gonzalez is paid by the NDF at a rate of approximately \$3 per workday when engaged on project work. Prior to the supplemental chainsaw training, Mr. Gonzalez (as are most other inmates) was paid \$2 per workday, which amount was an increase from his initial ninety (90) days of employment at \$1 per workday. As circumstances may otherwise warrant, for emergency incident response assignments (including firefighting), Mr. Gonzalez may be paid \$1 per hour, from the time of dispatch until returned to TLVCC.

14. Although Mr. Gonzalez is an inmate at TLVCC, under the control and custodial authority of the NDOC, Mr. Gonzalez' salary for the work performed, in accord with the language of NRS 209.457, is paid directly by the NDF (listed as "OA - Outside Agency Payroll" on the NDOC account statements to Mr. Gonzalez), subject to deductions by the NDOC, as applicable.¹

¹ See generally NRS 209.231(1). Any money received from the operation of any conservation camp established under this chapter or from the assignment of any crew of a conservation camp to the extent that the money is not used for salaries, overhead or operating expenses of any camp or crew must be placed in the Division of Forestry Account.

1 15. Pursuant to NRS 209.231(3), the "State Forester Firewarden shall determine the amount
2 of wages that must be paid to offenders who participate in conservation camps as provided in
3 NRS 472.040."

4 16. Again, pursuant to NRS 472.040(1)(h), the "State Forester Firewarden shall... [d]etermine
5 the amount of wages that must be paid to offenders who participate in conservation camps and
6 who perform work relating to fire fighting and other work projects of conservation camps."

7 17. Pursuant to NRS 472.040(3), the "State Forester Firewarden, in carrying out the
8 [determination of the amount of wages that must be paid to offenders who participate in
9 conservation camps], is subject to administrative supervision by the Director of the State
10 Department of Conservation and Natural Resources," said Director, under NRS 232.050(1), being
11 "responsible to the Governor and... in the unclassified service of the State [of Nevada]."

12 18. Article 15, Section 16 of the Constitution of the State of Nevada provides that "[e]ach
13 employer shall pay a wage to each employee of not less than the hourly rates set forth in this
14 section," such hourly rates being no less than \$8.00 per hour, effective as of July 1, 2020.² As
15 used in Art. 15, Sec. 16(C), an "employee" means "any person who is employed by an employer...
16 but does not include an employee who is under eighteen (18) years of age, employed by a
17 nonprofit organization for after school or summer employment or as a trainee for a period not
18 longer than ninety (90) days." For purposes of this Section, these are the only enumerated
19 exclusions from the definition of "employee," with "inmate," "offender," or any synonymous
20 variant notably not being excluded. An "employer" under this Section is "any individual,
21 proprietorship, partnership, joint venture, corporation, limited liability company, trust,
22 association, or other entity that may employ individuals or enter into contracts of employment."

23 19. As referenced and described above, NDF is an entity which employs and pays wages to
24 inmates for work relating to fire fighting and other conservation camp work projects.
25 Additionally, the NDF enters into contracts of employment with state agencies and other third
26

27 ² See State of Nevada Minimum Wage 2020 Annual Bulletin, posted April 1, 2020, by the State of Nevada
28 Department of Business and Industry, Office of the Labor Commissioner. The "Lower Tier" minimum wage,
applicable to employers providing or making available qualifying health benefits, is \$8.00; the "Higher Tier" is
\$9.00 per hour. Prior to July 1, 2020, the minimally allowable "Lower Tier" wage is \$7.25 per hour.

1 parties for utilization of the labor of such inmates in their employ, by dint of which contracts NDF
2 receives remuneration and profit.

3 20. For purposes of and in accordance with Art. 15., Sec. 16 of the Constitution of the State
4 of Nevada, the NDF is an employer, and Mr. Gonzalez is an NDF employee, not subject to any
5 definitional exclusion. Accordingly, Mr. Gonzalez is legally and constitutionally entitled to
6 receive a wage not less than the applicable hourly wage, to wit, \$8.00 per hour.

7 21. Mr. Gonzalez is presently paid, generally, \$3 per workday, which is significantly less than
8 the applicable minimum wage, and, therefore, such a rate of pay to him and similarly situated
9 inmates constitutes a violation of Art. 15, Sec. 16 of the Constitution of the State of Nevada.

10 22. In an effort to remedy the injury to himself, on April 29, 2020, Mr. Gonzalez submitted
11 an informal grievance to the NDOC which was denied and returned to Mr. Gonzalez on June 10,
12 2020. The basis for the denial was that Mr. Gonzalez' informal grievance was improper and non-
13 grievable with the NDOC for lack of standing, since the "NDF is not an NDOC entity." Mr.
14 Gonzalez was advised by NDOC personnel that he "must address [his] issue directly with NDF."

15 23. On June 29, 2020, pursuant to NAC 527.550(1) or, in the alternative, NAC 527.560(1),
16 Mr. Gonzalez submitted a verified petition to the NDF and State Forester Firewarden KC
17 "requesting amendment of the regulation whereby and under which the State Forester Firewarden
18 has determined a wage for participants in conservation camps which is not in compliance with
19 Art. 15, Sec. 16 of the Constitution of the State of Nevada, or, in the alternative, a declaratory
20 order and/or advisory opinion from the State Forester Firewarden... holding that such regulation
21 is superseded by the Constitutionally mandated minimum wage and, therefore, no longer
22 applicable to Mr. Gonzalez."

23 24. On August 6, 2020, State Forester Firewarden KC denied Mr. Gonzalez' petition,
24 concluding that the "State Forester Firewarden is... free to set any wage for offenders
25 participating in conservation camp programs." This conclusion was predicated on the NDF's
26 interpretation of NRS 209.461(8), which narrowly states that "[t]he provisions of [NRS 209] do
27 not create a right on behalf of the offender to employment or to receive the federal or state
28 minimum wage for any employment and do not establish a cause of action against the State or its

1 officers or employees for employment of an offender or for payment of the federal or state
2 minimum wage to an offender," as well as on a federal district court ruling which held that
3 "neither Nevada statutory law, nor prison administrative regulations create a protected liberty or
4 property interest [in prison employment]." *Collins v. Palczewski*, 841 F. Supp. 333, 339 (D. Nev.
5 1993).

6 25. More significantly, State Forester Firewarden KC confirmed that the "State Forester
7 Firewarden has no authority to declare any provisions ... unconstitutional or amend any such
8 provisions that deny offenders the right to minimum wage."

9 26. As fully detailed above, the relevant chain of authority leads from NDF (State Forester
10 Firewarden KC) to NDCNR (Director Crowell) to the State of Nevada (Governor Sisolak), each
11 entity and individual having given their imprimatur to the denial of Mr. Gonzalez' constitutionally
12 guaranteed right and wage.

13 27. Predicated on the above denial and the bases therefor, Mr. Gonzalez maintains that his
14 rights and remedies pursuant to Article 15, Section 16 of the Constitution of the State of Nevada
15 have neither been addressed nor resolved, and, accordingly, brings the instant complaint and
16 asserts causes of action, as follows.

17 FIRST CAUSE OF ACTION

18 *Substantive and Procedural Due Process Violation*

19 28. Plaintiff reasserts and realleges allegations 1 through 27 of this Complaint and
20 incorporates them herein as if set forth in full.

21 29. Article 1, Section 8, Subsection 2 of the Constitution of the State of Nevada provides that
22 "[n]o person shall be deprived of life, liberty, or property, without due process of law."

23 30. Article 15, Section 16 of the Constitution of the State of Nevada provides that every
24 covered employee in the State is entitled to receipt of a minimum hourly wage, pursuant to which
25 the right to receive such minimum wage and the monetary value thereof are properly established
26 as individual property interests.

27 31. Pursuant to the applicable and relevant definitions of Article 15, Section 16 of the
28 Constitution of the State of Nevada, Mr. Gonzalez is a covered, non-excluded employee of the

1 NDF who possesses the personal right to compensation for his employment at the applicable
2 minimum wage.

3 32. The actions of the Defendants, individually and concertedly, have deprived and continue
4 to deprive Mr. Gonzalez of both his right to receive the minimum wage and the actual monetary
5 value thereof.

6 33. As illustrated in State Forester Firewarden KC's denial of Mr. Gonzalez' petition, Mr.
7 Gonzalez has no meaningful posture or procedure, absent intervention by this Court, for
8 challenging the deprivation of his property and property right.

9 34. The actions of the Defendants, individually and concertedly, have deprived and continue
10 to deprive Mr. Gonzalez of his constitutionally afforded rights, for which Mr. Gonzalez has
11 suffered and continues to suffer economic injury, namely lost wages and attorneys' fees and costs,
12 incurred and accruing.

13 **SECOND CAUSE OF ACTION**
14 ***Equal Protection Violation***

15 35. Plaintiff reasserts and realleges allegations 1 through 34 of this Complaint and
16 incorporates them herein as if set forth in full.

17 36. Article 15, Section 16 of the Constitution of the State of Nevada provides that every
18 covered employee in the State is entitled to receipt of a minimum hourly wage, the enforcement
19 of which provision is generally effected and enforced equally for all covered employees by and
20 through the authority of the State of Nevada.

21 37. Pursuant to the applicable and relevant definitions of Article 15, Section 16 of the
22 Constitution of the State of Nevada, Mr. Gonzalez is a covered, non-excluded employee of the
23 NDF who is entitled to receive minimum wage.

24 38. As the covered employer or the agents thereof, the Defendants do not confer payment of
25 the minimum wage to Mr. Gonzalez as is guaranteed to all other individuals directly employed
26 by or in the State of Nevada.

27 39. Further, in contrast to the general enforcement of the minimum wage constitutional
28 amendment, as is normally effected by the State of Nevada, the Defendants, each being an agent

1 of the State of Nevada, not only do not enforce the minimum wage requirement with respect to
2 Mr. Gonzalez, they are, individually and concertedly, actually denying such enforcement.

3 40. The actions of the Defendants, individually and concertedly, constitute unequal and
4 disparate treatment of Mr. Gonzalez with respect to both payment of the minimum wage and the
5 enforcement of the constitutional amendment assuring the same, as the result of which, Mr.
6 Gonzalez has suffered and continues to suffer economic injury, namely lost wages and attorneys'
7 fees and costs, incurred and accruing.

8 **THIRD CAUSE OF ACTION**

9 *Declaratory Relief*

10 41. Plaintiff reasserts and realleges allegations 1 through 40 of this Complaint and
11 incorporates them herein as if set forth in full.

12 42. NRS 30.030 provides that "Courts of record ... shall have power to declare rights, status
13 and other legal relations whether or not further relief is or could be claimed."

14 43. NRS 30.040 allows that "any person... whose rights, status or other legal relations are
15 affected by a statute, municipal ordinance, contract or franchise, may have determined any
16 question of construction or validity arising under the instrument, statute, ordinance, contract or
17 franchise and obtain a declaration of rights, status or other legal relations thereunder."

18 44. Mr. Gonzalez' rights here, as previously detailed, are affected by relevant statutes and the
19 Defendants' interpretation and application thereof.

20 45. Accordingly, Mr. Gonzalez is entitled to, and hereby requests, a judgment declaring that
21 Article 15, Section 16 of the Constitution of the State of Nevada is applicable to Mr. Gonzalez
22 and similarly situated inmates, such that he is entitled to receive payment for his employment at
23 the applicable wage.

24 46. Further, Mr. Gonzalez hereby requests, a judgment declaring, to the extent that it is
25 deemed to be controlling and relevant,³ NRS 209.461(8) is unconstitutional in light of Article 15,
26 Section 16 of the Constitution of the State of Nevada.

27
28 ³ Mr. Gonzalez maintains that NRS 209.461(8) is not actually relevant, and its statement that it and the applicable chapter do not create a right or cause of action does not preclude the Constitution of the State of Nevada from doing so, and it is under the Constitution that Mr. Gonzalez' right and cause of action properly arise.

FOURTH CAUSE OF ACTION

Injunctive Relief

47. Plaintiff reasserts and realleges allegations 1 through 46 of this Complaint and incorporates them herein as if set forth in full.

48. As detailed above, it is evident that the actions of the Defendants have caused and continue to cause injury to Mr. Gonzalez.

49. With respect to Article 15, Section 16 of the Constitution of the State of Nevada, the definitions of "employee," "employer," the requirements of each under the Section, and the applicability to the instant circumstance, is sufficiently clear to illustrate that Mr. Gonzalez is likely to succeed at a trial on the merits.

50. Public policy and public interest speak in favor of the relief requested by Mr. Gonzalez insomuch as granting the relief will fulfill the purpose of Article 15, Section 16 of the Constitution of the State of Nevada as drafted by the State Legislature and twice approved by popular vote of the entire citizenry. Additionally, ancillary effects of granting the relief potentially redound to lower rates of recidivism by inmates, increased availability of funds for restitutions to victims, and proper financial remuneration and workers' compensation benefits for active participants in the dangerous process of firefighting and wildfire deterrence.

51. Accordingly, permanent injunctive relief to effect compliance with the Constitution of the State of Nevada is warranted and proper.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against the Defendants and relief as follows:

A. As to the first and second causes of action, for the economic damages that Mr. Gonzalez has suffered, in amounts to be proven at trial;

B. As to the third cause of action, a declaratory judgment finding that Article 15, Section 16 of the Constitution of the State of Nevada is applicable to Mr. Gonzalez and similarly situated inmates, such that he is (and they are) entitled to

- 1 receive payment for employment at the then-current minimum wage;
- 2 C. As to the third cause of action, as necessary, a declaratory judgment stating NRS
- 3 209.461(8) is unconstitutional in light of Article 15, Section 16 of the Constitution
- 4 of the State of Nevada;
- 5 D. Permanent injunctive relief, as the Court deems appropriate, to effect compliance
- 6 with Article 15, Section 16 of the Constitution of the State of Nevada;
- 7 E. For punitive damages as the Court deems appropriate;
- 8 F. For pre-judgment interest from the date of Plaintiff's injuries and for post-
- 9 judgment interest at the legal rate on the damages assessed by verdict until paid;
- 10 G. For Mr. Gonzalez' attorneys' fees and costs incurred and accruing pursuant to
- 11 Article 15, Section 16(B) of the Constitution of the State of Nevada; and
- 12 H. For such other and further relief as this Court deems just under the circumstances.

13
14 DATED this 2nd day of September 2020.

15
16 GALLIAN WELKER & BECKSTROM, L.C.

17
18 
19 Nathan E. Lawrence, SBN 5060

20 Travis N. Barrick, SBN 9257

21 540 East St. Louis Avenue

22 Las Vegas, Nevada 89104

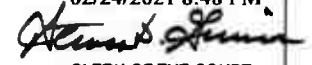
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26 Attorneys for Plaintiff David A. Gonzalez

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28


CLERK OF THE COURT

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Attorneys for Defendants

DISTRICT COURT
CLARK COUNTY, NEVADA

DAVID A. GONZALEZ, an individual,

Case No.: A-20-820596-C

Plaintiff,

Dept. No.: 14

vs.

STATE OF NEVADA; NEVADA
DEPARTMENT OF CONSERVATION AND
NATURAL RESOURCES; NEVADA
DIVISION OF FORESTRY; STEPHEN F.
SISOLAK, in his official capacity as
Governor of Nevada; BRADLEY CROWELL;
in his official capacity as Director of Nevada
Department of Conservation and Natural
Resources; and KACEY KC, in her official
capacity as Nevada State Forester
Firewarden; collectively,
Defendants.

ORDER OF DISMISSAL

This matter having come on regularly for hearing before this court on January 12, 2021, at the hour of 9:30 a.m. on Defendants' Motion to Dismiss.

The Court having read and reviewed the papers and pleadings on file herein and considered the arguments of counsel, and finds the following:

The instant Complaint alleges that Plaintiff, David A. Gonzalez, who at all relevant times has been an inmate of the Nevada Department of Corrections ("NDOC"), has participated in a Nevada Division of Forestry ("NDF") work program pursuant to Nevada

1 Revised Statute ("NRS") 209.457(2)(a). The Complaint seeks relief declaring Plaintiff is
2 entitled to minimum wage compensation under Article 15, Section 16 of the Nevada State
3 Constitution. Defendant's Motion to Dismiss argues the Plaintiff is not entitled to such
4 relief as he was an inmate and not defined as an employee under Nevada law. As such, the
5 sole issue before this Court is whether inmates in the NDOC and performing work for the
6 NDF pursuant to NRS 209.457(2)(a), are employees as defined by Article 15, Section 16 of
7 the Nevada State Constitution and are thus entitled to minimum wage compensation under
8 Article 15, Section 16 of the Nevada State Constitution.

9 **A. Plaintiff is Not an Employee Under Article 15, Section 16 of The**
10 **Nevada State Constitution**

11 The Nevada Supreme Court in *Terry v. Sapphire Gentlemen's Club*, 336 P.3d 951,
12 130 Nev. 879 (2014) has adopted an "economic realities" test to determine whether an
13 employment relationship exists between purported employees and employers for claims
14 arising under NRS 608.010. There, the Court found that certain adult performers met the
15 statutory definition of "employee" under NRS 608.250, while also recognizing that NRS 608
16 was superseded by Article 15, Section 16 of the Nevada State Constitution ("Minimum
17 Wage Amendment" or "MWA"), under *Thomas v. Nevada Yellow Cab Corp.*, 327 P.3d 518,
18 130 Nev. 484 (2014). In *Terry*, the original complaint was brought under NRS 608.250 and
19 not the MWA. Nevertheless, the Court reasoned that both definitions of employee and
20 employer under NRS 608.010, 608.011 and the MWA required a more instructive aid – the
21 federal Fair Labor Standards Act "economic realities" test – to determine the exact
22 relationship between appellant and respondent in harmony with Nevada legislative intent
23 for Nevada minimum wage laws to "run parallel" to federal law, at least in many significant
24 respects. *Terry*, 336 P.3d at 955

25 The Court held:

26 Thus, the Legislature has not clearly signaled its intent that
27 Nevada's minimum wage scheme should deviate from the
28 federally set course, and for the practical reasons examined
above, our state's and federal minimum wage laws should be
harmonious in terms of which workers qualify as employees
under them. We therefore adopt the FLSA's "economic realities"

test for employment in the context of Nevada's minimum wage laws.

Id. at 958.

Nevada courts may, therefore, follow federal case law in applying the economic reality test, including an examination of the totality of the circumstances:

Thus, the economic realities test examines the totality of the circumstances and determines whether, as a matter of economic reality, workers depend upon the business to which they render service for the opportunity to work. See *Goldberg v. Whitaker House Coop., Inc.*, 366 U.S. 28, 32-33, 81 S.Ct. 933, 6 L.Ed.2d 100 (1961); *Juino v. Livingston Parish Fire Dist. No. 5*, 717 F.3d 431, 434 (5th Cir.2013). Given this backdrop, this court has difficulty fathoming a test that would encompass more workers than the economic realities test, short of deciding that all who render service to an industry would qualify, a result that NRS Chapter 608 and our case law specifically negate. See NRS 608.255; *Prieur*, 102 Nev. at 474, 726 P.2d at 1373.

Thus, to the extent that our test could only, from a pragmatic standpoint, seek to be equally as protective as the economic realities test, and having no substantive reason to break with the federal courts on this issue, “judicial efficiency implores us to use the same test as the federal courts” under the FLSA. See *Moore v. Labor & Indus. Review Comm’n*, 175 Wis.2d 561, 499 N.W.2d 288, 292 (Wis.Ct.App.1993) (adopting, for analogous state law purposes, the test used by federal courts to determine whether someone is an employee for the purpose of a claim under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e (2012))

Id. at 956-957.

Defendants argued that the holdings in *Hale v. Arizona*, 993 F.2d 1387 (9th Cir. 1993), *Morgan v. MacDonald*, 41 F.3d 1291 (9th Cir. 1994) and *Vanskike v. Peters*, 974 F.2d 806 (7th Cir. 1992) were determinative. Specifically, “the primary policy concern of the FLSA—ensuring a minimum standard of living for all workers—is simply inapplicable to prisoners ‘for whom clothing, shelter, and food are provided by the prison.’” *Morgan*, 41 F.3d. at 1292. Federal Appellate Courts have consistently found that inmates do not meet the definition of employee under the FLSA. This court agrees and may apply the same test to the MWA under *Terry*.

As here, under *Morgan* and *Hale*, inmates were held to be required to perform work as a condition of their incarceration. See *Morgan*, 41 F.3d. at *Id.* (citing NRS 209.461(1)(b))

1 as applied to Nevada inmates under the FLSA); *Hale*, 993 F.2d 1387 at 1398. Because
2 *Morgan* examined the economic realities of Nevada inmates, *Morgan* is factually and
3 analytically on point for this court's determination: NRS 209.461(1)(b) still requires, to the
4 extent practicable, Nevada inmates to either receive vocational training or work 40 hours
5 per week as a condition of incarceration, subject to behavioral, medical, or educational
6 exclusions. Further, the NDOC may provide inmates to the NDF under NRS 209.457(3)
7 which allows the NDF to utilize inmates to perform work as specified in the statute,
8 provided that an inmate volunteering for a work program meets certain eligibility
9 requirements under NRS 209.457(2)(a) and NRS 209.4615.

10 The only Nevada Supreme Court decisions to consider inmate eligibility for
11 minimum wage compensation are *Prieur v. D.C.I. Plasma Ctr.*, 102 Nev. 472, 726 P2d 1372
12 (1986) and *White v. State*, 454 P.3d 736, 135 Nev. Adv. Op. 67 (2019). However, the Court
13 in *Prieur*, sitting prior to the enactment of the MWA, recognized but did not employ the
14 economic reality test; instead, ultimately finding that no employment relationship existed
15 between Nevada inmates and a private company because the State and the company were
16 the sole contracting parties. See *Prieur*, 726 P2d 1372 at 1373. Similarly, *White* was
17 decided on other workers' compensation grounds. See *White*, 454 P.3d at 739-40.
18 Nevertheless, the Court in *Prieur* signaled that it was open to examining the economic
19 realities of incarceration in terms of employment. See *Prieur*, 726 P2d 1372 at *Id.* *Prieur*
20 can therefore be read consistently with *Terry*, which was decided after the enactment of
21 the MWA and which specifically applied the economic realities test to both Nevada law and
22 the FLSA. See *Terry*, 336 P.3d at 955-957. As such, this court may examine the economic
23 realities of Nevada inmates to determine whether an employment relationship exists.

24 Under the totality of the circumstances, factors and policies analyzed in *Terry*, *Hale*,
25 *Morgan* and *Vanskike*, it is this court's finding, parallel to and consistent with federal law,
26 that the purpose of any minimum wage law is to prevent members of the general public
27 from falling into substandard living conditions. The economic realities of incarceration are
28 distinct and separate from those faced by the general public because inmates are

1 guaranteed housing, meals, medical attention and are able to participate in work programs
2 under NRS 209.457(2)(a) and in exchange for sentence reduction credits under NRS
3 209.449. The reality of incarceration is further not based on a pecuniary relationship
4 between inmates and the state. Therefore, there is no employment relationship between
5 inmates and the state.

6 Based on the foregoing, this court finds that inmates in Nevada do not meet the
7 definition of employee under Nevada's Minimum Wage Amendment.

8 **B. Article 15, Section 16 of the Nevada State Constitution Does Not**
9 **Impliedly Repeal NRS 209.461(8)**

10 Defendants assert that NRS 209.461(8) establishes that there is no right to
11 minimum wage compensation for inmates. Plaintiff has argued that the MWA impliedly
12 repealed NRS 209.461(8). Plaintiff relies on *Thomas v. Nevada Yellow Cab Corp* (citation
13 *supra*), in which a taxi-driver exception to Nevada's Wage and Hour Law was held to be
14 impliedly repealed by the later enactment of the MWA, precisely because taxi-drivers were
15 not explicitly exempted under the MWA.

16 This court finds that *Thomas* is distinguishable from the case at hand and therefore
17 inapplicable. NRS 209.461(8) does not create a constitutionally conflicting exemption from
18 the MWA in the same way as the taxi driver exemption examined in *Thomas*. Here, NRS
19 209.461(8) simply bars a minimum wage cause of action for inmates arising pursuant to
20 the provisions of NRS Chapter 209 and does not expressly create an exemption for those
21 who would otherwise be classified as employees under the MWA. Based on the totality of
22 the circumstances and policies examined in *Terry*, *Hale*, *Morgan*, and *Vanskike*, inmates
23 do not have the same employee-employer relationship characteristics as taxi drivers and
24 their employers.

25 Based on the foregoing, this court finds that NRS 209.461(8) is not in conflict with,
26 nor impliedly repealed by the MWA.

27 ///

28 ///

1 **C. Plaintiff's Complaint Fails to State a Claim Upon Which Relief Can**
2 **Be Granted**

3 Pursuant to Nevada Rule of Civil Procedure ("NRCPP") 12(b)(5), Plaintiff's Complaint
4 fails to state a claim upon which relief can be granted because Plaintiff's claim for minimum
5 wage compensation is explicitly barred by NRS 209.461(8). NRS 209.461(8) states: "The
6 provisions of this chapter do not create a right on behalf of the offender to employment or
7 to receive the federal or state minimum wage for any employment and do not establish a
8 basis for any cause of action against the State or its officers or employees for employment
9 of an offender or for payment of the federal or state minimum wage to an offender." As
10 such, Plaintiff is not an employee, and has no claims for which relief can be granted.

11 Based thereon, IT IS HEREBY ORDERED that Plaintiff's Complaint be and is
12 hereby dismissed with prejudice.

13 DATED: *A. Escobar*

Dated this 24th day of February, 2021

 A. Escobar

DISTRICT COURT JUDGE

AA8 9E3 90C8 907F
Adriana Escobar
District Court Judge

17 Respectfully submitted by:

18 AARON D. FORD
19 Attorney General

20 /s/ Anthony J. Walsh
21 ANTHONY WALSH (Bar No. 14128)
22 Deputy Attorney General
23 100 North Carson Street
24 Carson City, NV 89701-4717
25 Tel: (775) 684-1213
26 Fax: (775) 684-1108
27 Email: AJWalsh@ag.nv.gov

28 *Attorneys for Defendants*

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5
6 David Gonzalez, Plaintiff(s)

CASE NO: A-20-820596-C

7 vs.

DEPT. NO. Department 14

8 State of Nevada, Defendant(s)
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order was served via the court's electronic eFile system to all
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 2/24/2021

15 Nathan Lawrence

nlawrence@vegascase.com

16 Anthony Walsh

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Attorneys for Defendants

DISTRICT COURT
CLARK COUNTY, NEVADA

DAVID A. GONZALEZ, an individual,

Plaintiff,

vs.

STATE OF NEVADA; NEVADA
DEPARTMENT OF CONSERVATION AND
NATURAL RESOURCES; NEVADA
DIVISION OF FORESTRY; STEPHEN F.
SISOLAK, in his official capacity as
Governor of Nevada; BRADLEY CROWELL;
in his official capacity as Director of Nevada
Department of Conservation and Natural
Resources; and KACEY KC, in her official
capacity as Nevada State Forester
Firewarden; collectively,

Defendants.

Case No.: A-20-820596-C

Dept. No.: 14

NOTICE OF ENTRY OF ORDER OF DISMISSAL

PLEASE TAKE NOTICE that an Order of Dismissal was entered in the above-entitled matter on the 24th day of February, 2021, a copy of said Order is attached hereto as Exhibit "A".

DATED this 11th day of March, 2021.

AARON D. FORD
Attorney General

By: /s/ Anthony Walsh
ANTHONY WALSH
Deputy Attorney General
Attorney for Defendant

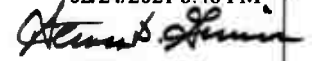
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Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

Page 2 of 2

Exhibit A

Exhibit A


CLERK OF THE COURT

1 **ORDM**
2 **AARON D. FORD**
3 **Attorney General**
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5 **(Bar No. 14128)**
6 **Deputy Attorney General**
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10 **Tel: (775) 684-1213**
11 **Fax: (775) 684-1108**
12 **Email: AJWalsh@ag.nv.gov**
13 **Attorneys for Defendants**

8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 **DAVID A. GONZALEZ, an individual,**

Case No.: A-20-820596-C

11 **Plaintiff,**

Dept. No.: 14

12 **vs.**

13 **STATE OF NEVADA; NEVADA**
14 **DEPARTMENT OF CONSERVATION AND**
15 **NATURAL RESOURCES; NEVADA**
16 **DIVISION OF FORESTRY; STEPHEN F.**
17 **SISOLAK, in his official capacity as**
18 **Governor of Nevada; BRADLEY CROWELL;**
19 **in his official capacity as Director of Nevada**
20 **Department of Conservation and Natural**
21 **Resources; and KACEY KC, in her official**
22 **capacity as Nevada State Forester**
23 **Firewarden; collectively,**

24 **Defendants.**

25 **ORDER OF DISMISSAL**

26 This matter having come on regularly for hearing before this court on January 12,
27 2021, at the hour of 9:30 a.m. on Defendants' Motion to Dismiss.

28 The Court having read and reviewed the papers and pleadings on file herein and
considered the arguments of counsel, and finds the following:

The instant Complaint alleges that Plaintiff, David A. Gonzalez, who at all relevant
times has been an inmate of the Nevada Department of Corrections ("NDOC"), has
participated in a Nevada Division of Forestry ("NDF") work program pursuant to Nevada

1 Revised Statute (“NRS”) 209.457(2)(a). The Complaint seeks relief declaring Plaintiff is
2 entitled to minimum wage compensation under Article 15, Section 16 of the Nevada State
3 Constitution. Defendant’s Motion to Dismiss argues the Plaintiff is not entitled to such
4 relief as he was an inmate and not defined as an employee under Nevada law. As such, the
5 sole issue before this Court is whether inmates in the NDOC and performing work for the
6 NDF pursuant to NRS 209.457(2)(a), are employees as defined by Article 15, Section 16 of
7 the Nevada State Constitution and are thus entitled to minimum wage compensation under
8 Article 15, Section 16 of the Nevada State Constitution.

9 **A. Plaintiff is Not an Employee Under Article 15, Section 16 of The**
10 **Nevada State Constitution**

11 The Nevada Supreme Court in *Terry v. Sapphire Gentlemen’s Club*, 336 P.3d 951,
12 130 Nev. 879 (2014) has adopted an “economic realities” test to determine whether an
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14 arising under NRS 608.010. There, the Court found that certain adult performers met the
15 statutory definition of “employee” under NRS 608.250, while also recognizing that NRS 608
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22 relationship between appellant and respondent in harmony with Nevada legislative intent
23 for Nevada minimum wage laws to “run parallel” to federal law, at least in many significant
24 respects. *Terry*, 336 P.3d at 955

25 The Court held:

26 Thus, the Legislature has not clearly signaled its intent that
27 Nevada’s minimum wage scheme should deviate from the
28 federally set course, and for the practical reasons examined
above, our state’s and federal minimum wage laws should be
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1 test for employment in the context of Nevada's minimum wage
laws.

2 *Id.* at 958.

3 Nevada courts may, therefore, follow federal case law in applying the economic
4 reality test, including an examination of the totality of the circumstances:

5 Thus, the economic realities test examines the totality of the
6 circumstances and determines whether, as a matter of economic
7 reality, workers depend upon the business to which they render
8 service for the opportunity to work. See *Goldberg v. Whitaker*
9 *House Coop., Inc.*, 366 U.S. 28, 32-33, 81 S.Ct. 933, 6 L.Ed.2d 100
10 (1961); *Juino v. Livingston Parish Fire Dist. No. 5*, 717 F.3d 431,
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11 fathoming a test that would encompass more workers than the
12 economic realities test, short of deciding that all who render
13 service to an industry would qualify, a result that NRS Chapter
14 608 and our case law specifically negate. See NRS 608.255;
15 *Prieur*, 102 Nev. at 474, 726 P.2d at 1373.

16 Thus, to the extent that our test could only, from a pragmatic
17 standpoint, seek to be equally as protective as the economic
18 realities test, and having no substantive reason to break with the
19 federal courts on this issue, “judicial efficiency implores us to use
20 the same test as the federal courts” under the FLSA. See *Moore*
21 *v. Labor & Indus. Review Comm’n*, 175 Wis.2d 561, 499 N.W.2d
22 288, 292 (Wis.Ct.App.1993) (adopting, for analogous state law
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24 someone is an employee for the purpose of a claim under Title VII
25 of the Civil Rights Act of 1964, 42 U.S.C. § 2000e (2012))

26 *Id.* at 956-957.

27 Defendants argued that the holdings in *Hale v. Arizona*, 993 F.2d 1387 (9th Cir.
28 1993), *Morgan v. MacDonald*, 41 F.3d 1291 (9th Cir. 1994) and *Vanskike v. Peters*, 974 F.2d
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As here, under *Morgan* and *Hale*, inmates were held to be required to perform work
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2 *Morgan* examined the economic realities of Nevada inmates, *Morgan* is factually and
3 analytically on point for this court's determination: NRS 209.461(1)(b) still requires, to the
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5 per week as a condition of incarceration, subject to behavioral, medical, or educational
6 exclusions. Further, the NDOC may provide inmates to the NDF under NRS 209.457(3)
7 which allows the NDF to utilize inmates to perform work as specified in the statute,
8 provided that an inmate volunteering for a work program meets certain eligibility
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10 The only Nevada Supreme Court decisions to consider inmate eligibility for
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13 in *Prieur*, sitting prior to the enactment of the MWA, recognized but did not employ the
14 economic reality test; instead, ultimately finding that no employment relationship existed
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18 Nevertheless, the Court in *Prieur* signaled that it was open to examining the economic
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23 realities of Nevada inmates to determine whether an employment relationship exists.

24 Under the totality of the circumstances, factors and policies analyzed in *Terry*, *Hale*,
25 *Morgan* and *Vanskike*, it is this court's finding, parallel to and consistent with federal law,
26 that the purpose of any minimum wage law is to prevent members of the general public
27 from falling into substandard living conditions. The economic realities of incarceration are
28 distinct and separate from those faced by the general public because inmates are

1 guaranteed housing, meals, medical attention and are able to participate in work programs
2 under NRS 209.457(2)(a) and in exchange for sentence reduction credits under NRS
3 209.449. The reality of incarceration is further not based on a pecuniary relationship
4 between inmates and the state. Therefore, there is no employment relationship between
5 inmates and the state.

6 Based on the foregoing, this court finds that inmates in Nevada do not meet the
7 definition of employee under Nevada's Minimum Wage Amendment.

8 **B. Article 15, Section 16 of the Nevada State Constitution Does Not**
9 **Impliedly Repeal NRS 209.461(8)**

10 Defendants assert that NRS 209.461(8) establishes that there is no right to
11 minimum wage compensation for inmates. Plaintiff has argued that the MWA impliedly
12 repealed NRS 209.461(8). Plaintiff relies on *Thomas v. Nevada Yellow Cab Corp* (citation
13 *supra*), in which a taxi-driver exception to Nevada's Wage and Hour Law was held to be
14 impliedly repealed by the later enactment of the MWA, precisely because taxi-drivers were
15 not explicitly exempted under the MWA.

16 This court finds that *Thomas* is distinguishable from the case at hand and therefore
17 inapplicable. NRS 209.461(8) does not create a constitutionally conflicting exemption from
18 the MWA in the same way as the taxi driver exemption examined in *Thomas*. Here, NRS
19 209.461(8) simply bars a minimum wage cause of action for inmates arising pursuant to
20 the provisions of NRS Chapter 209 and does not expressly create an exemption for those
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22 the circumstances and policies examined in *Terry*, *Hale*, *Morgan*, and *Vanskike*, inmates
23 do not have the same employee-employer relationship characteristics as taxi drivers and
24 their employers.

25 Based on the foregoing, this court finds that NRS 209.461(8) is not in conflict with,
26 nor impliedly repealed by the MWA.

27 ///

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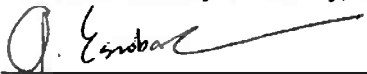
1 **C. Plaintiff's Complaint Fails to State a Claim Upon Which Relief Can**
2 **Be Granted**

3 Pursuant to Nevada Rule of Civil Procedure ("NRCPP") 12(b)(5), Plaintiff's Complaint
4 fails to state a claim upon which relief can be granted because Plaintiff's claim for minimum
5 wage compensation is explicitly barred by NRS 209.461(8). NRS 209.461(8) states: "The
6 provisions of this chapter do not create a right on behalf of the offender to employment or
7 to receive the federal or state minimum wage for any employment and do not establish a
8 basis for any cause of action against the State or its officers or employees for employment
9 of an offender or for payment of the federal or state minimum wage to an offender." As
10 such, Plaintiff is not an employee, and has no claims for which relief can be granted.

11 Based thereon, IT IS HEREBY ORDERED that Plaintiff's Complaint be and is
12 hereby dismissed with prejudice.

13 DATED: 

Dated this 24th day of February, 2021


DISTRICT COURT JUDGE

AA8 9E3 90C8 907F
Adriana Escobar
District Court Judge

17 Respectfully submitted by:

18 AARON D. FORD
19 Attorney General

20 /s/ Anthony J. Walsh
21 ANTHONY WALSH (Bar No. 14128)
22 Deputy Attorney General
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24 *Attorneys for Defendants*

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5
6 David Gonzalez, Plaintiff(s)

CASE NO: A-20-820596-C

7 vs.

DEPT. NO. Department 14

8 State of Nevada, Defendant(s)
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order was served via the court's electronic eFile system to all
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 2/24/2021

15 Nathan Lawrence

nlawrence@vegascase.com

16 Anthony Walsh

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