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8 **UNITED STATES DISTRICT COURT**

9 **DISTRICT OF NEVADA**

10 ***

11 ERIC SCHEUMANN, an individual,) Case No.: 2:18-cv-01772-JCM-NJK
)

12 Plaintiff,)

13 vs.)

14 CITY OF LAS VEGAS; DOES I through X,)
15 inclusive; ROE CORPORATIONS I through X,)
16 inclusive,)

Defendant.)

FIRST AMENDED COMPLAINT

JURY TRIAL DEMANDED

17 ERIC SCHEUMANN (herein "Plaintiff"), by and through his counsel of record, the law
18 firm of Kemp & Kemp, and for a cause of action does hereby state and allege as follows:
19

20 **I. JURISDICTION AND VENUE**

21 1. This is a civil action for damages brought by ERIC SCHEUMANN ("Plaintiff") for
22 violations of the Fair Labor Standards Act ("FLSA") for Defendant's failure to pay overtime
23 wages as required by 29 U.S.C. § 201-218 *et seq.*, and for violations of the Nevada State
24 Constitution and Nevada Revised Statute § 608.018.
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1 2. This Court has jurisdiction over this case pursuant to 28 U.S.C. §1331 in that it arises
2 under the Constitution, laws, or treaties of the United States. This Court has supplemental
3 jurisdiction pursuant to 28 U.S.C. § 1367 over any related state law claims alleged herein.

4 3. Pursuant to 28 U.S.C. § 1391(b)(1) and (2), venue is proper in the unofficial Southern
5 Division of the Court in that all of the material events complained of herein took place in Clark
6 County, Nevada.

7 4. Plaintiff demands a jury trial of this case pursuant to Local Rule 38-1 and 28 U.S.C. §
8 1411.
9

10 **II. PARTIES**

11 5. Plaintiff, ERIC SCHEUMANN, resides in Clark County, Nevada.

12 6. Plaintiff works as a Fire Engineer (Firefighter) for the City of Las Vegas, Las Vegas,
13 Nevada. All acts complained of herein happened in or around Las Vegas, Nevada, and for the
14 benefit of the CITY OF LAS VEGAS (herein “Defendant”).
15

16 7. As Plaintiff’s employer during the relevant time period, Defendant was engaged in
17 operations and or conducting business within the County of Clark, State of Nevada. Defendant
18 was engaged in activities affecting commerce and employed at least 500 employees in the two
19 calendar years preceding the events in question.
20

21 8. At all times complained of herein, Defendant was a municipality and political subdivision
22 located in the State of Nevada.

23 9. At all times complained of herein, the acts and or failures to act were duly performed by
24 and or attributed to Defendant acting by and through its agents and or employees. The acts or
25 failures to act described were within the scope of said agency and or employment, or
26 Defendant’s agents or employees, and Defendant ratified the acts and or omissions.
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1 10. The true names or capacities, whether individual, corporate, association or otherwise, of
2 Defendant DOES I through X, and ROE CORPORATIONS I through X, are unknown to
3 Plaintiff, who therefore sues said Defendant by such fictitious names. Plaintiff is informed and
4 believes and therefore alleges that each of the Defendant designated herein as a DOE and a ROE
5 CORPORATION are responsible in some manner for the events and happenings referred to and
6 caused damages proximately to the Plaintiff as herein alleged. Plaintiff will ask leave of this
7 Court to amend her Complaint to insert the true names and capacities of DOES I through X, and
8 ROE CORPORATIONS I through X, when the same have been ascertained and to join such
9 Defendant in this action.
10

11 11. Defendant is an employer within the meaning of the Fair Labor Standards Act (herein
12 “FLSA”), Federal common law, Nevada Constitution, and Nevada Revised Statutes.
13

14 12. Plaintiff was an employee of Defendant as defined with the meaning of the FLSA,
15 Federal common law, Nevada Constitution, and Nevada Revised Statutes.
16

17 13. All acts which form the basis of this First Amended Complaint occurred during
18 Plaintiff’s employment with Defendant.
19

20 14. As an employer in Nevada, Defendant is required to comply with all state and federal
21 statutes.
22

23 15. Plaintiff is unaware of the true names and capacities whether individuals, corporations,
24 associates, or otherwise of Defendants DOE INDIVIDUALS I through X and ROE BUSINESS
25 ENTITIES I through X, inclusive, and therefore sues these Defendants by such fictitious names.
26 Plaintiff is informed and believes and thereupon alleges that the Defendants, and each of them,
27 are in some manner responsible and liable for the acts and damages alleged in this Complaint.
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1 **III. FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

2
3 16. Plaintiff began his employment with Defendant as a Fire Engineer in approximately
4 2002, a period of 17 years.

5 17. Plaintiff is a non-exempt employee.

6 18. Plaintiff worked either unreported or under-reported overtime beginning March 2014
7 until December 13, 2017, including during the time period after the 1 October mass shooting
8 while Plaintiff was on leave recovering from being an off-duty first responder to the tragedy.

9 19. Plaintiff worked on certain projects for the benefit of Defendant. These additional
10 employment duties are separate and distinct from Plaintiff's employment duties as a Fire
11 Engineer.

12 20. Defendant required Plaintiff to work while on various types of leaves including
13 administration and sick leave.

14 21. During the full relevant period of time (March 2014-December 2017), Plaintiff's
15 supervisors and superiors were aware of his performing the additional employment duties
16 including daily communications with Plaintiff. Defendant did not keep proper records of the
17 either unreported or under-reported Plaintiff worked.
18

19 22. In addition, in approximately April 2015, an Administrative Officer made Defendant
20 made aware of its violations of the Fair Labor Standards Act as those violations relate to
21 Plaintiff.
22

23 23. Defendant's violations of the Fair Labor Standards Act alleged herein were repeated,
24 intentional and willful and were done with the specific approval of Defendant.

25 24. Plaintiff worked extensive unreported or under-reported overtime without compensation
26 in violation of the Fair Labor Standards Act. For the year 2014 (beginning in March), Plaintiff
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1 worked unreported or under-reported overtime hours for which he was not compensated of
2 approximately 754.00. For the year 2015, Plaintiff worked unreported or under-reported
3 overtime hours of approximately 1517 hours. For the year 2016, Plaintiff unreported or under-
4 reported overtime hours of approximately 1550 hours. For the year 2017, Plaintiff worked
5 unreported or under-reported overtime hours of approximately 1444.40 hours.

6 25. Plaintiff is entitled to compensation for unreported or under-reported overtime hours
7 worked based on a pay rate of F-76. The base rate does not include upward adjustments to which
8 Plaintiff is entitled including Longevity Pay, and an additional 10% as per the Collective
9 Bargaining Agreement between Defendant and the International Association of Fire Fighters
10 Local Union 1285, of which Plaintiff is a member.

11 26. The acts and or omissions of Defendant as complained of herein were taken by Defendant
12 directly and/or indirectly for its interests. As such, Defendant materially advanced, and profited
13 by its violations of the Fair Labor Standards Act when it directed, allowed, permitted and or
14 suffered Plaintiff's labor which was valuable and useful to Defendant, without any cost
15 whatsoever and in violation of the Fair Labor Standards Act.

16
17
18 **FIRST CLAIM FOR RELIEF**

19 **Violations of the Fair Labor Standards Act**

20 27. All other pertinent paragraphs set forth herein are incorporated here by reference as if
21 fully set forth and re-alleged.

22 28. This claim arises from Defendant's violation of the Fair Labor Standards Act, 29 U.S.C.
23 § 201 *et seq.*, for its failure to pay Plaintiff wages and or overtime wages for all time worked.

24 29. At all times material hereto, Plaintiff was employed by Defendant as an "employee"
25 within the meaning Fair Labor Standards Act.
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30. Plaintiff was not compensated for all wages and or overtime earned.

31. Defendant has a policies, programs and or practices to fail and refuse to pay employees overtime worked.

32. At all times relevant, Plaintiff was employed by Defendant in a non-exempt position and is entitled to overtime wages (at 1.5 times the regular rate) for all overtime hours worked.

33. In violation of 29 C.F.R. 516.2 *et seq.*, Defendant failed to keep accurate records of wage and overtime hours worked by Plaintiff in the non-exempt employment duties he performed.

34. Pursuant to the applicable provisions of the Fair Labor Standards Act, 29 U.S.C. § 206 and or § 207, Plaintiff was entitled to wages and overtime wages for all hours worked up.

35. Defendant did not compensate Plaintiff as required pursuant the Fair Labor Standards Act.

36. Plaintiff has suffered loss as a result of Defendant’s violations of the Fair Labor Standards Act.

37. Defendant violations of the Fair Labor Standards Act were intentional and willful.

38. Plaintiff seeks all damages available under the Fair Labor Standards Act including, but not limited to, wage and overtime compensation, liquidated damages, attorneys’ fees and costs.

SECOND CLAIM FOR RELIEF

Violations of Nevada Wage Laws

39. All other pertinent paragraphs set forth herein are incorporated here by reference as if fully set forth and re-alleged.

40. Nevada Revised Statue § 608.140 provides that an employee has a private right of action for unpaid wages and may be entitled to attorneys’ fees as costs of suit: “Whenever a mechanic, artisan, miner, laborer, servant or employee shall have cause to bring suit for wages earned and

1 due according to the terms of his or her employment, and shall establish by decision of the court
2 or verdict of the jury that the amount for which he or she has brought suit is justly due, and that a
3 demand has been made, in writing, at least 5 days before suit was brought, for a sum not to
4 exceed the amount so found due, the court before which the case shall be tried shall allow to the
5 plaintiff a reasonable attorney fee, in addition to the amount found due for wages and penalties,
6 to be taxed as costs of suit.” Plaintiff made demand for unpaid wages upon Defendant pursuant
7 to N.R.S. 608.140, but satisfactory payment was not received. Defendant did not respond to
8 Plaintiff’s demand.
9

10 41. Nevada Revised Statute § 608.016 states, “An employer shall pay to the employee wages
11 for each hour the employee works.” Hours worked means anytime the employer exercises
12 “control or custody” over an employee. *See*, N.R.S. § 608.011 (defining an “employer” as “every
13 person having control or custody ... of any employee.”). Pursuant to the Nevada Administrative
14 Code, hours worked includes “all time worked by the employee at the direction of the employer,
15 including time worked by the employee that is outside the scheduled hours of work of the
16 employee.” N.A.C. § 608.115(1).
17

18 42. By failing to compensate Plaintiff for time spent engaged in work activities described
19 above, Defendant also failed to pay Plaintiff, and those similarly situated for all hours worked in
20 violation of N.R.S. §§ 608.140 and 608.016.
21

22 43. Although the statute of limitations for minimum wage violations is two years, there is no
23 express statute of limitations for violations of N.R.S. §§ 608.140 and 608.016 and, therefore, the
24 three-year statute contained in N.R.S. § 11.190(3) for statutory violations applies.
25

26 44. Defendant has failed to pay Plaintiff overtime wages for all hours worked in excess of 8
27 hours per day, or 40 hours per week in violation of N.R.S. § 608.018.
28

1 45. Defendant is liable for overtime wages owed to Plaintiff at the rate of 1.5 times his hourly
2 rate of pay for all hours worked in excess of 8 hours per day or 40 hours per week.

3 46. Defendant did not compensate Plaintiff as required under Nevada wage laws.

4 47. Plaintiff has suffered loss as a result of Defendant’s violations of Nevada wage laws.

5 48. Defendant violations of Nevada wage laws were intentional and willful.

6 49. Plaintiff seeks all available damages under Nevada wage laws including, but not limited
7 to, wages and overtime compensation, liquidated damages, and attorneys’ fees.

8
9 **IV. DEMAND FOR JUDGMENT FOR RELIEF**

10 Plaintiff prays judgment against Defendant as follows:

11 A. All applicable relief provided for under 29 U.S.C. § 216 (b) including, but not
12 limited to:

- 13 1. Money damages for unpaid overtime, salary, wages, employment benefits, or
14 other compensation denied or lost due to the violations of law by Defendant;
- 15 2. An additional amount as liquidated damages equal to the sum of the amount
16 of damages awarded for overtime compensation denied or lost due to the
17 violations of FLSA by the Defendant in accordance with 29 U.S.C. § 216;
- 18 3. Interest on the amounts awarded under 1 and 2 above at the prevailing rate;
- 19 4. Equitable relief as may be appropriate;
- 20 5. Reasonable attorney’s fees, reasonable expert witness fees, and other costs of
21 the action;
- 22
- 23

24 B. All applicable remedies provided for under Nevada Constitution Article 15,
25 Section 16, including “all remedies available under the law or in equity appropriate to remedy
26 any violation of this section, including but not limited to back pay, damages, reinstatement or
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1 injunctive relief. An employee who prevails in any action to enforce this section shall be
2 awarded his or her reasonable attorney's fees and costs.”

3 C. All applicable remedies for Defendant’s violation of N.R.S. § 608.018 failure to pay
4 overtime.

5 D. Pre-judgment and Post-judgment interest on all applicable sums due.

6 E. For trial by jury on all issues that may be tried to by a jury.

7 F. For such other and further relief as the Court may deem just and proper.
8

9 DATED this 15th day of May 2019.

10 s/ Victoria L. Neal

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date indicated below, a copy of the **FIRST AMENDED COMPLAINT** was served on the following as indicated:

All Parties Registered
Through the CM/ECF system.

DATED this 15th day of May, 2019

s/ Victoria L. Neal
An employee of Kemp & Kemp, Attorneys at Law

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