



CASE NO: A-19-797084-C
Department 18

COMJD

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**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

CURTIS MAESTAS, on behalf of himself
and all others similarly situated;

Plaintiff,

vs.

LISA/CARRISON LTD. d/b/a and a/k/a
PUTTER'S BAR & GRILL also d/b/a and
a/k/a LISA CARRISON LTD., L.C.C.;
DOES 1 through 50, inclusive,

Defendant.

Case No.
Dept.:

CLASS ACTION COMPLAINT

**Arbitration Exemption Claimed:
Class Action**

- 1) Failure to Pay Minimum Wages in Violation of the Nevada Constitution;
- 2) Failure to Pay Overtime in Violation of NRS 608.018 and 608.140;
- 3) Failure to Timely Pay All Wages Due and Owing in Violation of NRS 608.020-050 and 608.140; and,
- 4) Injunctive Relief.

**LIEN REQUESTED PURSUANT TO
NRS 608.050**

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

COMES NOW Plaintiff Curtis Maestas on behalf of himself and all others similarly situated and alleges the following:

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

JURISDICTION AND VENUE

1. This Court has original jurisdiction over the state law claims alleged herein because the amount in controversy exceeds \$15,000 and a party seeking to recover unpaid wages has a private right of action pursuant to the Nevada Constitution, Article 15 Section 16, and Nevada Revised Statute ("NRS") Chapter 608. *See Neville v. Eighth Judicial Dist. Court in & for Cty. of Clark*, 406 P.3d 499 (Nev. 2017).

2. Plaintiff also claims a private cause of action to foreclose a lien against the property owner for wages due pursuant to NRS 608.050.

3. Venue is proper in this Court because the Defendant named herein maintains a principal place of business or otherwise is found in this judicial district and many of the acts complained of herein occurred in Clark County, Nevada.

PARTIES

4. Plaintiff Curtis Maestas ("Plaintiff") is a natural person who is and was a resident of the State of Nevada and was employed by Defendant as a non-exempt hourly employee from in or about December of 2018 to in or about May of 2019.

5. Defendant Lisa/Carrison Ltd. d/b/a and a/k/a Putter's Bar & Grill also d/b/a and a/k/a Lisa Carrison Ltd., L.C.C. ("Defendant") is a domestic limited-liability company registered with the Nevada Secretary of State.

6. Defendant Lisa/Carrison Ltd. holds the fictitious firm name for Putter's Bar & Grill with Clark County.

7. Defendant was doing business in this Judicial District in Clark County,

1 Nevada where the subject incidences occurred.

2 8. At all relevant times, each Defendant was an agent, employee, joint-
3 venturer, shareholder, director, member, co-conspirator, alter ego, master, or partner of
4 each of the other Defendants, and at all times mentioned herein were acting within the
5 scope and course and in pursuance of his, her, or its agency, joint venture, partnership,
6 employment, common enterprise, or actual or apparent authority in concert with each
7 other and the other Defendants.

8 9. At all relevant times, the acts and omissions of Defendants concurred and
9 contributed to the various acts and omissions of each and every one of the other
10 Defendants in proximately causing the complaints, injuries, and damages alleged
11 herein. At all relevant times herein, Defendants approved of, condoned and/or otherwise
12 ratified each and every one of the acts or omissions complained of herein. At all
13 relevant times herein, Defendants aided and abetted the acts and omissions of each
14 and every one of the other Defendants thereby proximately causing the damages as
15 herein alleged.

16 10. The Defendants named herein are the employers of the Plaintiff and all
17 Class Members alleged herein. The Defendants are employers engaged in commerce
18 under the provisions of NRS 608.011. The identity of DOES 1-50 is unknown at the time
19 and the Complaint will be amended at such time when the identities are known to
20 Plaintiff. Plaintiff is informed and believes that each Defendants sued herein as DOE is
21 responsible in some manner for the acts, omissions, or representations alleged herein
22 and any reference to "Defendant" or "Defendants" herein shall mean "Defendants and
23 each of them."

24 **FACTUAL ALLEGATIONS**

25 **The Named-Plaintiff**

26 11. Plaintiff was employed by Defendant as a bartender from in or about
27 December of 2018 to in or about May of 2019.

12. Plaintiff had been classified as an hourly non-exempt employee of Defendant with an hourly rate of pay of less than \$8.25.

13. Plaintiff was regularly scheduled for and regularly worked at least 8 hours per workday.

Defendant's Policy of Failing to Offer or Provide Health Insurance Benefits Less Than 10% of Employees' Total Gross Income

14. Defendant maintains an unlawful payment practice of paying Plaintiff and all other similarly situated employees less than the higher-tier minimum and overtime wage rate even though Defendant does not offer or provide insurance that is less than 10% of the total gross income of Plaintiff and other similarly situated employees.

15. For instance, on the pay period ending February 20, 2019 (a true and correct copy of Plaintiff's earnings statement is attached hereto as Exhibit I, with the wages for the aforementioned pay period being issued on February 14, 2019), Defendant paid Plaintiff a total gross taxable income of 493.36 in minimum and overtime wages (\$493.36 in minimum wages for 68.05 regular hours worked). Tips are not included in the calculation of an employee's total gross taxable income. See *MDC Restaurants, LLC et al v. The Eighth Judicial Dist. Court*, 132 Nev. Op. 76 (Oct. 27, 2016). During that same period of time (and indeed during the entire time he was paid less than the higher-tier minimum wage of \$8.25), Plaintiff was not offered or provided with health benefits of less than the 10% maximum percentage for an employer to qualify for the lower-tier minimum wage payment. Accordingly, Defendant failed to compensate Plaintiff at the correct legal higher-tier minimum wage rate of \$8.25 per non-overtime hour and \$12.38 per overtime hour worked. Defendant therefore underpaid Plaintiff \$68.05 during that pay period.

16. Similarly, on the pay period ending May 5, 2019 (a true and correct copy of Plaintiff's earnings statement is attached hereto as Exhibit II, with the wages for the aforementioned pay period being issued on May 9, 2019), Defendant paid Plaintiff a total gross taxable income of \$472.92 in minimum and overtime wages (\$472.92 in

1 minimum wages for 65.23 regular hours worked). Tips are not included in the
2 calculation of an employee's total gross taxable income. See *MDC Restaurants, LLC et*
3 *al v. The Eighth Judicial Dist. Court*, 132 Nev. Op. 76 (Oct. 27, 2016). During that same
4 period of time (and indeed during the entire time he was paid less than the higher-tier
5 minimum wage of \$8.25), Plaintiff was not offered or provided with health benefits of
6 less than the 10% maximum percentage for an employer to qualify for the lower-tier
7 minimum wage payment. Accordingly, Defendant failed to compensate Plaintiff at the
8 correct legal higher-tier minimum wage rate of \$8.25 per non-overtime hour and \$12.38
9 per overtime hour worked. Defendant therefore underpaid Plaintiff \$65.23 during that
10 pay period.

11 17. Upon information and belief, any health benefits offered to Plaintiff were
12 not at a cost of less than 10% of his gross taxable income. See, e.g., a true and correct
13 copy of Putter's Bi-Weekly Insurance Deductions attached hereto as Exhibit III.

14 18. The policies and practices of Defendant at all relevant times have been
15 substantially similar, if not identical, for all employees at all Defendant's locations.
16 Defendant also purportedly paid less than the higher-tier minimum wage rate to putative
17 class members even though it did not offer health insurance to employees at a cost of
18 10% or less than their gross earnings.

19 19. Defendant is legally required to maintain all itemized pay statements that
20 will demonstrate the amount of health insurance premiums offered to Plaintiff and all
21 putative class member and the resulting amount of wages underpaid to Plaintiff and all
22 members of the putative class during the entire period of time at issue in this case.

23 CLASS ACTION ALLEGATIONS

24 20. Plaintiff realleges and incorporates by this reference all the paragraphs
25 above in this Complaint as though fully set forth herein.

26 21. Plaintiff brings this action on behalf of himself and all others similarly
27 situated employees as a class action under Rule 23 of the Nevada Rules of Civil
28 Procedure.

22. The **Classes** are defined as follows:

A. **Minimum Wage Class:** "All hourly paid non-exempt persons employed by Defendant who were paid less than \$8.25 per non-overtime hour worked in the state of Nevada within 2 years from the filing of this complaint until judgment."

B. **Overtime Class:** "All hourly paid non-exempt persons employed by Defendant who were paid less than \$12.38 per overtime hour worked in the state of Nevada within 3 years from the filing of this complaint until judgment."

C. **Waiting Time Penalty Class:** "All members of the Minimum Wage and/or Overtime Wage Classes who are former employees."

23. Class treatment is appropriate under Rule 23's class certification mechanism because:

A. The Classes are Sufficiently Numerous: Upon information and belief, Defendant employs, and has employed, in excess of 75 Minimum Wage, Overtime, and Waiting Time Penalty Class Members within the applicable time period. Because Defendant is legally obligated to keep accurate payroll records, Plaintiff alleges that Defendant's records will establish the members of these Classes as well as their numerosity.

B. Plaintiff's Claims is Typical to Those of Fellow Class Members: Each Class Member is and was subject to the same practices, plans, or policies as Plaintiff: (1) Whether Defendant can meet its burden of demonstrating that Plaintiff and Minimum Wage Class Members were only entitled to receive less than the higher-tier minimum wage rate; (2) Whether Defendant can meet its burden of demonstrating that Plaintiff and Overtime Class Members were entitled to receive less than the higher-tier overtime wage rate; (3) Whether Plaintiff and members of the Waiting Time Penalty Class are entitled to waiting time penalties for the failure to pay them minimum, regular, and overtime wages owed.

C. Common Questions of Law and Fact Exist: Common questions of and fact exist and predominate as to Plaintiff and the Class Members, including, without limitation: Whether Defendant offered health insurance to Plaintiff and Class Members

1 that was no more than 10% of employees' gross taxable income and whether
2 Defendant failed to pay the Waiting Time Penalty Class Members all their wages due
3 and owing in violation of NRS 608.020-050.

4 D. Plaintiff is Adequate Representative of the Class: Plaintiff will fairly
5 and adequately represent the interests of the Class because Plaintiff is a member of all
6 the Classes, he has issues of law and fact in common with all members of the Classes,
7 and his interests are not antagonistic to Class members. Plaintiff and his counsel are
8 aware of their fiduciary responsibilities to Class Members and are determined to
9 discharge those duties diligently by vigorously seeking the maximum possible recovery
10 for Class Members.

11 E. Predominance/Superior Mechanism: Class claims predominate and
12 a class action is superior to other available means for the fair and efficient adjudication
13 of this controversy. Each Class Member has been damaged and is entitled to recovery
14 by reason of Defendant's illegal policy and/or practice of failing to compensate its
15 employees in accordance with Nevada wage and hour law. The prosecution of
16 individual remedies by each Class Member will tend to establish inconsistent standards
17 of conduct for Defendant and result in the impairment of Class Members' rights and the
18 disposition of their interest through actions to which they were not parties.

19 FIRST CAUSE OF ACTION

20 **Failure to Pay Minimum Wages in Violation of the Nevada Constitution (On Behalf of Plaintiff and the Minimum Wage Class Against Defendant)**

21 24. Plaintiff realleges and incorporates by this reference all the paragraphs
22 above in this Complaint as though fully set forth herein.

23 25. Article 15 Section 16 of the Nevada Constitution sets forth the
24 requirements the minimum wage requirements in the State of Nevada ("MWA"). The
25 MWA sets forth a two-tiered minimum wage, which were set at \$7.25 and \$8.25 for the
26 relevant time period covered in this action.

27 26. In order to pay the lower-tier minimum wage amount, an employer must
28 offer health benefits to its employees and the dependents of the employees "at a total

1 cost to the employee for premiums of not more than 10 percent of the employee's gross
2 taxable income from the employer."

3 27. As alleged herein, Defendant paid Plaintiff and all other members of the
4 Class less than the higher-tier minimum wage rate of \$8.25 but failed to offer qualifying
5 health benefits to its employees and the employees' dependents at a total cost to the
6 employee for premiums of not more than 10% of the employees' gross taxable income.

7 28. By unlawfully paying Plaintiff and members of the Class less than the
8 higher-tier minimum wage rate of \$8.25, instead of the applicable minimum wage rate of
9 \$8.25, Defendant has failed to compensate Plaintiff and members of the Class at the
10 minimum wage rate for all the hours that they worked pursuant to the Nevada
11 Constitution.

12 29. Wherefore, Plaintiff demands for himself and for all other Class Members
13 that Defendant pay Plaintiff and Class Members their unpaid minimum wages for all
14 hours worked during the relevant time period alleged herein together with attorneys'
15 fees, costs, interest, and punitive damages, as provided by law.

16 **SECOND CAUSE OF ACTION**

17 **Failure to Pay Overtime Wages in Violation of NRS 608.018 and 608.140
(On Behalf of Plaintiff and the Overtime Class Against Defendant)**

18 30. Plaintiff realleges and incorporates by this reference all the paragraphs
19 above in this Complaint as though fully set forth herein.

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

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

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

28 33. NRS 608.018(2) provides as follows:

1 An employer shall pay 1 1/2 times an employee's regular
2 wage rate whenever an employee who receives
3 compensation for employment at a rate not less than 1 1/2
4 times the minimum rate prescribed pursuant to NRS 608.250
works more than 40 hours in any scheduled week of work.

5 34. As alleged herein, Defendant paid Plaintiff and all other members of the
6 Class less than the higher-tier minimum wage rate but has failed to offer health benefits
7 to its employees and the employees' dependents at a total cost to the employee for
8 premiums of not more than 10% of the employees' gross taxable income.

9 35. By unlawfully paying Plaintiff and members of the Overtime Class less
10 than the higher-tier minimum wage rate of \$8.25 (with an overtime wage rate of
11 \$12.38.88), Defendant has likewise failed to compensate Plaintiff and members of the
12 Class at the correct overtime wage rate for all the overtime hours that they worked
pursuant to NRS 608.018.

13 36. Wherefore, Plaintiff demands for himself and all Overtime Class Members
14 that Defendant pay Plaintiff and Overtime Class Members one and one-half times their
15 legally mandated minimum wage rate of pay for all hours worked in excess of eight (8)
16 hours in a workday and/or in excess of forty (40) hours per workweek during the
17 relevant time period together with attorneys' fees, costs, and interest, as provided by
18 law.

19 **THIRD CAUSE OF ACTION**

20 **Waiting Time Penalties Pursuant to NRS 608.020-.050 and 608.140** 21 **(On Behalf of Plaintiff and the Waiting Time Penalty Class Against Defendant)**

22 37. Plaintiff realleges and incorporates by this reference all the paragraphs
above in this Complaint as though fully set forth herein.

23 38. NRS 608.140 provides that an employee has a private right of action for
24 unpaid wages.

25 39. NRS 608.020 provides that "[w]henver an employer discharges an
26 employee, the wages and compensation earned and unpaid at the time of such
27 discharge shall become due and payable immediately."
28

1 benefits to its employees and the employees' dependents at a total cost to the
2 employee for premiums of not more than 10% of the employees' gross taxable income,
3 Defendant has wrongfully withheld wages properly-owed to the Plaintiff and the
4 Minimum Wage Class Members.

5 47. As Defendant has likewise failed to compensate Plaintiff and members of
6 the Overtime Class at the correct overtime wage rate for all the overtime hours that they
7 worked pursuant to NRS 608.018, Defendant has wrongfully withheld wages properly-
8 owed to the Plaintiff and the Overtime Class Members.

9 48. Plaintiff, the Minimum Wage Class, and the Overtime Class will suffer
10 irreparable injury if Defendant is not enjoined from the future wrongful retention of
11 wages owed.

12 49. As a result of the aforementioned unlawful payment practices, Plaintiff
13 submits that there has been a likelihood of success on the merits that Plaintiff and the
14 Class Members have been damaged and that there is irreparable harm.

15 50. Plaintiff requests that this Honorable Court enter an Order that restrains
16 Defendant from attempting to enforce the alleged unlawful payment practices.

17 51. Plaintiff requests that this Honorable Court enter a declaration of
18 rights/obligations in regards to all such unlawful payment practices in this matter.

19 52. Further, disputes and controversies have arisen between the parties
20 relative to the lawfulness of the payment practices, and Plaintiff is entitled to have an
21 order entered pursuant to Chapter 30 of the Nevada Revised Statutes construing the
22 payment practices and adjudging and declaring Plaintiff and the Class Members' rights
23 and remedies thereunder including such an Order stating that such payment practices
24 are unlawful.

25 53. Plaintiff has been required to retain the services of an attorney and is
26 entitled to a reasonable award of attorneys' fees and costs.

PRAYER FOR RELIEF

Wherefore Plaintiff, by himself and on behalf of Class Members, prays for relief as follows relating to his class action allegations:

1. For an order certifying this action as a class action on behalf the proposed Classes and providing notice to all Class Members so they may participate in this lawsuit;
2. For an order appointing Plaintiff as the Representative of the Classes and his counsel as Class Counsel;
3. For damages according to proof for minimum rate pay under the Nevada Constitution for all hours worked;
4. For damages according to proof for overtime compensation under NRS 608.018 and 608.140 for all hours worked over 8 hours per day and/or over 40 hours in a workweek;
5. For waiting time penalties pursuant to NRS 608.040-.050 and 608.140;
6. For a lien on the property where Plaintiff and all Nevada Class Members labored pursuant to NRS 608.050;
7. For injunctive relief;
8. For declaratory relief;
9. For interest as provided by law at the maximum legal rate;
10. For punitive damages;
11. For reasonable attorneys' fees authorized by statute;
12. For costs of suit incurred herein;
13. For pre-judgment and post-judgment interest, as provided by law; and,

///

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

2 DATED: June 20th, 2019

GABROY LAW OFFICES

3
4 By: 

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EXHIBIT I

PUTTER'S BAR & GRILL

021120

SSN

State (Frg/State)
Single (Frg/State)
Pay Period 01/28/2019 - 02/05/2019

Allocation Extra
Fed 00/NV 00
Pay Date 02/14/2019

Earnings and Deductions	Period	Rate	Current	YTD Amount
Heavy Bartender	08.05	7.25	401.50	146.82
Declared Tips	08.05		54.40	1,023.44
			158.76	3,281.30

Taxes	Period	Rate	Current	YTD Amount
Medicare Employee Add'l Tax			0.00	
Federal Withholding			66.00	203.00
Social Security Employee			47.04	203.44
Medicare Employee			11.00	47.48
			124.04	544.00

Adjustments to Net Pay	Period	Rate	Current	YTD Amount
Declared Tips Deduction			265.40	1,023.44
Child Support			314.36	630.85
Child Support Fee - State			2.00	4.00
Child Support Fee - Employer			3.00	8.00
			584.76	1,713.29

Net Pay

49.99

1,023.99

Lisa Carrison Ltd. L.L.C. LISA CARRISON LTD LLC

Powered by Intuit Payroll

EXHIBIT II

PUTTER'S BAR & GRILL

021794

Employee

SSN [REDACTED] Status (Fed/State)

Advances Extra

Fed-06/NV-070

Pay Date 06/09/2019

Pay Period 04/22/2019 - 05/05/2019

Earnings and Hours	Hours	Rate	Current	YTD Amount
Hourly - Bartender	65.23	7.25	472.92	5,131.40
Declared Tips	55.23		254.40	2,667.66
			727.32	7,809.06

Taxes

	Current	YTD Amount
Medicare Employee Adj. Tax	0.00	
Federal Withholding	-62.00	-572.00
Social Security Employee	-45.08	-477.34
Medicare Employee	-10.55	-111.84
	-117.64	-1,280.95

Adjustments to Net Pay

	Current	YTD Amount
Declared Tips Deduction	-254.40	-2,667.66
Child Support	-304.84	-2,531.26
Child Support Fee - State	-2.00	-16.00
Child Support Fee - Employer	-3.00	-24.00
	-564.24	-5,138.92

Net Pay

45.44

1,289.16

Lisa Carrison Ltd., L.P.C. LISA CARRISON LTD LLC

Powered by Intuit Payroll

EXHIBIT III

PUTTER'S BI-WEEKLY INSURANCE DEDUCTIONS

EFFECTIVE 6/1/19 - 5/31/20

HMO30/5000-4A LG SOLUTIONS HMO 35 POS25/0/500/70%

EMPLOYEE ONLY	\$	52.76	\$	91.43	\$	114.97
EMPLOYEE & SPOUSE	\$	196.53	\$	273.86	\$	320.94
EMPLOYEE & CHILD(REN)	\$	182.15	\$	255.60	\$	300.34
EMPLOYEE & FAMILY	\$	369.03	\$	492.75	\$	568.11

DENTAL PPO

DENTAL DHMO

GUARDIAN VISION

EMPLOYEE ONLY	\$	13.41	\$	9.12	\$	4.19
EMPLOYEE & SPOUSE	\$	27.70	\$	18.05	\$	7.05
EMPLOYEE & CHILD(REN)	\$	33.11	\$	18.78	\$	7.19
EMPLOYEE & FAMILY	\$	47.39	\$	28.49	\$	11.38