

CASE NO: A-19-795009-C
Department 1

1 **COMJD**
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DISTRICT COURT

CLARK COUNTY, NEVADA

21 STORMY RUSSUM, on behalf of herself
22 and all others similarly situated;

23 Plaintiff,

24 vs.

25 LUCKY LUCY D LLC d/b/a and a/k/a
26 LUCKY CLUB CASINO; DOES 1 through
27 50, inclusive,

28 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

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1 **CLASS ACTION COMPLAINT**

2 COMES NOW Plaintiff Stormy Russum, on behalf of herself and all others
3 similarly situated and alleges the following:

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

8 **JURISDICTION AND VENUE**

9 1. This Court has original jurisdiction over the state law claims alleged herein
10 because the amount in controversy exceeds \$15,000 and a party seeking to recover
11 unpaid wages has a private right of action pursuant to the Nevada Constitution, Article
12 15 Section 16, and Nevada Revised Statute (“NRS”) Chapter 608. See *Neville v.*
13 *Terrible Herbst, Inc.*, 133 Nev. Adv. Op. 95 (Dec. 7, 2017).

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

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

19 **PARTIES**

20 4. Plaintiff Stormy Russum (“Plaintiff”) is a natural person who is and was a
21 resident of the State of Nevada and was employed by Defendant as a non-exempt
22 hourly employee from in or about June 2018 to in or about May of 2019.

23 5. Defendant Lucky Lucy D LLC d/b/a and a/k/a Lucky Club Casino is a
24 domestic limited-liability company registered with the Nevada Secretary of State.

25 6. Defendant Lucky Lucy D LLC d/b/a and a/k/a Lucky Club Casino was
26 doing business in this Judicial District in Clark County, Nevada where the subject
27 incidences occurred.

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

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

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

23 **FACTUAL ALLEGATIONS**

24 **The Named-Plaintiff**

25 10. Plaintiff was employed by Defendant as a cocktail server from in or about
26 June of 2018 to in or about May of 2019.

27 11. Plaintiff had been classified as an hourly non-exempt employee of
28 Defendant with an hourly rate of pay of \$7.25.

1 12. Plaintiff was regularly scheduled for and regularly worked at least 40 hours
2 per workweek.

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

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

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

11 15. For instance, on the pay period ending April 22, 2019 (a true and correct
12 copy of Plaintiff's earnings record is attached hereto as Exhibit I, with the wages for the
13 aforementioned pay period being issued on May 10, 2019), Defendant paid Plaintiff a
14 total gross taxable income of \$580.00 in minimum and overtime wages. Tips are not
15 included in the calculation of an employee's total gross taxable income. See *MDC*
16 *Restaurants, LLC et al v. The Eighth Judicial Dist. Court*, 132 Nev. Op. 76 (Oct. 27,
17 2016). During that same period of time (and indeed during her entire employment),
18 Plaintiff was not offered or provided with health benefits of less than the 10% maximum
19 percentage for an employer to qualify for the lower-tier minimum wage payment.
20 Accordingly, Defendant failed to compensate Plaintiff at the correct legal higher tier
21 minimum wage rate of \$8.25 per non-overtime hour and \$12.38 per overtime hour
22 worked. Defendant therefore underpaid Plaintiff \$80.00 during that pay period.

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

27 17. Defendant is legally required to maintain all itemized pay statements that
28 will demonstrate the amount of health insurance premiums offered to Plaintiff and all

1 putative class member and the resulting amount of wages underpaid to Plaintiff and all
2 members of the putative class during the entire period of time at issue in this case.

3 **CLASS ACTION ALLEGATIONS**

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

6 19. Plaintiff brings this action on behalf of herself and all others similarly
7 situated employees as a class action under Rule 23 of the Nevada Rules of Civil
8 Procedure.

9 20. The **Classes** are defined as follows:

10 A. **Minimum Wage Class:** "All hourly paid non-exempt persons
11 employed by Defendant who were paid less than \$8.25 per non-
12 overtime hour worked in the state of Nevada within 2 years from
May 17, 2019 until judgment."

13 B. **Overtime Class:** "All hourly paid non-exempt persons
14 employed by Defendant who were paid less than \$12.38 per
overtime hour worked in the state of Nevada within 3 years from
May 17, 2019 until judgment."

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

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

19 A. The Classes are Sufficiently Numerous: Upon information and
20 belief, Defendant employs, and has employed, in excess of 40 Minimum Wage,
21 Overtime, and Waiting Time Penalty Class Members within the applicable time period.
22 Because Defendant is legally obligated to keep accurate payroll records, Plaintiff
23 alleges that Defendant's records will establish the members of these Classes as well as
24 their numerosity.

25 B. Plaintiff's Claims is Typical to Those of Fellow Class Members:
26 Each Class Member is and was subject to the same practices, plans, or policies as
27 Plaintiff: (1) Whether Defendant can meet its burden of demonstrating that Plaintiff and
28 Minimum Wage Class Members were only entitled to receive the lower tier minimum

1 wage rate; (2) Whether Defendant can meet its burden of demonstrating that Plaintiff
2 and Overtime Class Members were only entitled to receive the lower tier overtime wage
3 rate; (3) Whether Plaintiff and members of the Waiting Time Penalty Class are entitled
4 to waiting time penalties for the failure to pay them minimum, regular, and overtime
5 wages owed.

6 C. Common Questions of Law and Fact Exist: Common questions of
7 and fact exist and predominate as to Plaintiff and the Class Members, including, without
8 limitation: Whether Defendant offered health insurance to Plaintiff and Class Members
9 that was no more than 10% of employees' gross taxable income and whether
10 Defendant failed to pay the Waiting Time Penalty Class Members all their wages due
11 and owing in violation of NRS 608.020-050.

12 D. Plaintiff is Adequate Representative of the Class: Plaintiff will fairly
13 and adequately represent the interests of the Class because Plaintiff is a member of all
14 the Classes, she has issues of law and fact in common with all members of the
15 Classes, and her interests are not antagonistic to Class members. Plaintiff and her
16 counsel are aware of their fiduciary responsibilities to Class Members and are
17 determined to discharge those duties diligently by vigorously seeking the maximum
18 possible recovery for Class Members.

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

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FIRST CAUSE OF ACTION
Failure to Pay Minimum Wages in Violation of the Nevada Constitution
(On Behalf of Plaintiff and the Minimum Wage Class Against Defendant)

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

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

24. In order to pay the lower tier minimum wage amount, an employer must offer health benefits to its employees and the dependents of the employees "at a total cost to the employee for premiums of not more than 10 percent of the employee's gross taxable income from the employer."

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

26. By unlawfully paying Plaintiff and members of the Class the lower-tier minimum wage rate of \$7.25, instead of the applicable minimum wage rate of \$8.25, Defendant has failed to compensate Plaintiff and members of the Class at the minimum wage rate for all the hours that they worked pursuant to the Nevada Constitution.

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

SECOND CAUSE OF ACTION
Failure to Pay Overtime Wages in Violation of NRS 608.018 and 608.140
(On Behalf of Plaintiff and the Overtime Class Against Defendant)

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

1 29. NRS 608.140 provides that an employee has a private right of action for
2 unpaid wages.

3 30. NRS 608.018(1) provides as follows:

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

13 31. NRS 608.018(2) provides as follows:

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

19 32. As alleged herein, Defendant paid Plaintiff and all other members of the
20 Class at the lower-tier minimum wage rate but has failed to offer health benefits to its
21 employees and the employees' dependents at a total cost to the employee for
22 premiums of not more than 10% of the employees' gross taxable income.

23 33. By unlawfully paying Plaintiff and members of the Overtime Class the
24 lower-tier minimum wage rate of \$7.25 (with an overtime wage rate of \$10.88), instead
25 of the applicable minimum wage rate of \$8.25 (with an overtime wage rate of \$12.38),
26 Defendant has likewise failed to compensate Plaintiff and members of the Class at the
27 correct overtime wage rate for all the overtime hours that they worked pursuant to NRS
28 608.018.

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

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THIRD CAUSE OF ACTION
Waiting Time Penalties Pursuant to NRS 608.020-.050 and 608.140
(On Behalf of Plaintiff and the Waiting Time Penalty Class Against Defendant)

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

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

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

38. NRS 608.040(1)(a-b), in relevant part, imposes a penalty on an employer who fails to pay a discharged or quitting employee: "Within 3 days after the wages or compensation of a discharged employee becomes due; or on the day the wages or compensation is due to an employee who resigns or quits, the wages or compensation of the employee continues at the same rate from the day the employee resigned, quit, or was discharged until paid for 30-days, whichever is less."

39. NRS 608.050 grants an "employee lien" to each discharged or laid-off employee for the purpose of collecting the wages or compensation owed to them "in the sum agreed upon in the contract of employment for each day the employer is in default, until the employee is paid in full, without rendering any service therefore; but the employee shall cease to draw such wages or salary 30 days after such default."

40. By failing to pay Plaintiff and the Waiting Time Penalty Class Members their legally mandated minimum and overtime wages, Defendant has failed to timely remit all wages due and owing to Plaintiff and the Waiting Time Penalty Class Members.

41. Defendant willfully refuses and continues to refuse to pay Plaintiff and Waiting Time Penalty Class Members all the wages that were due and owing upon the termination of their employment.

42. Wherefore, Plaintiff and the Waiting Time Penalty Class Members demand thirty (30) days of pay as waiting penalties under NRS 608.040 and 608.140, and thirty

1 (30) days of pay as waiting penalties under NRS 608.050 and 608.140, together with
2 attorneys' fees, costs, and interest, as provided by law.

3 **FOURTH CAUSE OF ACTION**
4 **Injunctive/Declaratory Relief**
5 **(On Behalf of Plaintiff, Minimum Wage Class, and the Overtime Class Against**
6 **Defendant)**

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

9 44. As Defendant has paid Plaintiff and all other members of the Minimum
10 Wage Class at the lower-tier minimum wage rate but have failed to offer health benefits
11 to their employees and the employees' dependents at a total cost to the employee for
12 premiums of not more than 10% of the employees' gross taxable income, Defendant
13 has wrongfully withheld wages properly-owed to the Plaintiff and the Minimum Wage
14 Class Members.

15 45. As Defendant has likewise failed to compensate Plaintiff and members of
16 the Overtime Class at the correct overtime wage rate for all the overtime hours that they
17 worked pursuant to NRS 608.018, Defendant has wrongfully withheld wages properly-
18 owed to the Plaintiff and the Overtime Class Members.

19 46. Plaintiff, the Minimum Wage Class, and the Overtime Class will suffer
20 irreparable injury if Defendant is not enjoined from the future wrongful retention of
21 wages owed.

22 47. As a result of the aforementioned unlawful payment practices, Plaintiff
23 submits that there has been a likelihood of success on the merits that Plaintiff and the
24 Class Members have been damaged and that there is irreparable harm.

25 48. Plaintiff requests that this Honorable Court enter an Order that restrains
26 Defendant from attempting to enforce the alleged unlawful payment practices.

27 49. Plaintiff requests that this Honorable Court enter a declaration of
28 rights/obligations in regards to all such unlawful payment practices in this matter.

50. Further, disputes and controversies have arisen between the parties

1 relative to the lawfulness of the payment practices, and Plaintiff is entitled to have an
2 order entered pursuant to Chapter 30 of the Nevada Revised Statutes construing the
3 payment practices and adjudging and declaring Plaintiff and the Class Members' rights
4 and remedies thereunder including such an Order stating that such payment practices
5 are unlawful.

6 51. Plaintiff has been required to retain the services of an attorney and is
7 entitled to a reasonable award of attorneys' fees and costs.

8 **PRAYER FOR RELIEF**

9 Wherefore Plaintiff, by herself and on behalf of Class Members, prays for relief
10 as follows relating to her class action allegations:

- 11 1. For an order certifying this action as a class action on behalf the proposed
12 Classes and providing notice to all Class Members so they may participate
13 in this lawsuit;
- 14 2. For an order appointing Plaintiff as the Representatives of the Classes
15 and their counsel as Class Counsel;
- 16 3. For damages according to proof for minimum rate pay under the Nevada
17 Constitution for all hours worked;
- 18 4. For damages according to proof for overtime compensation under NRS
19 608.018 and 608.140 for all hours worked over 8 hours per day and/or
20 over 40 hours in a workweek;
- 21 5. For waiting time penalties pursuant to NRS 608.040-.050 and 608.140;
- 22 6. For a lien on the property where Plaintiff and all Nevada Class Members
23 labored pursuant to NRS 608.050;
- 24 7. For injunctive relief;
- 25 8. For declaratory relief;
- 26 9. For interest as provided by law at the maximum legal rate;
- 27 10. For punitive damages;
- 28 11. For reasonable attorneys' fees authorized by statute;

GABROY LAW OFFICES

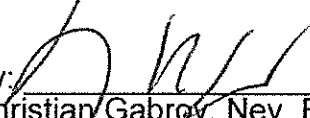
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- 12. For costs of suit incurred herein;
- 13. For pre-judgment and post-judgment interest, as provided by law; and,
- 14. For such other and further relief as the Court may deem just and proper.

DATED: May 17, 2019

GABROY LAW OFFICES

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EXHIBIT I

login.paylocity.com



Lucky Lucy D LLC (762381)



Home Employees HR Payroll Talent Notifications

Help

Russum Stormy (81294) (CG)

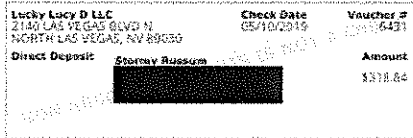
Employee

Employee Id: 81294 Department: CG - LCC Casino Bar

Hourly: 57.25

Check

Show Adjustment Checks Yes Check Date 05/10/2019



Voucher # - Delivery Location: 0431

Check Date: 05/10/2019

Period Begin - End Date: 04/22/2019

Gross Earnings - YTD: \$1,020.64

Net Earnings - YTD: \$318.84

Direct Deposits

Bank	Account	Type	Amount
WESTSTAR CREDIT UNION	###2967	Checking	\$318.84
Totals			\$318.84

Earnings

Description	Hrs	Rate	Current	YTD
OVERTIME			\$0.00	\$84.28
REGULAR	80.00	\$7.25	\$580.00	\$4,812.19
TIPS REPORTED			\$440.64	\$3,846.36
Totals	80.00		\$1,020.64	\$8,742.83

Taxes

Description	Current
FITW	\$91.15
MED	\$13.36
NV	\$0.00
SS	\$57.11
Totals	\$161.62

Deductions

Description	Current	YTD
DENTAL HMO	\$8.96	\$89.60
LCC HMO BASE 5000	\$89.30	\$893.00
TIPS REPORTED	\$440.64	\$2,846.36
EYEMED VISION	\$1.28	\$12.80
Totals	\$540.18	\$4,841.76

Time Off

Description	Used

Benefits

Description	Current	YTD

