



CASE NO: A-20-824304-C
Department 20

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DISTRICT COURT

CLARK COUNTY, NEVADA

EMMANUEL FLORES, on behalf of himself
and all others similarly situated,

Plaintiff,

vs.

DOMINO'S PIZZA LLC; and DOES 1
through 50, inclusive,

Defendant(s).

Case No.:

Dept. No.:

CLASS ACTION COMPLAINT

**(EXEMPT FROM ARBITRATION
PURSUANT TO NAR 5)**

- 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; and

3) Failure to Timely Pay All Wages Due and Owing in Violation of NRS 608.020-050 and 608.140;

LIEN REQUESTED PURSUANT TO NRS 608.050

JURY TRIAL DEMANDED

COMES NOW Plaintiff EMMANUEL FLORES, 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") sections 608.140, 608.018, and 608.020-.050. *See Neville v. Eighth Judicial Dist., Terrible Herbst, Inc.*, 133 Nev. Adv. Op. 95 (Dec. 7, 2017), 406 P.3d 499 (2017); *HG Staffing, LLC, et al. v. Second Judicial District Court*, Nevada Supreme Court Case No. 79118 (May 7, 2020) ("In *Neville v. Eighth Judicial District Court*, 133 Nev. 77, 406 P.3d 499 (2017), we held, by necessary implication, the exhaustion of administrative remedies is not required before filing an unpaid-wage claim in district court."). Plaintiff has made a proper demand for wages due pursuant to NRS 608.140.

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 one or more of the Defendants 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.

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PARTIES

4. Plaintiff EMMANUEL FLORES (hereinafter “Plaintiff” or “FLORES”) is a natural person who is and was a resident of the State of Nevada and was employed by Defendant Domino’s Pizza, LLC, as a non-exempt hourly employee from on or about May 2019 to on or about August 13, 2020.

5. Defendant DOMINO’S PIZZA LLC is a foreign corporation that conducts business in the state of Nevada. Defendant’s agent of service is located at 701 S. Carson Street, Suite 200, Carson City, Nevada 89701.

6. The Defendant named herein is the employer of the Plaintiff and all Class Members alleged herein. The Defendant is the employer engaged in commerce under the provisions of NRS 608.011. The identity of DOES 1-50 is unknown at the time and the Complaint will be amended at such time when the identities are known to Plaintiff. Plaintiff is informed and believes that each Defendant sued herein as DOE is responsible in some manner for the acts, omissions, or representations alleged herein and any reference to “Defendant,” “Defendants,” or “Domino’s” herein shall mean “Defendants and each of them.”

FACTUAL ALLEGATIONS

7. According to its company profile on Dun & Bradstreet, “Domino's Pizza LLC is located in MI, United States and is part of the Restaurants Industry. Domino's Pizza LLC has 10,000 employees across all of its locations. There are 740 companies in the Domino's Pizza LLC corporate family.” See https://www.dnb.com/business-directory/company-profiles.dominos_pizza_llc.e2b4a634715654c7f5431ef585f4ef6d.html (last visited Oct. 22, 2020).

8. Defendant sells pizza and other food items to customers, whether they carry out the food or have it delivered.

9. Plaintiff has been employed by Defendant as a delivery driver at the Domino’s location at 6101 West Charleston Avenue in Las Vegas, Nevada.

10. Plaintiff was paid an hourly rate of \$8.25 per hour for all hours he worked. He was not offered, and did not receive, health insurance benefits.

11. Plaintiff was compensated for overtime at 1 ½ times his base hourly wage when he worked over 40 hours in a workweek.

12. Plaintiff was not paid overtime at 1 ½ times his base hourly wage when he worked over 8 hours in a workday.¹

Defendant Fails To Reimburse Its Delivery Drivers For Employer Related Expenses

13. Defendant requires its delivery drivers to maintain and pay for safe, legally-operable, and insured automobiles when delivering pizza and other food items.

14. Defendant's delivery drivers incur costs for gasoline, vehicle parts and fluids, automobile repair and maintenance services, automobile insurance, and depreciation ("automobile expenses") while delivering pizzas for the primary benefit of Defendant.

15. Despite Defendant's requirement that delivery drivers use their own vehicles to deliver food items to Defendant's customers, Defendant does not reimburse its delivery drivers for the cost of operating the delivery vehicles.

16. During the applicable limitations period, the IRS business mileage reimbursement rate ranged between \$.58 and \$.535 per mile.² Likewise, reputable companies that study the cost of owning and operating a motor vehicle and/or reasonable reimbursement rates, including the AAA, have determined that the average cost of owning and operating a vehicle in 2019 ranged between \$.7929 to \$.5331 per mile depending on the number of miles driven.³ These figures

¹ In Nevada, employees who make less than 1 ½ times the applicable minimum wage must be paid overtime when they work over 8 hours in a workday. A "workday" in Nevada is defined as "a period of 24 consecutive hours which begins when the employee begins work."

² The reimbursement rates during the relevant time period are as follows:

2020	\$.575
2019	\$.58
2018	\$.545
2017	\$.535

See <https://www.irs.gov/tax-professionals/standard-mileage-rates> (last visited Oct. 22, 2020).

³See, e.g., <https://exchange.aaa.com/wp-content/uploads/2019/09/AAA-Your-Driving-Costs-2019.pdf> (last visited Oct. 22, 2020) (average cost per mile for miles driven less than 10,000 per year in 2019 was \$.7929)

1 represent a reasonable approximation of the average cost of owning and operating a vehicle for
2 use in delivering pizzas.

3 17. The driving conditions associated with the pizza delivery business cause more
4 frequent maintenance costs, higher costs due to repairs associated with driving, and more rapid
5 depreciation from driving as much as, and in the manner of, a delivery driver. Defendant's
6 delivery drivers further experience lower gas mileage and higher repair costs than the average
7 driver used to determine the average cost of owning and operating a vehicle described above due
8 to the nature of the delivery business, including frequent starting and stopping of the engine,
9 frequent braking, short routes as opposed to highway driving, and driving under time pressures.

10 18. Defendant's systematic failure to reimburse automobile expenses constitutes a
11 "kickback" to Defendant such that the hourly wages they pay to Plaintiff and Defendant's other
12 delivery drivers are not paid free and clear of all outstanding obligations to Defendant.

13 ***Defendant's Failure to Reimburse Automobile Expenses Causes Minimum Wage Violations***

14 19. Plaintiff was paid \$8.25 per hour during his employment with Defendant.

15 20. During that time period, the Nevada minimum wage rate was \$8.25 for employees
16 who were not offered qualified health benefits.

17 21. Plaintiff was never offered or provided with qualified health benefits.

18 22. Throughout his employment with Defendant, Plaintiff estimates that he worked
19 approximately 5 shifts per week and worked approximately 6 hours per shift. On average,
20 Plaintiff completed 18 deliveries per shift; Plaintiff estimates that he drove approximately 5-6
21 miles per delivery.

22 23. Plaintiff estimates that he worked approximately 321 shifts during his employment
23 with Defendant. Based on Plaintiff's good faith and reasonable estimates of the amount of miles
24 that he drove per delivery and the amount of deliveries that he made per shift, Plaintiff can
25 reasonable estimate that he drove approximately 108 miles per shift and 34,668 miles over the
26 course of his employment.

27 24. The IRS business mileage reimbursement rate during Plaintiff's employment with
28 Defendant was \$.58 per mile, which is a reasonable approximation of the automobile expenses

1 incurred in delivering pizzas. Using the IRS rate as a reasonable approximation of Plaintiff's
2 automobile expenses, every mile driven on the job decreased Plaintiff's net wages by
3 approximately \$.58. Since Plaintiff estimates that he drove approximately 34,668 miles during
4 his employment with Defendant, Plaintiff has "kicked back" to Defendant an estimated amount
5 of \$20,107.44 in minimum wages to Defendant that should have been paid free and clear to
6 Plaintiff by Defendant.

7 25. All of Defendant's delivery drivers had similar experiences to those of Plaintiff.
8 They were subject to the same "no reimbursement policy"; incurred similar automobile expenses;
9 completed deliveries of similar distances and at similar frequencies; and were paid hourly wages
10 at or very near the applicable Nevada minimum wage.

11 26. Based on the allegations set forth above, Defendant's average under-
12 reimbursement of automobile expenses over the prior three years has exceeded the difference
13 between hourly wages in each state in which Defendant operates and the federal and state
14 minimum wage during part or all of the limitations period, thereby resulting in company-wide
15 minimum wage violations.

16 27. The net effect of Defendant's "no reimbursement" policy, instituted and approved
17 by company managers, is that it willfully failed to pay minimum wages required by state law.
18 Defendant has thereby enjoyed ill-gained profits at the expense of their employees.

19 ***Defendant's Policy Of Not Paying Daily Overtime***

20 28. In addition to Defendant's unlawful minimum wage practices, Defendant also
21 maintained an unlawful policy of not paying daily overtime to non-exempt hourly employees who
22 earned 1 ½ times less than the applicable minimum wage.

23 29. Plaintiff frequently worked over 8 hours in any given workday. On many
24 occasions, Plaintiff would work a night shift until the early morning hours and then return to work
25 a day shift. The number of hours he worked in a workday under Nevada law was over 8 hours in
26 a 24 hour period of time. But despite having worked more than 8 hours in a 24 hour period of
27 time, Defendant failed to compensate Plaintiff at 1 ½ times his regular rate of pay for the overtime
28 hours he worked.

30. Upon information and belief, Defendant maintained a company-wide policy and practice of refusing to pay daily overtime wages to Nevada employees who worked over 8 hours in a workday. This “no daily overtime” policy has always been common to all non-exempt hourly paid employees at Defendant’s locations in the state of Nevada.

CLASS ACTION ALLEGATIONS

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

32. Plaintiff brings this action on behalf of himself and all other similarly situated employees as a class action under Rule 23 of the Nevada Rules of Civil Procedure.

33. The **Nevada Minimum Wage Class** is defined as “All hourly paid delivery drivers employed by Defendant in the state of Nevada at any time within 2 years from the date of filing this action until judgment.

34. The **Nevada Overtime Class** is defined as “All hourly paid non-exempt persons employed by Defendant in the state of Nevada who earned less than 1 ½ times the applicable minimum wage and who worked over eight (8) hours in a workday at any time within 3 years from the date of filing this action until judgment.”

35. The **Waiting Time Penalty Class** is defined as “All Nevada Minimum Wage Class and Nevada Overtime Class Members who are former employees.”

36. 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 1,000 Nevada Minimum Wage, Nevada 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 are Typical to Those of Fellow Class Members: Each Class Member is and was subject to the same practices, plans, or policies as Plaintiff: (1)

1 Whether Defendant's "no reimbursement" policy deprived Plaintiff and members of the
2 Nevada Minimum Wage Class minimum wages according to Nevada law; (2) Whether
3 Defendant compensated Plaintiff and members of the Nevada Overtime Class daily
4 overtime wages when they worked over 8 hours in a workday; (3) Whether Plaintiff and
5 members of the Waiting Time Penalty Class are entitled to waiting time penalties for the
6 failure to pay them minimum, regular, and overtime wages owed.

7 c. Common Questions of Law and Fact Exist: Common questions of law and
8 and fact exist and predominate as to Plaintiff and the Class Members, including, without
9 limitation: Whether Defendant's "no reimbursement" policy deprived Plaintiff and
10 Nevada Minimum Wage Class Members the minimum wage guaranteed by Nevada law;
11 Whether Defendant failed to pay Plaintiff and the Nevada Overtime Class Members one
12 and one half times their regular rate for all hours worked in excess of 8 hours a workday;
13 and Whether Defendant failed to pay Plaintiff and the Waiting Time Penalty Class
14 Members all their wages due and owing in violation of NRS 608.020-050.

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

22 e. Predominance/Superior Mechanism: Class claims predominate and a class
23 action is superior to other available means for the fair and efficient adjudication of this
24 controversy. Each Class Member has been damaged and is entitled to recovery by reason
25 of Defendant's illegal policy and/or practice of failing to compensate its employees in
26 accordance with Nevada wage and hour law. The prosecution of individual remedies by
27 each Class Member will tend to establish inconsistent standards of conduct for Defendants
28

1 and result in the impairment of Class Members' rights and the disposition of their interest
2 through actions to which they were not parties.

3 **FIRST CAUSE OF ACTION**

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

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

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

16 39. As alleged herein, Defendant has failed to reimburse delivery drivers their
17 automobile expenses to such an extent that it diminishes these employees' wages beneath
18 Nevada's minimum wage provisions.

19 40. Defendant knew or should have known that its "no reimbursement" policy and
20 methodology fails to compensate delivery drivers at the Nevada minimum wage.

21 41. Plaintiff and all similarly situated delivery drivers are victims of a uniform and
22 employer-based compensation policy. This uniform policy, in violation of the Nevada
23 Constitution, has been applied, and continues to be applied, to all delivery driver employees in
24 Defendant's Nevada restaurants.

25 42. Plaintiff and all similarly situated employees are entitled to damages equal to the
26 minimum wage minus actual wages received after deducting reasonably approximated
27 automobile expenses within two years from the date of filing this action.

28

43. Wherefore, Plaintiff demands for himself and for all other Nevada Minimum Wage Class Members that Defendant pay Plaintiff and Nevada Minimum Wage 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 Nevada Overtime Class Against Defendant)

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

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

46. NRS 608.018(1) provides as follows:

An employer shall pay 1 1/2 times an employee's regular wage rate whenever an employee who receives compensation for employment at a rate less than 1 1/2 times the minimum rate prescribed pursuant to NRS 608.250 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.

47. NRS 608.018(2) provides as follows:

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

48. As described above, Defendant maintained a policy and/or practice of illegal shift jamming (i.e., refusing to pay daily overtime when Plaintiff and members of the Nevada Overtime Class worked over 8 hours in a workday). As a result, Plaintiff and Nevada Overtime Class Members have been denied overtime compensation according to Nevada law.

49. Wherefore, Plaintiff demands for himself and all Nevada Overtime Class Members that Defendant pay Plaintiff and Nevada Overtime Class Members one and one half times their

1 “regular rate” of pay for all hours worked in excess of eight (8) hours in a workday during the
2 relevant time period together with attorneys’ fees, costs, interest, and punitive damages, as
3 provided by law.

4 **THIRD CAUSE OF ACTION**

5 **Waiting Time Penalties Pursuant to NRS 608.020-.050 and 608.140**

6 **(On Behalf of Plaintiff and the Waiting Time Penalty Class Against Defendant)**

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

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

11 52. NRS 608.020 provides that “[w]henver an employer discharges an employee, the
12 wages and compensation earned and unpaid at the time of such discharge shall become due and
13 payable immediately.”

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

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

25 55. By failing to pay Plaintiff and the Waiting Time Penalty Class Members their
26 minimum, regular, and overtime wages in violation of state law, Defendant has failed to timely
27 remit all wages due and owing to Plaintiff and the Waiting Time Penalty Class Members.
28

56. Despite demand, 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.

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

PRAYER FOR RELIEF

Wherefore Plaintiff, by himself and on behalf of Class Members, pray for relief as follows relating to their 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;
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 interest as provided by law at the maximum legal rate;
8. For punitive damages;
9. For reasonable attorneys' fees authorized by statute;
10. For costs of suit incurred herein;

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11. For pre-judgment and post-judgment interest, as provided by law; and
12. For such other and further relief as the Court may deem just and proper.

DATED: November 5, 2020

Respectfully Submitted,

THIERMAN BUCK LLP

/s/ Joshua D. Buck

Joshua D. Buck

Mark R. Thierman

Leah L. Jones

Joshua R. Hendrickson