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14 IN THE SECOND JUDICIAL DISTRICT COURT OF
15 THE STATE OF NEVADA IN AND FOR THE
16 COUNTY OF WASHOE

17 ANGELICA GODINEZ-GARCIA, on behalf
18 of herself and all others similarly situated,

19 Plaintiffs,

20 vs.

21 LAXMI HOTELS, dba HAMPTON INN &
22 SUITES, HILTON WORLDWIDE, and
23 DOES 1 through 50, inclusive,

24 Defendant(s).

Case No.:

Dept. No.:

**COLLECTIVE AND CLASS ACTION
COMPLAINT**

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

- 1) Failure to Pay Overtime Wages in Violation of NRS 608.140 and 608.018;
- 2) Failure to Timely Pay All Wages Due and Owing in Violation of NRS 608.140 and 608.020-050;
- 3) Failure to Pay Overtime in Violation of 29 U.S.C. § 207; and
- 4) Breach of Contract.

JURY TRIAL DEMANDED

1 COMES NOW Plaintiff ANGELICA GODINEZ-GARCIA on behalf of herself and all
2 other similarly situated and typical persons and alleges the following:

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

7 **JURISDICTION AND VENUE**

8 1. This Court has original jurisdiction over both state and federal claims alleged
9 herein. The Court has original jurisdiction over the state law claims alleged herein because the
10 amount in controversy exceeds \$10,000 and a party seeking to recover unpaid wages has a private
11 right of action pursuant to Nevada Revised Statute (“NRS”) sections 608.020-.050, and 608.140.
12 *See Lucatelli v. Texas De Brazil (Las Vegas) Corp.*, 2:11-CV-01829-RCJ, 2012 WL 1681394 (D.
13 Nev. May 11, 2012) (“[T]he Nevada Supreme Court recently held that NRS § 608.040 contains
14 a private cause of action because it is “illogical” that a plaintiff who can privately enforce a claim
15 for attorneys’ fees under NRS § 608.140 cannot privately enforce the underlying claim the fees
16 arose from.”); *Busk v. Integrity Staffing Solutions, Inc.*, 2013 U.S. App. LEXIS 7397 (9th Cir.
17 Nev. Apr. 12, 2013), overruled on other grounds, (“Nevada Revised Statute § 608.140 does
18 provide a private right of action to recoup unpaid wages.”); *Doolittle v. Eight Judicial Dist. Court*,
19 54 Nev. 319, 15 P.2d 684; 1932 Nev. LEXIS 34 (Nev. 1932) (recognizing that former employees
20 have a private cause of action to sue their employer (as well as third party property owners where
21 the work was performed) for wages and waiting penalties under NRS 608.040 and NRS 608.050).
22 This Court has jurisdiction over the federal claims alleged herein pursuant to Fair Labor Standards
23 Act (“FLSA”), 29 U.S.C. § 216(b).

24 2. Plaintiffs are seeking to recover unpaid wages due pursuant to Nevada statutory
25 authority and pursuant to an agreement (implied by law and fact) to pay for all hours worked.
26 Plaintiffs have a private right of action to bring their Nevada statutory claims pursuant to NRS
27 608.040 and 608.140. Plaintiffs made a proper demand for wages due pursuant to NRS 608.140.

28

FACTUAL ALLEGATIONS

1
2 9. Hilton Worldwide operates and franchises more than 1900 Hampton by Hilton
3 brand hotels worldwide.

4 10. Hilton Worldwide is both a direct employer of hotel employees at their various
5 franchisee locations and is a joint-employer with the individual franchisees—*e.g.*, the Hampton
6 Inn in Reno, Nevada. Hilton Worldwide employs more than 300,000 employees at its corporate
7 offices and at its owned, managed and franchised properties in 90 different countries. Hampton
8 Inn employees, whether direct hires by Hilton Worldwide or by individual franchisees, are
9 provided orientation and training designed by the corporate offices of Hilton Worldwide. For
10 example, through its various “College” programs, Hilton Worldwide offers more than 2,500
11 different courses that are delivered through classroom training, e-learning, webinars, e-books, live
12 and taped programs, on-the-job development experiences, social learning and apps. These
13 programs are designed to train management and employees regarding standards, compliance and
14 other topics to enable its franchisees to meet Hilton Worldwide’s expectations at all hotel
15 locations, whether owned solely by Hilton Worldwide or by a franchisee. All employees of Hilton
16 Worldwide’s Hampton by Hilton brand hotels, whether owned solely by Hilton Worldwide or by
17 a franchisee, are informed that they “are part of one big, happy (Hilton Worldwide) family” and
18 are required to comply with the policies and meet the expectations set by Hilton Worldwide.
19 Hilton Worldwide corporate employees regularly visit corporate and franchised hotel locations to
20 inspect the hotels and, upon information and belief, to oversee the employee management of each
21 hotel. Potential Hampton Inn employees apply for positions on the corporate Hilton Worldwide
22 website. *See* <http://jobs.hiltonworldwide.com/our-brands/hampton/> (last visited May 26, 2015).
23 Through its job postings on this website, Hilton Worldwide sets job requirements, expectations,
24 and duties for potential employees, regardless of whether the potential employee goes to work for
25 a hotel owned solely by Hilton Worldwide or by a franchisee. Ultimately, upon information and
26 belief, Hilton Worldwide exercises control over the hours and other working conditions of
27 Plaintiff and all similarly-situated hourly employees.

28 11. Plaintiff was employed by Defendants as a housekeeper.

1 12. Plaintiff earned between \$7.25 and \$8.25 an hour during her employment.

2 13. Defendants regularly scheduled Plaintiff to work a shift beginning at 8 a.m. and
3 ending at 4 p.m., six days a week. Thus, Plaintiff’s regularly scheduled shift required her to work
4 8 hours per day, six days a week, for a total of 48 hours per week. Plaintiff did not receive any
5 overtime premium pay for hours worked in excess of 8 hours in a day or 40 in a week.

6 14. In addition to the work performed during her regularly scheduled shift, Plaintiff
7 regularly worked additional overtime for Defendants following the end of her regularly scheduled
8 shift. Specifically, Plaintiff regularly worked 10 hours per day, six days per week, for an average
9 workweek of approximately 60 hours. Defendants required Plaintiff to stay and clean additional
10 rooms past the end of her regularly scheduled shift until all rooms had been cleaned. However,
11 Defendants did not pay Plaintiff any overtime premium pay for hours worked in excess of 8 hours
12 in a day or 40 in a week.

13 15. Plaintiffs have attached Exhibit A with this Complaint (hereinafter “Godinez-
14 Garcia August 1 – 15, 2013 Pay Period”) as an example of one of the many specific pay periods
15 whereby Plaintiffs were not paid for all hours suffered or permitted by the employer to be worked
16 at the employee’s overtime rate of pay, whether scheduled or not. Exhibit A consists of an
17 Earnings Statement, and shows that Mrs. Godinez-Garcia worked 99.5 hours in the pay period
18 beginning on August 1, 2013 and ending on August 15, 2013. In each of the workweeks of that
19 pay period, Mrs. Godinez-Garcia worked over 8 hours a day and over 40 hours a week, but did
20 not receive any overtime premium time for such work. Exhibit A provides irrefutable evidence
21 of Plaintiff’s factual allegations. In that pay period, Mrs. Godinez-Garcia was only paid for 99.5
22 hours at the minimum wage rate of \$8.25/hour for a sum of \$820.88. Mrs. Godinez-Garcia should
23 have been paid one and one half times her regular rate of pay for all hours worked in excess of 8
24 hours a day under Nevada law and 40 hours in a single workweek under Nevada and federal law

25 16. Exhibit A shows one example of the many pay periods whereby Mrs. Godinez-
26 Garcia worked over 40 hours in one of the pay period’s weeks, but was not compensated for the
27 hours worked in excess of 40 hours during that workweek at the overtime compensation premium
28 of one and one half times the minimum wage or her regular rate for the hours worked in excess

1 of 40 in that workweek pursuant to federal law. Upon information and belief, all other Class
2 Members employed by Defendants worked similar schedules and were paid in the same manner.

3 17. As a result of not being paid for the performance of compensable work, all former
4 employees of Defendants were likewise deprived their final pay upon the separation of their
5 employment.

6 18. The policies and practices of Defendants at all relevant times have been
7 substantially similar, if not identical, for all non-exempt employees it employs.

8 **COLLECTIVE AND CLASS ACTION ALLEGATIONS**

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

11 20. Plaintiff brings this action on behalf of herself and all other similarly situated and
12 typical employees as both a collective action under the FLSA and a true class action under Nevada
13 law.

14 21. Pursuant to the decision of the Ninth Circuit Court of Appeals in *Busk v. Integrity*
15 *Staffing Solutions, Inc.*, 713 F.3d 52 (9th Cir. 2013) rev'd on other grounds, No. 13-433, 2014
16 WL 6885951 (U.S. Dec. 9, 2014) *supra*, both opt-in collective or representative treatment of
17 claims under the federal FLSA and FRCP Rule 23 Class treatment of pendant state law claims
18 may be maintained in the same action.

19 22. The statute of limitations under the FLSA is 3 years for willful violations.

20 23. The statute of limitations for violation of a statutory duty under Nevada law is 3
21 years.

22 24. The statute of limitations for breach of a contract under Nevada law is 6 years.

23 25. The FLSA Class is defined as follows: **All current and former employees of**
24 **Defendants who worked as non-exempt employees at any time during the relevant time**
25 **period.**

26 26. The Nevada State Class is defined as follows: **All current and former employees**
27 **of Defendants who worked as non-exempt employees in the State of Nevada at any time**
28 **during the relevant time period.**

1 27. The Waiting Time Penalty Class is defined as follows: **All Nevada State Class**
2 **members who are former employees.**

3 28. With regard to the conditional certification mechanism under the FLSA, Plaintiff
4 is similarly situated to those that she seeks to represent for the following reasons, among others:

5 a. Defendants employed Plaintiff and all other members of the relevant
6 Classes as hourly employees who did not receive overtime premium pay of one and one
7 half their regular rate of pay for all hours worked in excess of forty (40) hours in a
8 workweek.

9 b. Common questions of fact and law exist as to whether Defendants failed
10 to pay Plaintiffs and all other members of the relevant Classes one and one half times their
11 regular rate for all hours worked in excess of 40 hours a week.

12 c. Upon information and belief, Defendants employ, and have employed,
13 thousands of Class Members within the applicable statute of limitations.

14 d. Named Plaintiffs have filed or will file their consents to sue with the Court.
15 Plaintiffs will seek conditional certification so that all class members can receive official
16 court notice of the pendency of this action. *See, e.g., Hoffmann-La Roche Inc. v. Sperling,*
17 *493 U.S. 165, 110 S. Ct. 482, 107 L. Ed. 2d 480 (1989).*

18 e. Defendants have known or should have known its policies alleged herein
19 were unlawful and that they owe employees this money, and have willfully failed to pay
20 their employees properly.

21 29. NRCF Rule 23 Class treatment for all non-FLSA claims alleged in this complaint
22 is appropriate in this case for the following reasons:

23 A. The Class is Sufficiently Numerous: Upon information and belief,
24 Defendants employ, and have employed, thousands of Class Members within the
25 applicable statute of limitations.

26 B. Common Questions of Law and Fact Exist: Common questions of law and
27 fact exist and predominate as to Plaintiff and Class Members, including, without
28 limitation:

FIRST CAUSE OF ACTION

(Failure to Pay Overtime Wages in Violation of NRS 608.140 and 608.018)

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

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

33. 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.

34. 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.

35. Defendants failed to pay Plaintiff and Nevada State Class Members daily overtime premium pay for all hours worked over eight (8) hours in a workday to those Nevada State Class Members who were paid a regular rate of less than one and one half times the minimum wage premium pay and, failed to pay a weekly premium overtime rate of pay of time and one half their regular rate for all members of the Class who earned over one and one half times the minimum wage rate and who worked in excess of forty (40) hours in a week, in violation of NRS 608.140 and 608.018.

36. Wherefore, Plaintiff demands for herself and for Nevada State Class Members that Defendants pay Plaintiff and Nevada State Class Members one and one half times their "regular rate" of pay for all hours worked in excess of eight (8) hours in a workday and in excess of forty

1 (40) hours a workweek during the relevant time period alleged herein together with attorneys'
2 fees, costs, and interest as provided by law.

3 **SECOND CAUSE OF ACTION**

4 (Failure to Timely Pay All Wages Due and Owing Upon Termination Pursuant to NRS 608.140
5 and 608.020-.050)

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

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

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

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

24 42. By failing to pay Plaintiff and Nevada State Class Members overtime as described
25 above, Defendants have failed to pay Waiting Time Penalty Class Members all their wages due
26 and owing at the time of their separation from employment.

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1 time period alleged herein together with liquidated damages, attorneys' fees, costs, and interest
2 as provided by law.

3 **FOURTH CAUSE OF ACTION**

4 (Breach of Contract)

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

7 52. At all times relevant herein, Defendants had an agreement with Plaintiff and with
8 every FLSA and Nevada State Class Member to pay an agreed upon hourly wage rate for all hours
9 they worked for Defendants. Indeed, Defendants offered to pay Plaintiff and FLSA and Nevada
10 State Class Members a specific rate of pay in exchange for Plaintiff and FLSA and Nevada State
11 Class Members' promise to perform work for Defendants.

12 53. The parties' employment agreement necessarily incorporated all applicable
13 provisions of both state and federal law.

14 54. Defendants beached their agreement with Plaintiff and FLSA and Nevada State
15 Class Members by failing to compensate them for hours worked in excess of 8 in a day and 40 in
16 a week at the agreed upon rate of pay.

17 55. As a result of Defendants' breach, Plaintiff and FLSA and Nevada State Class
18 Members have suffered economic loss that includes lost wages and interest.

19 56. Wherefore, Plaintiff demands for herself and for Class Members that Defendants
20 pay Plaintiff and FLSA and Nevada State Class Members their agreed upon rate of pay for all
21 hours worked in excess of 8 in a day and 40 in a week during the relevant time period alleged
22 herein together with attorney's fees, costs, and interest as provided by law.

23 **PRAYER FOR RELIEF**

24 Wherefore Plaintiff, by herself and on behalf of all Class Members, pray for relief as
25 follows relating to their collective and class action allegations:

- 26 1. For an order conditionally certifying this action under the FLSA and providing
27 notice to all members of the Class so they may participate in this lawsuit;

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2. For an order certifying this action as a traditional class action under Nevada Rule of Civil Procedure Rule 23 for all other claims presented in this complaint;
3. For an order appointing Plaintiff as the Representative of the Class and her counsel as Class Counsel;
4. For damages according to proof for overtime compensation under NRS 608.140 and 608.018 for all hours worked for those employees who earned a regular rate of less than one and one half times the minimum wage for hours worked in excess of 8 hours per day and/or for all class members for overtime premium pay of one and one half their regular rate for all hours worked in excess of 40 hours per week;
5. For waiting time penalties pursuant to NRS 608.140 and 608.040-.050;
6. For damages according to proof for overtime compensation at the applicable rate under federal law for all hours worked over 40 per week;
7. For liquidated damages pursuant to 29 U.S. C. § 216(b);
8. For damages pursuant to Defendant's breach of contract;
9. For interest as provided by law at the maximum legal rate;
10. For reasonable attorneys' fees authorized by statute;
11. For costs of suit incurred herein;
12. For pre-judgment and post-judgment interest, as provided by law, and
13. For such other and further relief as the Court may deem just and proper.

DATED: July 2, 2015

/s/Joshua D. Buck
Mark R. Thierman
Joshua D. Buck
Leah L. Jones

Attorneys for Plaintiffs

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**SECOND JUDICIAL DISTRICT COURT
COUNTY OF WASHOE, STATE OF NEVADA**

**AFFIRMATION
Pursuant to NRS 239B.030**

The undersigned does hereby affirm that the preceding document, _____
Complaint

_____ (Title of Document)

filed in case number: _____

Document does not contain the social security number of any person

-OR-

Document contains the social security number of a person as required by:

A specific state or federal law, to wit:

_____ (State specific state or federal law)

-or-

For the administration of a public program

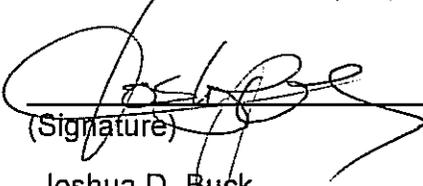
-or-

For an application for a federal or state grant

-or-

Confidential Family Court Information Sheet
(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: 7/2/2015



(Signature)

Joshua D. Buck

(Print Name)

Plaintiff

(Attorney for)