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DISTRICT COURT

CLARK COUNTY, NEVADA

TARISSA LAURIN and GILBERT
MCFARLIN, on behalf of themselves and
all others similarly situated,

Plaintiffs,

vs.

SITEL OPERATING CORPORATION; and
DOES 1 through 50, inclusive,

Defendant(s).

Case No.: **A- 16 - 736053 - C**
Dept. No.: **XXX**

CLASS ACTION COMPLAINT
(EXEMPT FROM ARBITRATION
PURSUANT TO NAR 5)

- 1) Failure to Compensate for All Hours Worked in Violation of NRS 608.140 and 608.016;
- 2) Failure to Pay Minimum Wages in Violation of the Nevada Constitution;
- 3) Failure to Pay Overtime in Violation of NRS 608.140 and 608.018;
- 4) Failure to Timely Pay All Wages Due and Owing in Violation of NRS 608.140 and 608.020-050; and
- 5) Breach of Contract.

JURY TRIAL DEMANDED

COMES NOW Plaintiff TARISSA LAURIN and GILBERT MCFARLIN on behalf of themselves and all others similarly situated and typical persons and alleges the following:

All allegations in the Complaint are based upon information and belief except for those allegations that pertain to the Plaintiffs named herein and their 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 \$10,000 and a party seeking to recover unpaid wages has a private right of action pursuant to Nevada Revised Statute (“NRS”) sections 608.050, 608.250, and 608.140. *See Lucatelli v. Texas De Brazil (Las Vegas) Corp.*, 2:11-CV-01829-RCJ, 2012 WL 1681394 (D. Nev. May 11, 2012) (“[T]he Nevada Supreme Court recently held that NRS § 608.040 contains a private cause of action because it is “illogical” that a plaintiff who can privately enforce a claim for attorneys' fees under NRS § 608.140 cannot privately enforce the underlying claim the fees arose from.”); *Busk v. Integrity Staffing Solutions, Inc.*, 2013 U.S. App. LEXIS 7397 (9th Cir. Nev. Apr. 12, 2013) (“Nevada Revised Statute § 608.140 does provide a private right of action to recoup unpaid wages.”); *Doolittle v. Eight Judicial Dist. Court*, 54 Nev. 319, 15 P.2d 684; 1932 Nev. LEXIS 34 (Nev. 1932) (recognizing that former employees have a private cause of action to sue their employer (as well as third party property owners where the work was performed) for wages and waiting penalties under NRS 608.040 and NRS 608.050).

2. Plaintiff is seeking to recover unpaid wages due pursuant to Nevada statutory authority and pursuant to an agreement (implied by law and fact) to pay for all hours worked and/or under the wage laws of the State of Nevada. Plaintiff therefore has a private right of action pursuant to Nevada Revised Statute (“NRS”) Sections 608.040 and 608.140 as well as a claim for at least minimum wages for all hours worked “off-the-clock” pursuant to Section 16 of Article 15 of the Nevada State Constitution. Plaintiff made a proper demand for wages due pursuant to NRS 608.140 and by agreement of the parties.

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

PARTIES

4. Plaintiff TARISSA LAURIN (hereinafter “Plaintiff” or “Ms. Laurin”) 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 in its Las Vegas facility from on or about December 2013 until April 2014.

5. Plaintiff GILBERT MCFARLIN (hereinafter “Plaintiff” or “Mr. McFarlin”) 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 in its 420 Pilot Road Las Vegas facility from on or about April 15, 2013 until on or about March 2015.

6. Defendant SITEL OPERATING CORPORATION (hereinafter “Defendant” or “Sitel”) is a foreign corporation incorporated in the state of Delaware and is an employer under NRS 608.011.

7. 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 “Sitel” herein shall mean “Defendants and each of them.”

FACTUAL ALLEGATIONS

8. According to its website, Sitel is a “Global outsourcing provider of customer experience management helping the largest brands in the world retain and grow their customer base.” See <http://www.sitel.com/> (last visited May 1, 2016). Sitel contracts with numerous companies such as Sony, AAA, and 24 Hour Fitness, to provide customer service support. Sitel operates at least two (2) call center location in Las Vegas.

9. At all relevant times, Plaintiff Laurin was employed by Defendant as a Customer Service Representative at one of its Las Vegas call center locations and Plaintiff McFarlin was employed as a Customer Service Agent and Mentor at the other location at 420 Pilot Road.

10. In their roles as a call center employees, Plaintiffs had to perform work activities before clocking-in and after clocking-out (i.e., “off-the-clock”) and were not compensated for engaging in those activities for much of the time period when they worked for Sitel. At some point during their employment, however, Sitel altered the manner in which employees clocked in/out with respect to when they would perform their computer boot up and boot down activities by installing Kronos kiosks so that employees were no longer performing such work off-the-clock. This complaint only covers the time period prior to the installation of the Kronos kiosk.

11. Plaintiffs estimate they were under the custody and control of their employer at the place of employment without compensation approximately 20 minutes a day. Namely, Plaintiffs were required boot up their computers and load numerous programs to be used during their workday (which involved starting up and logging on to approximately eleven or twelve different programs) before they were able to turn on the phone to receive their first customer call. Because the phone system recorded Plaintiffs’ time and worked and acted as their time card, Plaintiffs could not clock in until after all of the above activities were completed. Plaintiffs estimate that it took them approximately 15 minutes to perform these work related activities prior to clocking in every day.

12. At the end of their workday, Plaintiffs were required to clock out of the timekeeping system and then shut down the various programs they used during the workday and power down the computer. Plaintiffs estimate that it took approximately 5 minutes to perform these activities after clocking out.

13. Plaintiffs were regularly scheduled to work 5 shifts a week and 40 hours a week. As an example of the wages Plaintiff Laurin is owed, during her last full week of employment she was paid for 40 hours but she actually worked approximately 1.67 hours without any compensation at all. As a result, Plaintiff Laurin is owed her overtime rate of pay for those hours worked.

14. Upon information and belief, all Sitel call center employees were similarly required to perform these same pre- and post-shift activities without compensation.

15. All these off-the-clock work requirements alleged herein caused Plaintiffs and all other similarly situated employees to work regular time and overtime for which they were either not compensated or not properly compensated by Defendant. To the extent Plaintiffs and other employees worked more than 8 hours a day or 40 hours a week, the unpaid time should have been paid at a rate of one-and-one-half times their regular rate of pay as required by law.

16. Like all agreements, Defendant's agreement with its employees includes, expressly and/or implicitly, an agreement to comply with all state and federal laws, and in particular, the labor laws of the state of Nevada.

CLASS ACTION ALLEGATIONS

17. Plaintiffs reallege and incorporate by reference all the paragraphs above in the Complaint as though fully set forth herein.

18. Plaintiffs brings the action on behalf of themselves and the following classes of similarly situated and typical employees:

A. **NEVADA CLASS:** All hourly paid call center employees employed by Defendant in the state of Nevada at any time during the relevant time period alleged herein (pre Kronos kiosk).

B. **WAGES DUE AND OWING CLASS:** All members of the NEVADA CLASS who are former employees.

19. Rule 23 Class treatment is appropriate in the case for the following reasons:

A. The Class is Sufficiently Numerous: Upon information and belief, Defendant employs, and has employed, in excess of 1,000 NEVADA Class Members within the applicable statute of limitations. Because Defendant is legally obligated to keep accurate payroll records, Plaintiffs allege that Defendant's records will establish the identity and ascertainability of members of the NEVADA Class as well as their numerosity.

B. Plaintiffs' Claims are Typical to Those of Fellow Class Members: Each NEVADA Class Member is and was subject to the same practices, plans, and/or policies as Plaintiffs, as follows: Defendant required Plaintiffs and NEVADA Class Members to engage in pre- and post-shift activities without compensation; Defendant failed to pay Plaintiffs and NEVADA Class Members at their regular rate for all time spent on the above referenced activity, and if applicable, time and one half their regular rate if they worked in excess of 40 hours in a workweek or, if paid a base rate of less than one and one half the minimum wage, then failed to pay a premium rate of one and one half their regular rate if they worked more than 8 hours in a day; and Defendant failed to pay Plaintiffs and WAGES DUE AND OWING Class Members all wages due and owing at the time of their termination or separation from employment.

C. Common Questions of Law and Fact Exist: Common questions of law and fact exist and predominate as to Plaintiffs and the Class, including, without limitation the following: Whether the time spent by Plaintiffs and NEVADA Class Members engaging in pre-shift activities is compensable under federal and Nevada law; Whether Defendant failed to pay a premium rate of one and one half times their regular rate for all hours worked in excess of 40 hours a week, and if they were paid less than one and one half the minimum wage, then for all hours worked in excess of 8 hours a day; Whether Plaintiffs and NEVADA Class Members were compensated for "all time worked by the employee at the direction of the employer, including time worked by the employee that is outside the scheduled hours of work of the employee" pursuant to the Nevada Administrative Code ("NAC") 608.115(1), and NRS 608.016; and Whether Defendant delayed final payment to Plaintiffs and WAGES DUE AND OWING Class Members in violation of NRS 608.020-050.

D. Plaintiffs Are Adequate Representatives of the Class: Plaintiffs will fairly and adequately represent the interests of the Classes because Plaintiffs are members of the Classes, they have issues of law and fact in common with all members of the Classes, and they do not have any interests antagonistic to Class Members. Plaintiffs and

counsel are aware of their fiduciary responsibilities to Class Members and are determined to discharge those duties diligently and vigorously by seeking the maximum possible recovery for Class Members as a group.

E. Predominance/Superiority: Common questions predominate and a class action is superior to other available means for the fair and efficient adjudication of their controversy. Each Class Member has been damaged and is entitled to recovery by reason of Defendant's illegal policy and/or practice of failing to compensate its employees in accordance with federal and Nevada wage and hour law. The prosecution of individual remedies by each Class Member will be cost prohibitive and may lead to inconsistent standards of conduct for Defendant and result in the impairment of Class Members' rights and the disposition of their interest through actions to which they were not parties.

FIRST CAUSE OF ACTION

Failure to Pay Wages for All Hours Worked in Violation of NRS 608.140 and 608.016

(On Behalf of Plaintiffs and all members of the NEVADA CLASS)

20. Plaintiffs reallege and incorporate by the reference all the paragraphs above in the Complaint as though fully set forth herein.

21. NRS 608.140 provides that an employee has a private right of action for unpaid wages: "Whenever a mechanic, artisan, miner, laborer, servant or employee shall have cause to bring suit for wages earned and due according to the terms of her or her employment, and shall establish by decision of the court or verdict of the jury that the amount for which he or she has brought suit is justly due, and that a demand has been made, in writing, at least 5 days before suit was brought, for a sum not to exceed the amount so found due, the court before which the case shall be tried shall allow to the Plaintiff a reasonable attorney fee, in addition to the amount found due for wages and penalties, to be taxed as costs of suit." Plaintiffs have made a demand for unpaid wages upon Defendant pursuant to NRS 608.140 but satisfactory payment was not received.

22. NRS 608.016 states that "An employer shall pay to the employee wages for each hour the employee works." Hours worked means any time the employer exercises "control or

custody” over an employee. *See* NRS 608.011 (defining an “employer” as “every person having control or custody . . . of any employee.”). Pursuant to the Nevada Administrative Code, hours worked includes “all time worked by the employee at the direction of the employer, including time worked by the employee that is outside the scheduled hours of work of the employee.” NAC 608.115(1).

23. Except for employees engaged in mining, Nevada law requires employees be paid for all time under the custody and control of their employer at the place of employment.

24. By failing to compensate Plaintiffs and NEVADA Class Members for the pre and post shift activities described above, Defendant has failed to pay Plaintiffs and NEVADA Class Members for all hours worked in violation of NRS 608.140 and 608.016.

25. Wherefore, Plaintiffs demand for themselves and for all NEVADA Class Members payment by Defendant at the regular hourly rate of pay for all hours worked during the relevant time period together with attorneys’ fees, costs, and interest as provided by law.

SECOND CAUSE OF ACTION

Failure to Pay Minimum Wages in Violation of the Nevada Constitution

(On Behalf of Plaintiffs and all members of the NEVADA CLASS)

26. Plaintiffs reallege and incorporate by reference all the paragraphs above in the Complaint as though fully set forth herein.

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

28. By failing to compensate Plaintiffs and all other members of the NEVADA Class for the time spent engaging in pre and post-shift activities described above, Defendant has paid Plaintiffs and NEVADA Class Members zero (\$0.00) dollars for performing said work, which is less than the minimum wage. Thus, Defendant has failed to pay Plaintiffs and NEVADA Class Members for all hours worked in violation of the Nevada Constitution.

29. Although the issue is presently pending before the Nevada Supreme Court, upon information and belief, Plaintiffs believe the correct statute of limitations for violations of the State Constitution is the four year "Catch All" statute of NRS 11.220. Plaintiffs will amend their demand if the Nevada Supreme Court rules to the contrary.

30. Wherefore, Plaintiffs demand for themselves and for the NEVADA Class Members payment by Defendant at the minimum wage rate for all hours worked during the relevant time period together with attorneys' fees, costs, and interest as provided by law.

THIRD CAUSE OF ACTION

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

(On Behalf of Plaintiffs and all members of the NEVADA CLASS)

31. Plaintiffs reallege and incorporate by reference all the paragraphs above in the 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. By failing to compensate Plaintiffs and all other members of the NEVADA Class for the time spent engaging in pre and post-shift activities described above, Defendant failed to pay Plaintiffs and NEVADA Class Members daily overtime premium pay to those NEVADA 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 NEVADA Class who worked in excess of forty (40) hours in a week in violation of NRS 608.140 and 608.018.

36. Wherefore, Plaintiffs demand for themselves and for the NEVADA Class Members payment by Defendant at one and one half times their “regular rate” of pay for all hours worked in excess of eight (8) hours in a workday for those class members whose regular rate of pay did not exceed the one and one half the minimum wage set by law, and premium overtime rate of one and one half their regular rate for all class members who worked in excess of forty (40) hours a workweek during the relevant time period together with attorneys’ fees, costs, and interest as provided by law.

FOURTH CAUSE OF ACTION

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

(On Behalf of Plaintiffs and the WAGES DUE AND OWING CLASS)

37. Plaintiffs reallege and incorporate by reference all the paragraphs above in the Complaint as though fully set forth herein.

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

39. 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.”

40. 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.”

41. 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 therefor; but the employee shall cease to draw such wages or salary 30 days after such default.”

42. By failing to pay Plaintiffs and all members of the NEVADA Class for all hours worked in violation of Nevada wage-hour laws, Defendant has failed to timely remit all wages due and owing to Plaintiffs and all members of the WAGES DUE AND OWING Class.

43. Despite demand, Defendant willfully refuses and continues to refuse to pay Plaintiffs and all WAGES DUE AND OWING Class Members.

44. Wherefore, Plaintiffs demand thirty (30) days wages under NRS 608.140 and 608.040, and an additional thirty (30) days wages under NRS 608.140 and 608.050, for Plaintiffs and all members of the WAGES DUE AND OWING Class together with attorneys’ fees, costs, and interest as provided by law.

FIFTH CAUSE OF ACTION

Breach of Contract

(On Behalf of Plaintiffs and the NEVADA CLASS)

45. Plaintiffs reallege and incorporate by reference all the paragraphs above in the Complaint as though fully set forth herein.

46. At all times relevant herein, Defendant had an agreement with Plaintiffs and with every NEVADA Class Member to pay an agreed upon hourly wage rate for all hours they worked for Defendant. Indeed, Defendant offered to pay Plaintiffs and NEVADA Class Members a specific rate of pay in exchange for Plaintiffs and NEVADA Class Members’ promise to perform work for Defendant.

47. The parties' employment agreement necessarily incorporated all applicable provisions of both state and federal law, including the labor laws of the State of Nevada.

48. Defendant breached its agreement with Plaintiffs and NEVADA Class Members by failing to compensate them for all hours worked, namely, for hours spent performing work activities off-the-clock, at the agreed upon rate of pay.

49. As a result of Defendant's breach, Plaintiffs and NEVADA Class Members have suffered economic loss that includes lost wages and interest.

50. The statute of limitations for breach of a written agreement is six years and breach of an oral agreement is four years. *See* NRS 11.190(1)(b); NRS 11.190(2)(c).

51. Wherefore, Plaintiffs demands for themselves and for NEVADA Class Members that Defendant pay Plaintiffs and NEVADA Class Members their agreed upon rate of pay for all hours worked off the clock during the relevant time period alleged herein together with attorney's fees, costs, and interest as provided by law.

JURY TRIAL DEMANDED

Plaintiffs hereby demand a jury trial pursuant to Nevada Rule of Civil Procedure 38.

PRAYER FOR RELIEF

Wherefore Plaintiffs, individually and on behalf of Class Members, pray for relief as follows relating to their class action allegations:

1. For an order certifying the action as a class action under Nevada Rule of Civil Procedure Rule 23 on behalf of each proposed class;
2. For an order appointing Plaintiffs as the Representatives of each class and their counsel as Class Counsel for each class;
3. For damages according to proof for regular rate pay under NRS 608.140 and 608.016 for all hours worked;
4. For damages according to proof for minimum wage rate pay under the Nevada Constitution for all hours worked;
5. 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;

6. For sixty days of waiting time penalties pursuant to NRS 608.140 and 608.040-.050;
7. For damages pursuant to Defendant's breach of contract;
8. For interest as provided by law at the maximum legal rate;
9. For reasonable attorneys' fees authorized by statute;
10. For costs of suit incurred herein;
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: May 3, 2016

Respectfully Submitted,

THIERMAN BUCK LLP

/s/Joshua D. Buck

Mark R. Thierman

Joshua D. Buck

Leah L. Jones

Attorneys for Plaintiff