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DISTRICT COURT

CLARK COUNTY, NEVADA

AMANDA FAIN, on behalf of herself and all
others similarly situated,

Plaintiff,

vs.

CELEBRITY BURGERS, LLC, dba
WAHLBURGERS, and DOES 1 through 50,
inclusive,

Defendant(s).

Case No.: A-16-742245-C

Dept. No.: XXVIII

CLASS ACTION COMPLAINT

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

- 1) Failure to Pay Overtime 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) Breach of Contract; and
- 4) Quantum Meruit/Unjust Enrichment.

JURY TRIAL DEMANDED

COMES NOW Plaintiff AMANDA FAIN, on behalf of herself 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 her 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. The Nevada state court has jurisdiction over the state law claims alleged herein because the amount in controversy exceeds \$10,000 and because Plaintiff has a private right of action for minimum wages for all hours worked pursuant to Section 16 of Article 15 of the Nevada State Constitution. Article 15, Section 16(B) of the Constitution of the State of Nevada states in relevant part: “An employee claiming violation of this section may bring an action against his or her employer in the courts of this State to enforce the provisions of this section and shall be entitled to all remedies available under the law or in equity appropriate to remedy any violation of this section, including but not limited to back pay, damages, reinstatement or injunctive relief. An employee who prevails in any action to enforce this section shall be awarded his or her reasonable attorney’s fees and costs.”

2. In addition, this court has jurisdiction over the Nevada statutory claims alleged herein because 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).

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 the judicial district and many of the acts complained of herein occurred in Clark County, Nevada.

PARTIES

4. Plaintiff AMANDA FAIN (hereinafter “Plaintiff” or “FAIN”) is a natural person who is and was a resident of the State of Nevada and has been employed by Defendant as a non-exempt hourly employee during the relevant time period alleged herein.

5. Defendant CELEBRITY BURGERS, LLC, dba WAHLBURGERS (hereinafter “Defendant” or “Wahlburgers”) is a domestic corporation incorporated in the state of Nevada, with its principle place of business located at 3635 Las Vegas Boulevard South Unit 100, Las Vegas, Nevada. The Defendant named herein is the employer of the Plaintiff and all Class Members alleged herein.

6. The Defendant is an employer engaged in commerce under the provisions of 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 Defendants sued herein as DOE is responsible in some manner for the acts, omissions, or representations alleged herein and any reference to “Defendant,” “Defendants,” or “Wahlburgers” herein shall mean “Defendants and each of them.”

FACTUAL ALLEGATIONS

8. Plaintiff has been employed by Defendant as a lead bartender at Wahlburgers restaurant and bar located on the Las Vegas strip.

9. Plaintiff was paid a hourly rate of \$8.25 per hour for all hours she worked. She was not offered, and does not receive, health insurance benefits.

10. Plaintiff was scheduled for, and regularly worked, 6-7 shifts per week, 10-12 hours per shift. Plaintiff has been employed by Defendant since May of 2016. Prior to taking a temporary leave of absence to attend to a family emergency pursuant to the Family Medical Leave Act (“FMLA”) on or about July 12, 2016, Plaintiff estimates that she worked up to 84 hours per week (she worked approximately 12 hours a day for 14-days straight) and was not paid any overtime compensation for those hours over 8 in a workday and/or over 40 in a workweek. Even though she was paid \$8.25 for all those hours, she is still owed 4.125 for all the overtime hours

each day and/or week. Defendant is in the sole possession of Plaintiff's time cards that would indicate the number of hours worked per day and per week. Plaintiff estimates, however, that she worked, on average, 72 hours per week and thus would be entitled to overtime pay at \$4.125 for 32 hours per week. Having been employed for approximately 12 weeks, Plaintiff is owed approximately \$1,584 in unpaid overtime wages.

11. Upon information and belief, Defendant did not pay any other non exempt hourly employee (e.g., bartender, waitress, cook, dishwasher, etcetera) overtime wages for the time that they worked over 8 hours in a workday and/or over 40 hours in a workweek. This no-overtime policy has always been common to all non-exempt hourly paid employees at Wahlburgers.

CLASS ACTION ALLEGATIONS

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

13. Plaintiff brings this action on behalf of himself and the following similarly situated and typical employees in Nevada as a true class action under Nevada law: **All hourly paid employees of Defendant in the State of Nevada during the relevant time period alleged herein.**

14. **The Class is Sufficiently Numerous.** Upon information and belief, Defendant employs, and has employed, in excess of 75 Class Members within the applicable statute of limitations. Because Defendant is legally obligated to keep accurate payroll records, Plaintiff alleges that Defendant's records will establish the identity and ascertainability of members of the Class as well as their numerosity.

15. **Plaintiff's Claims are Typical to Those of Fellow Class Members.** Each Class Member is and was subject to the same practices, plans, and/or policies as Plaintiff, as follows: (1) Defendant failed to pay Plaintiff and all Class Members overtime pay when they worked over 8 hours in a workday and/or over 40 hours in a workweek.

16. **Common Questions of Law and Fact Exist.** Common questions of law and fact exist and predominate as to Plaintiff and the Class, including, without limitation the following: (1) Whether Defendant failed to pay overtime pay to all hourly paid employees when they worked

over 8 hours in a workday and/or over 40 hours in a workweek; (2) Whether Defendant delayed final payment to Plaintiff and Class Members who are former employees in violation of NRS 608.020-050.

17. **Plaintiff Is an Adequate Representative of the Class.** Plaintiff will fairly and adequately represent the interests of the Class because Plaintiff is a member of the Class, she has issues of law and fact in common with all members of the Class, and she does not have any interests antagonistic to the members of the Class. Plaintiff and counsel are aware of their fiduciary responsibilities to Members of the Class and are determined to discharge those duties diligently and vigorously by seeking the maximum possible recovery for the Class.

18. **Common Questions Predominate And A Class Action Is A Superior Mechanism to Hundreds Of Individual Actions.** Common questions of whether Defendants maintained a policy of refusing to pay overtime pay to non exempt employees when they worked over 8 hours in a workday and/or over 40 hours in a workweek. A class action is superior to other available means for the fair and efficient adjudication of their controversy. Each Member of the Class 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 Nevada wage and hour law. The prosecution of individual remedies by each member of the Class will be cost prohibitive and may lead to inconsistent standards of conduct for Defendant and result in the impairment of the rights and the disposition of their interest through actions to which they were not parties.

FIRST CAUSE OF ACTION

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

(On Behalf of Plaintiff and all members of the Class)

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

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

21. 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.

22. 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

23. Defendant's "no overtime" policy deprive non-exempt employees of legally mandated overtime compensation pursuant to Nevada wage and hour laws. Defendant thus did not pay Plaintiff and Class Member daily overtime premium 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 Members who worked in excess of forty (40) hours in a week in violation of NRS 608.140 and 608.018.

24. Wherefore, Plaintiff demands for herself and for the 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 alleged herein together with attorneys' fees, costs, and interest as provided by law.

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SECOND 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 Plaintiff and the Class)

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

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

27. 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.”

28. 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.”

29. 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.”

30. By failing to pay Plaintiff and all members of the Class who are former employees for all hours worked in violation of state law, at the correct legal rate, Defendant has failed to timely remit all wages due and owing to Plaintiff and all members of the Class who are former employees.

31. Despite demand, Defendant willfully refuses and continues to refuse to pay Plaintiff and all Class Members who are former employees.

32. Wherefore, Plaintiff demands 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 all members of the Class who are former employees together with attorneys' fees, costs, and interest as provided by law.

THIRD CAUSE OF ACTION

Breach of Contract

(On Behalf of Plaintiff and the Class)

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

34. At all times relevant herein, Defendant had an agreement with Plaintiff and with every Class Member to pay an agreed upon hourly wage rate for all hours they worked for Defendant. Indeed, Defendant offered to pay Plaintiff and Class Members a specific rate of pay in exchange for Plaintiff and Class Members' promise to perform work for Defendant. That agreement necessarily included the agreement to be paid in accordance with Nevada's wage and hour laws.

35. Plaintiff and the Class complied with their obligation each and every day by showing up for work and performing labor for Defendant. Defendant failed in its obligation to pay Plaintiff and Class Members overtime pay pursuant to Nevada law for all the overtime hours that they worked for Defendant.

36. Defendant breached its agreement with Plaintiff and Class Members by failing to compensate them overtime pay for overtime hours worked.

37. As a result of Defendant's breach, Plaintiff and Class Members who worked the graveyard shift have suffered economic loss that includes lost wages and interest.

38. Wherefore, Plaintiff demands for herself and for Class Members who worked over 8 hours in a workday and/or over 40 hours in a workweek that they be compensated their overtime rate for all the overtime hours worked during the relevant time period alleged herein together with attorney's fees, costs, and interest as provided by law.

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FOURTH CAUSE OF ACTION

Quantum Meruit/Unjust Enrichment

(On Behalf of Plaintiff and the Class)

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

40. Plaintiff performed labor for Defendant and for Defendant's benefit.

41. By virtue of performing labor in the state of Nevada, Plaintiff expects to be compensated according to the laws of the state of Nevada.

42. Similarly, by employing persons in the state of Nevada, Defendant is obligated to comply with the wage and hour laws of the state of Nevada. Indeed, "[it is unlawful for any employer to: (b) Pay a lower wage, salary or compensation to an employee than the amount that the employer is required to pay to the employee by virtue of any statute or regulation or by contract between the employer and the employee[.]" NRS 608.100(1).

43. By failing to pay Plaintiff and all members of the Class overtime compensation mandated by law, Defendant has been unjustly enriched and has engaged in unfair competition with other Nevada businesses that compensate employees in accordance with the laws of this state.

44. Wherefore, Plaintiff demands for herself and for Class Members who worked over 8 hours in a workday and/or over 40 hours in a workweek that they be compensated their overtime rate for all the overtime hours worked during the relevant time period alleged herein together with attorney's fees, costs, and interest as provided by law.

JURY TRIAL DEMANDED

Plaintiff hereby demands a jury trial pursuant to Nevada Rule of Civil Procedure 38.

PRAYER FOR RELIEF

Wherefore Plaintiff, individually and on behalf of all Members of the Class alleged herein, prays for relief as follows:

1. For an order certifying the action as a traditional class action under Nevada Rule of Civil Procedure Rule 23 on behalf of all members of the Class;

2. For an order appointing Plaintiff as the Representative of the Class and her counsel as Class Counsel for the Class;
3. For damages according to proof for overtime premium rate;
4. For waiting time penalties pursuant to NRS 608.140 and 608.040-.050;
5. For damages pursuant to Defendant's breach of contract;
6. For damages pursuant to Defendant's unjust enrichment;
7. For interest as provided by law at the maximum legal rate;
8. For reasonable attorneys' fees authorized by statute;
9. For costs of suit incurred herein;
10. For pre-judgment and post-judgment interest, as provided by law; and
11. For such other and further relief as the Court may deem just and proper.

DATED: August 24, 2016

Respectfully Submitted,

THIERMAN BUCK LLP

/s/Joshua D. Buck

Mark R. Thierman

Joshua D. Buck

Leah L. Jones

Attorneys for Plaintiff