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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

OLIVER GREENE-LEWIS, on behalf of
himself and all others similarly situated;

Plaintiff,

vs.

HUSSONG'S LAS VEGAS, LLC d/b/a
and a/k/a HUSSONGS LAS VEGAS LLC
also d/b/a and a/k/a HUSSONG'S
CANTINA LAS VEGAS; and DOES 1
through 50, inclusive,

Defendant.

Case No. A-18-771094-C

Dept.: Department 17

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;
- 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

CLASS ACTION COMPLAINT

COMES NOW Plaintiff Oliver Greene-Lewis, 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") Chapter 608. See *Neville v. Terrible Herbst, Inc.*, 133 Nev. Adv. Op. 95 (Dec. 7, 2017).

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. Plaintiff made a proper demand for wages due pursuant to NRS 608.140 on March 8, 2018.

4. Venue is proper in this Court because the Defendant 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.

PARTIES

5. Plaintiff Oliver Greene-Lewis ("Plaintiff" or "Greene-Lewis") 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 from December 2016 to January 2018.

6. Defendant Hussong's Las Vegas, LLC d/b/a and a/k/a Hussongs Las Vegas LLC also d/b/a and a/k/a Hussong's Cantina Las Vegas is a domestic limited liability company.

7. Defendant Hussong's Las Vegas, LLC holds the fictitious firm name for

1 Hussong's Cantina Las Vegas with Clark County and was doing business in this Judicial
2 District in Clark County, Nevada where the subject incidences occurred.

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

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

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

25 **FACTUAL ALLEGATIONS**

26 **The Named-Plaintiff**

27 11. Plaintiff Greene-Lewis was employed by Defendant as a server from
28 December 2016 to January 2018.

12. Plaintiff Greene-Lewis had been classified as an hourly non-exempt employee of Defendant with an hourly rate of pay of \$7.25.

13. Plaintiff Greene-Lewis was regularly scheduled for and regularly worked at least 40 hours per workweek.

14. Plaintiff Greene-Lewis was regularly scheduled for and regularly worked at least 8 hours per workday.

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

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

16. For instance, on the pay period ending January 8, 2017 (a true and correct copy of Plaintiff's earnings record is attached hereto as Exhibit I, with the wages for the aforementioned pay period being issued on January 13, 2017), Defendant paid Plaintiff Greene-Lewis a total gross taxable income of \$357.47 in minimum and overtime wages (\$326.69 in minimum wages for 45.06 regular hours worked and \$30.78 for overtime hours worked during the pay period). Tips are not included in the calculation of an employee's total gross taxable income. *See MDC Restaurants, LLC et al v. The Eighth Judicial Dist. Court*, 132 Nev. Op. 76 (Oct. 27, 2016). During that same period of time (and indeed during his entire employment), Plaintiff Greene-Lewis was not offered or provided with health benefits of less than the 10% maximum percentage for an employer to qualify for the lower-tier minimum wage payment. Accordingly, Defendant failed to compensate Plaintiff Greene-Lewis at the correct legal higher tier minimum wage rate of \$8.25 per non-overtime hour and \$12.38 per overtime hour worked. Defendant therefore underpaid Plaintiff Greene-Lewis \$49.31 during that pay period.

17. The policies and practices of Defendant at all relevant times have been substantially similar, if not identical, for all employees. Defendant is legally required to

maintain all itemized pay statements that will demonstrate the amount of health insurance premiums paid by Plaintiff and all putative class member and the resulting amount of wages underpaid to Plaintiff and all members of the putative class during the entire period of time at issue in this case.

18. Upon information and belief, Defendant represents to its employees that it is "obligated to keep accurate records of the time worked by non-exempt employees. This is done by time sheets and/or time clocks."

CLASS ACTION ALLEGATIONS

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

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

21. The **Classes** are defined as follows:

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

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

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

22. 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 100 Minimum Wage, 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

1 their numerosity.

2 B. Plaintiff's Claims is Typical to Those of Fellow Class Members:

3 Each Class Member is and was subject to the same practices, plans, or policies as
4 Plaintiff: (1) Whether Defendant can meet its burden of demonstrating that Plaintiff and
5 Minimum Wage Class Members were only entitled to receive the lower tier minimum
6 wage rate; (2) Whether Defendant can meet its burden of demonstrating that Plaintiff
7 and Overtime Class Members were only entitled to receive the lower tier overtime wage
8 rate; (3) Whether Plaintiff and members of the Waiting Time Penalty Class are entitled
9 to waiting time penalties for the failure to pay them minimum, regular, and overtime
10 wages owed.

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

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

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

1 individual remedies by each Class Member will tend to establish inconsistent standards
2 of conduct for Defendant and result in the impairment of Class Members' rights and the
3 disposition of their interest through actions to which they were not parties.

4 **FIRST CAUSE OF ACTION**

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

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

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

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

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

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

25 28. Wherefore, Plaintiff demands for himself and for all other Class Members
26 that Defendant pay Plaintiff and Class Members their unpaid minimum wages for all
27 hours worked during the relevant time period alleged herein together with attorneys'
28 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)

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

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

31. 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.

32. 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.

33. As alleged herein, Defendant paid Plaintiff and all other members of the Class at the lower-tier minimum wage rate but has 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.

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

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

1 legally mandated minimum wage rate of pay for all hours worked in excess of eight (8)
2 hours in a workday and/or in excess of forty (40) hours per workweek during the
3 relevant time period together with attorneys' fees, costs, and interest, as provided by
4 law.

5 **THIRD CAUSE OF ACTION**

6 **Waiting Time Penalties Pursuant to NRS 608.020-.050 and 608.140**
7 **(On Behalf of Plaintiff and the Waiting Time Penalty Class Against Defendant)**

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

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

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

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

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

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

42. Despite demand, Defendant willfully refuse and continue to refuse to pay

1 Plaintiff and Waiting Time Penalty Class Members all the wages that were due and
2 owing upon the termination of their employment.

3 43. Wherefore, Plaintiff and the Waiting Time Penalty Class Members demand
4 thirty (30) days of pay as waiting penalties under NRS 608.040 and 608.140, and thirty
5 (30) days of pay as waiting penalties under NRS 608.050 and 608.140, together with
6 attorneys' fees, costs, and interest, as provided by law.

7 **FOURTH CAUSE OF ACTION**
8 **Injunctive/Declaratory Relief**
9 **(On Behalf of Plaintiff, Minimum Wage Class, and the Overtime Class Against Defendant)**

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

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

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

22 47. Plaintiff, the Minimum Wage Class, and the Overtime Class will suffer
23 irreparable injury if Defendant is not enjoined from the future wrongful retention of
24 wages owed.

25 48. As a result of the aforementioned unlawful payment practices, Plaintiff
26 submits that there has been a likelihood of success on the merits that Plaintiff and the
27 Class Members have been damaged and that there is irreparable harm.

28 49. Plaintiff requests that this Honorable Court enter an Order that restrains

1 Defendant from attempting to enforce the alleged unlawful payment practices.

2 50. Plaintiff requests that this Honorable Court enter a declaration of
3 rights/obligations in regards to all such unlawful payment practices in this matter.

4 51. Further, disputes and controversies have arisen between the parties
5 relative to the lawfulness of the payment practices, and Plaintiff is entitled to have an
6 order entered pursuant to Chapter 30 of the Nevada Revised Statutes construing the
7 payment practices and adjudging and declaring Plaintiff and the Class Members' rights
8 and remedies thereunder including such an Order stating that such payment practices
9 are unlawful.

10 52. Plaintiff has been required to retain the services of an attorney and is
11 entitled to a reasonable award of attorneys' fees and costs.

12 **PRAYER FOR RELIEF**

13 Wherefore Plaintiff, by himself and on behalf of Class Members, prays for relief
14 as follows relating to his class action allegations:

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

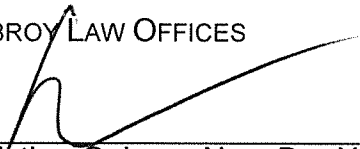
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8. For declaratory relief;
9. For interest as provided by law at the maximum legal rate;
10. For punitive damages;
11. For reasonable attorneys' fees authorized by statute;
12. For costs of suit incurred herein;
13. For pre-judgment and post-judgment interest, as provided by law; and,
14. For such other and further relief as the Court may deem just and proper.

DATED: March 14, 2018

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EXHIBIT I

Earnings Record

Check Date	Earnings	Rate	Hours	Amount	Gross	Federal Taxes	State/Local Taxes	Deductions	Net Pay
Employee: Greene-Lewis, Oliver - Department: FOODSERVICE									
1/13/2017	Regular	7.2500	45.06	326.69	979.47	FED FIT	92.35		196
	Overtime	10.8750	2.83	30.78		FED SOCSEC	60.73		Ch
	Cash tips*	0.0000	0.00	622.00		FED	14.20		No: 35170
1/27/2017	Regular	7.2500	58.73	425.79	1,241.79	FED FIT	131.70		196
	Cash tips*	0.0000	0.00	816.00		FED SOCSEC	76.99		Ch
						FED	18.01		No: 35173
2/10/2017	Regular	7.2500	50.17	363.73	1,057.73	FED FIT	104.09		176
	Cash tips*	0.0000	0.00	694.00		FED SOCSEC	65.58		Ch
						FED	15.34		No: 35177
2/24/2017	Regular	7.2500	57.35	415.79	1,208.79	FED FIT	126.75		196
	Cash tips*	0.0000	0.00	793.00		FED SOCSEC	74.94		Ch
						FED	17.52		No: 35180
3/10/2017	Regular	7.2500	62.71	454.65	1,321.65	FED FIT	143.68		206
	Cash tips*	0.0000	0.00	867.00		FED SOCSEC	81.94		Ch
						FED	19.17		No: 35183
3/24/2017	Regular	7.2500	62.48	452.98	1,316.98	FED FIT	142.98		206
	Cash tips*	0.0000	0.00	864.00		FED SOCSEC	81.66		Ch
						FED	19.09		No: 35187
4/7/2017	Regular	7.2500	66.70	483.58	1,409.58	FED FIT	156.87		216
	Cash tips*	0.0000	0.00	926.00		FED SOCSEC	87.39		Ch
						FED	20.44		No: 35191
4/21/2017	Regular	7.2500	73.91	535.85	1,558.85	FED FIT	179.26		237
	Cash tips*	0.0000	0.00	1,023.00		FED SOCSEC	96.65		Ch
						FED	22.61		No: 35195
5/5/2017	Regular	7.2500	62.29	451.60	1,312.60	FED FIT	142.32		208
	Cash tips*	0.0000	0.00	861.00		FED SOCSEC	81.38		Ch
						FED	19.03		No: 35198
5/19/2017	Regular	7.2500	64.01	464.07	1,335.07	FED FIT	145.69		216
	Cash tips*	0.0000	0.00	871.00		FED SOCSEC	82.78		

Company: HUSSONGS LAS VEGAS LLC

Check Dates From: 1/13/2017 To: 12/29/2017

Pay Period from: 12/26/2016 to: 12/24/2017