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**IN THE SECOND JUDICIAL DISTRICT COURT OF
THE STATE OF NEVADA IN AND FOR THE
COUNTY OF WASHOE**

MICHAEL PLANAS, on behalf of himself
and all others similarly situated,

Plaintiff,

vs.

CIRCUS AND EL DORADO JOINT
VENTURE d/b/a SILVER LEGACY
RESORT CASINO; 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 MICHAEL PLANAS, 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. 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

4. Plaintiff MICHAEL PLANAS (“Plaintiff” or “Planas”) 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 from June 1999 to June 17, 2018.

5. Defendant CIRCUS AND EL DORADO JOINT VENTURE d/b/a SILVER LEGACY RESORT CASINO (“Defendant” or “Silver Legacy”) is a domestic Nevada company that owns and operates the Silver Legacy Resort Casino, Circus Circus Reno, and Eldorado Resort Casino, all located in Reno, Nevada.

6. The Defendants named herein are the employers of the Plaintiff and all Class Members alleged herein. The Defendants are employers engaged in commerce under the provisions of NRS 608.011 and are employers under the Nevada Constitutional Minimum Wage Amendment.

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

1 and believes that each Defendants sued herein as DOE is responsible in some manner
2 for the acts, omissions, or representations alleged herein and any reference to
3 “Defendant” or “Defendants” herein shall mean “Defendants and each of them.”

4 **FACTUAL ALLEGATIONS**

5 **The Named-Plaintiff**

6 8. Plaintiff Planas was employed by Defendant as a dealer June 1999 to June
7 17, 2018. He had been classified as an hourly non-exempt employee of Defendant and
8 was earning \$7.40 per hour at the time of his termination. Plaintiff Planas was regularly
9 scheduled for and regularly worked an average of 40 hours per workweek.

10 **Defendant’s Policy of Failing to Offer or Provide Health Insurance Benefits Less**

11 **Than 10% of Employees’ Total Gross Income**

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

16 10. For instance, on the pay period ending May 13, 2018 (a true and correct
17 copy of this pay statement is attached hereto as Exhibit 1), Defendant paid Plaintiff
18 Planas a total gross taxable income of \$532.80 in minimum and overtime wages
19 (\$482.85 in hourly wages at \$7.40 per hour for 65.25 hours and \$49.95 in overtime
20 wages at \$11.10 per hour for 4.5 overtime hours worked during the pay period). Tips
21 are not included in the calculation of an employee’s total gross taxable income.
22 *See MDC Restaurants, LLC et al v. The Eighth Judicial Dist. Court*, 132 Nev. Op. 76
23 (Oct. 27, 2016). During that same period of time (and indeed during his entire
24 employment), Plaintiff Planas was not offered or provided with health benefits of less
25 than the 10% maximum percentage for an employer to qualify for the lower-tier minimum
26 wage payment. Instead, Plaintiff Planas paid \$139.39 in medical insurance for that pay
27 period (Indeed, Plaintiff paid \$139.39 every pay period for medical insurance).

Accordingly, Plaintiff paid 26% of his gross taxable income for medical insurance. Since the cost of health insurance greatly exceeded the 10% threshold, Defendant was required to compensate Plaintiff Planas at the higher tier minimum wage rate of \$8.25 per non-overtime hour and \$12.38 per overtime hour worked. Defendant therefore underpaid Plaintiff Planas \$61.20 during that pay period alone.

11. 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.

CLASS ACTION ALLEGATIONS

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

13. 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.

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

A. **Minimum Wage Class:** "All hourly paid non-exempt persons employed by Defendant who worked at Silver Legacy Resort Casino, Circus Circus Reno, and/or Eldorado Resort Casino, and 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 worked at Silver Legacy Resort Casino, Circus Circus Reno, and/or Eldorado Resort Casino, and 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."

1 15. Class treatment is appropriate under Rule 23's class certification
2 mechanism because:

3 A. The Classes are Sufficiently Numerous: Upon information and
4 belief, Defendant employs, and has employed, in excess 1,000 Minimum Wage,
5 Overtime, and Waiting Time Penalty Class Members within the applicable time
6 period. Because Defendant is legally obligated to keep accurate payroll records,
7 Plaintiff alleges that Defendant's records will establish the members of these
8 Classes as well as their numerosity.

9 B. Plaintiff's Claims is Typical to Those of Fellow Class Members: Each
10 Class Member is and was subject to the same practices, plans, or policies as
11 Plaintiff: (1) Whether Defendant can meet its burden of demonstrating that Plaintiff
12 and Minimum Wage Class Members were only entitled to receive the lower tier
13 minimum wage rate; (2) Whether Defendant can meet its burden of demonstrating
14 that Plaintiff and Overtime Class Members were only entitled to receive the lower
15 tier overtime wage rate; (3) Whether Plaintiff and members of the Waiting Time
16 Penalty Class are entitled to waiting time penalties for the failure to pay them
17 minimum, regular, and overtime wages owed.

18 C. Common Questions of Law and Fact Exist: Common questions of
19 and fact exist and predominate as to Plaintiff and the Class Members, including,
20 without limitation: Whether Defendant offered health insurance to Plaintiff and
21 Class Members that was no more than 10% of employees' gross taxable income.

22 D. Plaintiff is Adequate Representative of the Class: Plaintiff will fairly
23 and adequately represent the interests of the Class because Plaintiff is a member
24 of all the Classes, he has issues of law and fact in common with all members of
25 the Classes, and his interests are not antagonistic to Class members. Plaintiff
26 and his counsel are aware of their fiduciary responsibilities to Class Members and
27
28

1 are determined to discharge those duties diligently by vigorously seeking the
2 maximum possible recovery for Class Members.

3 E. Predominance/Superior Mechanism: Class claims predominate and
4 a class action is superior to other available means for the fair and efficient
5 adjudication of this controversy. Each Class Member has been damaged and is
6 entitled to recovery by reason of Defendant's illegal policy and/or practice of
7 failing to compensate its employees in accordance with Nevada wage and hour
8 law. The prosecution of individual remedies by each Class Member will tend to
9 establish inconsistent standards of conduct for Defendant and result in the
10 impairment of Class Members' rights and the disposition of their interest through
11 actions to which they were not parties.

12 **FIRST CAUSE OF ACTION**

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

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

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

20 18. In order to pay the lower tier minimum wage amount, an employer must (1)
21 offer health benefits to its employees and the dependents of the employees "at a total
22 cost to the employee for premiums of not more than 10 percent of the employee's gross
23 taxable income from the employer" and (2) offer health insurance at a cost to the
24 employer of at least \$1.00 per hour worked by the employee. See *MDC Restaurants,*
25 *LLC v. The Eighth Judicial Dist. Court*, 134 Nev. Op. 41 (May 31, 2018)

26 19. As alleged herein, Defendant paid Plaintiff and all other members of the
27 Class at the lower-tier minimum wage rate but have failed to offer health benefits to its
28

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.

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

21. Wherefore, Plaintiff demands for himself and for all other Class Members that Defendant pay Plaintiff and 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 Overtime Class Against Defendant)

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

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

24. 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.

25. 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.

26. 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.

27. 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.

28. Wherefore, Plaintiff demands for himself and all Overtime Class Members that Defendant pay Plaintiff and Overtime Class Members one and one-half times their legally mandated minimum wage rate of pay for all hours worked in excess of eight (8) hours in a workday and/or in excess of forty (40) hours per workweek during the relevant time period together with attorneys' fees, costs, interest, and punitive damages, as provided by law.

THIRD CAUSE OF ACTION

Waiting Time Penalties Pursuant to NRS 608.020-.050 and 608.140 (On Behalf of Plaintiff and the Waiting Time Penalty 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 608.020 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."

32. 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.”

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

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

35. Despite demand, Defendant willfully refuse and continue 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.

36. 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, and interest, as provided by law.

PRAYER FOR RELIEF

Wherefore Plaintiff, by himself and on behalf of Class Members, prays for relief as follows relating to his 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 Representatives of the Classes and their 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 and/or over 40 hours in a workweek;
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;
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.

AFFIRMATION

The undersigned does hereby affirm that the preceding document filed in the Second Judicial District Court of the State of Nevada, County of Washoe, does not contain the social security number of any person.

DATED: July 30, 2018.

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/s/Mark R. Thierman

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