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DISTRICT COURT

CLARK COUNTY, NEVADA

16 ANTHONY WINDOM and ALICIA
17 GLENNY, on behalf of themselves and all
18 others similarly situated,

19 Plaintiffs,

20 vs.

21 THE SPEARMINT RHINO COMPANIES
22 WORLDWIDE, INC.; K-KEL, INC.; and
23 DOES 1 through 50, inclusive,

24 Defendant(s).

Case No.: A-17-765720-C

Dept. No.: Department 24

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

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1 COMES NOW Plaintiff ANTHONY WINDOM and ALICIA GLENNY, on behalf of
2 themselves and all others similarly situated 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 the state law claims alleged herein
9 because the amount in controversy exceeds \$10,000 and a party seeking to recover unpaid wages
10 has a private right of action pursuant to the Nevada Constitution, Article 15 Section 16, and
11 Nevada Revised Statute (“NRS”) sections 608.050 and 608.140. *See Lucatelli v. Texas De Brazil*
12 *(Las Vegas) Corp.*, 2:11-CV-01829-RCJ, 2012 WL 1681394 (D. Nev. May 11, 2012) (“[T]he
13 Nevada Supreme Court recently held that NRS § 608.040 contains a private cause of action
14 because it is “illogical” that a plaintiff who can privately enforce a claim for attorneys' fees under
15 NRS § 608.140 cannot privately enforce the underlying claim the fees arose from.”); *Busk v.*
16 *Integrity Staffing Solutions, Inc.*, 2013 U.S. App. LEXIS 7397 (9th Cir. Nev. Apr. 12, 2013)
17 (“Nevada Revised Statute § 608.140 does provide a private right of action to recoup unpaid
18 wages.”); *Doolittle v. Eight Judicial Dist. Court*, 54 Nev. 319, 15 P.2d 684; 1932 Nev. LEXIS 34
19 (Nev. 1932) (recognizing that former employees have a private cause of action to sue their
20 employer (as well as third party property owners where the work was performed) for wages and
21 waiting penalties under NRS 608.040 and NRS 608.050).

22 2. Plaintiffs also claim a private cause of action to foreclose a lien against the
23 property owner for wages due pursuant to NRS 608.050.

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

27 / / /

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PARTIES

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2 4. Plaintiff ANTHONY WINDOM (“WINDOM”) is a natural person who is and was
3 a resident of the State of Nevada and has been employed by Defendant as a non-exempt hourly
4 employee from May 2011 to the present.

5 5. Plaintiff ALICIA GLENNY (“GLENNY”) is a natural person who is and was a
6 resident of the State of Nevada and has been employed by Defendant as a non-exempt hourly
7 employee from August 2016 until October 2017.

8 6. Defendant THE SPEARMINT RHINO COMPANIES WORLDWIDE, INC. is a
9 domestic Nevada Corporation with a principle place of business located at 1875 Tandem Way,
10 Norco, California, 92860.

11 7. Defendant K-KEL, INC. is a domestic Nevada Corporation with a principle place
12 of business located at 3351 S. Highland Drive #206, Las Vegas, Nevada 89109.

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

18 9. At all relevant times, the acts and omissions of Defendants concurred and
19 contributed to the various acts and omissions of each and every one of the other Defendants in
20 proximately causing the complaints, injuries, and damages alleged herein. At all relevant times
21 herein, Defendants approved of, condoned and/or otherwise ratified each and every one of the
22 acts or omissions complained of herein. At all relevant times herein, Defendants aided and abetted
23 the acts and omissions of each and every one of the other Defendants thereby proximately causing
24 the damages as herein alleged.

25 10. The Defendants named herein are the employers of the Plaintiff and all Class
26 Members alleged herein. The Defendants are employers engaged in commerce under the
27 provisions of NRS 608.011. The identity of DOES 1-50 is unknown at the time and the Complaint
28 will be amended at such time when the identities are known to Plaintiff. Plaintiff is informed and

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

4 **FACTUAL ALLEGATIONS**

5 **The Named-Plaintiffs**

6 11. Plaintiff Windom has been employed by Defendants as a VIP Host/Security since
7 May 2011. He has been classified as an hourly non-exempt employee of Defendants and is
8 currently earning \$7.25 per hour. Plaintiff Windom is regularly scheduled for and regularly works
9 at least 40 hours per workweek.

10 12. Plaintiff Glenny was employed by Defendants as a Cocktail Waitress from August
11 2016 until October 19, 2017. She has been classified as an hourly non-exempt employee of
12 Defendants and is earned \$7.25 per hour. Plaintiff Glenny was regularly scheduled for and
13 regularly worked at least 40 hours per workweek.

14 **Defendants’ Policy of Failing to Offer or Provide Health Insurance Benefits Less Than**
15 **10% of Employees’ Total Gross Income**

16 13. Defendants maintain an unlawful payment practice of paying Plaintiffs and all
17 other similarly situated employees the lower tier minimum and overtime wage rate even though
18 Defendants do not offer or provide insurance that is less than 10% of the total gross income of
19 Plaintiff and other similarly situated employees.

20 14. For instance, on the pay period ending March 18, 2017 (a true and correct copy of
21 this pay statement is attached hereto as Exhibit A), Defendants paid Plaintiff Windom a total gross
22 taxable income of \$583.48 in minimum and overtime wages (\$577.17 in minimum wages for
23 79.61 hours worked during the pay period and \$6.31 in overtime wages for .58 overtime hours
24 worked during the pay period). Tips are not included in the calculation of an employee’s total
25 gross taxable income. *See MDC Restaurants, LLC et al v. The Eighth Judicial Dist. Court*, 132
26 Nev. Op. 76 (Oct. 27, 2016). During that same period of time (and indeed during his entire
27 employment), Plaintiff Windom was not offered or provided with health benefits of less than the
28 10% maximum percentage for an employer to qualify for the lower-tier minimum wage payment.

1 Accordingly, Defendants failed to compensate Plaintiff Windom at the correct legal higher tier
2 minimum wage rate of \$8.25 per non overtime hour and \$12.38 per overtime hour worked.
3 Defendants therefore underpaid Plaintiff Windom \$80.48 during that pay period.

4 15. On the pay period ending June 10, 2017 (a true and correct copy of this pay
5 statement is attached hereto as Exhibit B), Defendants paid Plaintiff Glenny a total gross taxable
6 income of \$279.23 in minimum and overtime wages (\$262.33 in minimum wages for 36.17 hours
7 worked during the pay period and \$17.52 in overtime wages for 1.54 overtime hours worked
8 during the pay period). During that same period of time, Plaintiff Glenny paid a total of \$100.76
9 in premiums for employee health benefits (\$19.99 for Dental and \$80.77 for Medical). The health
10 benefit premiums thus represent 36% of Plaintiff Glenny's total gross taxable income for that
11 time period. Since 36% is well above the 10% maximum percentage for an employer to qualify
12 for the lower-tier minimum wage payment, Defendants failed to compensate Plaintiff Glenny at
13 the correct legal higher tier minimum wage rate of \$8.25 per non overtime hour and \$12.38 per
14 overtime hour worked. Defendants therefore underpaid Plaintiff Glenny \$37.72 during that pay
15 period.

16 16. The policies and practices of Defendants at all relevant times have been
17 substantially similar, if not identical, for all employees. Defendant is legally required to maintain
18 all itemized pay statements that will demonstrate the amount of health insurance premiums paid
19 by Plaintiffs and all putative class member and the resulting amount of wages underpaid to
20 Plaintiff and all members of the putative class during the entire period of time at issue in this case.

21 **CLASS ACTION ALLEGATIONS**

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

24 18. Plaintiffs bring this action on behalf of themselves and all other similarly situated
25 employees as a class action under Rule 23 of the Nevada Rules of Civil Procedure.

26 19. The **Classes** are defined as follows:

27 A. **Minimum Wage Class:** "All hourly paid non-exempt persons
28 employed by Defendants who were paid less than \$8.25 per non-overtime

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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 Defendants 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.”

20. Class treatment is appropriate under Rule 23’s class certification mechanism because:

A. The Classes are Sufficiently Numerous: Upon information and belief, Defendants employ, and have employed, in excess 200 Minimum Wage, Overtime, and Waiting Time Penalty Class Members within the applicable time period. Because Defendants are legally obligated to keep accurate payroll records, Plaintiffs allege that Defendants’ records will establish the members of these Classes as well as their numerosity.

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

C. Common Questions of Law and Fact Exist: Common questions of law and fact exist and predominate as to Plaintiffs and the Class Members, including, without limitation: Whether Defendants offered health insurance to Plaintiffs and Class Members that was no more than 10% of employees’ gross taxable income.

D. Plaintiff is Adequate Representative of the Class: Plaintiffs will fairly and adequately represent the interests of the Class because Plaintiffs are members of all the

Classes, they have issues of law and fact in common with all members of the Classes, and their interests are not antagonistic to Class members. Plaintiffs and their counsel are aware of their fiduciary responsibilities to Class Members and are determined to discharge those duties diligently by vigorously seeking the maximum possible recovery for Class Members.

E. Predominance/Superior Mechanism: Class claims predominate and a class action is superior to other available means for the fair and efficient adjudication of this controversy. Each Class Member has been damaged and is entitled to recovery by reason of Defendants' 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 Class Member will tend to establish inconsistent standards of conduct for Defendants 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 Minimum Wages in Violation of the Nevada Constitution

(On Behalf of Plaintiff and the Minimum Wage Class Against Defendants)

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

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

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

24. As alleged herein, Defendants paid Plaintiffs and all other members of the Class at the lower-tier minimum wage rate but have failed to offer health benefits to its employees and

1 the employees' dependents at a total costs to the employee for premiums of not more than 10%
2 of the employees' gross taxable income.

3 25. By unlawfully paying Plaintiffs and members of the Class the lower-tier minimum
4 wage rate of \$7.25, instead of the applicable minimum wage rate of \$8.25, Defendants have failed
5 to compensate Plaintiffs and members of the Class at the minimum wage rate for all the hours
6 that they worked pursuant to the Nevada Constitution.

7 26. Wherefore, Plaintiffs demands for themselves and for all other Class Members that
8 Defendants pay Plaintiffs and Class Members their unpaid minimum wages for all hours worked
9 during the relevant time period alleged herein together with attorneys' fees, costs, interest, and
10 punitive damages, as provided by law.

11 **SECOND CAUSE OF ACTION**

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

13 **(On Behalf of Plaintiff and the Overtime Class Against Defendants)**

14 27. Plaintiffs reallege and incorporate by this reference all the paragraphs above in this
15 Complaint as though fully set forth herein.

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

18 29. NRS 608.018(1) provides as follows:

19 An employer shall pay 1 1/2 times an employee's regular wage rate
20 whenever an employee who receives compensation for
21 employment at a rate less than 1 1/2 times the minimum rate
22 prescribed pursuant to NRS 608.250 works: (a) More than 40 hours
23 in any scheduled week of work; or (b) More than 8 hours in any
24 workday unless by mutual agreement the employee works a
25 scheduled 10 hours per day for 4 calendar days within any
26 scheduled week of work.

27 30. NRS 608.018(2) provides as follows:

28 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.

1 31. As alleged herein, Defendants paid Plaintiffs and all other members of the Class
2 at the lower-tier minimum wage rate but have failed to offer health benefits to its employees and
3 the employees' dependents at a total costs to the employee for premiums of not more than 10%
4 of the employees' gross taxable income.

5 32. By unlawfully paying Plaintiffs and members of the Overtime Class the lower-tier
6 minimum wage rate of \$7.25 (with an overtime wage rate of \$10.88), instead of the applicable
7 minimum wage rate of \$8.25 (with an overtime wage rate of \$12.38), Defendants have likewise
8 failed to compensate Plaintiffs and members of the Class at the correct overtime wage rate for all
9 the overtime hours that they worked pursuant to NRS 608.018.

10 33. Wherefore, Plaintiffs demand for themselves and all Overtime Class Members that
11 Defendants pay Plaintiffs and Overtime Class Members one and one half times their legally
12 mandated minimum wage rate of pay for all hours worked in excess of eight (8) hours in a
13 workday and/or in excess of forty (40) hours per workweek during the relevant time period
14 together with attorneys' fees, costs, interest, and punitive damages, as provided by law.

15 **THIRD CAUSE OF ACTION**

16 **Waiting Time Penalties Pursuant to NRS 608.020-.050 and 608.140**

17 **(On Behalf of Plaintiff and the Waiting Time Penalty Class Against Defendants)**

18 34. Plaintiffs reallege and incorporate by this reference all the paragraphs above in this
19 Complaint as though fully set forth herein.

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

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

25 37. NRS 608.040(1)(a-b), in relevant part, imposes a penalty on an employer who fails
26 to pay a discharged or quitting employee: “Within 3 days after the wages or compensation of a
27 discharged employee becomes due; or on the day the wages or compensation is due to an
28 employee who resigns or quits, the wages or compensation of the employee continues at the same

1 rate from the day the employee resigned, quit, or was discharged until paid for 30-days, whichever
2 is less.”

3 38. NRS 608.050 grants an “employee lien” to each discharged or laid-off employee
4 for the purpose of collecting the wages or compensation owed to them “in the sum agreed upon
5 in the contract of employment for each day the employer is in default, until the employee is paid
6 in full, without rendering any service therefore; but the employee shall cease to draw such wages
7 or salary 30 days after such default.”

8 39. By failing to pay Plaintiffs and the Waiting Time Penalty Class Members their
9 legally mandated minimum and overtime wages, Defendants have failed to timely remit all wages
10 due and owing to Plaintiffs and the Waiting Time Penalty Class Members.

11 40. Despite demand, Defendants willfully refuse and continue to refuse to pay
12 Plaintiffs and Waiting Time Penalty Class Members all the wages that were due and owing upon
13 the termination of their employment.

14 41. Wherefore, Plaintiffs and the Waiting Time Penalty Class Members demand thirty
15 (30) days of pay as waiting penalties under NRS 608.040 and 608.140, and thirty (30) days of
16 pay as waiting penalties under NRS 608.050 and 608.140, together with attorneys’ fees, costs,
17 and interest, as provided by law.

18 **PRAYER FOR RELIEF**

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

- 21 1. For an order certifying this action as a class action on behalf the proposed Classes
22 and providing notice to all Class Members so they may participate in this lawsuit;
- 23 2. For an order appointing Plaintiffs as the Representatives of the Classes and their
24 counsel as Class Counsel;
- 25 3. For damages according to proof for minimum rate pay under the Nevada
26 Constitution for all hours worked;

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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.

DATED: December 4, 2017

Respectfully Submitted,
THIERMAN BUCK LLP

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

EXHIBIT A

EXHIBIT A

Earnings Statement

ANTHONY WINDOM

Company: OW423 - K-KEL INC

Pay Date: 03/24/2017

Emp #: A0BN

Period Start: 03/05/2017

1875 TANDEM WAY

Dept: COP - CLUB OPERATIONS

Period End: 03/18/2017

NORCO, CA 92860

(951) 371-3788

Pay Basis: Hourly

Earnings	Rate	Hours/Units	Current Period	Year to Date
Regular	7.25	79.61	577.17	3,807.18
Overtime	10.88	0.58	6.31	60.25
Chip Red			117.24	517.78
Chip Tip			351.72	1,553.34 In/Out
DECLARED TIPS			90.00	765.00 In/Out
Gross Pay		80.19	1,142.44	6,703.55

W/H Taxes

(S/1) Federal W/H	116.80	678.13
Medicare	16.57	97.21
Social Security	70.83	415.62

Deductions

None	0.00	0.00
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Net Pay Distribution

Net Pay	496.52	3,194.25
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Payroll Net Check

Payroll Net Check	496.52	3,194.25
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Check No.: 105054078

EXHIBIT B

EXHIBIT B

Earnings Statement

Earnings Statement

Pay Date: 06/16/2017
 Period Start: 05/28/2017
 Period End: 06/10/2017

Company: OW423 - K-KEL INC

1875 TANDEM WAY
 NORCO, CA 92860

(951) 371-3788

ALICIA GLENNY

ALICIA GLENNY

Emp #: A3CK

Dept: COP - CLUB OPERATIONS

Pay Basis: Hourly

Earnings	Rate	Hours/Units	Current Period	Year to Date
Regular	7.25	36.17	262.23	4,938.27
Overtime	11.38	1.54	17.52	24.94
Chip Red			0.00	15.00
Commission			0.00	1,231.81
Chip Tip			0.00	45.00
DECLARED TIPS			0.00	2,159.00
Gross Pay		37.71	279.75	8,414.02

W/H Taxes

(S/1) Federal W/H			0.00	524.90
Medicare			2.60	104.48
Social Security			11.10	446.71

Deductions

Arrears Dental			0.00	19.99
DENTAL			19.99	219.89
MEDICAL			80.77	969.24

Net Pay Distribution

Net Pay			165.29	3,924.81
Direct Deposit Net Check			165.29	3,924.81 A/C:4402

Voucher No.: 75639900DD

THE FACE OF THIS DOCUMENT HAS A COLOURED VOID PANTOGRAPH BACKGROUND, HEAT SENSITIVE RED TON, ARTIFICIAL WATERMARK AND MICROPRINTING

K-KEL INC
 1875 TANDEM WAY
 NORCO, CA 92860

JPMorgan Chase Bank, N.A.
 Oklahoma City, OK

39-64/1030

75639900DD

COP

This is not a check
 DATE: 06/16/2017

This is not a check

One Hundred Sixty Five And 29/100 Dollars

***165.29

This is not a check

Direct Deposit Voucher

NON-NEGOTIABLE

DEPOSIT
 TO THE
 ORDER
 OF

ALICIA GLENNY
 7227 WINDMILL #173
 LAS VEGAS, NV 89113

THE REVERSE SIDE OF THIS DOCUMENT HAS SECURITY FEATURES