

CASE NO: A-19-803397-C
Department 1

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13 **EIGHTH JUDICIAL DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 **CRISTIAN-LUIS REYES**, on behalf of
himself and all others similarly situated;

16 Plaintiff,

17 vs.

18 **PARKWAY FLAMINGO LLC; DOES 1**
through 50, inclusive,

19 Defendants.

Case No.
Dept.:

20 **CLASS ACTION COMPLAINT**

21 **Arbitration Exemption Claimed:**
Class Action

- 22 1) Failure to Pay Minimum Wages in Violation of the Nevada Constitution;
- 23 2) Failure to Pay Overtime in Violation of NRS 608.018 and 608.140;
- 24 3) Failure to Timely Pay All Wages Due and Owing in Violation of NRS 608.020-050 and 608.140; and,
- 25 4) Injunctive Relief.

26 **LIEN REQUESTED PURSUANT TO**
NRS 608.050

27 **JURY TRIAL DEMANDED**

1 **CLASS ACTION COMPLAINT**

2 COMES NOW Plaintiff Cristian-Luis Reyes, on behalf of himself and all others
3 similarly situated and alleges the following:

4 All allegations in the Complaint are based upon information and belief except for
5 those allegations that pertain to the Plaintiff named herein and his counsel. Each
6 allegation in the Complaint either has evidentiary support or is likely to have evidentiary
7 support after a reasonable opportunity for further investigation and discovery.

8 **JURISDICTION AND VENUE**

9 1. This Court has original jurisdiction over the state law claims alleged herein
10 because the amount in controversy exceeds \$15,000 and a party seeking to recover
11 unpaid wages has a private right of action pursuant to the Nevada Constitution, Article 15
12 Section 16, and Nevada Revised Statute ("NRS") Chapter 608. See *Neville v. Eighth*
13 *Judicial Dist. Court in & for County of Clark*, 406 P.3d 499, 502 (Nev. 2017).

14 2. Plaintiff also claims a private cause of action to foreclose a lien against the
15 property owner for wages due pursuant to NRS 608.050.

16 3. Venue is proper in this Court because the Defendant named herein
17 maintains a principal place of business or otherwise is found in this judicial district and
18 many of the acts complained of herein occurred in Clark County, Nevada.

19 **PARTIES**

20 4. Plaintiff Cristian-Luis Reyes ("Plaintiff" or "Reyes") is a person who is and
21 was a resident of the State of Nevada and was employed by Defendant as a non-exempt
22 hourly employee from March of 2016 to October of 2019.

23 5. Defendant Parkway Flamingo LLC ("Defendant") is a domestic limited-
24 liability company registered with the Nevada Secretary of State.

25 6. At all relevant times, Defendant Parkway Flamingo LLC was doing business
26 in this Judicial District in Clark County, Nevada where the subject incidences occurred.

27 7. At all relevant times, Defendant Parkway Flamingo LLC was Plaintiff's
28 employer.

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

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

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

22 **FACTUAL ALLEGATIONS**

23 **The Named-Plaintiff**

24 11. Plaintiff Reyes was employed by Defendant as a non-exempt hourly
25 employee from March of 2016 to October of 2019.

26 12. Plaintiff was classified as an hourly non-exempt employee of Defendant
27 who was paid an hourly rate of pay of \$8.00.

28 13. Plaintiff was scheduled for and worked at least 8-hour workdays.

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

3 14. Defendant maintains an unlawful payment practice of paying Plaintiff and
4 all other similarly situated employees less than the applicable minimum and overtime
5 wage rate even though Defendant does not offer or provide insurance that is less than
6 10% of the total gross income of Plaintiff and other similarly situated employees.

7 15. For instance, on the pay period ending August 11, 2019, (a true and correct
8 copy of Plaintiff's earnings statements is attached hereto as Exhibit I) Defendant paid
9 Plaintiff a total gross taxable income of \$432.44 in minimum wages for 53.93 regular hours
10 worked during the pay period and a total gross taxable income of \$34.68 in overtime
11 wages for 2.86 overtime hours worked during the pay period. Tips are not included in the
12 calculation of an employee's total gross taxable income. See *MDC Restaurants, LLC et*
13 *al v. The Eighth Judicial Dist. Court*, 132 Nev. Op. 76 (Oct. 27, 2016). During that same
14 period of time, Plaintiff was not offered or provided with health benefits of less than the
15 10% maximum percentage for an employer to qualify for the lower-tier minimum wage
16 payment. Accordingly, Defendant failed to compensate Plaintiff at the correct legal
17 higher-tier minimum wage rate of \$8.25 per non-overtime hour and \$12.38 per overtime
18 hour worked. Defendant therefore underpaid Plaintiff \$14.21 during that pay period.

19 16. Similarly, on the pay period ending July 14, 2019, (a true and correct copy
20 of Plaintiff's earnings statements is attached hereto as Exhibit II) Defendant paid Plaintiff
21 a total gross taxable income of \$461.44 in minimum wages for 57.68 regular hours worked
22 during the pay period and a total gross taxable income of \$21.10 in overtime wages for
23 1.74 overtime hours worked during the pay period. During that same period of time,
24 Plaintiff was not offered or provided with health benefits of less than the 10% maximum
25 percentage for an employer to qualify for the lower-tier minimum wage payment.
26 Accordingly, Defendant failed to compensate Plaintiff at the correct legal higher-tier
27 minimum wage rate of \$8.25 per non-overtime hour and \$12.38 per overtime hour
28 worked. Defendant therefore underpaid Plaintiff \$14.86 during that pay period.

1 17. The policies and practices of Defendant at all relevant times have been
2 substantially similar, if not identical, for all employees. Defendant also purportedly paid
3 less than the higher-tier minimum wage rate to putative class members even though they
4 did not offer health insurance to employees at a cost of 10% or less than their gross
5 earnings.

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

10 **CLASS ACTION ALLEGATIONS**

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

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

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

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

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

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

28 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 have employed, in excess 40 Minimum Wage, Overtime, and
Waiting Time Penalty Class Members within the applicable time period. Because

1 Defendant is legally obligated to keep accurate payroll records, Plaintiff alleges that
2 Defendant's records will establish the members of these Classes as well as their
3 numerosity.

4 B. Plaintiff's Claims are Typical to Those of Fellow Class Members:

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

13 C. Common Questions of Law and Fact Exist: Common questions of

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

19 D. Plaintiff is Adequate Representative of the Class: Plaintiff will fairly

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

26 E. Predominance/Superior Mechanism: Class claims predominate and

27 a class action is superior to other available means for the fair and efficient adjudication
28 of this controversy. Each Class Member has been damaged and is entitled to recovery

1 by reason of Defendant's illegal policy and/or practice of failing to compensate their
2 employees in accordance with Nevada wage and hour law. The prosecution of individual
3 remedies by each Class Member will tend to establish inconsistent standards of conduct
4 for Defendant and result in the impairment of Class Members' rights and the disposition
5 of their interest through actions to which they were not parties.

6 **FIRST CAUSE OF ACTION**

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

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

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

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

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

23 27. By unlawfully paying Plaintiff and members of the Class less than the
24 applicable minimum wage rate of \$8.25, Defendant has failed to compensate Plaintiff and
25 members of the Class at the minimum wage rate for all the hours that they worked
26 pursuant to the Nevada Constitution.

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

1 costs, interest, and punitive damages, as provided by law.

2 **SECOND CAUSE OF ACTION**
3 **Failure to Pay Overtime Wages in Violation of NRS 608.018 and 608.140**
4 **(On Behalf of Plaintiff and the Overtime Class Against Defendant)**

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

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

9 31. NRS 608.018(1) provides as follows:

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

18 32. NRS 608.018(2) provides as follows:

19 An employer shall pay 1 1/2 times an employee's regular wage
20 rate whenever an employee who receives compensation for
21 employment at a rate not less than 1 1/2 times the minimum
22 rate prescribed pursuant to NRS 608.250 works more than 40
23 hours in any scheduled week of work.

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

28 34. By unlawfully paying Plaintiff and members of the Overtime Class less than
the higher-tier 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 pays 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 relevant
3 time period together with attorneys' fees, costs, and interest, as provided by law.

4 **THIRD CAUSE OF ACTION**

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

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

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

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

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

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

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

28 42. Defendant willfully refuses and continues to refuse to pay Plaintiff and
Waiting Time Penalty Class Members all the wages that were due and owing upon the

1 termination of their employment.

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

6 **FOURTH CAUSE OF ACTION**
7 **Injunctive/Declaratory Relief**
8 **(On Behalf of Plaintiff, Minimum Wage Class, and the Overtime Class Against**
9 **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 Minimum
13 Wage Class at a rate lower than the higher-tier minimum wage rate but has failed to offer
14 health benefits to its employees and the employees' dependents at a total cost to the
15 employee for premiums of not more than 10% of the employees' gross taxable income,
16 Defendant has wrongfully withheld wages properly-owed to the Plaintiff and the Minimum
17 Wage 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 wages
24 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
Defendant from attempting to enforce the alleged unlawful payment practices.

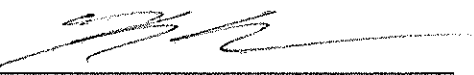
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- 10. For punitive damages;
- 11. For reasonable attorneys' fees authorized by statute;
- 12. For costs of suit incurred herein;
- 13. For pre-judgment and post-judgment interest, as provided by law; and,
- 14. For such other and further relief as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

DATED: October 10, 2019 GABROY LAW OFFICES

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leah@thiermanbuck.com
THIERMAN BUCK LLP
7287 Lakeside Drive
Reno, NV 89511

EXHIBIT I

Earnings Statement

CRISTIAN-LUIS REYES

Company: ONH80 - PARKWAY FLAMINGO LLC

Pay Date: 08/16/2019

Emp #: A11E

Period Start: 07/29/2019

Dept: 101 - Bartender

Period End: 08/11/2019

Pay Basis: Hourly

Earnings	Rate	Hours/Units	Current Period	Year to Date
Regular	8.00	53.93	431.44	7,173.52
Overtime	12.13	2.86	34.68	449.12
Position Rate	0.00	0.00	0.00	280.00
Payroll Advance - No Tax			-172.43	-165.91
Tip Auto Gratuity			172.43	298.80
Charged Tips			3,155.08	36,347.88
Gross Pay	56.79		3,621.20	44,383.41

W/H Taxes				
(S/O) Federal W/H			175.90	2,323.63
Medicare			55.01	610.82
Social Security			235.21	2,611.71

Deductions				
Dental Low			0.00	171.08
Anthem Mid HMO			0.00	2,212.86
Vision			0.00	41.34
Net Pay			0.00	64.09

Net Pay Distribution			
Payroll Net Check		0.00	64.09

Employee Benefits, Allowances, and Other	YTD Taken	Available
Dental Employer		7.86
Medical Employer		595.14
Vision Employer		1.70

Check No [REDACTED]

paycom 46:180:11:MC

VOID AFTER 180 DAYS 11-24/1210

PARKWAY FLAMINGO LLC
7120 RAFAEL RIDGE WAY
LAS VEGAS, NV 89119

Wells Fargo Bank
Oklahoma City, OK

paycom

101 **DATE: 08/16/2019**

\$ ***0.00

Zero And 00/100 Dollars

AY TO: CRISTIAN-LUIS REYES
THE ORDER OF: [REDACTED]

NON-NEGOTIABLE

Sign on behalf of above client

THE REVERSE SIDE OF THIS DOCUMENT HAS LISTED SECURITY FEATURES.

EXHIBIT II

Earnings Statement

CRISTIAN-LUIS REYES

Company: ONH80 - PARKWAY FLAMINGO LLC

Pay Date: 07/19/2019
 Period Start: 07/01/2019
 Period End: 07/14/2019

Emp #: A11E
 Dept: 101 - Bartender
 Pay Basis: Hourly

Earnings	Rate	Hours/Units	Current Period	Year to Date
Regular	8.00	57.68	461.44	6,317.76
Overtime	12.13	1.74	21.10	374.31
Position Rate	0.00	0.00	0.00	280.00
Payroll Advance - No Tax			0.00	6.52
Tip Auto Gratuity			0.00	126.37
Charged Tips			2,466.41	30,846.43
Gross Pay		59.42	2,948.95	37,951.39

W/H Taxes			
(S/O) Federal W/H		256.95	1,898.31
Medicare		42.76	515.05
Social Security		182.83	2,202.23

Deductions			
Dental Low		0.00	171.08
Anthem Mfd HMO		0.00	2,212.86
Vision		0.00	41.34
Net Pay		0.00	64.09

Check No. [REDACTED]

Net Pay Distribution			
Payroll Net Check		0.00	64.09

Employee Benefits, Allowances, and Other	YTD Taken	Available
Dental Employer	7.86	
Medical Employer	595.14	
Vision Employer	1.70	

paycom 56:183:10:MC

VOID AFTER 180 DAYS

11-24/1210

PARKWAY FLAMINGO LLC
 7120 RAFAEL RIDGE WAY
 LAS VEGAS, NV 89119

Wells Fargo Bank
 Oklahoma City, OK

paycom

101

DATE: 07/19/2019

\$ ****0.00

Zero And 00/100 Dollars

AY TO CRISTIAN-LUIS REYES

HE [REDACTED]
 ORDER [REDACTED]
 IF P [REDACTED]

NON-NEGOTIABLE

Signed on behalf of above client



THE REVERSE SIDE OF THIS DOCUMENT HAS LISTED SECURITY FEATURES.