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CASE NO: A-20-825493-C
Department 26

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21 *the Putative Classes*

DISTRICT COURT

CLARK COUNTY, NEVADA

22 ANDREA BARRETT, on behalf of herself
23 and all others similarly situated,

24 Plaintiff,

25 vs.

26 MAXIM HEALTHCARE SERVICES, INC.,
27 and DOES 1 through 50, inclusive,

28 Defendant(s).

Case No.:

Dept. No.:

CLASS ACTION COMPLAINT

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

- 1) Failure to Pay Wages For Intra Workday Travel in Violation of 608.016, 608.018, 608.140, and the Nev. Const.;
- 2) Failure to Reimburse Employer Expenses in Violation of 608.016, 608.018, 608.140, and the Nev. Const.; and

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3) Failure to Timely Pay All Wages Due and Owing in Violation of NRS 608.140 and 608.020-050.

JURY TRIAL DEMANDED

COMES NOW Plaintiff ANDREA BARRETT on behalf of herself and all other similarly situated and typical persons 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. This Court has original jurisdiction over the state law claims alleged herein. The 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 Article 16 Section 15 of the Nevada Constitution and Nevada Revised Statute (“NRS”) sections 608.020-.050, and 608.140. *See Neville v. Terrible Herbst, Inc.*, 133 Nev. Adv. Op. 95 (Dec. 7, 2017), 406 P.3d 499 (2017).

2. Venue is proper in the 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

3. Plaintiff ANDREA BARRETT is a natural person who is and was a resident of the State of Nevada at all relevant times herein. Mrs. Barrett was employed by Defendant as a non-exempt hourly employee from on or about April 2018 to October 29, 2020.

4. Defendant MAXIM HEALTHCARE SERVICES, INC. (“Maxim”) is a foreign corporation with a principal place of business in Columbia, Maryland, that does business in the state of Nevada and maintains a registered agent in this state at 112 North Curry Street, Carson City, Nevada 89703. Maxim is an employer under NRS 608.011.

1 requires that the employees sign, and then requires employees to “submit” the information. Upon
2 clicking “submit”, the employees’ time stops recording.

3 9. Maxim only compensates its in-home care employees for work activities spent in-
4 home (“In Home Work”). Maxim does not compensate employees for the time spent traveling
5 from one client residences to the next (“Intra Workday Travel”). Maxim’s policies of only
6 compensating in-home caregivers for their In Home Work, and not compensating them for their
7 Intra Workday Travel time, are common policies that apply to Plaintiff and all other similarly
8 situated in-home caregivers. Plaintiff alleges that this practice is unlawful under Nevada law,
9 NAC 608.130: “Travel by an employee: (a) Is considered to be time worked by the employee:
10 (1) If the travel is between different work sites during a workday[.]”

11 10. Furthermore, Plaintiff and all other similarly situated in-home healthcare
12 employees use their own vehicles for the Intra Workday Travel and they are not reimbursed the
13 mileage. During the applicable limitations period alleged in this action, the IRS business mileage
14 reimbursement rate ranged between \$.58 and \$.535 per mile.¹ Likewise, reputable companies that
15 study the cost of owning and operating a motor vehicle and/or reasonable reimbursement rates,
16 including the AAA, have determined that the average cost of owning and operating a vehicle in
17 2019 ranged between \$.7929 to \$.5331 per mile depending on the number of miles driven.² These
18 figures represent a reasonable approximation of the average cost of owning and operating a
19 vehicle for use in commuting between client residences. Failing to reimburse Plaintiff and all
20 other similarly situated in-home healthcare employees for their vehicle expenses resulting from
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22 ¹ The reimbursement rates during the relevant time period are as follows:

23	2020	\$.575
24	2019	\$.58
25	2018	\$.545
26	2017	\$.535

26 See <https://www.irs.gov/tax-professionals/standard-mileage-rates> (last visited Oct. 22, 2020).

27 ² See, e.g., <https://exchange.aaa.com/wp-content/uploads/2019/09/AAA-Your-Driving->
28 [Costs-2019.pdf](https://exchange.aaa.com/wp-content/uploads/2019/09/AAA-Your-Driving-Costs-2019.pdf) (last visited Oct. 22, 2020) (average cost per mile for miles driven less than 10,000
per year in 2019 was \$.7929)

1 the Intra Workday Travel means that these employees were required to pay, out of their own
2 wages, an employer expense.

3 11. Plaintiff alleges that Maxim’s policies of only compensating employees for the In
4 Home Work, and not compensating employees for the Intra Workday Travel, and failing to
5 reimburse employees for their vehicle expenses resulting from the Intra Workday Travel, are
6 unlawful under Nevada law.

7 **CLASS ACTION ALLEGATIONS**

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

10 13. Plaintiff brings this action on behalf of herself and the following Class and
11 Subclass of persons:

- 12 A. **Nevada Class:** All persons that provided in-home patient
13 care, including not limited to Patient Care Assistants, that
14 were employed by Defendant at anytime within 3-years from
15 the date of filing the original complaint in this action.
- 16 B. **Continuation Wage Subclass:** All Nevada Class members
17 who are former employees.

18 14. NRCP Rule 23 Class treatment for all claims alleged in this complaint is
19 appropriate in this case for the following reasons:

- 20 A. The Class is Sufficiently Numerous: Upon information and belief,
21 Defendant employs, and has employed, hundreds of Nevada Class members within the
22 applicable statute of limitations.
- 23 B. Common Questions of Law and Fact Exist: Common questions of law and
24 fact exist and predominate as to Plaintiff and Nevada Class members including, without
25 limitation: (1) Whether Defendant’s policy and practice of only paying Plaintiff and
26 members of the Nevada Class for In Home Work and not compensating them for the time
27 spent during their Intra Workday Travel violates Nevada law; (2) Whether Defendant’s
28 refusal to reimburse Plaintiff and Nevada Class members their vehicle expenses resulting
from the Intra Workday Travel violates Nevada law; (3) Whether Plaintiff and members

1 of the Nevada Class are entitled to unpaid minimum, regular, and/or overtime wages as a
2 result of Defendant's pay policies; and (4) Whether Plaintiff and members of the
3 Continuation Wage Subclass may recover 60-days additional wages if Defendant's pay
4 policies are deemed to have violated Nevada's wage laws.

5 C. Plaintiff's Claims are Typical to Those of Fellow Class Members:
6 Plaintiff's claims for unpaid wages resulting from Maxim's pay practices and her claim
7 for continuation wages are typical to all other members of the Nevada Class and
8 Continuation Wage Subclass.

9 D. Plaintiff is an Adequate Representatives of the Class: Plaintiff will fairly
10 and adequately represent the interests of Class Members because Plaintiff is a member of
11 the Class and Subclass, she has common issues of law and fact with members of the Class
12 and Subclass, and her claims are typical to other Class Members.

13 15. Predominance/Superiority: Common questions predominate and a class action is
14 superior to other available means for the fair and efficient adjudication of this controversy, since
15 individual joinder of all members of the Nevada Class is impractical. Class action treatment will
16 permit a large number of similarly situated persons to prosecute their common claims in a single
17 forum simultaneously, efficiently, and without unnecessary duplication of effort and expense.
18 Furthermore, the expenses and burden of individualized litigation would make it difficult or
19 impossible for individual members of the Nevada Class to redress the wrongs done to them, while
20 an important public interest will be served by addressing the matter as a class action.
21 Individualized litigation would also present the potential for inconsistent or contradictory
22 judgments.

23 **FIRST CAUSE OF ACTION**

24 **Failure to Pay Wages For Intra Workday Travel in Violation of NRS 608.016, 608.018,**
25 **608.140, and the Nevada Constitution**

26 (On Behalf of Plaintiff and the Nevada Class Against Defendant)

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

1 17. NRS 608.140 provides that an employee has a private right of action for unpaid
2 wages: “Whenever a mechanic, artisan, miner, laborer, servant or employee shall have cause to
3 bring suit for wages earned and due according to the terms of his or her employment, and shall
4 establish by decision of the court or verdict of the jury that the amount for which he or she has
5 brought suit is justly due, and that a demand has been made, in writing, at least 5 days before suit
6 was brought, for a sum not to exceed the amount so found due, the court before which the case
7 shall be tried shall allow to the plaintiff a reasonable attorney fee, in addition to the amount found
8 due for wages and penalties, to be taxed as costs of suit.” On or about November 12, 2020
9 Plaintiff made demand for unpaid wages upon Defendant pursuant to NRS 608.140 but
10 satisfactory payment was not received.

11 18. NRS 608.016 states that “An employer shall pay to the employee wages for each
12 hour the employee works.” Hours worked means anytime the employer exercises “control or
13 custody” over an employee. *See* NRS 608.011 (defining an “employer” as “every person having
14 control or custody . . . of any employee.”). Pursuant to the Nevada Administrative Code, hours
15 worked includes “all time worked by the employee at the direction of the employer, including
16 time worked by the employee that is outside the scheduled hours of work of the employee.” NAC
17 608.115(1). “Travel by an employee: (a) Is considered to be time worked by the employee: (1)
18 If the travel is between different work sites during a workday[.]” NAC 608.130.

19 19. NRS 608.018(1) provides that “An employer shall pay 1 1/2 times an employee’s
20 regular wage rate whenever an employee who receives compensation for employment at a rate
21 less than 1 1/2 times the minimum rate prescribed pursuant to NRS 608.250 works: (a) More than
22 40 hours in any scheduled week of work; or (b) More than 8 hours in any workday unless by
23 mutual agreement the employee works a scheduled 10 hours per day for 4 calendar days within
24 any scheduled week of work.”

25 20. Article 15 Section 16 of the Nevada Constitution sets forth the requirements the
26 minimum wage requirements in the State of Nevada and further provides that “[t]he provisions
27 of this section may not be waived by agreement between an individual employee and an
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1 employer. . . . An employee claiming violation of this section may bring an action against his
2 or her employer in the courts of this State to enforce the provisions of this section and shall be
3 entitled to all remedies available under the law or in equity appropriate to remedy any violation
4 of this section, including but not limited to back pay, damages, reinstatement or injunctive
5 relief. An employee who prevails in any action to enforce this section shall be awarded his or
6 her reasonable attorney’s fees and costs.”

7 21. Nevada law further provides that an employer’s obligation to pay wages
8 (minimum, regular, or overtime rate wages, whichever is applicable) shall continue during a meal
9 period unless the employee is granted a full uninterrupted 30-minute meal period. See NRS
10 608.019(1) (“An employer shall not employ an employee for a continuous period of 8 hours
11 without permitting the employee to have a meal period of at least one-half hour. No period of
12 less than 30 minutes interrupts a continuous period of work for the purposes of this subsection.”).

13 22. By failing to compensate Plaintiff and Nevada Class Members for their Intra
14 Workday Travel, Defendant failed to pay Plaintiffs and other members of the Nevada Class
15 wages at the applicable hourly rate (minimum, regular, and/or overtime) for all the compensable
16 hours that they worked.

17 23. Therefore, Plaintiff demands that she and all other members of the Nevada Class
18 be paid their wages at the applicable minimum, regular, or overtime rate, for all their Intra
19 Workday Travel hours together with attorneys’ fees, costs, interest, and all other remedies as
20 provided by law.

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22 **SECOND CAUSE OF ACTION**

23 **Failure to Reimburse for Employer Expenses in Violation of NRS 608.016, 608.018,**
24 **608.140, and the Nevada Constitution**

25 (On Behalf of Plaintiff and the Nevada Class Against Defendant)

26 24. Plaintiff realleges and incorporates by this reference all the paragraphs above in
27 this Complaint as though fully set forth herein.
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32. NRS 608.140 provides that an employee has a private right of action for unpaid wages.

33. 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.”

34. 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.”

35. 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.”

36. By failing to pay Plaintiff and the Continuation Wage Subclass members their wages as described above, Defendant has failed to pay the Continuation Wage Subclass Members all their wages due and owing at the time of their separation from employment.

37. Despite demand, Defendant willfully refuses and continues to refuse to pay Plaintiff and all Continuation Wage Subclass members their wages that were due and owing upon the termination of their employment.

38. 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 herself and all Waiting Time Penalty Subclass members during the relevant time period alleged herein together with attorneys’ fees, costs, and interest as provided by law.

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PRAYER FOR RELIEF

Wherefore Plaintiff, by herself and on behalf of all Class and Subclass members, pray for relief as follows relating to their class action allegations:

1. For an order certifying the Class and Subclass under Nevada Rule of Civil Procedure 23;
2. For an order appointing Plaintiff as the Representatives of the Class and Subclasses and her counsel as Class Counsel;
3. Damages according to proof for regular rate, minimum wage rate, and/or overtime rate pay under all the state laws alleged herein for all hours worked during the Intra Workday Travel throughout the relevant time period alleged herein;
4. Damages according to proof for regular rate, minimum wage rate, and/or overtime was resulting from all unreimbursed employer related expenses incurred during the Intra Workday Travel throughout the relevant time period alleged herein;
5. For continuation wages pursuant to NRS 608.140 and 608.040-.050;
6. For injunctive relief;
7. For declaratory relief;
8. For interest as provided by law at the maximum legal rate;
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: November 25, 2020

THIERMAN BUCK LLP

/s/ Joshua D. Buck

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

Attorneys for Plaintiff