

CASE NO: A-21-829462-C
Department 30

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**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

KRISTIAN ROSETE, on behalf of herself
and all others similarly situated,

Plaintiff,

vs.

RED ROBIN INTERNATIONAL, INC.;
DOES 1 through 50; inclusive,

Defendant(s).

Case No.:
Dept. No.:

CLASS ACTION COMPLAINT

**Arbitration Exemption Claimed: Class
Action**

- 1) Failure to Pay Overtime in Violation of
NRS 608.018 and 608.140;
- 2) Failure to Timely Pay All Wages Due
and Owing in Violation of NRS
608.020-050 and 608.140; and,
- 3) Injunctive Relief.

**LIEN REQUESTED PURSUANT TO
NRS 608.050**

JURY TRIAL DEMANDED

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1 COMES NOW Plaintiff Kristian Rosete, on behalf of herself and all others similarly
2 situated and alleges the following:

3 All allegations in the Complaint are based upon information and belief except for
4 those allegations that pertain to the Plaintiff named herein and her counsel. Each
5 allegation in the Complaint either has evidentiary support or is likely to have evidentiary
6 support after a reasonable 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 \$15,000 and a party seeking to recover
10 unpaid wages has a private right of action pursuant to the Nevada Constitution, Article
11 15 Section 16, and Nevada Revised Statute ("NRS") sections 608.050 and 608.140. See
12 *Neville v. Eighth Judicial Dist. Court in & for County of Clark*, 406 P.3d 499, 502 (Nev.
13 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. Plaintiff made a proper demand for wages due pursuant to NRS 608.140
17 on February 9, 2021.

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

21 5. Plaintiff demands a jury trial on all issues triable by jury herein.

22 **PARTIES**

23 6. Plaintiff Kristian Rosete (hereinafter "Plaintiff") was at all relevant times a
24 resident of the State of Nevada and was employed by Defendant as a non-exempt
25 hourly employee from August of 2016 to the present.

26 7. Defendant Red Robin International, Inc. ("Defendant") is a domestic
27 corporation registered with the Nevada Secretary of State.

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1 8. Defendant was doing business in this Judicial District in Clark County,
2 Nevada where the subject incidences occurred.

3 9. 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 10. 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 herein.
12 At all relevant times herein, Defendants approved of, condoned and/or otherwise ratified
13 each and every one of the acts or omissions complained of herein. At all relevant times
14 herein, Defendants aided and abetted the acts and omissions of each and every one of
15 the other Defendants thereby proximately causing the damages as herein alleged.

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

24 **FACTUAL ALLEGATIONS**

25 12. Plaintiff was employed by Defendant as a non-exempt employee from
26 August of 2016 to the present.

27 13. Defendant maintains an unlawful policy of not paying daily overtime to non-
28 exempt hourly employees who earn less than 1 ½ times the applicable minimum wage.

1 14. At all relevant times, Plaintiff was a non-exempt hourly employee of
2 Defendant who earned less than 1 ½ times the applicable minimum wage.

3 15. NRS 608.0126 defines as a “workday” as “a period of 24 consecutive hours
4 which begins when the employee begins work.”

5 16. Plaintiff has frequently worked over 8 hours in any 24-hour workday.

6 17. Thus, Plaintiff has frequently worked overtime hours under Nevada law.

7 18. On many occasions, Plaintiff has worked a shift in the late afternoon and
8 evening hours and then returned the next day at an earlier start time than the previous
9 day’s shift. The number of hours she worked in a workday under Nevada law was over 8
10 hours in a 24-hour period of time.

11 19. For instance, during the workweek of June 2, 2020, Defendant scheduled
12 Plaintiff to work and Plaintiff did work over 8 hours in a 24-hour period of time. See a true
13 and correct copy of Plaintiff’s time records attached hereto as Exhibit I.

14 20. Specifically, Plaintiff worked no less than 9.42 hours in the workday
15 beginning at 3:45 pm on June 2, 2020. See Exhibit I.

16 21. Plaintiff worked no less than 1.42 overtime hours in the workday
17 beginning at 3:45 pm on June 2, 2020. See Exhibit I.

18 22. But despite having worked more than 8 hours in a 24-hour period of time,
19 Defendant failed to compensate Plaintiff at 1 ½ times her regular rate of pay for all the
20 overtime hours she worked. See a true and correct copy of Plaintiff’s pay statement
21 attached hereto as Exhibit II.

22 23. Similarly, during the workweek of June 12, 2020, Defendant scheduled
23 Plaintiff to work and Plaintiff did work over 8 hours in a 24-hour period of time. See
24 Exhibit I.

25 24. Specifically, Plaintiff worked no less than 9 hours in the workday beginning
26 at 4:36 pm on June 12, 2020. See Exhibit I.

27 25. Plaintiff worked no less than 1 overtime hour in the workday beginning at
28 4:36 pm on June 12, 2020. See Exhibit I.

1 whether Defendant compensated Plaintiff and members of the Class daily overtime
2 wages when they worked over 8 hours in a workday and whether members of the
3 Waiting Time Penalty Class are entitled to waiting time penalties for the failure to pay
4 them minimum, regular, and overtime wages owed.

5 c. Common Questions of Law and Fact Exist: Common questions of
6 law and fact exist and predominate as to Plaintiff and the Class Members, including,
7 without limitation: whether Defendant failed to pay Plaintiff and the Class Members one
8 and one-half times their regular rate for all hours worked in excess of 8 hours a workday
9 and whether Defendant failed to pay the Waiting Time Penalty Class Members all their
10 wages due and owing in violation of NRS 608.020-050.

11 d. Plaintiff is Adequate Representative of the Class: Plaintiff will fairly
12 and adequately represent the interests of the Classes because Plaintiff is a member of
13 the Nevada Overtime Class, she has issues of law and fact in common with all members
14 of the Classes, and her interests are not antagonistic to Class members. Plaintiff and her
15 counsel are aware of their fiduciary responsibilities to Class Members and are
16 determined to discharge those duties diligently by vigorously seeking the maximum
17 possible recovery for Class Members.

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

FIRST CAUSE OF ACTION
Failure to Pay Overtime Wages in Violation of NRS 608.018 and 608.140
(On Behalf of Plaintiff and the Nevada Overtime Class)

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

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

36. 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.

37. 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.

38. As described above, Defendant maintains a policy and/or practice of illegal shift jamming (i.e., refusing to pay daily overtime when Plaintiff and members of the Nevada Overtime Class worked over 8 hours in a workday). As a result, Plaintiff and Nevada Overtime Class Members have been denied overtime compensation according to Nevada law.

39. Wherefore, Plaintiff demands for herself and all Nevada Overtime Class Members that Defendant pays Plaintiff and Nevada Overtime Class Members one and one-half times their "regular rate" of pay for all hours worked in excess of eight (8) hours in a workday during the relevant time period together with attorneys' fees, costs, and interest as provided by law.

SECOND 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)

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

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

7 42. NRS 608.020 provides that "[w]henver an employer discharges an
8 employee, the wages and compensation earned and unpaid at the time of such
9 discharge shall become due and payable immediately."

10 43. NRS 608.030 provides that "[w]henver an employee resigns or quits his or
11 her employment, the wages and compensation earned and unpaid at the time of the
12 employee's resignation or quitting must be paid no later than...[t]he day on which the
13 employee would have regularly been paid the wages or compensation; or[s]even days
14 after the employee resigns or quits...whichever is earlier."

15 44. 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 of
19 the employee continues at the same rate from the day the employee resigned, quit, or
20 was discharged until paid for 30-days, whichever is less."

21 45. 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 46. By failing to pay Waiting Time Penalty Class Members their minimum,
27 regular, and overtime wages in violation of state and federal law, Defendant has failed to
28 timely remit all wages due and owing to the Waiting Time Penalty Class Members.

1 and remedies thereunder including such an Order stating that such payment practices
2 are unlawful.

3 55. Plaintiff has been required to retain the services of an attorney and is
4 entitled to a reasonable award of attorneys' fees and costs.

5 **PRAYER FOR RELIEF**

6 Wherefore Plaintiff, by herself and on behalf of all Class Members, prays for
7 relief as follows relating to her class action allegations:

- 8 1. For an order certifying this action as a class action on behalf the
9 proposed Classes and providing notice to all Class Members so they may
10 participate in this lawsuit;
- 11 2. For an order appointing Plaintiff as the Representative of the Classes and
12 her counsel as Class Counsel;
- 13 3. For damages according to proof for overtime compensation under NRS
14 608.018 and 608.140 for all hours worked over 8 hours per day;
- 15 4. For waiting time penalties pursuant to NRS 608.040-.050 and 608.140;
- 16 5. For a lien on the property where Plaintiff and all Nevada Class Members
17 labored pursuant to NRS 608.050;
- 18 6. For interest as provided by law at the maximum legal rate;
- 19 7. For injunctive relief;
- 20 8. For declaratory relief;
- 21 9. For punitive damages;
- 22 10. For reasonable attorneys' fees authorized by statute;
- 23 11. For costs of suit incurred herein;
- 24 12. For pre-judgment and post-judgment interest, as provided by law; and,
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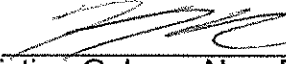
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13. For such other and further relief as the Court may deem just and proper.

DATED: February 16, 2021

Respectfully Submitted,

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