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15 **UNITED STATES DISTRICT COURT**
16 **DISTRICT OF NEVADA**

17 KATHY BELMONTE, an individual; MARIA
18 HIGH, an individual, on behalf of themselves
19 and all others similarly situated as referenced
20 herein,

21 Plaintiffs,

22 vs.

23 BOYD GAMING CORPORATION, a Nevada
24 corporation; COAST HOTELS AND
25 CASINOS, INC., a Nevada corporation; DOES
26 I through V, inclusive; and ROE corporations I
27 through V, inclusive,

28 Defendants.

Case No:

COMPLAINT

COMPLAINT

Plaintiffs KATHY BELMONTE and MARIA HIGH ("Plaintiffs"), on behalf of themselves and all others similarly situated, by and through Cogburn Law Offices, hereby allege and complain against BOYD GAMING CORPORATION and COAST HOTELS AND CASINOS ("Defendants"), as follows:

JURISDICTION AND VENUE

1
2 1. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C.
3 §§ 1331 and 1343(3) as the controversy arises under the laws of the United States. Specifically,
4 the claims arise under the Fair Labor Standards Act of 1938, 29 U.S.C. § 201 *et. seq.* (FLSA).

5 2. Venue is proper in the District of Nevada (and its unofficial Southern District)
6 because Defendants Boyd Gaming Corporation and Coast Hotels and Casinos are Nevada-based
7 corporations with their principal place of business in Las Vegas, Nevada.

GENERAL ALLEGATIONS

8
9 3. Plaintiffs are, or formerly were, restaurant cashiers, *i.e.*, employees not exempt
10 from the overtime provisions of the FLSA, generally employed in Defendants' food and
11 beverage division.

12 4. Defendant Boyd Gaming Corporation is a Nevada corporation that, at all times
13 relevant, performed business in the states of Illinois, Indiana, Iowa, Kansas, Louisiana,
14 Mississippi, New Jersey and Nevada.

15 5. Defendant Coast Hotels and Casinos, Inc. is a Nevada corporation that, at all
16 times, relevant, conducted business in Nevada and is controlled by Defendant Boyd Gaming
17 Corporation and conducts its business generally at the gaming property known as "Orleans Hotel
18 and Casino".

19 6. Defendant Boyd Gaming operates 21-wholly owned gaming entertainment
20 properties.

21 7. Plaintiffs are and were at all relevant times a resident of Clark County, Nevada.

22 8. Plaintiffs Belmonte and High bring these claims individually and on behalf of all
23 non-exempt restaurant cashiers subject to Defendants' time-and-attendance practices and
24 policies.

25 9. Plaintiffs allege for themselves and others similarly situated, Defendants
26 maintained a uniform corporate policy that forced non-exempt employees – in this case
27 restaurant cashiers – to work off-the-clock both before and after their shifts. FLSA collective
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1 members worked overtime and Defendants failed to record and maintain time records of the
2 hours worked as required by law.

3 10. For all intents and purposes, Defendants Boyd and Coast Hotels and Casinos are
4 the same legal entity and a joint employer for purposes of the Fair Labor Standards Act.

5 11. Defendants' practices violated and continue to violate the FLSA. The collective
6 action claims are for overtime compensation, liquidated damages, and/or interest, and attorneys'
7 fees and costs, under the FLSA, 29 U.S.C. §§ 207 and 216(b).

8 12. Defendants willfully committed, ordered, directed, supervised, allowed, planned,
9 ratified, concealed, organized, or otherwise participated in the unlawful acts complained of
10 herein.

11 PARTIES

12 13. Belmonte was employed by Defendants as a "restaurant cashier" in Clark County,
13 Nevada for eleven years at its Orleans property. Belmonte regularly worked in excess of 40
14 hours per week and 8 hours per day, but failed to receive all minimum wages, including overtime
15 compensation to which she was entitled for hours worked in excess of 40 hours per week and/or
16 8 hours per day.

17 14. High was employed by Defendants as a restaurant cashier in Clark County,
18 Nevada for eleven years at its Orleans property. High regularly worked in excess of 40 hours per
19 week and 8 hours per day, but failed to receive all minimum wages, including overtime
20 compensation to which she was entitled for hours worked in excess of 40 hours per week and/or
21 8 hours per day.

22 15. At all times herein, Defendants were Plaintiffs' "employer" and thus subject to
23 the FLSA.

24 16. By filing this Complaint, each of the named Plaintiffs consent to sue with respect
25 to each such Plaintiff's FLSA claim for relief against Defendants pursuant to § 216(b) of the
26 FLSA and hereby seek relief under that provision. Hundreds of other similarly situated non-
27 exempt employees may elect to join this collective action if given proper notice of the pendency
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1 of the action and an opportunity to participate by “opting in”. Consents to Sue on behalf of
2 additional FLSA Collective Members may be filed as this litigation progresses.

3 17. Defendant Boyd Gaming Corporation is, and at all relevant times was, a Nevada
4 corporation conducting business in the State of Nevada and Clark County, Nevada.

5 18. Defendant Coast Hotels and Casinos is, and at all relevant times was, a Nevada
6 corporation conducting business in the State of Nevada and Clark County, Nevada.

7 19. The true names and capacities whether individual, corporate, associate or
8 otherwise of Defendants named herein as DOES I through V, inclusive, and ROE
9 CORPORATIONS I through V, inclusive are unknown to Plaintiffs. Said DOE and ROE
10 Defendants are responsible for damages suffered by Plaintiffs. Therefore, Plaintiffs sue said
11 Defendants by such fictitious names. Plaintiffs will ask leave to amend this Complaint to show
12 the true names and capacities of each DOE and ROE Defendants at such time as the same has
13 been ascertained.

14 GENERAL FACTUAL ALLEGATIONS

15 20. Plaintiffs bring their claim for relief for violation of the FLSA as an “opt-in”
16 collective action pursuant to § 216(b) of the FLSA on behalf of all persons who were, are or will
17 be employed by Defendants as non-exempt employees subject to Defendants’ wage-and-hour
18 practices because they were both non-exempt employees, subject to Defendants’ general time-
19 and-attendance policies.

20 21. Those time and attendance policies and practices required Plaintiffs, and all others
21 similarly situated as restaurant cashiers, to clock-in at “:53” minutes before their scheduled shift
22 and clock-out no later than “:07”, irrespective of whether they had finished their job-related tasks
23 necessary to finish their day, such as performing cash-out procedures regarding counting and
24 verifying the money they received from customers during the day. Similarly, other non-exempt
25 employees were also required to show up early, work off-the-clock and perform pre-shift work
26 off-the-clock.

1 22. On average, Plaintiffs, and all others similarly situated, worked approximately 30-
2 45 minutes “off the clock” per shift.

3 23. Generally, these named Plaintiffs were responsible for having to account for
4 money (cash, credit receipts, tips, casino chips, i.e., any form of money) as part of their job
5 duties, which included but was not limited to having a cash drawer, till, bank or some other item
6 for which they – or someone on their behalf – had to count the money at the end of the shift.
7 Plaintiffs had to ensure the cash drawer, till, bank, etc., balanced, *i.e.*, equaled the same as the
8 amount they were given and the amount they gave back to Defendants at the end of the shift to
9 ensure there was neither a surplus nor shortage.

10 24. On average, these named Plaintiffs and all others similarly situated performed 30-
11 45 minutes of off-the-clock work related to both counting their cash drawers as well as
12 performing pre- and post-shift tasks.

13 25. Upon information and belief, Defendants’ time-and-attendance policies of
14 requiring restaurant cashiers to clock-in and clock-out at the “:53” and “:07” applied uniformly,
15 across all 21 of its gaming properties throughout the United States.

16 26. Upon information and belief, Defendants’ time-and-attendance policies were
17 based on a common practice, policy or scheme that resulted in all non-exempt restaurant
18 cashiers, across all 21 of its gaming properties, being forced to work off-the-clock an average of
19 30-45 minutes per shift.

20 27. Defendants’ violations of the FLSA were intentional because several employees
21 had or have come forward to complain about these off-the-clock practices many times over the
22 years and Defendant has failed to remedy the violations.

23 28. Some restaurant cashiers were told by managers they would be terminated for any
24 complaints about being forced to work off-the-clock.

25 29. This problem – working off-the-clock – has and still occurs at all of Defendants’
26 properties and, upon information and belief, is part of a company-wide practice to deter overtime
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1 and thus decrease all of its non-exempt restaurant cashiers' compensation throughout the United
2 States.

3 30. Defendants were, and are, aware of the problem but have failed to take any steps
4 to voluntarily remediate the issue by compensating Plaintiffs and all others similarly situated.

5 31. Defendants' conduct was intentional, purposefully designed to deprive Plaintiffs,
6 and all others similarly situated from overtime wages owed.

7 32. Questions of law and fact common to the FLSA Collective Members as a whole
8 include, but are not limited to, the following:

9 a. Whether Defendants unlawfully failed and continues to fail to pay
10 minimum wages and overtime compensation in violation of the FLSA;

11 b. Whether Defendant's failure to pay overtime to its non-exempt FLSA
12 Collective Plaintiffs was willful within the meaning of the FLSA;

13 c. Whether Defendants failed and continues to fail to maintain accurate
14 records of actual time worked by the FLSA Collective Members and prospective FLSA
15 Collective Members;

16 d. Whether Defendants failed and continues to fail to maintain accurate
17 records of actual time worked by the FLSA Collective Plaintiffs and prospective FLSA
18 Collective Members;

19 e. Whether Defendants failed and continues to fail to provide accurate wage
20 statements itemizing all actual time worked and wages earned by the FLSA Collective Plaintiffs
21 and prospective FLSA Collective Members.

22 33. Plaintiffs and FLSA Collective Members are similarly situated, have substantially
23 similar job requirements, pay provisions, and are subject to Defendants' common practice, policy
24 or plan of refusing to pay overtime in violation of the FLSA and/or requiring restaurant cashiers
25 to work-off-the-clock.

26 34. Plaintiffs' Claims for Relief for violations of the FLSA may be brought and
27 maintained as an "opt-in" collective action pursuant to § 216(b) of the FLSA, for all claims
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1 asserted by the Plaintiffs and the FLSA Collective Members (FLSA claims) because the claims
2 of the Plaintiffs are similar to the claims of the members of the prospective FLSA Collective
3 Members.

4 35. While the exact number of FLSA Collective Members is unknown to Plaintiffs at
5 the present, based on information and belief, there are more than 500 such members. Thus, a
6 collective action is the most efficient mechanism for resolution of the FLSA Collective
7 Members' claims.

8 36. The FLSA Collective Members, on behalf of whom Plaintiffs bring this "opt-in"
9 action, are similarly situated because they have been or are employed in similar positions and
10 were subject to the similar unlawful practices as the individually-named Plaintiffs. The number
11 and identify of other Plaintiffs yet to opt-in and consent to be a Plaintiff may be determined from
12 the records of Defendants and potential Plaintiffs may be notified of the pendency of this action
13 utilizing the payroll records of Defendants. At all times during the FLSA Collective Period, all of
14 the FLSA Collective Members were employed in the same or similar job as the Plaintiffs and
15 were paid in the same manner and under the same standard employment procedures and practices
16 as Plaintiffs.

17 37. During the FLSA Collective Period, Defendants were fully aware that Plaintiffs
18 and FLSA Collective Members were working uncompensated overtime.

19 38. Defendants' violations of the FLSA, § 207, were repeated, intentional and willful.

20 39. The Plaintiffs and FLSA Collective Members have been damaged by Defendants'
21 FLSA § 207 violations.

22 40. Pursuant to §§ 207(a) and 216(b), Defendants are liable to Plaintiffs and the
23 FLSA Collective Members for the full amount of all their unpaid wages, including overtime, plus
24 an additional equal amount as liquidated damages, plus the attorneys' fees and costs of the
25 Plaintiffs and FLSA Collective Members who affirmatively "opt-in" to this collective action.

26 41. In addition, an action under § 216(b) is superior to other available methods for the
27 fair and efficient adjudication of this controversy since the damages suffered by the individual
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1 members of the FLSA Collective Action may be relatively small, and the expense and burden of
 2 the individual redress would make it impossible for such FLSA Collective Members to
 3 individually redress the harms.

4 42. Moreover, because of the similarity of the FLSA Collective Members' claims,
 5 individual actions would present the risk of inconsistent adjudications, subjecting both
 6 employees and Defendants to incomparable standards of conduct.

7 43. Plaintiffs are currently unaware of the identities of all the FLSA Collective
 8 Members. Accordingly, Defendants should be required to provide Plaintiffs a list of all persons,
 9 inclusive of phone numbers and addresses of all persons employed by Defendants since January
 10 2009 that were non-exempt employees subject to Defendants' time-and-attendance policies
 11 requiring them to clock in and out at the intervals stated above but nonetheless required to
 12 continue to perform off-the-clock work for which they did not receive overtime compensation.
 13 That would allow FLSA Collective Members notice of the pendency of this action and an
 14 opportunity to make an informed decision about whether to participate in it.

15 **FIRST CLAIM FOR RELIEF**

16 **(Violation of the Fair Labor Standards Act – Wages on Behalf of the Named Plaintiffs and All Others Similarly Situated)**

17 44. Plaintiffs repeat and reallege and incorporate by reference the allegations set forth
 18 above as though fully stated herein.

19 45. Each of the Plaintiffs identified in paragraphs 12 through 13 above consents to
 20 sue in this action pursuant to § 216(b) of the FLSA. Additional potential FLSA Collective
 21 Members may execute and file forms consenting to "opt-in" and joining as Plaintiffs in this
 22 collective action.

23 46. This claim arises from Defendants' violation of the FLSA, 29 U.S.C. § 201, *et*.
 24 *seq.*, for its failure to pay overtime wages to Plaintiffs and all others similarly situated for all
 25 time worked in excess of forty (40) hours in individual work weeks.

26 47. At all times material hereto, Plaintiffs were employed by Defendants as an
 27 "employee" within the meaning of Section 3(e)(1) of the FLSA, 29 U.S.C. § 203(e)(1).
 28

1 48. At all times relevant, Plaintiffs, and all others similarly situated, were employed
2 by Defendants in non-exempt positions entitled 1.5 times their regularly rate in overtime wages
3 for all hours worked over 40 in a week pursuant to 29 U.S.C. § 207.

4 49. Plaintiffs, and all others similarly situated, were subject to a company-wide policy
5 that purposefully, or alternatively negligently, deprived them overtime wages for at least the past
6 three years for off-the-clock work performed that benefited Defendants.

7 50. Upon information and belief, this practice of forcing restaurant cashiers to work
8 off-the-clock was a common practice throughout all of Defendants' properties.

9 51. On average, Plaintiffs, and all others similarly situated, have worked from 30-45
10 minutes of off-the-clock overtime for Defendant in the past three years.

11 52. Defendants did not compensate Plaintiffs and those similarly situated at a rate of
12 one-and-a-half times their regularly hourly rate of pay for all time worked in excess of forty (40)
13 hours in individual workweeks, as required by the FLSA.

14 53. Defendants' refusal and failure to pay lawful wages, including overtime wages,
15 to Plaintiffs and those similarly situated for all time worked in excess of forty (40) hours per
16 week violated 29 U.S.C. § 207.

17 54. Defendants acted willfully in violating the FLSA.

18 55. Per the FLSA, Plaintiffs, and those similarly situated, seek all available damages
19 including but not limited to wages, liquidated damages, attorneys' fees, punitive damages and
20 costs.

21 56. The named Plaintiffs, on their behalf and all others similarly situated who
22 consent in writing to join this action seek, on this First Claim for Relief, a judgment for unpaid
23 overtime wages, unpaid minimum wages (if any), and additional liquidated damages of 100% of
24 any unpaid minimum (if any) and/or overtime wages, with such sums to be determined on an
25 accounting of the hours worked by, and wages actually paid to, the named Plaintiffs and any
26 such other person who consent to join this action. The Plaintiffs also seek an award of attorneys'
27 fees, interest and costs as provided for by the FLSA, as well as punitive damages if viable.
28

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

1. Designation of this action as a collective action on behalf of the proposed FLSA Collective Members asserting FLSA claims and prompt issuance of the notice pursuant to 29 U.S.C. § 216(b) to all similarly situated members of the FLSA Opt-In action, apprizing them of the pendency of this action, and permitting them to timely assert FLSA claim in this action by filing individual Consent to Sue forms pursuant to 29 U.S.C. § 216(b), and a tolling of the statute of limitations on the FLSA Collective Action Members' claims until the FLSA Collective Members are provided with a reasonable notice of the pendency of this action and a fair opportunity to exercise their right to opt-in as Plaintiffs;

2. Designation of Plaintiffs Belmonte and High as representatives of the Nationwide FLSA Collective Members;

3. A declaratory judgment that the practices complained of are unlawful under the FLSA, § 201 *et. seq.*;

4. An injunction against Defendants and its officers, agents, successors, employees, representatives and any and all other persons acting in concert with it, from engaging in each of the unlawful acts, policies, practices, etc., set forth herein;

5. An award of damages, including liquidated and exemplary damages and waiting time penalties and other statutory penalties;

6. Costs of this action, including reasonable attorneys' fees and expert fees;

7. Pre-Judgment and post-Judgment interest as provided by law;

8. Such other and further legal and equitable relief as this Court may deem necessary, just and proper.

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JURY DEMAND

Pursuant to Fed. R. Civ. P. 38(b) and the Seventh Amendment to the United States Constitution, Plaintiffs hereby file their Demand for Jury Trial.

Dated this 27th day of June 2013

Respectfully Submitted By:

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