

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

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3
4 COLLINS KWAYISI, *et al.*,

5 Appellants,

6 vs.

7 WENDY'S OF LAS VEGAS, INC., an
8 Ohio Corporation; and CEDAR
9 ENTERPRISES, INC., an Ohio
10 Corporation,

11 Respondents.

Electronically Filed
Nov 05 2015 11:00 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

Case No. 68754

United States District Court
Case No.: 2:14-cv-00729-GMN-VCF

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13 **APPELLANTS' APPENDIX**

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ALPHABETICAL INDEX TO APPELLANTS' APPENDIX¹

<u>Document Name</u>	<u>Date</u>	<u>Page No.</u>
Answer to First Amended Complaint	February 23, 2015	0041-0057
Class Action Complaint	May 9, 2014	0001-0018
First Amended Class Action Complaint	May 20, 2014	0019-0040
Order	August 21, 2015	0058-0069
Order Accepting Certified Question, Directing Briefing, and Directing Submission of Filing Fee	October 9, 2015	0070-0071

¹ Counsel for Appellants attempted to confer with Counsel for Respondents regarding the composition and filing of a joint appendix, as required by N.R.A.P. 30(a). Counsel for Respondents declined to respond to those communications.

1 **CERTIFICATE OF SERVICE**

2 **STATE OF NEVADA, COUNTY OF CLARK**

3 At the time of service, I was over 18 years of age and not a party to this
4 action. I am employed in the County of Clark, State of Nevada My business
address is 3556 E. Russell Road, 2nd Floor, Las Vegas, Nevada 89120-2234.

5 On November 5, 2015, I served true copies of the following document(s)
6 described as **APPELLANTS' APPENDIX** on the interested parties in this action
as follows:

7 **BY CM/ECF:** Pursuant to N.E.F.R., the above-referenced document was
8 electronically filed and served upon the parties listed below through the Court's
Case Management and Electronic Case Filing (CM/ECF) system.

9 Rick D. Roskelley, Esq.
10 Roger L. Grandgenett, II, Esq.
Katie Blakey, Esq.
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13 Las Vegas, NV 89169-5937
Attorneys for Respondents

14 **BY U.S. MAIL:** I enclosed the document(s) listed above in a sealed
15 envelope or package addressed to the persons at the addresses listed above and
placed the envelopes for collection and mailing, following our ordinary business
16 practices. I am readily familiar with Wolf, Rifkin, Shapiro, Schulman & Rabkin,
LLP's practice for collecting and processing correspondence for mailing. On the
17 same day that the correspondence is placed for collection and mailing, it is
deposited in the ordinary course of business with the United States Postal Service,
18 in a sealed envelope with postage fully prepaid.

19 I declare under penalty of perjury under the laws of the State of Nevada that
the foregoing is true and correct.

20 Executed on November 5, 2015, at Las Vegas, Nevada.

21 By: /s/ Christie Rehfeld

22 Christie Rehfeld, an Employee of
23 WOLF, RIFKIN, SHAPIRO,
24 SCHULMAN & RABKIN, LLP
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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

LATONYA TYUS, an individual; DAVID
HUNSICKER, an individual; LINDA
DAVIS, an individual; TERRON SHARP,
an individual, all on behalf of themselves
and all similarly-situated individuals,

Plaintiffs,

vs.

WENDY'S OF LAS VEGAS, INC., an
Ohio corporation; CEDAR ENTERPRISES,
INC., an Ohio Corporation; and DOES 1
through 100, Inclusive,

Defendants.

CLASS ACTION COMPLAINT

The above-referenced Plaintiffs (herein "Plaintiffs") through undersigned counsel, on
behalf of themselves and all persons similarly situated, complain and allege as follows:

INTRODUCTION

1. This lawsuit is an individual and class action brought by Plaintiffs, on behalf of

1 themselves and all similarly-situated employees of Defendants (collectively, “Defendants”),
2 owners and operators of Wendy’s Restaurants in southern Nevada (the “Companies”).

3 2. This lawsuit is a result of the Companies’ failure to pay Plaintiffs and other
4 similarly-situated employees who are members of the Class the lawful minimum wage, because
5 the Companies improperly claim, or have claimed, the right to compensate employees at a reduced
6 minimum wage rate under Nev. Const. art. XV, § 16.

7 3. At the 2006 General Election, Nevada voters approved, for the second time, a
8 constitutional amendment regarding the minimum wage to be paid to all Nevada employees.¹ The
9 amendment became effective in November, 2006, and was codified as new Article XV, § 16 of the
10 Nevada Constitution.

11 4. The 2006 amendment guaranteed to each Nevada employee, with very few
12 exceptions, a particular hourly wage: “Each employer shall pay a wage to each employee of not
13 less than the hourly rates set forth in this section. The rate shall be five dollars and fifteen cents
14 (\$5.15) per hour worked, if the employer provides health benefits as described herein, or six
15 dollars and fifteen cents (\$6.15) per hour if the employer does not provide such benefits.”

16 5. The amendment contained an index/increase mechanism, such that by 2014 the
17 Nevada minimum wage level is \$7.25 per hour worked if the employer provides health benefits, or
18 \$8.25 per hour if the employer does not provide such benefits.

19 6. This means employees earning the reduced amount per hour can make up to 12%
20 less than minimum wage workers paid at the \$8.25 level.

21 7. Pursuant to the constitutional amendment, employers must qualify for the privilege
22 of paying their minimum wage workers at a reduced wage level for every hour worked. In order to
23 qualify to pay employees at a reduced minimum wage rate, the cost of health insurance benefit
24 premiums for the employee, and his or her dependents, may not exceed “10 percent of the
25 employee’s gross taxable income from the employer.” Nev. Const. art. XV, § 16.

26 8. Furthermore, in order to qualify to pay employees at a reduced minimum wage rate,

27
28 ¹ See Exhibit 1 here attached, a true and correct copy of the text of Nev. Const. art. XV, § 16.

1 the health insurance benefits plan provided, offered, and/or maintained must be truly
2 comprehensive in its coverage, and cover “those categories of health care expenses that are
3 generally deductible by an employee on his/her individual federal income tax return pursuant to 26
4 U.S.C. § 213 and any federal regulations relating thereto, if such expenses had been borne directly
5 by the employee.” N.A.C. 608.102(1)(a).

6 9. The public policy underlying the minimum wage amendment was to benefit
7 Nevada’s minimum wage employees, and to incentivize employers to provide low-cost,
8 comprehensive health insurance benefits to the state’s lowest-paid workers.

9 10. The Companies do pay, or have paid, Plaintiffs and members of the Class at the
10 reduced minimum wage rate.

11 11. The Companies do not provide, offer, and/or maintain qualifying health insurance
12 plan benefits for the benefit of Plaintiffs and members of the Class, and therefore Defendants are
13 not, and have not been, eligible to pay Plaintiffs and members of the Class at the reduced
14 minimum wage rate. Either the Companies simply do not offer benefit plans to Plaintiffs, or the
15 plans offered do not meet constitutional coverage or cost requirements.

16 **PARTIES**

17 **A. Plaintiffs**

18 12. Plaintiff LATONYA TYUS is a resident of Nevada, and has worked as a crew
19 member at a Wendy’s restaurant owned and operated by the Companies in Clark County, Nevada
20 since September 2013. Her wage is, and has been since she began working for Defendants, \$7.55
21 per hour. She has two dependent children.

22 13. Plaintiff DAVID HUNSICKER is a resident of Nevada, and has worked as a crew
23 member at a Wendy’s restaurant owned and operated by the Companies in Clark County, Nevada
24 since November 2013. His wage is, and has been since he began working for the Companies,
25 \$7.55 per hour.

26 14. Plaintiff LINDA DAVIS is a resident of Nevada, and has worked as a crew
27 member at a Wendy’s restaurant owned and operated by the Companies in Clark County, Nevada
28 since February 2013. Her wage is, and has been since she began working for the Companies,

1 \$7.55 per hour.

2 15. Plaintiff TERRON SHARP is a resident of Nevada, and has worked as a crew
3 member at a Wendy's restaurant owned and operated by the Companies in Clark County, Nevada
4 between September 2001 and March 2012, and presently since March 2014. His wage is \$7.55 per
5 hour. He earned \$7.50 between September 2011 and March 2012. He has one dependent child.

6 **B. Defendants**

7 16. Plaintiffs are informed and believe and thereon allege that at all times material
8 hereto Defendant WENDY'S OF LAS VEGAS, INC. was and is an Ohio corporation, and it and
9 any subsidiaries or affiliated companies were and are engaged in the ownership and operation of
10 franchise and non-franchise restaurants located in Clark County and throughout Nevada. Upon
11 information and belief, this Defendant owns and operates approximately 31 Wendy's Restaurants
12 in Clark County, Nevada, employs Plaintiffs and Class members, and is conducting business in
13 good standing in the State of Nevada.

14 17. Plaintiffs are informed and believe and thereon allege that at all times material
15 hereto Defendant CEDAR ENTERPRISES, INC. was and is an Ohio corporation, and it and any
16 subsidiaries or affiliated companies were and are engaged in the ownership and operation of
17 franchise and non-franchise restaurants located in Clark County and throughout Nevada. Upon
18 information and belief, this Defendant owns and operates approximately 31 Wendy's Restaurants
19 in Clark County, Nevada as Wendy's of Las Vegas, Inc., employs Plaintiffs and Class members,
20 and is conducting business in good standing in the State of Nevada

21 18. Plaintiffs sue fictitious Defendants DOES 1 through 100, inclusive, as Plaintiffs do
22 not know their true names and/or capacities, and upon ascertainment, will amend the Complaint
23 with their true names and capacities. Plaintiffs are informed and believe and on that basis allege
24 that each of said fictitiously named Defendants is responsible in some manner for the occurrences
25 herein alleged, and that Plaintiffs' damages were proximately caused by their conduct mentioned
26 herein, each of the Defendants, including DOES 1 through 100, was an agent, joint-venturer,
27 representative, alter ego, and/or employee of the other defendants, and was acting both
28 individually and in the course and scope of said relationship at the time of the events herein

1 alleged, and all aided and abetted the wrongful acts of the others.

2 **JURISDICTION AND VENUE**

3 19. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §
4 1332(d), because diversity of the parties exists and the aggregate amount in controversy exceeds
5 \$5,000,000.00.

6 20. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(ii) because acts
7 giving rise to the claims of the Plaintiffs herein occurred within this judicial district, and
8 Defendants each regularly conduct business in and have engaged and continue to engage in the
9 wrongful conduct alleged herein—and, thus, are subject to personal jurisdiction—in this judicial
10 district.

11 **GENERAL ALLEGATIONS**

12 **A. Plaintiffs' Allegations**

13 21. Plaintiff Tyus works as a crew member at a Wendy's restaurant owned and
14 operated by the Companies in Clark County, Nevada, and earns \$7.55 per hour, below the
15 constitutional minimum wage under Nev. Const. art XV, § 16 of \$8.25 per hour.

16 22. Upon her hiring in September 2013, Ms. Tyus's location manager offered her the
17 company health insurance plan through Aetna Inc. (the "Plan"). She declined insurance coverage
18 at that time due to cost.

19 23. The Plan offered to Ms. Tyus (which, upon information and belief, is the plan
20 contracted for by Cedar Enterprises Inc. with Aetna, Inc. for workers in its Wendy's locations in
21 Southern Nevada) is not, and was not, in compliance with Nev. Const. art XV, § 16 or N.A.C.
22 608.102, as it did not cover those categories of health care expenses that are generally deductible
23 by an employee on his/her individual federal income tax return pursuant to 26 U.S.C. § 213 and
24 any federal regulations relating thereto, if such expenses had been borne directly by the employee.

25 24. Furthermore, the Plan offered to Ms. Tyus (which, upon information and belief, is
26 the plan contracted for by Cedar Enterprises Inc. with Aetna, Inc. for workers in its Wendy's
27 locations in Southern Nevada) is not, and was not, in compliance with Nev. Const. art XV, § 16 or
28 N.A.C. 608.104, as the premium costs to her and her dependents exceeded the constitutionally-

1 prescribed maximums.

2 25. The Companies, therefore, have been unlawfully paying Ms. Tyus sub-minimum
3 wage for the entirety of her employment.

4 26. Plaintiff Hunsicker works as a crew member at a Wendy's restaurant owned and
5 operated by the Companies in Clark County, Nevada, and earns \$7.55 per hour, below the
6 constitutional minimum wage under Nev. Const. art XV, § 16 of \$8.25 per hour.

7 27. Upon his hiring in November 2013, Mr. Hunsicker's location manager offered him
8 the company health insurance plan through Aetna Inc. (the "Plan"), but discouraged him from
9 accepting the benefits because they were "expensive" and the manager "wouldn't recommend it."
10 The location manager did not provide actual premium cost figures to Mr. Hunsicker.

11 28. The Plan offered to Mr. Hunsicker (which, upon information and belief, is the plan
12 contracted for by Cedar Enterprises Inc. with Aetna, Inc. for workers in all its Wendy's locations
13 in Southern Nevada) is not in compliance with Nev. Const. art XV, § 16 or N.A.C. 608.102, as it
14 does not cover those categories of health care expenses that are generally deductible by an
15 employee on his/her individual federal income tax return pursuant to 26 U.S.C. § 213 and any
16 federal regulations relating thereto, if such expenses had been borne directly by the employee.

17 29. The Companies, therefore, have been unlawfully paying Mr. Hunsicker sub-
18 minimum wage for the entirety of his employment.

19 30. Mr. Hunsicker has worked overtime for the Companies, but due to the
20 underpayment of his lawful wage, the amount of his overtime wage payments pursuant to N.R.S.
21 608.018 has also been under-calculated and underpaid as well.

22 31. Plaintiff Davis works as a crew member at a Wendy's restaurant owned and
23 operated by the Companies in Clark County, Nevada, and earned \$7.55 per hour. She received a
24 ten-cent raise, to \$7.65, beginning with the bi-weekly pay period starting January 27, 2014. Both
25 amounts are below the constitutional minimum wage under Nev. Const. art XV, § 16 of \$8.25 per
26 hour.

27 32. Upon her hiring in February 2013, Ms. Davis's location manager offered her the
28 company health insurance plan through Aetna Inc. (the "Plan"). At times during 2013, Ms. Davis

1 was provided and paid for health insurance benefits under the Plan. As of December 2013, Ms.
2 Davis no longer had health insurance benefits through the Companies' Plan.

3 33. The Plan offered to Ms. Davis (which, upon information and belief, is the plan
4 contracted for by Cedar Enterprises Inc. with Aetna, Inc. for workers in its Wendy's locations in
5 Southern Nevada) is not, and was not, in compliance with Nev. Const. art XV, § 16 or N.A.C.
6 608.102, as it did not cover those categories of health care expenses that are generally deductible
7 by an employee on his/her individual federal income tax return pursuant to 26 U.S.C. § 213 and
8 any federal regulations relating thereto, if such expenses had been borne directly by the employee.

9 34. Furthermore, the Plan offered to Ms. Davis (which, upon information and belief, is
10 the plan contracted for by Cedar Enterprises Inc. with Aetna, Inc. for workers in its Wendy's
11 locations in Southern Nevada) is not, and was not, in compliance with Nev. Const. art XV, § 16 or
12 N.A.C. 608.104, as the premium costs to her exceeded the constitutionally-prescribed maximums.

13 35. The Companies, therefore, have been unlawfully paying Ms. Davis sub-minimum
14 wage for the entirety of her employment.

15 36. Ms. Davis has worked overtime for the Companies, but due to the underpayment of
16 her lawful wage, the amount of her overtime wage payments pursuant to N.R.S. 608.018 has also
17 been under-calculated and underpaid as well.

18 37. Plaintiff Sharp works and has worked as a crew member at a Wendy's restaurant
19 owned and operated by the Companies in Clark County, Nevada between September 2001 and
20 March 2012, and presently since March 2014. His current wage is \$7.55 per hour. He earned \$7.50
21 between September 2011 and March 2012. Both amounts are below the constitutional minimum
22 wage under Nev. Const. art XV, § 16 of \$8.25 per hour.

23 38. During neither of his employment periods with the Companies was Mr. Sharp
24 offered or provided health insurance benefits for himself or his dependent child.

25 39. The Companies, therefore, have been unlawfully paying Mr. Sharp sub-minimum
26 wage for the entirety of his employment.

27 **B. Defendants' Control of the Companies**

28 40. Defendants maintain control, oversight, and direction over the operation of the

1 Companies, including their employment and/or labor practices.

2 41. Defendants (i) create uniform wage and benefit policies and practices for use at the
3 Companies, (ii) impose their uniform wage and benefit policies and practices at the Companies,
4 and (iii) maintain centralized human resource functions which implement wage and benefit
5 policies and practices at the Companies.

6 42. Defendants contract for and/or maintain the non-compliant Plan or Plan(s) which
7 are the subject of this lawsuit.

8 **C. Defendants' Unlawful Minimum Wage Practices**

9 43. The Companies claim eligibility to pay, do pay, and have paid Plaintiffs and
10 members of the Class at a reduced minimum wage rate pursuant to Nev. Const. art. XV, § 16.

11 44. The Companies do not provide, offer, and/or maintain health insurance plan
12 benefits that meet necessary requirements in order to qualify to pay Plaintiffs and members of the
13 Class at the reduced minimum wage level.

14 45. The Plan, where provided, offered, and/or maintained by the Companies for the
15 benefit of Plaintiffs and members of the Class, does not meet, and has not met, the minimum
16 coverage requirements under law for Plaintiffs and members of the Class and their dependents,
17 and therefore the Companies are not, and have not been, eligible to pay Plaintiffs and members of
18 the Class at the reduced minimum wage rate.

19 46. The Plan provided, offered, and/or maintained by the Companies for the benefit of
20 Plaintiffs and members of the Class does not meet, and has not met, the maximum premium cost
21 requirements under law for Plaintiffs and members of the Class and their dependents, and
22 therefore the Companies are not, and have not been, eligible to pay Plaintiffs and members of the
23 Class at the reduced minimum wage rate.

24 47. Upon information and belief, members of the Class have been provided and/or
25 offered the same non-qualifying Plan as Plaintiffs while being paid at a reduced minimum wage
26 rate. The Companies, therefore, have been unlawfully paying all Class members a sub-minimum
27 wage and unlawfully-reduced overtime wages during employment by the Companies.

28 48. As a result, Plaintiffs and the members of the Class are owed back pay and

1 damages for every regular and overtime hour worked during the applicable period.

2 49. Defendants are aware of, and perpetuate, this ongoing violation of Nevada's
3 constitutional provision regarding minimum wage, and associated regulatory provisions
4 implementing same.

5 **CLASS ACTION ALLEGATIONS**

6 50. Plaintiffs re-allege and incorporate herein by this reference all the paragraphs above
7 in this Complaint as though fully set forth herein.

8 51. Plaintiffs bring this action pursuant to F.R.C.P. 23 on behalf of themselves and all
9 others similarly situated, as representative members of the following proposed Class:

10 **All current and former employees of Defendants employed at all**
11 **Nevada locations at any time during the applicable statutes of**
12 **limitation who were compensated at any time at less than the**
13 **maximum state constitutional minimum wage rate.**

14 52. Numerosity: The members of the proposed Class are so numerous that individual
15 joinder of all members is impracticable under the circumstances of this case, and the disposition of
16 their claims as a Class will benefit the parties and the Court. The precise number of members
17 should be readily available from a review of the Companies' personnel, payroll, and benefits
18 records, and upon information and belief numbers in the thousands.

19 53. Commonality/Predominance: Common questions of law or fact are shared by the
20 members of the proposed Class. This action is suitable for class treatment because these common
21 questions of fact and law predominate over any questions affecting individual members. These
22 common legal and factual questions, include, but are not limited to, the following:

- 23 i. Whether Defendants appropriately paid Class members the required
24 minimum wage pursuant to state law;
- 25 ii. Whether, when paying minimum wage employees the reduced minimum
26 wage level pursuant to Nev. Const. art. XV, § 16, Defendants provided
27 health insurance benefit plans to members of the Class covering all required
28 health care expenses at all required times;

- 1 iii. Whether, when paying minimum wage employees the reduced minimum
2 wage level pursuant to Nev. Const. art. XV, § 16, Defendants provided
3 health insurance benefit plans to members of the Class at premium cost
4 levels exceeding permissible maximums under law, during all required pay
5 periods;
- 6 iv. The applicable statute of limitations, if any, for Plaintiffs' and Class
7 members' claims;
- 8 v. Whether Defendants are liable for pre-judgment interest; and
- 9 vi. Whether Defendant are liable for attorneys' fees and costs.

10 54. Typicality: Plaintiffs' claims are typical of those of the proposed Class, and the
11 relief sought is typical of the relief which would be sought by each member of the Class in
12 separate actions. Plaintiffs and all other proposed Class members sustained similar losses, injuries,
13 and damages as a direct and proximate result of the Companies' same unlawful policies and/or
14 practices. Plaintiffs' claims arise from the Companies' same unlawful policies, practices, and/or
15 course of conduct as all other proposed Class members' claims in that Plaintiffs were denied
16 lawful wages for hours worked, and Plaintiffs' legal theories are based on the same legal theories
17 as all other proposed Class members. the Companies' compensation and benefit policies and
18 practices affected all Class members similarly, and the Companies benefited from the same type of
19 unfair and/or wrongful acts done to each Class member.

20 55. Adequacy: Plaintiffs are adequate representatives of the proposed Class because
21 Plaintiffs are members of the proposed Class they seek to represent and their interests do not
22 conflict with the interests of the other members of the proposed Class that Plaintiffs seek to
23 represent. Plaintiffs have retained counsel that is competent and experienced in complex class
24 action litigation, and Plaintiffs intend to prosecute this action vigorously. The interests of members
25 of the proposed Class will be fairly and adequately protected by Plaintiffs and their counsel.
26 Neither Plaintiffs nor their counsel have interests that are contrary to, or conflicting with, the
27 interests of the proposed Class.

56. *Superiority*: A class action is superior to other available methods for the fair and efficient adjudication of the controversy, because, *inter alia*, as minimum wage employees it is economically infeasible for proposed Class members to prosecute individual actions of their own given the relatively small amount of damages at stake for each individual. Important public interests will be served by addressing the matter as a class action. The cost to the court system and the public for the adjudication of individual litigation and claims would be substantial and substantially more than if the claims are treated as a class action. Prosecution of separate actions by individual Class members would create a risk of inconsistent and/or varying adjudications with respect to the individual members of the Class, establishing incompatible standards of conduct for the Companies and resulting in the impairment of Class members' rights and the disposition of their interests through actions to which they were not parties. The issues in this action can be decided by means of common, class-wide proof. In addition, if appropriate, the Court can and is empowered to, fashion methods to efficiently manage this action as a class action.

57. The case will be manageable as a class action. Plaintiffs and their counsel know of no unusual difficulties in the case and the Companies have advanced networked computer, payroll, and benefit systems that will allow the class, wage, benefits, and damages issues in the case to be resolved with relative ease.

58. Because the elements of Rule 23(b)(3), or in the alternative Rule 23(c)(4), are satisfied in the case, class certification is appropriate.

FIRST CLAIM FOR RELIEF

Violation of Nev. Const. art. XV, § 16

Failure to Pay Lawful Minimum Wage

(On Behalf of Plaintiffs and the Class against Defendants)

59. All preceding paragraphs in this Complaint are re-alleged and incorporated by reference as though fully set forth herein.

60. As described and alleged herein, the Companies pay, and have paid, Plaintiffs and members of the Class at a reduced minimum wage level pursuant to Nev. Const. art XV, § 16 without providing qualifying health insurance benefits as required by that provision.

THIRD CLAIM FOR RELIEF

Violation of Nev. Const. art. XV, § 16 and N.A.C. 608.104

Failure to Pay Lawful Minimum Wage

(On Behalf of Plaintiffs and the Class against Defendants)

67. All preceding paragraphs in this Complaint are re-alleged and incorporated by reference as though fully set forth herein.

68. As described and alleged herein, the Companies pay, and have paid, Plaintiffs and members of the Class at the reduced minimum wage level pursuant to Nev. Const. art XV, § 16 without providing qualifying health insurance benefits as required by that provision.

69. The premium costs of the health insurance benefits provided and/or offered to Plaintiffs and members of the Class and their dependents exceeds, or has exceeded, the level permitted by Nev. Const. art XV, § 16, and therefore the Companies are not, and/or were not, eligible to pay Plaintiffs and members of the Class at the reduced minimum wage tier during any period where such qualifying benefits were not provided, offered, or maintained by the Companies.

70. Pursuant to Nev. Const. art XV, § 16, the Companies are liable to Plaintiffs and members of the Class for their unpaid wages for any period during which the Companies were ineligible to compensate Plaintiffs and members of the Class at the reduced minimum wage tier; an award of damages; costs of the action; reasonable attorneys' fees; and any other relief deemed appropriate by this Court.

FOURTH CLAIM FOR RELIEF

Violation of N.R.S. 608.018

Failure to Pay Lawful Overtime Wages

(On Behalf of Plaintiffs and the Class against Defendants)

71. All preceding paragraphs in this Complaint are re-alleged and incorporated by reference as though fully set forth herein.

1 72. N.R.S. 608.018 provides that employees in Nevada shall not be employed more
2 than forty hours in a workweek or eight hours in a workday unless they receive additional
3 compensation beyond their regular wages in amounts specified by law.

4 73. N.R.S. 608.018 provides that an employer shall pay one-and-one-half times the
5 employee's regular wage rate for all time worked in excess of the levels described in the preceding
6 paragraph.

7 74. Plaintiffs and other members of the Class do not perform duties that exempt them
8 from the mandates and requirements of N.R.S. 608.018's overtime wage rate provisions.

9 75. The Companies have failed to pay Plaintiffs and other Class members appropriate
10 overtime compensation for all hours they have worked in excess of the maximum hours
11 permissible by law as required under N.R.S. 608.018.

12 76. Plaintiffs, and other members of the Class, are entitled to seek and recover
13 reasonable attorney's fees and costs pursuant to N.R.S. 608.140.

14 **PRAYER FOR RELIEF**

15 **WHEREFORE**, Plaintiffs, on behalf of themselves and all other similarly-situated
16 members of the Class, request that this Court enter an Order:

17 A. Certifying this matter as a class action pursuant to F.R.C.P. 23, designating
18 Plaintiffs as Class representatives, and appointing undersigned as Class counsel;

19 B. Declaring the practices here complained of as unlawful under appropriate law;

20 C. Granting judgment to Plaintiffs and the members of the Class on their claims of
21 unpaid wages as secured by law, as well as damages, interest, attorneys' fees and costs as
22 applicable and appropriate;

23 D. Granting punitive damages against the Companies;

24 E. Ordering such other relief as the Court may deem necessary and just; and

25 ///

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27 ///

28 ///

JURY TRIAL DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs demand a trial by jury on all issues so triable.

DATED this 9th day of May, 2014.

**WOLF, RIFKIN, SHAPIRO,
SCHULMAN & RABKIN, LLP**

By: /s/ Don Springmeyer, Esq.
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0016

Nev. Const. Art 15, Sec. 16.

Payment of minimum compensation to employees.

A. Each employer shall pay a wage to each employee of not less than the hourly rates set forth in this section. The rate shall be five dollars and fifteen cents (\$5.15) per hour worked, if the employer provides health benefits as described herein, or six dollars and fifteen cents (\$6.15) per hour if the employer does not provide such benefits. Offering health benefits within the meaning of this section shall consist of making health insurance available to the employee for the employee and the employee's dependents 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. These rates of wages shall be adjusted by the amount of increases in the federal minimum wage over \$5.15 per hour, or, if greater, by the cumulative increase in the cost of living. The cost of living increase shall be measured by the percentage increase as of December 31 in any year over the level as of December 31, 2004 of the Consumer Price Index (All Urban Consumers, U.S. City Average) as published by the Bureau of Labor Statistics, U.S. Department of Labor or the successor index or federal agency. No CPI adjustment for any one-year period may be greater than 3%. The Governor or the State agency designated by the Governor shall publish a bulletin by April 1 of each year announcing the adjusted rates, which shall take effect the following July 1. Such bulletin will be made available to all employers and to any other person who has filed with the Governor or the designated agency a request to receive such notice but lack of notice shall not excuse noncompliance with this section. An employer shall provide written notification of the rate adjustments to each of its employees and make the necessary payroll adjustments by July 1 following the publication of the bulletin. Tips or gratuities received by employees shall not be credited as being any part of or offset against the wage rates required by this section.

B. The provisions of this section may not be waived by agreement between an individual employee and an employer. All of the provisions of this section, or any part hereof, may be waived in a bona fide collective bargaining agreement, but only if the waiver is explicitly set forth in such agreement in clear and unambiguous terms. Unilateral implementation of terms and conditions of employment by either party to a collective bargaining relationship shall not constitute, or be permitted, as a waiver of all or any part of the provisions of this section. An employer shall not discharge, reduce the compensation of or otherwise discriminate against any employee for using any civil remedies to enforce this section or otherwise asserting his or her rights under this section. An employee claiming violation of this section may bring an action against his or her employer in the courts of this State to enforce the provisions of this section and shall be entitled to all remedies available under the law or in equity appropriate to remedy any violation of this section, including but not limited to back pay, damages, reinstatement or injunctive relief. An employee who prevails in any action to enforce this section shall be awarded his or her reasonable attorney's fees and costs.

C. As used in this section, "employee" means any person who is employed by an employer as defined herein but does not include an employee who is under eighteen (18) years of age, employed by a nonprofit organization for after school or summer employment or as a trainee for a period not longer than ninety (90) days. "Employer" means any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity that may employ individuals or enter into contracts of employment.

D. If any provision of this section is declared illegal, invalid or inoperative, in whole or in part, by the final decision of any court of competent jurisdiction, the

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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

LATONYA TYUS, an individual; DAVID
HUNSICKER, an individual; LINDA
DAVIS, an individual; TERRON SHARP,
an individual; COLLINS KWAYISI, an
individual; LEE JONES, an individual;
RAISSA BURTON, an individual;
JERMEY MCKINNEY, an individual;
FLORENCE EDJEOU, an individual, all on
behalf of themselves and all similarly-
situated individuals,

Plaintiffs,

vs.

WENDY'S OF LAS VEGAS, INC., an
Ohio corporation; CEDAR ENTERPRISES,
INC., an Ohio Corporation; and DOES 1
through 100, Inclusive,

Defendants.

Case No: 2:14-cv-00729-GMN-VCF

**FIRST AMENDED CLASS
ACTION COMPLAINT**

The above-referenced Plaintiffs (herein "Plaintiffs") through undersigned counsel, on
behalf of themselves and all persons similarly situated, complain and allege as follows:

INTRODUCTION

1
2 1. This lawsuit is an individual and class action brought by Plaintiffs, on behalf of
3 themselves and all similarly-situated employees of Defendants (collectively, “Defendants”),
4 owners and operators of Wendy’s Restaurants in southern Nevada (the “Companies”).

5 2. This lawsuit is a result of the Companies’ failure to pay Plaintiffs and other
6 similarly-situated employees who are members of the Class the lawful minimum wage, because
7 the Companies improperly claim, or have claimed, the right to compensate employees below the
8 upper-tier hourly minimum wage level under Nev. Const. art. XV, § 16.

9 3. At the 2006 General Election, Nevada voters approved, for the second time, a
10 constitutional amendment regarding the minimum wage to be paid to all Nevada employees.¹ The
11 amendment became effective in November, 2006, and was codified as new Article XV, § 16 of the
12 Nevada Constitution.

13 4. The 2006 amendment guaranteed to each Nevada employee, with very few
14 exceptions, a particular hourly wage: “Each employer shall pay a wage to each employee of not
15 less than the hourly rates set forth in this section. The rate shall be five dollars and fifteen cents
16 (\$5.15) per hour worked, if the employer provides health benefits as described herein, or six
17 dollars and fifteen cents (\$6.15) per hour if the employer does not provide such benefits.”

18 5. The amendment contained an index/increase mechanism, such that by 2010 until
19 the present time the Nevada minimum wage level has been \$7.25 per hour worked if the employer
20 provides qualifying health benefits, or \$8.25 per hour if the employer does not provide qualifying
21 health benefits.²

22 6. This means employees earning the reduced amount per hour can make up to 12%
23 less than minimum wage workers paid at the \$8.25 level.

24 7. Pursuant to the constitutional amendment, employers must qualify for the privilege
25

26 ¹ See **Exhibit 1** here attached, a true and correct copy of the text of Nev. Const. art. XV, § 16.

27 ² Starting at \$5.15 / \$6.15 per hour in November of 2006 and reaching \$7.25 / \$8.25 by 2010,
28 and remaining there presently, there were a number of increasing annual levels for Nevada’s
minimum hourly wage due to the indexing mechanism found in the constitutional provision.

1 of paying their minimum wage workers below the upper-tier hourly minimum wage level for
 2 every hour worked. In order to qualify to pay employees below the upper-tier hourly minimum
 3 wage level, the cost of health insurance benefit premiums for the employee, and his or her
 4 dependents, may not exceed “10 percent of the employee’s gross taxable income from the
 5 employer.” Nev. Const. art. XV, § 16.

6 8. Furthermore, in order to qualify to pay employees below the upper-tier hourly
 7 minimum wage level, the health insurance benefits plan provided, offered, and/or maintained must
 8 be truly comprehensive in its coverage, and cover “those categories of health care expenses that
 9 are generally deductible by an employee on his/her individual federal income tax return pursuant
 10 to 26 U.S.C. § 213 and any federal regulations relating thereto, if such expenses had been borne
 11 directly by the employee.” N.A.C. 608.102(1)(a).

12 9. The public policy underlying the minimum wage amendment was to benefit
 13 Nevada’s minimum wage employees, and to incentivize employers to provide low-cost,
 14 comprehensive health insurance benefits to the state’s lowest-paid workers.

15 10. The Companies do pay, or have paid, Plaintiffs and members of the Class below
 16 the upper-tier hourly minimum wage level.

17 11. The Companies do not provide, offer, and/or maintain qualifying health insurance
 18 plan benefits for the benefit of Plaintiffs and members of the Class, and therefore Defendants are
 19 not, and have not been, eligible to pay Plaintiffs and members of the Class below the upper-tier
 20 hourly minimum wage level. Either the Companies simply do not offer benefit plans to Plaintiffs,
 21 or the plans offered do not meet constitutional coverage or cost requirements.

22 **PARTIES**

23 **A. Plaintiffs**

24 12. Plaintiff LATONYA TYUS is a resident of Nevada, and has worked as a crew
 25 member at a Wendy’s restaurant owned and operated by the Companies in Clark County, Nevada
 26 since September 2013. Her wage is, and has been since she began working for Defendants, \$7.55
 27 per hour. She has two dependent children.

28 13. Plaintiff DAVID HUNSICKER is a resident of Nevada, and has worked as a crew

1 member at a Wendy's restaurant owned and operated by the Companies in Clark County, Nevada
2 since November 2013. His wage is, and has been since he began working for the Companies,
3 \$7.55 per hour.

4 14. Plaintiff LINDA DAVIS is a resident of Nevada, and has worked as a crew
5 member at a Wendy's restaurant owned and operated by the Companies in Clark County, Nevada
6 since February 2013. Her wage is, and has been since she began working for the Companies,
7 \$7.55 per hour.

8 15. Plaintiff TERRON SHARP is a resident of Nevada, and has worked as a crew
9 member at a Wendy's restaurant owned and operated by the Companies in Clark County, Nevada
10 between September 2001 and March 2012, and presently since March 2014. His wage is \$7.55 per
11 hour. He earned \$7.50 between September 2011 and March 2012. He has one dependent child.

12 16. Plaintiff COLLINS KWAYISI is a resident of Nevada, and has worked as a crew
13 member at a Wendy's restaurant owned and operated by the Companies in Clark County, Nevada
14 since May 2010. His wage is \$7.75 per hour. He earned \$7.65 between June 2012 and May 2013;
15 \$7.60 between May 2011 and June 2012; and, \$7.55 between May 2010 and May 2011. He has
16 one dependent child.

17 17. Plaintiff LEE JONES is a resident of Nevada, and has worked as a crew member at
18 a Wendy's restaurant owned and operated by the Companies in Clark County, Nevada since
19 January 2014. His wage is, and has been since he began working for the Companies, \$7.55 per
20 hour. He has one dependent child.

21 18. Plaintiff RAISSA BURTON is a resident of Nevada, and has worked as a crew
22 member at a Wendy's restaurant owned and operated by the Companies in Clark County, Nevada
23 since February 2014. Her wage is, and has been since she began working for the Companies,
24 \$7.55 per hour. She has five dependent children.

25 19. Plaintiff JERMEY MCKINNEY is a resident of Nevada, and worked as a crew
26 member at a Wendy's restaurant owned and operated by the Companies in Clark County, Nevada
27 between June 2009 and August 2009 and between May 2011 and February 2014. His wage was
28 \$7.85 per hour in February 2014. He earned \$7.70 between July 2012 and January 2014; \$7.55

1 between May 2011 and July 2012; and, \$7.55 between June 2009 and August 2009. He has one
2 dependent child.

3 20. Plaintiff FLORENCE EDJEOU is a resident of Nevada, and has worked as a crew
4 member at a Wendy's restaurant owned and operated by the Companies in Clark County, Nevada
5 since June 2010. Her wage is \$7.90 per hour. She earned \$7.80 between May 2012 and May 2013;
6 \$7.70 between May 2011 and May 2012; and, \$7.55 between June 2010 and May 2011.

7 **B. Defendants**

8 21. Plaintiffs are informed and believe and thereon allege that at all times material
9 hereto Defendant WENDY'S OF LAS VEGAS, INC. was and is an Ohio corporation, and it and
10 any subsidiaries or affiliated companies were and are engaged in the ownership and operation of
11 franchise and non-franchise restaurants located in Clark County and throughout Nevada. Upon
12 information and belief, this Defendant owns and operates approximately 31 Wendy's Restaurants
13 in Clark County, Nevada, employs Plaintiffs and Class members, and is conducting business in
14 good standing in the State of Nevada.

15 22. Plaintiffs are informed and believe and thereon allege that at all times material
16 hereto Defendant CEDAR ENTERPRISES, INC. was and is an Ohio corporation, and it and any
17 subsidiaries or affiliated companies were and are engaged in the ownership and operation of
18 franchise and non-franchise restaurants located in Clark County and throughout Nevada. Upon
19 information and belief, this Defendant owns and operates approximately 31 Wendy's Restaurants
20 in Clark County, Nevada as Wendy's of Las Vegas, Inc., employs Plaintiffs and Class members,
21 and is conducting business in good standing in the State of Nevada

22 23. Plaintiffs sue fictitious Defendants DOES 1 through 100, inclusive, as Plaintiffs do
23 not know their true names and/or capacities, and upon ascertainment, will amend the Complaint
24 with their true names and capacities. Plaintiffs are informed and believe and on that basis allege
25 that each of said fictitiously named Defendants is responsible in some manner for the occurrences
26 herein alleged, and that Plaintiffs' damages were proximately caused by their conduct mentioned
27 herein, each of the Defendants, including DOES 1 through 100, was an agent, joint-venturer,
28 representative, alter ego, and/or employee of the other defendants, and was acting both

1 individually and in the course and scope of said relationship at the time of the events herein
 2 alleged, and all aided and abetted the wrongful acts of the others.

3 **JURISDICTION AND VENUE**

4 24. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §
 5 1332(d), because diversity of the parties exists and the aggregate amount in controversy exceeds
 6 \$5,000,000.00.

7 25. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(ii) because acts
 8 giving rise to the claims of the Plaintiffs herein occurred within this judicial district, and
 9 Defendants each regularly conduct business in and have engaged and continue to engage in the
 10 wrongful conduct alleged herein—and, thus, are subject to personal jurisdiction—in this judicial
 11 district.

12 **GENERAL ALLEGATIONS**

13 **A. Plaintiffs' Allegations**

14 26. Plaintiff Tyus works as a crew member at a Wendy's restaurant owned and
 15 operated by the Companies in Clark County, Nevada, and earns \$7.55 per hour, below the
 16 constitutional minimum wage under Nev. Const. art XV, § 16 of \$8.25 per hour.

17 27. Upon her hiring in September 2013, Ms. Tyus's location manager offered her the
 18 company health insurance plan through Aetna Inc. (the "Plan"). She declined insurance coverage
 19 at that time due to cost.

20 28. The Plan offered to Ms. Tyus (which, upon information and belief, is the plan
 21 contracted for by Cedar Enterprises Inc. with Aetna, Inc. for workers in its Wendy's locations in
 22 Southern Nevada) is not, and was not, in compliance with Nev. Const. art XV, § 16 or N.A.C.
 23 608.102, as it did not cover those categories of health care expenses that are generally deductible
 24 by an employee on his/her individual federal income tax return pursuant to 26 U.S.C. § 213 and
 25 any federal regulations relating thereto, if such expenses had been borne directly by the employee.

26 29. Furthermore, the Plan offered to Ms. Tyus (which, upon information and belief, is
 27 the plan contracted for by Cedar Enterprises Inc. with Aetna, Inc. for workers in its Wendy's
 28 locations in Southern Nevada) is not, and was not, in compliance with Nev. Const. art XV, § 16 or

1 N.A.C. 608.104, as the premium costs to her and her dependents exceeded the constitutionally-
2 prescribed maximums.

3 30. The Companies, therefore, have been unlawfully paying Ms. Tyus sub-minimum
4 wage for the entirety of her employment.

5 31. Plaintiff Hunsicker works as a crew member at a Wendy's restaurant owned and
6 operated by the Companies in Clark County, Nevada, and earns \$7.55 per hour, below the
7 constitutional minimum wage under Nev. Const. art XV, § 16 of \$8.25 per hour.

8 32. Upon his hiring in November 2013, Mr. Hunsicker's location manager offered him
9 the company health insurance plan through Aetna Inc. (the "Plan"), but discouraged him from
10 accepting the benefits because they were "expensive" and the manager "wouldn't recommend it."
11 The location manager did not provide actual premium cost figures to Mr. Hunsicker.

12 33. The Plan offered to Mr. Hunsicker (which, upon information and belief, is the plan
13 contracted for by Cedar Enterprises Inc. with Aetna, Inc. for workers in all its Wendy's locations
14 in Southern Nevada) is not in compliance with Nev. Const. art XV, § 16 or N.A.C. 608.102, as it
15 does not cover those categories of health care expenses that are generally deductible by an
16 employee on his/her individual federal income tax return pursuant to 26 U.S.C. § 213 and any
17 federal regulations relating thereto, if such expenses had been borne directly by the employee.

18 34. The Companies, therefore, have been unlawfully paying Mr. Hunsicker sub-
19 minimum wage for the entirety of his employment.

20 35. Mr. Hunsicker has worked overtime for the Companies, but due to the
21 underpayment of his lawful wage, the amount of his overtime wage payments pursuant to N.R.S.
22 608.018 has also been under-calculated and underpaid as well.

23 36. Plaintiff Davis works as a crew member at a Wendy's restaurant owned and
24 operated by the Companies in Clark County, Nevada, and earned \$7.55 per hour. She received a
25 ten-cent raise, to \$7.65, beginning with the bi-weekly pay period starting January 27, 2014. Both
26 amounts are below the constitutional minimum wage under Nev. Const. art XV, § 16 of \$8.25 per
27 hour.

28 37. Upon her hiring in February 2013, Ms. Davis's location manager offered her the

1 company health insurance plan through Aetna Inc. (the “Plan”). At times during 2013, Ms. Davis
2 was provided and paid for health insurance benefits under the Plan. As of December 2013, Ms.
3 Davis no longer had health insurance benefits through the Companies’ Plan.

4 38. The Plan offered to Ms. Davis (which, upon information and belief, is the plan
5 contracted for by Cedar Enterprises Inc. with Aetna, Inc. for workers in its Wendy’s locations in
6 Southern Nevada) is not, and was not, in compliance with Nev. Const. art XV, § 16 or N.A.C.
7 608.102, as it did not cover those categories of health care expenses that are generally deductible
8 by an employee on his/her individual federal income tax return pursuant to 26 U.S.C. § 213 and
9 any federal regulations relating thereto, if such expenses had been borne directly by the employee.

10 39. Furthermore, the Plan offered to Ms. Davis (which, upon information and belief, is
11 the plan contracted for by Cedar Enterprises Inc. with Aetna, Inc. for workers in its Wendy’s
12 locations in Southern Nevada) is not, and was not, in compliance with Nev. Const. art XV, § 16 or
13 N.A.C. 608.104, as the premium costs to her exceeded the constitutionally-prescribed maximums.

14 40. The Companies, therefore, have been unlawfully paying Ms. Davis sub-minimum
15 wage for the entirety of her employment.

16 41. Ms. Davis has worked overtime for the Companies, but due to the underpayment of
17 her lawful wage, the amount of her overtime wage payments pursuant to N.R.S. 608.018 has also
18 been under-calculated and underpaid as well.

19 42. Plaintiff Sharp works and has worked as a crew member at a Wendy’s restaurant
20 owned and operated by the Companies in Clark County, Nevada between September 2001 and
21 March 2012, and presently since March 2014. His current wage is \$7.55 per hour. He earned \$7.50
22 between September 2011 and March 2012. Both amounts are below the constitutional minimum
23 wage under Nev. Const. art XV, § 16 of \$8.25 per hour.

24 43. During neither of his employment periods with the Companies was Mr. Sharp
25 offered or provided health insurance benefits for himself or his dependent child.

26 44. The Companies, therefore, have been unlawfully paying Mr. Sharp sub-minimum
27 wage for the entirety of his employment.

28 45. Plaintiff Kwayisi works as a crew member at a Wendy’s restaurant owned and

1 operated by the Companies in Clark County, Nevada, and earns \$7.75 per hour. He earned \$7.65
2 between June 2012 and May 2013; \$7.60 between May 2011 and June 2012; and, \$7.55 between
3 May 2010 and May 2011. All amounts are below the constitutional minimum wage under Nev.
4 Const. art XV, § 16 of \$8.25 per hour.

5 46. Upon his hiring in January 2014, Mr. Kwayisi's location manager offered him the
6 company health insurance plan through Aetna Inc. (the "Plan"). He declined insurance coverage at
7 that time due to cost.

8 47. The Plan offered to Mr. Kwayisi (which, upon information and belief, is the plan
9 contracted for by Cedar Enterprises Inc. with Aetna, Inc. for workers in its Wendy's locations in
10 Southern Nevada) is not, and was not, in compliance with Nev. Const. art XV, § 16 or N.A.C.
11 608.102, as it did not cover those categories of health care expenses that are generally deductible
12 by an employee on his/her individual federal income tax return pursuant to 26 U.S.C. § 213 and
13 any federal regulations relating thereto, if such expenses had been borne directly by the employee.

14 48. Furthermore, the Plan offered to Mr. Kwayisi (which, upon information and belief,
15 is the plan contracted for by Cedar Enterprises Inc. with Aetna, Inc. for workers in its Wendy's
16 locations in Southern Nevada) is not, and was not, in compliance with Nev. Const. art XV, § 16 or
17 N.A.C. 608.104, as the premium costs to him and his dependents exceeded the constitutionally-
18 prescribed maximums.

19 49. The Companies, therefore, have been unlawfully paying Mr. Kwayisi sub-
20 minimum wage for the entirety of his employment.

21 50. Plaintiff Jones works as a crew member at a Wendy's restaurant owned and
22 operated by the Companies in Clark County, Nevada, and earns \$7.55 per hour, below the
23 constitutional minimum wage under Nev. Const. art XV, § 16 of \$8.25 per hour.

24 51. Upon his hiring in January 2014, Mr. Jones' location manager offered him the
25 company health insurance plan through Aetna Inc. (the "Plan"), but discouraged him from
26 accepting the benefits because the manager "wouldn't recommend it."

27 52. The Plan offered to Mr. Jones (which, upon information and belief, is the plan
28 contracted for by Cedar Enterprises Inc. with Aetna, Inc. for workers in its Wendy's locations in

1 Southern Nevada) is not, and was not, in compliance with Nev. Const. art XV, § 16 or N.A.C.
2 608.102, as it did not cover those categories of health care expenses that are generally deductible
3 by an employee on his/her individual federal income tax return pursuant to 26 U.S.C. § 213 and
4 any federal regulations relating thereto, if such expenses had been borne directly by the employee.

5 53. Furthermore, the Plan offered to Mr. Jones (which, upon information and belief, is
6 the plan contracted for by Cedar Enterprises Inc. with Aetna, Inc. for workers in its Wendy's
7 locations in Southern Nevada) is not, and was not, in compliance with Nev. Const. art XV, § 16 or
8 N.A.C. 608.104, as the premium costs to him and his dependents exceeded the constitutionally-
9 prescribed maximums.

10 54. The Companies, therefore, have been unlawfully paying Mr. Jones sub-minimum
11 wage for the entirety of his employment.

12 55. Plaintiff Burton works as a crew member at a Wendy's restaurant owned and
13 operated by the Companies in Clark County, Nevada, and earns \$7.55 per hour, below the
14 constitutional minimum wage under Nev. Const. art XV, § 16 of \$8.25 per hour.

15 56. Upon her hiring in February 2014, Ms. Burton's location manager offered her the
16 company health insurance plan through Aetna Inc. (the "Plan"), but discouraged her from
17 accepting the benefits.

18 57. The Plan offered to Ms. Burton (which, upon information and belief, is the plan
19 contracted for by Cedar Enterprises Inc. with Aetna, Inc. for workers in its Wendy's locations in
20 Southern Nevada) is not, and was not, in compliance with Nev. Const. art XV, § 16 or N.A.C.
21 608.102, as it did not cover those categories of health care expenses that are generally deductible
22 by an employee on his/her individual federal income tax return pursuant to 26 U.S.C. § 213 and
23 any federal regulations relating thereto, if such expenses had been borne directly by the employee.

24 58. Furthermore, the Plan offered to Ms. Burton (which, upon information and belief,
25 is the plan contracted for by Cedar Enterprises Inc. with Aetna, Inc. for workers in its Wendy's
26 locations in Southern Nevada) is not, and was not, in compliance with Nev. Const. art XV, § 16 or
27 N.A.C. 608.104, as the premium costs to her and her dependents exceeded the constitutionally-
28 prescribed maximums.

1 59. The Companies, therefore, have been unlawfully paying Ms. Burton sub-minimum
2 wage for the entirety of her employment.

3 60. Plaintiff McKinney worked as a crew member at a Wendy's restaurant owned and
4 operated by the Companies in Clark County, Nevada, and earned \$7.85 per hour in February 2014.
5 He earned \$7.70 between July 2012 and January 2014 and \$7.55 between May 2011 and July
6 2012. All amounts are below the constitutional minimum wage under Nev. Const. art XV, § 16 of
7 \$8.25 per hour.

8 61. Upon his initial hiring in June 2009, Mr. McKinney's location manager offered him
9 the company health insurance plan through Aetna Inc. (the "Plan"), but discouraged him from
10 accepting the benefits.

11 62. The Plan offered to Mr. McKinney (which, upon information and belief, is the plan
12 contracted for by Cedar Enterprises Inc. with Aetna, Inc. for workers in its Wendy's locations in
13 Southern Nevada) is not, and was not, in compliance with Nev. Const. art XV, § 16 or N.A.C.
14 608.102, as it did not cover those categories of health care expenses that are generally deductible
15 by an employee on his/her individual federal income tax return pursuant to 26 U.S.C. § 213 and
16 any federal regulations relating thereto, if such expenses had been borne directly by the employee.

17 63. Furthermore, the Plan offered to Mr. McKinney (which, upon information and
18 belief, is the plan contracted for by Cedar Enterprises Inc. with Aetna, Inc. for workers in its
19 Wendy's locations in Southern Nevada) is not, and was not, in compliance with Nev. Const. art
20 XV, § 16 or N.A.C. 608.104, as the premium costs to him and his dependents exceeded the
21 constitutionally-prescribed maximums.

22 64. The Companies, therefore, have been unlawfully paying Mr. McKinney sub-
23 minimum wage for the entirety of his employment.

24 65. Plaintiff Edjeou works as a crew member at a Wendy's restaurant owned and
25 operated by the Companies in Clark County, Nevada, and earns is \$7.90 per hour. She earned
26 \$7.80 between May 2012 and May 2013; \$7.70 between May 2011 and May 2012; and, \$7.55
27 between June 2010 and May 2011. All amounts are below the constitutional minimum wage under
28 Nev. Const. art XV, § 16 of \$8.25 per hour.

1 66. Upon her hiring in June 2010, Ms. Edjeou's location manager offered her the
2 company health insurance plan through Aetna Inc. (the "Plan"). She declined insurance coverage
3 at that time due to cost.

4 67. The Plan offered to Ms. Edjeou (which, upon information and belief, is the plan
5 contracted for by Cedar Enterprises Inc. with Aetna, Inc. for workers in its Wendy's locations in
6 Southern Nevada) is not, and was not, in compliance with Nev. Const. art XV, § 16 or N.A.C.
7 608.102, as it did not cover those categories of health care expenses that are generally deductible
8 by an employee on his/her individual federal income tax return pursuant to 26 U.S.C. § 213 and
9 any federal regulations relating thereto, if such expenses had been borne directly by the employee.

10 68. The Companies, therefore, have been unlawfully paying Ms. Edjeou sub-minimum
11 wage for the entirety of her employment.

12 **B. Defendants' Control of the Companies**

13 69. Defendants maintain control, oversight, and direction over the operation of the
14 Companies, including their employment and/or labor practices.

15 70. Defendants (i) create uniform wage and benefit policies and practices for use at the
16 Companies, (ii) impose their uniform wage and benefit policies and practices at the Companies,
17 and (iii) maintain centralized human resource functions which implement wage and benefit
18 policies and practices at the Companies.

19 71. Defendants contract for and/or maintain the non-compliant Plan or Plan(s) which
20 are the subject of this lawsuit.

21 **C. Defendants' Unlawful Minimum Wage Practices**

22 72. The Companies claim eligibility to pay, do pay, and have paid Plaintiffs and
23 members of the Class at a reduced minimum wage rate pursuant to Nev. Const. art. XV, § 16.

24 73. The Companies do not provide, offer, and/or maintain health insurance plan
25 benefits that meet necessary requirements in order to qualify to pay Plaintiffs and members of the
26 Class at the reduced minimum wage level.

27 74. The Plan, where provided, offered, and/or maintained by the Companies for the
28 benefit of Plaintiffs and members of the Class, does not meet, and has not met, the minimum

1 coverage requirements under law for Plaintiffs and members of the Class and their dependents,
 2 and therefore the Companies are not, and have not been, eligible to pay Plaintiffs and members of
 3 the Class at the reduced minimum wage rate.

4 75. The Plan provided, offered, and/or maintained by the Companies for the benefit of
 5 Plaintiffs and members of the Class does not meet, and has not met, the maximum premium cost
 6 requirements under law for Plaintiffs and members of the Class and their dependents, and
 7 therefore the Companies are not, and have not been, eligible to pay Plaintiffs and members of the
 8 Class at the reduced minimum wage rate.

9 76. Upon information and belief, members of the Class have been provided and/or
 10 offered the same non-qualifying Plan as Plaintiffs while being paid at a reduced minimum wage
 11 rate. The Companies, therefore, have been unlawfully paying all Class members a sub-minimum
 12 wage and unlawfully-reduced overtime wages during employment by the Companies.

13 77. As a result, Plaintiffs and the members of the Class are owed back pay and
 14 damages for every regular and overtime hour worked during the applicable period.

15 78. Defendants are aware of, and perpetuate, this ongoing violation of Nevada's
 16 constitutional provision regarding minimum wage, and associated regulatory provisions
 17 implementing same.

18 **CLASS ACTION ALLEGATIONS**

19 79. Plaintiffs re-allege and incorporate herein by this reference all the paragraphs above
 20 in this Complaint as though fully set forth herein.

21 80. Plaintiffs bring this action pursuant to F.R.C.P. 23 on behalf of themselves and all
 22 others similarly situated, as representative members of the following proposed Class:

23 **All current and former employees of Defendants at all Nevada**
 24 **locations at any time during the applicable statutes of limitation**
 25 **who were compensated at less than the upper-tier hourly**
minimum wage set forth in Nev. Const. art XV, § 16.

26 81. Numerosity: The members of the proposed Class are so numerous that individual
 27 joinder of all members is impracticable under the circumstances of this case, and the disposition of
 28 their claims as a Class will benefit the parties and the Court. The precise number of members

1 should be readily available from a review of the Companies' personnel, payroll, and benefits
 2 records, and upon information and belief numbers in the thousands.

3 82. Commonality/Predominance: Common questions of law or fact are shared by the
 4 members of the proposed Class. This action is suitable for class treatment because these common
 5 questions of fact and law predominate over any questions affecting individual members. These
 6 common legal and factual questions, include, but are not limited to, the following:

- 7 i. Whether Defendants appropriately paid Class members the required
 8 minimum wage pursuant to state law;
- 9 ii. Whether, when paying minimum wage employees below the upper-tier
 10 hourly minimum wage level pursuant to Nev. Const. art. XV, § 16,
 11 Defendants provided health insurance benefit plans to members of the Class
 12 covering all required health care expenses at all required times;
- 13 iii. Whether, when paying minimum wage employees below the upper-tier
 14 hourly minimum wage level pursuant to Nev. Const. art. XV, § 16,
 15 Defendants provided health insurance benefit plans to members of the Class
 16 at premium cost levels exceeding permissible maximums under law, during
 17 all required pay periods;
- 18 iv. The applicable statute of limitations, if any, for Plaintiffs' and Class
 19 members' claims;
- 20 v. Whether Defendants are liable for pre-judgment interest; and
- 21 vi. Whether Defendant are liable for attorneys' fees and costs.

22 83. Typicality: Plaintiffs' claims are typical of those of the proposed Class, and the
 23 relief sought is typical of the relief which would be sought by each member of the Class in
 24 separate actions. Plaintiffs and all other proposed Class members sustained similar losses, injuries,
 25 and damages as a direct and proximate result of the Companies' same unlawful policies and/or
 26 practices. Plaintiffs' claims arise from the Companies' same unlawful policies, practices, and/or
 27 course of conduct as all other proposed Class members' claims in that Plaintiffs were denied
 28 lawful wages for hours worked, and Plaintiffs' legal theories are based on the same legal theories

1 as all other proposed Class members. the Companies' compensation and benefit policies and
2 practices affected all Class members similarly, and the Companies benefited from the same type of
3 unfair and/or wrongful acts done to each Class member.

4 84. Adequacy: Plaintiffs are adequate representatives of the proposed Class because
5 Plaintiffs are members of the proposed Class they seek to represent and their interests do not
6 conflict with the interests of the other members of the proposed Class that Plaintiffs seek to
7 represent. Plaintiffs have retained counsel that is competent and experienced in complex class
8 action litigation, and Plaintiffs intend to prosecute this action vigorously. The interests of members
9 of the proposed Class will be fairly and adequately protected by Plaintiffs and their counsel.
10 Neither Plaintiffs nor their counsel have interests that are contrary to, or conflicting with, the
11 interests of the proposed Class.

12 85. Superiority: A class action is superior to other available methods for the fair and
13 efficient adjudication of the controversy, because, *inter alia*, as minimum wage employees it is
14 economically infeasible for proposed Class members to prosecute individual actions of their own
15 given the relatively small amount of damages at stake for each individual. Important public
16 interests will be served by addressing the matter as a class action. The cost to the court system and
17 the public for the adjudication of individual litigation and claims would be substantial and
18 substantially more than if the claims are treated as a class action. Prosecution of separate actions
19 by individual Class members would create a risk of inconsistent and/or varying adjudications with
20 respect to the individual members of the Class, establishing incompatible standards of conduct for
21 the Companies and resulting in the impairment of Class members' rights and the disposition of
22 their interests through actions to which they were not parties. The issues in this action can be
23 decided by means of common, class-wide proof. In addition, if appropriate, the Court can and is
24 empowered to, fashion methods to efficiently manage this action as a class action.

25 86. The case will be manageable as a class action. Plaintiffs and their counsel know of
26 no unusual difficulties in the case and the Companies have advanced networked computer, payroll,
27 and benefit systems that will allow the class, wage, benefits, and damages issues in the case to be
28 resolved with relative ease.

1 87. Because the elements of Rule 23(b)(3), or in the alternative Rule 23(c)(4), are
2 satisfied in the case, class certification is appropriate.

3 **FIRST CLAIM FOR RELIEF**

4 **Violation of Nev. Const. art. XV, § 16**

5 **Failure to Pay Lawful Minimum Wage**

6 **(On Behalf of Plaintiffs and the Class against Defendants)**

7 88. All preceding paragraphs in this Complaint are re-alleged and incorporated by
8 reference as though fully set forth herein.

9 89. As described and alleged herein, the Companies pay, and have paid, Plaintiffs and
10 members of the Class below the upper-tier hourly minimum wage level pursuant to Nev. Const. art
11 XV, § 16 without providing qualifying health insurance benefits as required by that provision.

12 90. The Companies are not, and/or were not, eligible to pay Plaintiffs and members of
13 the Class below the upper-tier hourly minimum wage level during any period where qualifying
14 benefits were not provided, offered, or maintained by the Companies.

15 91. Pursuant to Nev. Const. art XV, § 16, the Companies are liable to Plaintiffs and
16 members of the Class for their unpaid wages for any period during which the Companies were
17 ineligible to compensate Plaintiffs and members of the Class below the upper-tier hourly
18 minimum wage level ; an award of damages; costs of the action; reasonable attorneys' fees; and
19 any other relief deemed appropriate by this Court.

20 **SECOND CLAIM FOR RELIEF**

21 **Violation of Nev. Const. art. XV, § 16 and N.A.C. 608.102**

22 **Failure to Pay Lawful Minimum Wage**

23 **(On Behalf of Plaintiffs and the Class against Defendants)**

24 92. All preceding paragraphs in this Complaint are re-alleged and incorporated by
25 reference as though fully set forth herein.

26 93. As described and alleged herein, the Companies pay, and have paid, Plaintiffs and
27 members of the Class below the upper-tier hourly minimum wage level pursuant to Nev. Const. art
28 XV, § 16 without providing qualifying health insurance benefits as required by that provision.

1 94. Health insurance benefits provided and/or offered to Plaintiffs and members of the
 2 Class and their dependents did not meet coverage requirements under Nev. Const. art XV, § 16
 3 and N.A.C. 608.102, and therefore the Companies are not, and/or were not, eligible to pay
 4 Plaintiffs and members of the Class below the upper-tier hourly minimum wage level during any
 5 period where such qualifying benefits were not provided, offered, and/or maintained by the
 6 Companies.

7 95. Pursuant to Nev. Const. art XV, § 16, the Companies are liable to Plaintiffs and
 8 members of the Class for their unpaid wages for any period during which the Companies were
 9 ineligible to compensate Plaintiffs and members of the Class below the upper-tier hourly
 10 minimum wage level; an award of damages; costs of the action; reasonable attorneys' fees; and
 11 any other relief deemed appropriate by this Court.

12 **THIRD CLAIM FOR RELIEF**

13 **Violation of Nev. Const. art. XV, § 16 and N.A.C. 608.104**

14 **Failure to Pay Lawful Minimum Wage**

15 **(On Behalf of Plaintiffs and the Class against Defendants)**

16 96. All preceding paragraphs in this Complaint are re-alleged and incorporated by
 17 reference as though fully set forth herein.

18 97. As described and alleged herein, the Companies pay, and have paid, Plaintiffs and
 19 members of the Class below the upper-tier hourly minimum wage level pursuant to Nev. Const. art
 20 XV, § 16 without providing qualifying health insurance benefits as required by that provision.

21 98. The premium costs of the health insurance benefits provided and/or offered to
 22 Plaintiffs and members of the Class and their dependents exceeds, or has exceeded, the level
 23 permitted by Nev. Const. art XV, § 16, and therefore the Companies are not, and/or were not,
 24 eligible to pay Plaintiffs and members of the Class below the upper-tier hourly minimum wage
 25 level during any period where such qualifying benefits were not provided, offered, or maintained
 26 by the Companies.

27 99. Pursuant to Nev. Const. art XV, § 16, the Companies are liable to Plaintiffs and
 28 members of the Class for their unpaid wages for any period during which the Companies were

1 ineligible to compensate Plaintiffs and members of the Class below the upper-tier hourly
2 minimum wage level; an award of damages; costs of the action; reasonable attorneys' fees; and
3 any other relief deemed appropriate by this Court.

4 **FOURTH CLAIM FOR RELIEF**

5 **Violation of N.R.S. 608.018**

6 **Failure to Pay Lawful Overtime Wages**

7 **(On Behalf of Plaintiffs and the Class against Defendants)**

8 100. All preceding paragraphs in this Complaint are re-alleged and incorporated by
9 reference as though fully set forth herein.

10 101. N.R.S. 608.018 provides that employees in Nevada shall not be employed more
11 than forty hours in a workweek or eight hours in a workday unless they receive additional
12 compensation beyond their regular wages in amounts specified by law.

13 102. N.R.S. 608.018 provides that an employer shall pay one-and-one-half times the
14 employee's regular wage rate for all time worked in excess of the levels described in the preceding
15 paragraph.

16 103. Plaintiffs and other members of the Class do not perform duties that exempt them
17 from the mandates and requirements of N.R.S. 608.018's overtime wage rate provisions.

18 104. The Companies have failed to pay Plaintiffs and other Class members appropriate
19 overtime compensation for all hours they have worked in excess of the maximum hours
20 permissible by law as required under N.R.S. 608.018.

21 105. Plaintiffs, and other members of the Class, are entitled to seek and recover
22 reasonable attorney's fees and costs pursuant to N.R.S. 608.140.

23 **PRAYER FOR RELIEF**

24 **WHEREFORE**, Plaintiffs, on behalf of themselves and all other similarly-situated
25 members of the Class, request that this Court enter an Order:

26 A. Certifying this matter as a class action pursuant to F.R.C.P. 23, designating
27 Plaintiffs as Class representatives, and appointing undersigned as Class counsel;

28 B. Declaring the practices here complained of as unlawful under appropriate law;

1 C. Granting judgment to Plaintiffs and the members of the Class on their claims of
2 unpaid wages as secured by law, as well as damages, interest, attorneys' fees and costs as
3 applicable and appropriate;

4 D. Granting punitive damages against the Companies; and

5 E. Ordering such other relief as the Court may deem necessary and just.

6 **JURY TRIAL DEMAND**

7 Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs demand a trial by
8 jury on all issues so triable.

9
10 DATED this 20th day of May, 2014.

11 **WOLF, RIFKIN, SHAPIRO,**
12 **SCHULMAN & RABKIN, LLP**

13 By: /s/ Don Springmeyer, Esq.

DON SPRINGMEYER, ESQ.

Nevada State Bar No. 1021

14 BRADLEY SCHRAGER, ESQ.

Nevada State Bar No. 10217

15 DANIEL BRAVO, ESQ.

Nevada State Bar No. 13078

16 3556 E. Russell Road, Second Floor

17 Las Vegas, Nevada 89120

18 *Attorneys for Plaintiffs*

EXHIBIT “1”

EXHIBIT “1”

Nev. Const. Art 15, Sec. 16.

Payment of minimum compensation to employees.

A. Each employer shall pay a wage to each employee of not less than the hourly rates set forth in this section. The rate shall be five dollars and fifteen cents (\$5.15) per hour worked, if the employer provides health benefits as described herein, or six dollars and fifteen cents (\$6.15) per hour if the employer does not provide such benefits. Offering health benefits within the meaning of this section shall consist of making health insurance available to the employee for the employee and the employee's dependents 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. These rates of wages shall be adjusted by the amount of increases in the federal minimum wage over \$5.15 per hour, or, if greater, by the cumulative increase in the cost of living. The cost of living increase shall be measured by the percentage increase as of December 31 in any year over the level as of December 31, 2004 of the Consumer Price Index (All Urban Consumers, U.S. City Average) as published by the Bureau of Labor Statistics, U.S. Department of Labor or the successor index or federal agency. No CPI adjustment for any one-year period may be greater than 3%. The Governor or the State agency designated by the Governor shall publish a bulletin by April 1 of each year announcing the adjusted rates, which shall take effect the following July 1. Such bulletin will be made available to all employers and to any other person who has filed with the Governor or the designated agency a request to receive such notice but lack of notice shall not excuse noncompliance with this section. An employer shall provide written notification of the rate adjustments to each of its employees and make the necessary payroll adjustments by July 1 following the publication of the bulletin. Tips or gratuities received by employees shall not be credited as being any part of or offset against the wage rates required by this section.

B. The provisions of this section may not be waived by agreement between an individual employee and an employer. All of the provisions of this section, or any part hereof, may be waived in a bona fide collective bargaining agreement, but only if the waiver is explicitly set forth in such agreement in clear and unambiguous terms. Unilateral implementation of terms and conditions of employment by either party to a collective bargaining relationship shall not constitute, or be permitted, as a waiver of all or any part of the provisions of this section. An employer shall not discharge, reduce the compensation of or otherwise discriminate against any employee for using any civil remedies to enforce this section or otherwise asserting his or her rights under this section. An employee claiming violation of this section may bring an action against his or her employer in the courts of this State to enforce the provisions of this section and shall be entitled to all remedies available under the law or in equity appropriate to remedy any violation of this section, including but not limited to back pay, damages, reinstatement or injunctive relief. An employee who prevails in any action to enforce this section shall be awarded his or her reasonable attorney's fees and costs.

C. As used in this section, "employee" means any person who is employed by an employer as defined herein but does not include an employee who is under eighteen (18) years of age, employed by a nonprofit organization for after school or summer employment or as a trainee for a period not longer than ninety (90) days. "Employer" means any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity that may employ individuals or enter into contracts of employment.

D. If any provision of this section is declared illegal, invalid or inoperative, in whole or in part, by the final decision of any court of competent jurisdiction, the

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Attorneys for Defendants

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

LATONYA TYUS, an individual; DAVID
HUNSICKER, an individual; LINDA
DAVIS, an individual; TERRON SHARP,
an individual; COLLINS KWAYISI, an
individual; LEE JONES, an individual;
RAISSA BURTON, an individual;
JERMEY MCKINNEY, an individual; and
FLORENCE EDJEOU, an individual, all on
behalf of themselves and all similarly-
situated individuals,

Plaintiffs,

vs.

WENDY'S OF LAS VEGAS, INC., an
Ohio corporation; CEDAR ENTERPRISES,
INC., an Ohio Corporation; and DOES 1
through 100, Inclusive,

Defendants.

Case No. 2:14-cv-00729-GMN-VCF

**DEFENDANTS' ANSWER TO
PLAINTIFFS' FIRST AMENDED CLASS
ACTION COMPLAINT**

Defendants Wendy's of Las Vegas, Inc. ("WLV") and Cedar Enterprises, Inc. ("Cedar")
(collectively "Defendants"), by and through their attorneys of record, Littler Mendelson, P.C.,
hereby answer Plaintiff's Complaint as follows:

INTRODUCTION

1. Answering paragraph 1 of the First Amended Class Action Complaint, Defendant

1 Cedar denies that it owns or operates any Wendy's Restaurants in southern Nevada. Defendants
2 further respond that the remaining allegations of this paragraph do not allege any act or omission by
3 Defendants and do not require a response. To the extent that a response is required, Defendants lack
4 knowledge or information sufficient to form a belief about the truth of said allegation, which
5 statement has the effect of a denial.

6 2. Defendants deny the allegations set forth in paragraph 2 of the First Amended Class
7 Action Complaint.

8 3. Answering paragraph 3 of the First Amended Class Action Complaint, Defendants
9 respond that the allegations of this paragraph do not allege any act or omission by Defendants and do
10 not require a response. To the extent that a response is required, Defendants lack knowledge or
11 information sufficient to form a belief about the truth of said allegation, which statement has the
12 effect of a denial.

13 4. Answering paragraph 4 of the First Amended Class Action Complaint, Defendants
14 respond that the allegations of this paragraph do not allege any act or omission by Defendants and do
15 not require a response. To the extent that a response is required, Defendants lack knowledge or
16 information sufficient to form a belief about the truth of said allegation, which statement has the
17 effect of a denial.

18 5. Answering paragraph 5 of the First Amended Class Action Complaint, Defendants
19 respond that the allegations of this paragraph do not allege any act or omission by Defendants and do
20 not require a response. To the extent that a response is required, Defendants lack knowledge or
21 information sufficient to form a belief about the truth of said allegation, which statement has the
22 effect of a denial.

23 6. Answering paragraph 6 of the First Amended Class Action Complaint, Defendants
24 respond that the allegations of this paragraph do not allege any act or omission by Defendants and do
25 not require a response. To the extent that a response is required, Defendants lack knowledge or
26 information sufficient to form a belief about the truth of said allegation, which statement has the
27 effect of a denial.

28 7. Answering paragraph 7 of the First Amended Class Action Complaint, Defendants

1 responds that the allegations of this paragraph do not allege any act or omission by Defendants and
 2 do not require a response. To the extent that a response is required, Defendants lack knowledge or
 3 information sufficient to form a belief about the truth of said allegation, which statement has the
 4 effect of a denial.

5 8. Answering paragraph 8 of the First Amended Class Action Complaint, Defendants
 6 respond that the allegations of this paragraph do not allege any act or omission by Defendants and do
 7 not require a response. To the extent that a response is required, Defendants lack knowledge or
 8 information sufficient to form a belief about the truth of said allegation, which statement has the
 9 effect of a denial.

10 9. Answering paragraph 9 of the First Amended Class Action Complaint, Defendants
 11 respond that the allegations of this paragraph do not allege any act or omission by Defendants and do
 12 not require a response. To the extent that a response is required, Defendants lack knowledge or
 13 information sufficient to form a belief about the truth of said allegation, which statement has the
 14 effect of a denial.

15 10. Answering paragraph 10 of the First Amended Class Action Complaint, Defendant
 16 Cedar denies that it is the employer of or pays any Plaintiff or member of the alleged Class any
 17 hourly rate. Defendant WLV admits that in compliance with Nev. Const. art. XV, § 16 and N.A.C.
 18 608.100 *et seq.* it pays or paid some employees an hourly rate below \$8.25 but above \$7.25 per hour.
 19 Defendants lack knowledge or information sufficient to form a belief about the truth of the
 20 remaining allegations of paragraph 10, which has the effect of a denial.

21 11. Defendants deny the allegations set forth in paragraph 11 of the First Amended Class
 22 Action Complaint.

23 **PARTIES**

24 **A. Plaintiffs**

25 12. Answering paragraph 12 of the First Amended Class Action Complaint, Defendants
 26 admit that Plaintiff Latonya Tyus was an employee of WLV and worked as a crew member at a
 27 Wendy's restaurant owned and operated by WLV in Clark County, Nevada, and that she was paid
 28 \$7.55 per hour. Defendant Cedar denies that it has ever or currently does own or operate any

1 Wendy's restaurant in Clark County, Nevada. Defendants lack knowledge or information sufficient
2 to form a belief about the truth of the remaining allegations of paragraph 12 of the First Amended
3 Class Action Complaint, which has the effect of a denial.

4 13. Answering paragraph 13 of the First Amended Class Action Complaint, Defendants
5 admit that Plaintiff David Hunsicker was an employee of WLW and worked as a crew member at a
6 Wendy's restaurant owned and operated by Wendy's of Las Vegas, Inc., in Clark County, Nevada,
7 and that he was paid \$7.55 per hour. Defendant Cedar Enterprises, Inc., denies that it has ever or
8 currently does own or operate any Wendy's restaurant in Clark County, Nevada. Defendants lack
9 knowledge or information sufficient to form a belief about the truth of the remaining allegations of
10 paragraph 13 of the First Amended Class Action Complaint, which has the effect of a denial.

11 14. Answering paragraph 14 of the First Amended Class Action Complaint, Defendants
12 admit that Plaintiff Linda Davis was an employee of WLW and worked as a crew member at a
13 Wendy's restaurant owned and operated by Wendy's of Las Vegas, Inc., in Clark County, Nevada,
14 and that she was paid \$7.55 per hour. Defendant Cedar Enterprises, Inc., denies that it has ever or
15 currently does own or operate any Wendy's restaurant in Clark County, Nevada. Defendants lack
16 knowledge or information sufficient to form a belief about the truth of the remaining allegations of
17 paragraph 14 of the First Amended Class Action Complaint, which has the effect of a denial.

18 15. Answering paragraph 15 of the First Amended Class Action Complaint, Defendants
19 admit that Plaintiff Terron Sharp was an employee of WLW and worked as a crew member at a
20 Wendy's restaurant owned and operated by Wendy's of Las Vegas, Inc., in Clark County, Nevada,
21 and that he was paid \$7.55 per hour. Defendant Cedar Enterprises, Inc., denies that it has ever or
22 currently does own or operate any Wendy's restaurant in Clark County, Nevada. Defendants lack
23 knowledge or information sufficient to form a belief about the truth of the remaining allegations of
24 paragraph 15 of the First Amended Class Action Complaint, which has the effect of a denial.

25 16. Answering paragraph 16 of the First Amended Class Action Complaint, Defendants
26 admit that Plaintiff Collins Kwayisi was an employee of WLW and worked as a crew member at a
27 Wendy's restaurant owned and operated by Wendy's of Las Vegas, Inc., in Clark County, Nevada,
28 and that he was paid \$7.55 per hour. Defendant Cedar Enterprises, Inc., denies that it has ever or

1 currently does own or operate any Wendy's restaurant in Clark County, Nevada. Defendants lack
2 knowledge or information sufficient to form a belief about the truth of the remaining allegations of
3 paragraph 16 of the First Amended Class Action Complaint, which has the effect of a denial.

4 17. Answering paragraph 17 of the First Amended Class Action Complaint, Defendants
5 admit that Plaintiff Lee Jones was an employee of WLV and worked as a crew member at a Wendy's
6 restaurant owned and operated by Wendy's of Las Vegas, Inc., in Clark County, Nevada, and that he
7 was paid \$7.55 per hour. Defendant Cedar Enterprises, Inc., denies that it has ever or currently does
8 own or operate any Wendy's restaurant in Clark County, Nevada. Defendants lack knowledge or
9 information sufficient to form a belief about the truth of the remaining allegations of paragraph 17 of
10 the First Amended Class Action Complaint, which has the effect of a denial.

11 18. Answering paragraph 18 of the First Amended Class Action Complaint, Defendants
12 admit that Plaintiff Raissa Burton was an employee of WLV and worked as a crew member at a
13 Wendy's restaurant owned and operated by Wendy's of Las Vegas, Inc., in Clark County, Nevada,
14 and that she was paid \$7.55 per hour. Defendant Cedar Enterprises, Inc., denies that it has ever or
15 currently does own or operate any Wendy's restaurant in Clark County, Nevada. Defendants lack
16 knowledge or information sufficient to form a belief about the truth of the remaining allegations of
17 paragraph 18 of the First Amended Class Action Complaint, which has the effect of a denial.

18 19. Answering paragraph 19 of the First Amended Class Action Complaint, Defendants
19 admit that Plaintiff Jeremy McKinney was an employee of WLV and worked as a crew member at a
20 Wendy's restaurant owned and operated by Wendy's of Las Vegas, Inc., in Clark County, Nevada,
21 and that he was paid \$7.55 per hour. Defendant Cedar Enterprises, Inc., denies that it has ever or
22 currently does own or operate any Wendy's restaurant in Clark County, Nevada. Defendants lack
23 knowledge or information sufficient to form a belief about the truth of the remaining allegations of
24 paragraph 19 of the First Amended Class Action Complaint, which has the effect of a denial.

25 20. Answering paragraph 20 of the First Amended Class Action Complaint, Defendants
26 admit that Plaintiff Florence Edjeou was an employee of WLV and worked as a crew member at a
27 Wendy's restaurant owned and operated by Wendy's of Las Vegas, Inc., in Clark County, Nevada,
28 and that he was paid \$7.55 per hour. Defendant Cedar Enterprises, Inc., denies that it has ever or

currently does own or operate any Wendy's restaurant in Clark County, Nevada. Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations of paragraph 20 of the First Amended Class Action Complaint, which has the effect of a denial.

B. Defendants

21. Answering paragraph 21 of the First Amended Class Action Complaint, Defendant WLW denies that it is engaged in the ownership and operation of non-franchise restaurants. Defendants further deny all allegations relating to "any subsidiaries or affiliated companies." Defendants admit the remaining allegations of paragraph 21 of the First Amended Class Action Complaint.

22. Answering paragraph 22 of the First Amended Class Action Complaint, Defendant Cedar admits that it is an Ohio corporation. Defendants deny the remaining allegations of paragraph 21 of the First Amended Class Action Complaint.

23. Answering paragraph 23 of the First Amended Class Action Complaint, Defendants respond that the allegations of this paragraph do not allege any act or omission by Defendants and do not require a response. To the extent that a response is required, Defendants lack knowledge or information sufficient to form a belief about the truth of said allegation, which statement has the effect of a denial.

JURISDICTION AND VENUE

24. Answering paragraph 24 of the First Amended Class Action Complaint, Defendants responds that the allegations of this paragraph do not allege any act or omission by Defendants and do not require a response. To the extent that a response is required, Defendants lack knowledge or information sufficient to form a belief about the truth of said allegation, which statement has the effect of a denial.

25. Defendants deny the allegations set forth in paragraph 25 of the First Amended Class Action Complaint.

GENERAL ALLEGATIONS

A. Plaintiffs' Allegations

26. Answering paragraph 26 of the First Amended Class Action Complaint, Defendants

1 admit that Plaintiff Tyus works as a crew member at a Wendy's Restaurant owned and operated by
2 Wendy's of Las Vegas, Inc. and that she earns \$7.55 per hour. Defendants deny the remaining
3 allegations of paragraph 26 of the First Amended Class Action Complaint.

4 27. Answering paragraph 27 of the First Amended Class Action Complaint, Defendants
5 admit that Plaintiff Tyus was offered the Aetna Inc. health insurance plan. Defendants lack
6 knowledge or information sufficient to form a belief about the truth of the remaining allegations of
7 paragraph 27 of the First Amended Class Action Complaint, which has the effect of a denial.

8 28. Defendants deny the allegations set forth in paragraph 28 of the First Amended Class
9 Action Complaint.

10 29. Defendants deny the allegations set forth in paragraph 29 of the First Amended Class
11 Action Complaint.

12 30. Defendants deny the allegations set forth in paragraph 30 of the First Amended Class
13 Action Complaint.

14 31. Answering paragraph 31 of the First Amended Class Action Complaint, Defendants
15 admit that Plaintiff Hunsicker worked as a crew member at a Wendy's Restaurant owned and
16 operated by Wendy's of Las Vegas, Inc. and that he earned \$7.55 per hour. Defendants deny the
17 remaining allegations of paragraph 31 of the First Amended Class Action Complaint.

18 32. Answering paragraph 32 of the First Amended Class Action Complaint, Defendants
19 admit that Plaintiff Hunsicker was offered the Aetna Inc. health insurance plan. Defendants deny the
20 remaining allegations of paragraph 32 of the First Amended Class Action Complaint.

21 33. Defendants deny the allegations set forth in paragraph 33 of the First Amended Class
22 Action Complaint.

23 34. Defendants deny the allegations set forth in paragraph 34 of the First Amended Class
24 Action Complaint.

25 35. Defendants deny the allegations set forth in paragraph 35 of the First Amended Class
26 Action Complaint.

27 36. Answering paragraph 36 of the First Amended Class Action Complaint, Defendants
28 admit that Plaintiff Davis works as a crew member at a Wendy's Restaurant owned and operated by

1 Wendy's of Las Vegas, Inc. and that she earned \$7.55 per hour prior to receiving a ten-cent raise to
2 \$7.65 per hour. Defendant denies the remaining allegations of paragraph 36 of the First Amended
3 Class Action Complaint.

4 37. Defendants admit the allegations set forth in paragraph 37 of the First Amended Class
5 Action Complaint.

6 38. Defendants deny the allegations set forth in paragraph 38 of the First Amended Class
7 Action Complaint.

8 39. Defendants deny the allegations set forth in paragraph 39 of the First Amended Class
9 Action Complaint.

10 40. Defendants deny the allegations set forth in paragraph 40 of the First Amended Class
11 Action Complaint.

12 41. Defendants denies the allegations set forth in paragraph 41 of the First Amended
13 Class Action Complaint.

14 42. Answering paragraph 42 of the First Amended Class Action Complaint, Defendants
15 admit that Plaintiff Sharp worked as a crew member at a Wendy's Restaurant owned and operated by
16 Wendy's of Las Vegas, Inc. and that he earned \$7.55 per hour and \$7.50 per hour while employed at
17 Wendy's. Defendants deny the remaining allegations of paragraph 42 of the First Amended Class
18 Action Complaint.

19 43. Defendants deny the allegations set forth in paragraph 43 of the First Amended Class
20 Action Complaint.

21 44. Defendants deny the allegations set forth in paragraph 44 of the First Amended Class
22 Action Complaint.

23 45. Answering paragraph 45 of the First Amended Class Action Complaint, Defendants
24 admit that Plaintiff Kwayisi works as a crew member at a Wendy's Restaurant owned and operated
25 by Wendy's of Las Vegas, Inc. and that he has earned \$7.55, \$7.60, \$7.65, and \$7.75 per hour.
26 Defendants deny the remaining allegations of paragraph 45 of the First Amended Class Action
27 Complaint.

28 46. Answering paragraph 46 of the First Amended Class Action Complaint, Defendants

1 admit that Plaintiff Kwayisi was offered the Aetna Inc. health insurance plan. Defendants lack
2 knowledge or information sufficient to form a belief about the truth of the remaining allegations of
3 paragraph 46 of the First Amended Class Action Complaint, which has the effect of a denial.

4 47. Defendants deny the allegations set forth in paragraph 47 of the First Amended Class
5 Action Complaint.

6 48. Defendants deny the allegations set forth in paragraph 48 of the First Amended Class
7 Action Complaint.

8 49. Defendants deny the allegations set forth in paragraph 49 of the First Amended Class
9 Action Complaint.

10 50. Answering paragraph 50 of the First Amended Class Action Complaint, Defendants
11 admit that Plaintiff Jones works as a crew member at a Wendy's Restaurant owned and operated by
12 Wendy's of Las Vegas, Inc. and that he earns \$7.55 per hour. Defendants deny the remaining
13 allegations of paragraph 50 of the First Amended Class Action Complaint.

14 51. Answering paragraph 51 of the First Amended Class Action Complaint, Defendants
15 admit that Plaintiff Jones was offered the Aetna Inc. health insurance plan. Defendants deny the
16 remaining allegations of paragraph 51 of the First Amended Class Action Complaint.

17 52. Defendants deny the allegations set forth in paragraph 52 of the First Amended Class
18 Action Complaint.

19 53. Defendants deny the allegations set forth in paragraph 53 of the First Amended Class
20 Action Complaint.

21 54. Defendants deny the allegations set forth in paragraph 54 of the First Amended Class
22 Action Complaint.

23 55. Answering paragraph 55 of the First Amended Class Action Complaint, Defendants
24 admit that Plaintiff Burton works as a crew member at a Wendy's Restaurant owned and operated by
25 Wendy's of Las Vegas, Inc. and that she earns \$7.55 per hour. Defendant denies the remaining
26 allegations of paragraph 55 of the First Amended Class Action Complaint.

27 56. Answering paragraph 56 of the First Amended Class Action Complaint, Defendants
28 admit that Plaintiff Burton was offered the Aetna Inc. health insurance plan. Defendants deny the

1 remaining allegations of paragraph 56 of the First Amended Class Action Complaint.

2 57. Defendants deny the allegations set forth in paragraph 57 of the First Amended Class
3 Action Complaint.

4 58. Defendants deny the allegations set forth in paragraph 58 of the First Amended Class
5 Action Complaint.

6 59. Defendants deny the allegations set forth in paragraph 59 of the First Amended Class
7 Action Complaint.

8 60. Answering paragraph 60 of the First Amended Class Action Complaint, Defendants
9 admit that Plaintiff McKinney worked as a crew member at a Wendy's Restaurant owned and
10 operated by Wendy's of Las Vegas, Inc. and that he earned \$7.55, \$7.70, and \$7.85 per hour at
11 various points during his employment. Defendants deny the remaining allegations of paragraph 60
12 of the First Amended Class Action Complaint.

13 61. Answering paragraph 61 of the First Amended Class Action Complaint, Defendants
14 admit that Plaintiff McKinney was offered the Aetna Inc. health insurance plan. Defendants deny the
15 remaining allegations of paragraph 61 of the First Amended Class Action Complaint.

16 62. Defendants deny the allegations set forth in paragraph 62 of the First Amended Class
17 Action Complaint.

18 63. Defendants deny the allegations set forth in paragraph 63 of the First Amended Class
19 Action Complaint.

20 64. Defendants deny the allegations set forth in paragraph 64 of the First Amended Class
21 Action Complaint.

22 65. Answering paragraph 65 of the First Amended Class Action Complaint, Defendants
23 admit that Plaintiff Edjeou works as a crew member at a Wendy's Restaurant owned and operated by
24 Wendy's of Las Vegas, Inc. and that she has earns \$7.55, \$7.70, \$7.80, and \$7.90 per hour at various
25 points during her employment. Defendants deny the remaining allegations of paragraph 65 of the
26 First Amended Class Action Complaint.

27 66. Answering paragraph 66 of the First Amended Class Action Complaint, Defendants
28 admit that Plaintiff Edjeou was offered the Aetna Inc. health insurance plan. Defendants lack

knowledge or information sufficient to form a belief about the truth of the remaining allegations of paragraph 66 of the First Amended Class Action Complaint, which has the effect of a denial.

67. Defendants deny the allegations set forth in paragraph 67 of the First Amended Class Action Complaint.

68. Defendants deny the allegations set forth in paragraph 68 of the First Amended Class Action Complaint.

B. Defendants' Control of the Companies

69. Defendants deny the allegations set forth in paragraph 69 of the First Amended Class Action Complaint.

70. Defendants deny the allegations set forth in paragraph 70 of the First Amended Class Action Complaint.

71. Defendants deny the allegations set forth in paragraph 71 of the First Amended Class Action Complaint.

C. Defendants' Unlawful Minimum Wage Practices

72. Answering paragraph 72 of the First Amended Class Action Complaint, Defendants admit that Defendant WLV pays and has paid certain employees a reduced minimum wage pursuant to Nev. Const. art. XV, § 16. Defendants deny the remaining allegations of paragraph 72 of the First Amended Class Action Complaint.

73. Defendants deny the allegations set forth in paragraph 73 of the First Amended Class Action Complaint.

74. Defendants deny the allegations set forth in paragraph 74 of the First Amended Class Action Complaint.

75. Defendants deny the allegations set forth in paragraph 75 of the First Amended Class Action Complaint.

76. Defendants deny the allegations set forth in paragraph 76 of the First Amended Class Action Complaint.

77. Defendants deny the allegations set forth in paragraph 77 of the First Amended Class Action Complaint.

78. Defendants deny the allegations set forth in paragraph 78 of the First Amended Class Action Complaint.

CLASS ACTION ALLEGATIONS

79. Answering paragraph 79 of the First Amended Class Action Complaint, Defendants repeat and re-allege by reference each and every response, denial and admission contained in Paragraphs 1 through 78, and incorporate the same as though fully set forth herein.

80. Answering paragraph 80 of the First Amended Class Action Complaint, Defendants respond that the allegations of this paragraph do not allege any act or omission by Defendants and do not require a response. To the extent that a response is required, Defendants lack knowledge or information sufficient to form a belief about the truth of said allegation, which statement has the effect of a denial.

81. Defendants deny the allegations set forth in paragraph 81 of the First Amended Class Action Complaint.

82. Defendants deny the allegations set forth in paragraph 82 of the First Amended Class Action Complaint.

83. Defendants deny the allegations set forth in paragraph 83 of the First Amended Class Action Complaint.

84. Defendants deny the allegations set forth in paragraph 84 of the First Amended Class Action Complaint.

85. Defendants deny the allegations set forth in paragraph 85 of the First Amended Class Action Complaint.

86. Defendants deny the allegations set forth in paragraph 86 of the First Amended Class Action Complaint.

87. Defendants deny the allegations set forth in paragraph 87 of the First Amended Class Action Complaint.

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FIRST CLAIM FOR RELIEF

(Violation of Nev. Const. art. XV, § 16 – Failure to Pay Lawful Minimum Wage on Behalf of Plaintiffs and the Class against Defendants)

88. Answering paragraph 88 of the First Amended Class Action Complaint, Defendants repeat and re-allege by reference each and every response, denial and admission contained in Paragraphs 1 through 87, and incorporate the same as though fully set forth herein

89. Defendants deny the allegations set forth in paragraph 89 of the First Amended Class Action Complaint.

90. Defendants deny the allegations set forth in paragraph 90 of the First Amended Class Action Complaint.

91. Defendants deny the allegations set forth in paragraph 91 of the First Amended Class Action Complaint.

SECOND CLAIM FOR RELIEF

(Violation of Nev. Const. art. XV, § 16 and N.A.C. 608.102 – Failure to Pay Lawful Minimum Wage on Behalf of Plaintiffs and the Class against Defendants)

92. Defendants are not required to answer Paragraphs 92-95 as Plaintiffs Second Claim for Relief was dismissed with prejudice pursuant to the Court's Order of February 4, 2015.

THIRD CLAIM FOR RELIEF

(Violation of Nev. Const. art. XV, § 16 and N.A.C. 608.104 – Failure to Pay Lawful Minimum Wage on Behalf of Plaintiffs and the Class against Defendants)

96. Defendants are not required to answer Paragraphs 96-99 as Plaintiffs Third Claim for Relief was dismissed with prejudice pursuant to the Court's Order of February 4, 2015.

FOURTH CLAIM FOR RELIEF

(Violation of N.R.S. 608.018 – Failure to Pay Lawful Overtime Wages on Behalf of Plaintiffs and the Class against Defendants)

100. Defendants are not required to answer Paragraphs 100-105 as Plaintiffs Fourth Claim for Relief was dismissed with prejudice pursuant to the Court's Order of February 4, 2015.

///

PRAYER FOR RELIEF

Defendants are not required to respond to Plaintiffs' prayer for relief. However, to the extent Plaintiffs' prayer asserts allegations, Defendants deny the allegations in Plaintiffs' prayer.

AFFIRMATIVE DEFENSES

1. For and as a first, separate defense to the First Amended Class Action Complaint, Defendants allege that the First Amended Class Action Complaint fails to state a claim upon which relief may be granted.

2. For and as a second, separate defense to the First Amended Class Action Complaint, Defendants allege that some or all of the claims asserted in the First Amended Class Action Complaint are barred by the equitable doctrines of laches, waiver, estoppel, release and/or unclean hands.

3. For and as a third, separate defense to the First Amended Class Action Complaint, Defendants allege that some or all of the claims asserted in the First Amended Class Action Complaint, and each purported claim contained therein, are barred by the applicable statute of limitations.

4. For and as a fourth, separate defense to the First Amended Class Action Complaint, Defendants allege that the First Amended Class Action Complaint is barred to the extent Plaintiffs or any member of the alleged class which Plaintiffs purports to represent, the existence of which is expressly denied, have executed a compromise and release of any claims asserted in this lawsuit.

5. For and as a fifth, separate defense to the First Amended Class Action Complaint, Defendants allege that Plaintiffs' First Amended Class Action Complaint and each cause of action asserted therein, are subject to the doctrine of accord and satisfaction and therefore, any remedy or recovery to which Plaintiffs might have been entitled must be denied or reduced accordingly.

6. For and as a sixth, separate defense to the First Amended Class Action Complaint, Defendants allege that Plaintiffs have already been fully compensated for all hours worked.

7. For and as a seventh, separate defense to the First Amended Class Action Complaint, Defendants allege that with respect to some or all of the claims brought by Plaintiffs that any act(s) and/or omissions which may be found to be in violation of state law, occurred in good faith in

1 conformity with and in reliance on a written administrative regulation, order, ruling, approval and/or
2 interpretation by the Nevada Labor Commissioner, with respect to the class of employers to which
3 Defendants belong.

4 8. For and as a eighth, separate defense to the First Amended Class Action Complaint,
5 Defendants allege that Plaintiffs have failed to timely make demand in writing for wages due and
6 payable.

7 9. For and as a ninth, separate defense to the First Amended Class Action Complaint,
8 Defendants alleges that the First Amended Class Action Complaint is barred to the extent that
9 Plaintiffs lacks standing to raise some or all of the claims of the alleged class of persons whom
10 Plaintiffs purport to represent, the existence of which is expressly denied.

11 10. For and as a tenth, separate defense to the First Amended Class Action Complaint,
12 Defendant alleges that the class of persons that Plaintiffs purport to represent, the existence of which
13 is expressly denied, is not so numerous that joinder is impracticable.

14 11. For and as an eleventh, separate defense to the First Amended Class Action
15 Complaint, Defendants allege that the First Amended Class Action Complaint is barred to the extent
16 that the claims alleged by Plaintiffs are neither common to nor typical of those, if any, of the alleged
17 class of persons whom they purport to represent, the existence of which is expressly denied.

18 12. For and as a twelfth, separate defense to the First Amended Class Action Complaint,
19 Defendants allege that the First Amended Class Action Complaint is barred to the extent that
20 Plaintiffs are inadequate representatives of the alleged class of persons whom they purport to
21 represent, the existence of which is expressly denied.

22 13. For and as a thirteenth, separate defense to the First Amended Class Action
23 Complaint, Defendants allege that the types of claims alleged by Plaintiffs on behalf of themselves
24 and the class of persons whom Plaintiffs purport to represent, the existence of which is expressly
25 denied, are matters in which individual questions predominate and not appropriate for class
26 treatment.

27 14. For and as a fourteenth, separate defense to the First Amended Class Action
28 Complaint, Defendants allege that because liability may not be determined by a single jury on a class

1 wide basis, allowing this action to proceed as a collective action would violate Defendants' rights
2 under the Seventh Amendment.

3 15. For and as a fifteenth, separate defense to the First Amended Class Action Complaint,
4 Defendants allege that Plaintiffs have failed to exhaust their administrative, statutory, and/or
5 contractual remedies.

6 16. For and as a sixteenth, separate defense to the First Amended Class Action
7 Complaint, Defendants allege that Defendants acted in a good faith belief that they were in
8 compliance with all applicable statutes, law, and regulations concerning payment of wages and any
9 other compensation owed to Plaintiffs.

10 17. For and as a seventeenth, separate defense to the First Amended Class Action
11 Complaint, Defendants allege that at no time did Defendants pay Plaintiffs in a manner known or
12 believed to violate any applicable minimum wage laws, nor did Defendants compensate Plaintiffs in
13 willful disregard of any applicable minimum wage laws.

14 Because the Amended Complaint is couched in conclusory and vague terms, Defendants
15 cannot fully anticipate all affirmative defenses that may be applicable to this case. Accordingly,
16 Defendants hereby reserves the right to assert additional affirmative defenses.

17 WHEREFORE, Defendants prays as follows:

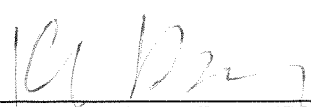
18 1. For judgment decreeing that the Plaintiffs are entitled to recover nothing by way of
19 their First Amended Class Action Complaint and that the First Amended Class Action Complaint be
20 dismissed with prejudice;

21 2. For an award of attorneys' fees and costs of suit incurred herein; and

22 3. For such other further relief as the Court deems proper.

23 Dated: February 23, 2015

24 Respectfully submitted,

25
26 
27 RICK D. ROSKELLEY, ESQ.
28 ROGER L. GRANDGENETT II, ESQ.
MONTGOMERY Y. PAEK, ESQ.
KATIE B. BLAKEY, ESQ.
LITTLER MENDELSON, P.C.

16.

PROOF OF SERVICE

I am a resident of the State of Nevada, over the age of eighteen years, and not a party to the within action. My business address is 3960 Howard Hughes Parkway, Suite 300, Las Vegas, Nevada, 89169. On February 23, 2015, I served the within document:

DEFENDANTS' ANSWER TO PLAINTIFFS' FIRST AMENDED CLASS ACTION COMPLAINT

☒ By CM/ECF Filing – Pursuant to FRCP 5(b)(3) and LR 5-4, the above-referenced document was electronically filed and served upon the parties listed below through the Court's Case Management and Electronic Case Filing (CM/ECF) system:

Don Springmeyer, Esq.
Bradley Schrager, Esq.
Royi Moas, Esq.
Daniel Bravo, Esq.
Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP
3556 E. Russell Road, 2nd Floor
Las Vegas, NV 89120-2234

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 23, 2015, at Las Vegas, Nevada.


Debra Perkins

Firmwide:131769879.1 029931.1008

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

LATONYA TYUS, an individual; DAVID
HUNSICKER, an individual; LINDA
DAVIS, an individual; TERRON SHARP,
an individual; COLLINS KWAYISI, an
individual; LEE JONES, an individual;
RAISSA BURTON, an individual;
JERMEY MCKINNEY, an individual; and
FLORENCE EDJEOU, an individual, all on
behalf of themselves and all similarly situated
individuals,

Plaintiffs,

vs.

WENDY’S OF LAS VEGAS, INC., an
Ohio corporation; CEDAR ENTERPRISES,
INC., an Ohio Corporation; and DOES 1
through 100, inclusive,

Defendants.

Case No.: 2:14-cv-00729-GMN-VCF

ORDER

Pending before the Court is the Motion for Partial Judgment on the Pleadings (ECF No. 43) filed by Defendants Wendy’s of Las Vegas, Inc. and Cedar Enterprises, Inc. (collectively, “Defendants”). Plaintiffs Raissa Burton, Linda Davis, Florence Edjeou, David Hunsicker, Lee Jones, Kwayisi, Jeremy McKinney, Terron Sharp, and Latonya Tyus (collectively, “Plaintiffs”) filed a Response (ECF No. 45), and Defendants filed a Reply (ECF No. 47).

Also pending before the Court is the Motion for Partial Summary Judgment (ECF No. 48) filed by Plaintiff Collins Kwayisi (“Kwayisi”). Defendants filed a Response (ECF No. 53), and Kwayisi filed a Reply (ECF No. 22). For the reasons discussed below, the Court **GRANTS** Defendants’ Motion for Partial Judgment on the Pleadings and **DENIES** Kwayisi’s Motion for Partial Summary Judgment.

1 **I. BACKGROUND**

2 This case arises out of alleged violations of Nevada’s Minimum Wage Amendment,
 3 Nev. Const. art. XV, § 16. Plaintiffs are employees at various locations throughout Clark
 4 County, Nevada of the fast food restaurant chain, Wendy’s. (Am. Compl. ¶ 1, ECF No. 3).
 5 Plaintiffs allege that this action “is a result of [Defendants’] failure to pay Plaintiffs and other
 6 similarly-situated employees who are members of the Class the lawful minimum wage, because
 7 [Defendants] improperly claim, or have claimed, the right to compensate employees below the
 8 upper-tier hourly minimum wage level under Nev. Const. art. XV, § 16.” (*Id.* ¶ 2).

9 Specifically, Plaintiff Kwayisi alleges that he worked at a Wendy’s restaurant owned
 10 and operated by Defendants and earned an hourly wage below the upper-tier hourly minimum
 11 wage under the Minimum Wage Amendment. (*Id.* ¶ 45). Moreover, Defendants offered
 12 Kwayisi a health insurance plan through Aetna Inc., but Kwayisi declined the insurance
 13 coverage. (*Id.* ¶ 46).

14 Plaintiffs filed the instant action in this Court on May 9, 2014. (*See* Compl., ECF No. 1).
 15 Shortly thereafter, on May 20, 2014, Plaintiffs filed an Amended Complaint. (*See* Am.
 16 Compl.). Subsequently, Defendants filed a Motion to Dismiss, seeking dismissal of Plaintiffs’
 17 Amended Complaint. (Mot. to Dismiss, ECF No. 11). The Court dismissed Plaintiffs’ Second,
 18 Third, and Fourth claims for relief with prejudice, and denied Defendant’s Motion as to
 19 Plaintiffs’ First claim for relief. (Feb. 4, 2015 Order, ECF No. 40).

20 **II. LEGAL STANDARD**

21 **A. Motion for Judgment on the Pleadings**

22 Federal Rule of Civil Procedure 12(c) provides that “[a]fter the pleadings are closed—
 23 but early enough not to delay trial—a party may move for judgment on the pleadings.”
 24 “Judgment on the pleadings is properly granted when, accepting all factual allegations in the
 25 complaint as true, there is no issue of material fact in dispute, and the moving party is entitled

1 to judgment as a matter of law.” *Chavez v. United States*, 683 F.3d 1102, 1108 (9th Cir. 2012).
2 Accordingly, “[a]nalysis under Rule 12(c) is substantially identical to analysis under Rule
3 12(b)(6) because, under both rules, a court must determine whether the facts alleged in the
4 complaint, taken as true, entitle the plaintiff to a legal remedy.” *Id.*

5 In order to survive a motion to dismiss under Rule 12(b)(6), a complaint must allege
6 “sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.”
7 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks omitted). “A claim has
8 facial plausibility when the plaintiff pleads factual content that allows the court to draw the
9 reasonable inference that the defendant is liable for the misconduct alleged.” *Id.*

10 **B. Motion for Summary Judgment**

11 The Federal Rules of Civil Procedure provide for summary adjudication when the
12 pleadings, depositions, answers to interrogatories, and admissions on file, together with the
13 affidavits, if any, show that “there is no genuine dispute as to any material fact and the movant
14 is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). Material facts are those that
15 may affect the outcome of the case. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248
16 (1986). A dispute as to a material fact is genuine if there is sufficient evidence for a reasonable
17 jury to return a verdict for the nonmoving party. *See id.* “Summary judgment is inappropriate if
18 reasonable jurors, drawing all inferences in favor of the nonmoving party, could return a verdict
19 in the nonmoving party’s favor.” *Diaz v. Eagle Produce Ltd. P’ship*, 521 F.3d 1201, 1207 (9th
20 Cir. 2008) (citing *United States v. Shumway*, 199 F.3d 1093, 1103–04 (9th Cir. 1999)). A
21 principal purpose of summary judgment is “to isolate and dispose of factually unsupported
22 claims.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323–24 (1986).

23 In determining summary judgment, a court applies a burden-shifting analysis. “When
24 the party moving for summary judgment would bear the burden of proof at trial, it must come
25 forward with evidence which would entitle it to a directed verdict if the evidence went

1 uncontroverted at trial. In such a case, the moving party has the initial burden of establishing
2 the absence of a genuine issue of fact on each issue material to its case.” *C.A.R. Transp.*
3 *Brokerage Co. v. Darden Rests., Inc.*, 213 F.3d 474, 480 (9th Cir. 2000) (citations omitted). In
4 contrast, when the nonmoving party bears the burden of proving the claim or defense, the
5 moving party can meet its burden in two ways: (1) by presenting evidence to negate an
6 essential element of the nonmoving party’s case; or (2) by demonstrating that the nonmoving
7 party failed to make a showing sufficient to establish an element essential to that party’s case
8 on which that party will bear the burden of proof at trial. *See Celotex Corp.*, 477 U.S. at 323–
9 24. If the moving party fails to meet its initial burden, summary judgment must be denied and
10 the court need not consider the nonmoving party’s evidence. *See Adickes v. S.H. Kress & Co.*,
11 398 U.S. 144, 159–60 (1970).

12 If the moving party satisfies its initial burden, the burden then shifts to the opposing
13 party to establish that a genuine issue of material fact exists. *See Matsushita Elec. Indus. Co. v.*
14 *Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). To establish the existence of a factual dispute,
15 the opposing party need not establish a material issue of fact conclusively in its favor. It is
16 sufficient that “the claimed factual dispute be shown to require a jury or judge to resolve the
17 parties’ differing versions of the truth at trial.” *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors*
18 *Ass’n*, 809 F.2d 626, 631 (9th Cir. 1987). In other words, the nonmoving party cannot avoid
19 summary judgment by relying solely on conclusory allegations that are unsupported by factual
20 data. *See Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). Instead, the opposition must go
21 beyond the assertions and allegations of the pleadings and set forth specific facts by producing
22 competent evidence that shows a genuine issue for trial. *See Celotex Corp.*, 477 U.S. at 324.

23 At summary judgment, a court’s function is not to weigh the evidence and determine the
24 truth but to determine whether there is a genuine issue for trial. *See Anderson*, 477 U.S. at 249.
25 The evidence of the nonmovant is “to be believed, and all justifiable inferences are to be drawn

1 in his favor.” *Id.* at 255. But if the evidence of the nonmoving party is merely colorable or is
 2 not significantly probative, summary judgment may be granted. *See id.* at 249–50.

3 **III. DISCUSSION**

4 **A. Motion for Partial Judgment on the Pleadings**

5 Plaintiffs’ sole surviving claim is for unpaid minimum wages under the Minimum Wage
 6 Amendment. (*See* Feb. 4, 2015 Order, ECF No. 40) (dismissing all claims except for violations
 7 of the Minimum Wage Amendment). Defendants urge the Court to find that Nevada courts
 8 would adopt one or both of the rationales articulated by the California Court of Appeals in
 9 *Brewer v. Premier Golf Properties* for finding that punitive damages are unavailable to
 10 plaintiffs claiming violations of minimum wage laws. 86 Cal. Rptr. 3d 225 (Cal. Ct. App.
 11 2008).¹ In *Brewer*, the court first held that the California Labor Code’s minimum wage
 12 requirements are new rights created by statute that did not exist under common law; therefore,
 13 under the “new right-exclusive remedy” rule, claims premised on violations of the statutory
 14 rights are limited to only those remedies expressly provided under the statute—which did not
 15 include punitive damages. *See id.* at 232–34. The court went on to find that notwithstanding
 16 the “new right-exclusive remedy” rule, punitive damages would still be unavailable to the
 17 plaintiff “because punitive damages are ordinarily limited to actions ‘for the breach of an
 18 obligation not arising from contract,’ and [plaintiff]’s claims for unpaid wages and unprovided
 19 meal/rest breaks arise from rights based on her employment contract.” *Id.* at 235 (citing Cal.
 20 Civ. Code § 3294).

21 The Court finds that both of the rationales for denying punitive damages in *Brewer* are
 22 equally applicable to claims arising under Nevada’s Minimum Wage Amendment. Like
 23 California, Nevada courts have long subscribed to the rule that “[w]here a statute gives a new
 24

25 ¹ “Where Nevada law is lacking, its courts have looked to the law of other jurisdictions, particularly California, for guidance.” *Eichacker v. Paul Revere Life Ins. Co.*, 354 F.3d 1142, 1145 (9th Cir. 2004).

1 right and prescribes a particular remedy, such remedy must be strictly pursued, and is exclusive
 2 of any other.” *State v. Yellow Jacket Silver Min. Co.*, 14 Nev. 220, 225 (1879); *see also*
 3 *Builders Ass’n of N. Nevada v. City of Reno*, 776 P.2d 1234, 1235 (Nev. 1989) (“If a statute
 4 expressly provides a remedy, courts should be cautious in reading other remedies into the
 5 statute.”). The right to receive a minimum wage arises from legislative mandate and did not
 6 exist under common law. *See Brewer*, 86 Cal. Rptr. 3d at 232 (“Labor Code statutes regulating
 7 pay stubs (§ 226) and minimum wages (§ 1197.1) create new rights and obligations not
 8 previously existing in the common law.”); *cf. MGM Grand Hotel-Reno, Inc. v. Insley*, 728 P.2d
 9 821, 824 (Nev. 1986) (noting that the “obligation to pay compensation benefits and the right to
 10 receive them exists as a matter of statute independent of any right established by contract,” and
 11 that such liability is “created” by statute). Accordingly, the remedies available for violating
 12 minimum wage laws are limited to those expressly provided by statute and constitutional
 13 amendment.

14 The Minimum Wage Amendment states: “An employee claiming violation of this
 15 section . . . shall be entitled to all remedies available under the law or in equity appropriate to
 16 remedy any violation of this section, including but not limited to back pay, damages,
 17 reinstatement or injunctive relief.” Nev. Const. art. XV, § 16(B).² However, there is no
 18 provision for punitive damages or any other type of damages aimed at punishing an employer
 19 for noncompliance. *See Siggelkow v. Phoenix Ins. Co.*, 846 P.2d 303, 304–05 (Nev. 1993)
 20 (“Punitive damages are not awarded as a matter of right to an injured litigant, but are awarded
 21 in addition to compensatory damages as a means of punishing the tortfeasor and deterring the
 22 tortfeasor and others from engaging in similar conduct.”). Instead, the Minimum Wage

24
 25 ² In addition to the compensatory damages, the Minimum Wage Amendment also provides: “An employee who prevails in any action to enforce this section shall be awarded his or her reasonable attorney’s fees and costs.” Nev. Const. art. XV, § 16(B).

1 Amendment's language explicitly provides only for damages "appropriate to remedy any
2 violation." Nev. Const. art. XV, § 16(B). Therefore, because damages for violations of the
3 Minimum Wage Amendment are limited to those expressly provided by the amendment and
4 there is no provision in the amendment for punitive damages, Plaintiffs cannot recover punitive
5 damages for their claims.³

6 Additionally, even if the "new right-exclusive remedy" rule did not apply, punitive
7 damages would still be unavailable for Plaintiffs' claims. Nevada law permits the awarding of
8 punitive damages for tort claims where the defendant "has been guilty of oppression, fraud or
9 malice," *see* Nev. Rev. Stat. § 42.005, or where such damages are explicitly provided by
10 statute. *See, e.g.,* Nev. Rev. Stat. § 42.010 ("In an action for the breach of an obligation, where
11 the defendant caused an injury by the operation of a motor vehicle . . . after willfully
12 consuming or using alcohol or another substance, knowing that the defendant would thereafter
13 operate the motor vehicle, the plaintiff, in addition to the compensatory damages, may recover
14 damages for the sake of example and by way of punishing the defendant."). However, "the
15 award of punitive damages cannot be based upon a cause of action sounding solely in contract."
16 *Ins. Co. of the W. v. Gibson Tile Co.*, 134 P.3d 698, 703 (Nev. 2006); *see also* Nev. Rev. Stat. §
17 42.005 ("[I]n an action for the breach of an obligation *not arising from contract*, . . . the
18 plaintiff . . . may recover damages for the sake of example and by way of punishing the
19 defendant.") (emphasis added).

20 Though Plaintiffs' minimum wage claims arise from Defendants' alleged failure to pay a
21

22
23 ³ The Court notes, however, that under the old statutory minimum wage scheme, "the Labor Commissioner may
24 impose against [an employer] an administrative penalty of not more than \$5,000 for each violation." Nev. Rev.
25 Stat. § 608.290.2. Accordingly, because there is no provision of the Minimum Wage Amendment addressing the
application of penalties or fines for violations, the Labor Commissioner may impose an administrative penalty of
up to \$5,000 for violators of the Minimum Wage Amendment. The ability of the Labor Commissioner to impose
such a penalty alleviates Plaintiffs' concern that punitive damages are necessary for minimum wage claims in
order to discourage employers from willfully violating the Minimum Wage Amendment. (*See* Resp. to Mot. for
Judgment n.2, ECF No. 45).

1 statutory obligation, “when a statute imposes additional obligations on an underlying
2 contractual relationship, a breach of the statutory obligation is a breach of contract that will not
3 support tort damages beyond those contained in the statute.” *See Brewer*, 86 Cal. Rptr. 3d at
4 235; *see also Camino Properties, LLC v. Ins. Co. of the W.*, No. 2:13-CV-02262-APG, 2015
5 WL 2225945, at *3 (D. Nev. May 12, 2015) (“ICW cannot be right that liabilities arising from
6 a contract, where the contract is required by statute, is a ‘liability by statute.’ . . . Even though
7 insurance contracts exist because a statute requires drivers to buy them, claims for breaches of
8 the insurance policy are governed by the six-year limitations period for contracts.”); *cf.*
9 *Descutner v. Newmont USA Ltd.*, No. 3:12-CV-00371-RCJ, 2012 WL 5387703, at *2 (D. Nev.
10 Nov. 1, 2012) (stating that the Nevada statute concerning overtime wages, section 608.140,
11 “does not imply a private right of action to sue under the labor code, but only to sue in
12 contract”). Therefore, because claims for violations of the Minimum Wage Amendment arise
13 from an underlying contractual employer-employee relationship, such claims do not entitle a
14 plaintiff to punitive damages. Accordingly, Plaintiffs cannot seek punitive damages based
15 solely on a claim for violations of the Minimum Wage Amendment, and their claims for
16 punitive damages are dismissed.

17 **B. Kwayisi’s Motion of Partial Summary Judgment (ECF No. 48)**

18 Kwayisi asserts that he “is entitled to partial summary judgment on his first claim for
19 relief, because Defendants could *only* pay the lower-tier wage if they *actually provided* (or
20 supplied or furnished) a qualifying health plan, which they did not, but must have paid the
21 upper-tier wage to him if they *did not actually provide* (or supply or furnish) such benefits, for
22 any reason.” (Mot. Partial Summ. J. 6:12–15, ECF No. 48). Moreover, Kwayisi argues that
23 “Defendants will claim that all they had to do was ‘offer’ health insurance benefits to gain the
24 privilege of underpaying its minimum wage employees,” however, “[s]uch conduct is not, in
25 any way, authorized by the Minimum Wage Amendment.” (*Id.* 6:15–18).

1 The Minimum Wage Amendment provides in pertinent part as follows:

2 Each employer shall pay a wage to each employee of not less than
 3 the hourly rates set forth in this section. The rate shall be five
 4 dollars and fifteen cents (\$5.15) per hour worked, if the employer
 5 provides health benefits as described herein, or six dollars and
 6 fifteen cents (\$6.15) per hour if the employer does not provide such
 7 benefits. Offering health benefits within the meaning of this section
 8 shall consist of making health insurance available to the employee
 9 for the employee and the employee's dependents at a total cost to the
 10 employee for premiums of not more than 10 percent of the
 11 employee's gross taxable income from the employer.

9 Nev. Const. art. XV, § 16. Because Plaintiffs' claims depend on whether Defendants' offer of
 10 health benefits was sufficient to pay the lower-tier wage, a dispositive question exists as to the
 11 interpretation of "provide" in the context of the Minimum Wage Amendment. The parties
 12 agree that the sole dispositive issue before the Court is the interpretation of "provide" in the
 13 context of the Minimum Wage Amendment. (*See* Response 4:19–20, ECF No. 53; Reply 2:7–8,
 14 ECF No. 55). Kwayisi argues that "provide" within the context of the Minimum Wage
 15 Amendment means to actually provide or furnish qualifying health benefits to employees.
 16 (Reply 2:13–14). However, Defendants contend that "provide" means to offer or make
 17 qualifying health benefits available to employees. (Response 3:5–6).

18 Pursuant to Rule 5 of the Nevada Rules of Appellate Procedure ("Rule 5"), a United
 19 States District Court may certify a question of law to the Nevada Supreme Court "upon the
 20 court's own motion." Nev. R. App. P. 5(a)-(b). Under Rule 5, the Nevada Supreme Court has
 21 the power to answer such a question that "may be determinative of the cause then pending in
 22 the certifying court and . . . it appears to the certifying court there is no controlling precedent in
 23 the decisions of the Supreme Court of this state." Nev. R. App. P. 5(a). In this case, the Court
 24 is sitting in diversity jurisdiction; thus Nevada substantive law controls. Moreover, the parties
 25 fail to cite and the Court has not found any controlling decisions from the Nevada Supreme

1 Court that interprets “provide” in the context of the Minimum Wage Amendment.

2 Accordingly, under Rule 5, answering this certified question is within the power of the Nevada
3 Supreme Court.

4 Rule 5 also provides that a certification order must specifically address each of six
5 requirements:

- 6 (1) The questions of law to be answered;
- 7 (2) A statement of all facts relevant to the questions certified;
- 8 (3) The nature of the controversy in which the questions arose;
- 9 (4) A designation of the party or parties who will be the appellant(s) and the
10 party or parties who will be the respondent(s) in the Supreme Court;
- 11 (5) The names and addresses of counsel for the appellant and respondent; and
- 12 (6) Any other matters that the certifying court deems relevant to a
13 determination of the questions certified.

14 Nev. R. App. P. 5(c). The relevant facts are set forth in Section I, above. Thus, the Court
15 addresses only the remaining five requirements below.

16 **1. Nature of the Controversy**

17 The parties disagree as to whether “provide” in the context of the Minimum Wage
18 Amendment means that an employer’s offer of health benefits is sufficient to pay the lower
19 wage rate under the Minimum Wage Amendment. In support of his argument, Plaintiff has
20 brought to the Court’s attention two recent state district court decisions in support of his
21 position. *See Diaz v. MDC Restaurants, LLC*, A-14-701633-C, Eighth Judicial Dist., Dept. XVI
22 (July 17, 2015); *Hancock v. The State of Nevada*, 14 OC 00080 1B, First Judicial Dist., Dept. II
23 (Aug. 14, 2015). On the other hand, Defendants cite various regulations enacted by the Labor
24 Commissioner to support their position, which clarify and implement the Minimum Wage
25 Amendment. *See* NAC § 608.102 (“To qualify to pay an employee the [lower-tier] minimum
wage...[t]he employer *must offer* a health insurance plan...[and] [t]he health insurance plan
must be made available to the employee and any dependents of the employee.”) (emphasis
added); *see also* NAC §§ 608.100, 106–08.

1 **2. Question of Law**

2 Accordingly, the Court certifies the following question of law:

3 *Whether an employee must actually enroll in health benefits offered by an employer*
4 *before the employer may pay that employee at the lower-tier wage under the Minimum*
5 *Wage Amendment, Nev. Const. art. XV, § 16.*

6 **IV. CONCLUSION**

7 **IT IS HEREBY ORDERED** that Defendants' Motion for Partial Judgment on the
8 Pleadings (ECF No. 43) is **GRANTED**. Plaintiffs' punitive damages requests are dismissed
9 with prejudice.

10 **IT IS FURTHER ORDERED** that Plaintiff Collins Kwayisi's Motion for Partial
11 Summary Judgment (ECF No. 48) is **DENIED without prejudice**, with permission to renew
12 the motion within thirty (30) days of the resolution of the Court's Certified Question to the
13 Nevada Supreme Court.

14 **IT IS FURTHER ORDERED** that the following question of law is **CERTIFIED to**
15 **the Nevada Supreme Court** pursuant to Rule 5 of the Nevada Rules of Appellate Procedure:

16 *Whether an employee must actually enroll in health benefits offered by an employer*
17 *before the employer may pay that employee at the lower-tier wage under the Minimum*
18 *Wage Amendment, Nev. Const. art. XV, § 16.*

19 *See Nev. R. App. P. 5(c)(1).* The nature of the controversy and a statement of facts are
20 discussed above. *See Nev. R. App. P. 5(c)(2)–(3).* Because Plaintiff Kwayisi is the movant,
21 Kwayisi is designated as the Appellant, and Defendants are designated as the Respondents. *See*
22 *Nev. R. App. P. 5(c)(4).* The names and addresses of counsel are as follows:

23 **Counsel for Plaintiff**

24 Bradley Scott Schrager, Daniel Bravo, and Don Springmeyer
25 Wold, Rifkin, Shapiro, Schulman & Rabkin, LLP
 3556 E. Russell Road, 2nd Floor
 Las Vegas, NV 89120

Counsel for Defendants

Kathryn Blakey, Rick D. Roskelley, and Roger L. Grandgenett
Littler Mendelson, PC
3960 Howard Hughes Parkway, Suite 300
Las Vegas, NV 89169

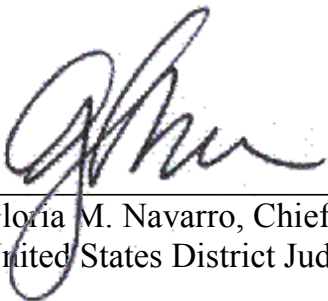
Montgomery Y. Paek
Jackson Lewis P.C.
3800 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169

See Nev. R. App. P. 5(c)(5). Further elaboration upon the certified question is included in this Order.

IT IS FURTHER ORDERED that the Clerk of the Court shall forward a copy of this Order to the Clerk of the Nevada Supreme Court under the official seal of the United States District Court for the District of Nevada. *See Nev. R. App. P. 5(d).*

IT IS FURTHER ORDERED that all other pending motions are **DENIED without prejudice**, with permission to re-file upon resolution of the Court's Certified Question to the Nevada Supreme Court.

DATED this 21st day of August, 2015.



Gloria M. Navarro, Chief Judge
United States District Judge

IN THE SUPREME COURT OF THE STATE OF NEVADA

COLLINS KWAYISI, AN INDIVIDUAL,
Appellant,
vs.
WENDY'S OF LAS VEGAS, INC., AN
OHIO CORPORATION; AND CEDAR
ENTERPRISES, INC., AN OHIO
CORPORATION,
Respondents.

No. 68754

FILED

OCT 09 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

***ORDER ACCEPTING CERTIFIED QUESTION, DIRECTING
BRIEFING, AND DIRECTING SUBMISSION OF FILING FEE***

This matter involves a legal question certified to this court, under NRAP 5, by the United States District Court, District of Nevada. Specifically, the District Court has certified the following question of law to this court:

Whether an employee must actually enroll in health benefits offered by an employer before the employer may pay that employee at the lower-tier wage under the Minimum Wage Amendment, Nev. Const. art. XV, § 16.

As no clearly controlling Nevada precedent exists with respect to this important legal question and its answer may determine part of the federal case, we accept the certified question. *See* NRAP 5(a); *Volvo Cars of N. Am., Inc. v. Ricci*, 122 Nev. 746, 137 P.3d 1161 (2006).

Accordingly, appellant shall have 30 days from the date of this order to file and serve an opening brief and appendix. Respondents shall have 30 days from the date the opening brief is served to file and serve an answering brief. Appellant shall then have 20 days from the date the answering brief is served to file and serve any reply brief. The parties' briefs shall comply with NRAP 28, 28.2, 31(c), and 32. *See* NRAP 5(g)(2).

Lastly, in any proceeding under NRAP 5, fees "shall be the same as in civil appeals . . . and shall be equally divided between the parties unless otherwise ordered by the certifying court." NRAP 5(e). The District Court's order does not address the payment of this court's fees. Accordingly, appellant and respondents shall each tender to the clerk of this court, within 11 days from the date of this order, the sum of \$125, representing half of the filing fee. See NRAP 3(e); NRAP 5(e).

It is so ORDERED.

Hardesty, C.J.
Hardesty

Parraguirre, J.
Parraguirre

Cherry, J.
Cherry

Gibbons, J.
Gibbons

Douglas, J.
Douglas

Saitta, J.
Saitta

Pickering, J.
Pickering

cc: Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP/Las Vegas
Littler Mendelson/Las Vegas