

IN THE SUPREME COURT OF THE STATE OF NEVADA

WESTERN CAB COMPANY,

Petitioner,

vs.

EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF
NEVADA, in and for the COUNTY
OF CLARK; and THE HONORABLE
LINDA MARIE BELL, District Judge,

Respondents,

and

LAKSIRI PERERA, Individually and
on behalf of others similarly situated,

Real Party in Interest.

Case No.: 68796

District Court Case No. A-14-707425-C

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**PETITIONER'S APPENDIX IN SUPPORT OF REPLY IN SUPPORT OF
PETITION FOR WRIT OF MANDAMUS OR PROHIBITION**

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<u>APPENDIX #</u>	<u>DOCUMENT DESCRIPTION</u>	<u>PAGES</u>
18	7/8/15 Declaration of Danny Thompson in Support of Nevada AFL-CIO's Motion to Intervene, filed in <i>Landry's Inc., et al., Plaintiffs, vs. Brian Sandoval, et al.</i> , Defendants, Case No. 2:15-cv-01160-GMN-PAL, in the U.S. District Court for the District of Nevada	465-466
19	6/19/15 Complaint for Injunctive, Declaratory and Other Relief filed in <i>Landry's Inc., et al., Plaintiffs, vs. Brian Sandoval, et al.</i> , Defendants, Case No. 2:15-cv-01160-GMN-PAL, in the U.S. District Court for the District of Nevada.....	467-480
20	7/16/15 First Amended Complaint for Injunctive, Declaratory and Other Relief filed in <i>Landry's Inc., et al., Plaintiffs, vs. Brian Sandoval, et al.</i> , Defendants, Case No. 2:15-cv-01160-GMN-PAL, in the U.S. District Court for the District of Nevada	481-497
21	8/25/15 Supplemental Declaration of Danny Thompson in Support of Nevada AFL-CIO's Motion to Intervene, filed in <i>Landry's Inc., et al., Plaintiffs, vs. Brian Sandoval, et al.</i> , Defendants, Case No. 2:15-cv-01160-GMN-PAL, in the U.S. District Court for the District of Nevada	498-499
22	8/25/15 Second Supplemental Declaration of Danny Thompson in Support of Nevada AFL-CIO's Motion to Intervene, filed in <i>Landry's Inc., et al., Plaintiffs, vs. Brian Sandoval, et al.</i> , Defendants, Case No. 2:15-cv-01160-GMN-PAL, in the U.S. District Court for the District of Nevada.....	500-501
23	4/1/15 Office of the Labor Commissioner Minimum Wage 2015 Annual Bulletin	502

24	8/24/15 Order Granting in Part and Staying in Part Defendant, Desert Cab., Inc.’s Motion to Dismiss Plaintiff’s First “Claims” for Relief and/or Motion to Strike Plaintiff’s First Claim for Relief and/or Prayer for Punitive Damages and Prayer for Injunctive and Equitable Relief and Denying Plaintiff’s Barbara Gilmour’s Countermotion for Discovery under N.R.C.P. 56(f), Clark County District Court Case No. A-12-668502-C	503-507
25	U.S. Department of Labor, Bureau of Labor Statistics, CPI, U.S. City Average 1996-2015	508

CERTIFICATE OF SERVICE

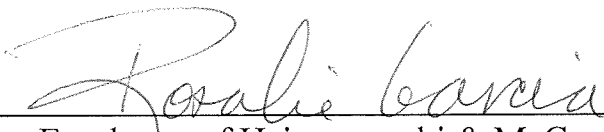
The undersigned does hereby certify that pursuant to NRAP 25(c) a true and correct copy of the foregoing **PETITIONER'S APPENDIX IN SUPPORT OF REPLY IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS OR PROHIBITION** was filed electronically with the Nevada Supreme Court Electronic Filing System, and a copy was served electronically on this 23rd day of November, 2015, to the following:

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And a true and correct copy of the foregoing **PETITIONER'S APPENDIX IN SUPPORT OF REPLY IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS OR PROHIBITION** was served via first class, postage-paid U.S.

Mail on this 23rd day of November, 2015, to the following:

The Honorable Linda Marie Bell
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Eighth Judicial District Court of Nevada
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APPENDIX 18

APPENDIX 18

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11 UNITED STATES DISTRICT COURT

12 DISTRICT OF NEVADA – SOUTHERN DIVISION

13 LANDRYS, INC., a Delaware corporation; BUBBA
14 GUMP SHRIMP CO., RESTAURANTS, INC., a
15 Delaware corporation; NEVADA RESTAURANT
16 SERVICES, INC. d/b/a DOTTY'S GAMING AND
17 SPIRITS, a Nevada Corporation; NEVADA
18 RESTAURANT SERVICES, INC. d/b/a
19 LAUGHLIN RIVER LODGE, a Nevada
20 corporation; NEVADA RESTAURANT
21 SERVICES, INC. d/b/a/ HOOVER DAM LODGE, a
22 Nevada Corporation,

23 Plaintiffs,

24 vs.

25 BRIAN SANDOVAL, in his official capacity as
26 Governor of the State of Nevada; SHANNON
27 CHAMBERS, in her official capacity as Labor
28 Commissioner in the State of Nevada ex rel,

Defendants.

NEVADA AFL-CIO.

Proposed Intervenor-Defendant

CASE NO. 2:15-cv-01160-GMN-PAL

DECLARATION OF DANNY THOMPSON
IN SUPPORT OF NEVADA AFL-CIO's
MOTION TO INTERVENE

I, Danny Thompson, declare:

1. I am the Executive Secretary-Treasurer of the Nevada AFL-CIO and have held that position since 1999, and am competent to testify to the following: the Nevada AFL-CIO is comprised of over 120 local unions with over 200,000 members in Nevada. The Nevada AFL-CIO and its affiliates actively

1 adoption by voters in 2004 and 2006 of the Minimum Wage Amendment to the Nevada Constitution
2 ("MWA") which we drafted in conjunction with our lawyers at the law firm of McCracken, Stemerman
3 & Holsberry. This law helped increase the compensation of AFL-CIO members in Nevada and helps level
4 the playing field between non-union employers and unionized employers (who generally have been paying
5 their employees better than non-union employers). Most unionized employers provide health benefits
6 readily meeting the MWA's standard of not costing employees more than 10 percent of their gross income,
7 while a number of nonunion plans are reported to be falling such standard inside Nevada, and we
8 understand many outside Nevada fail such standard.

9
10 2. We are unaware of any MWA enforcement efforts by the Labor Commissioner. We have had serious
11 differences with the Office of the Labor Commissioner and their counsel in recent years, and we recently
12 submitted comments to that office in a rulemaking process over their minimum wage regulations in which
13 we objected to a number of these regulations.
14

15 3. We are very active in the health benefits arena within Nevada and have developed expertise in this
16 arena as many unionized employers provide health benefits through plans which are jointly administered
17 by union and employer trustees. Even where the plan does not have union trustees, our unions are still
18 involved in negotiating over and monitoring the employer plans.
19

20 I declare under penalty of perjury of the laws of the United States and Nevada that the foregoing is true
21 and correct. Executed this ___ day of ___, 2015.

22 
23 _____
24 DANNY THOMPSON
25
26
27
28

APPENDIX 19

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11 **UNITED STATES DISTRICT COURT**
12 **DISTRICT OF NEVADA**

13 LANDRY'S, INC., a Delaware corporation;
BUBBA GUMP SHRIMP CO.
14 RESTAURANTS, INC., a Delaware
corporation; NEVADA RESTAURANT
15 SERVICES, INC. d/b/a DOTTY'S GAMING
AND SPIRITS, a Nevada corporation;
16 NEVADA RESTAURANT SERVICES, INC.
d/b/a LAUGHLIN RIVER LODGE, a Nevada
17 corporation; NEVADA RESTAURANT
SERVICES, INC. d/b/a HOOVER DAM
18 LODGE, a Nevada corporation,
Plaintiffs,

19 v.

20 BRIAN SANDOVAL, in his official capacity
as Governor of the State of Nevada;
21 SHANNON CHAMBERS, in her official
capacity as Labor Commissioner of the State of
22 Nevada ex rel,
23

Defendants.

Case No.

**COMPLAINT FOR INJUNCTIVE,
DECLARATORY AND OTHER RELIEF**

24 Plaintiffs, Landry's, Inc.; Bubba Gump Restaurants, Inc.; Nevada Restaurant Services, Inc.
25 d/b/a Dotty's Gaming and Spirits; Nevada Restaurant Services, Inc. d/b/a Laughlin River Lodge;
26 and Nevada Restaurant Services, Inc. d/b/a Hoover Dam Lodge (collectively, "Plaintiffs") allege
27 as follows:
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INTRODUCTION

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2 1. This action involves a challenge to Nevada's Minimum Wage Amendment, found
3 in Article 15, Section 16 of the Constitution of the State of Nevada ("Minimum Wage
4 Amendment" or "Amendment") and the implementing regulations found in NAC Chapter
5 608.100 – 608.108 (the "Regulations"). As set forth below, the Employee Retirement Income
6 Security Act of 1974 ("ERISA") preempts the voter-passed Minimum Wage Amendment and
7 Regulations. In addition, the Minimum Wage Amendment and Regulations are unconstitutional
8 under the commerce clause of Article I, Section 8 of the Constitution of the United States, the
9 Due Process Clause of the Fourteenth Amendment to the Constitution of the United States, and
10 the Constitution of the State of Nevada.

11 2. For these reasons, Plaintiffs ask the Court to preliminarily and permanently enjoin
12 all enforcement of the Minimum Wage Amendment and Regulations and declare the Minimum
13 Wage Amendment and Regulations to be preempted under ERISA and in violation of the
14 Constitution of the United States.

JURISDICTION AND VENUE

15
16 3. The Court has jurisdiction over this action pursuant to the federal question statute,
17 28 U.S.C. § 1331, because this is a civil action arising under the Constitution and laws of the
18 United States. More specifically, Plaintiffs bring this action because ERISA, 29 U.S.C. §§ 1001-
19 1461, as amended, preempts Nevada's Minimum Wage Amendment and Regulations. Thus,
20 jurisdiction is also proper under ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1). Furthermore,
21 Plaintiffs bring this suit under 42 U.S.C. § 1983, which provides a cause of action for "the
22 deprivation of any rights, privileges, or immunities secured by the Constitution and laws" of the
23 United States. The Court, therefore, has jurisdiction pursuant to 28 U.S.C. § 1343(a)(3). Under
24 28 U.S.C. § 1367(a), the Court has supplemental jurisdiction over Plaintiffs' claims arising under
25 the laws of the State of Nevada because those claims are so closely related to Plaintiffs' federal
26 claims that they form part of the same case or controversy for purposes of Article III of the U.S.
27 Constitution. In addition, the Court may grant declaratory and related relief pursuant to the
28 Declaratory Judgment Act, 28 U.S.C. §§ 2201(a) and 2202.

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1 offered health benefits plans to their employees. Such putative class-action lawsuits have become
2 increasingly common, as at least 11 lawsuits have been filed in Nevada in the last 18 months.¹

3 11. Defendant Brian Sandoval is the Governor of the State of Nevada. In his official
4 capacity, the Governor is the chief executive officer of Nevada. He must ensure that the laws of
5 the State are properly enforced.

6 12. Defendant Shannon Chambers is the Labor Commissioner of the State of Nevada.
7 In her official capacity, the Labor Commissioner is responsible for, among other things, enforcing
8 and regulating the State's labor laws. The Labor Commissioner has promulgated the Regulations
9 and investigated wage claims based on the Minimum Wage Amendment and Regulations relating
10 to health benefits. As recently as April 2015, the Labor Commissioner has enforced the
11 Minimum Wage Amendment and Regulations in a manner that violates federal and Nevada law.

12 FACTS

13 13. Pursuant to NRS 232, the Governor may appoint a Director of the Department of
14 Business and Industry. The Director of the Department of Business and Industry "serves at the
15 pleasure of the Governor." NRS 232.515. Under NRS 607.020, the Director of the Department
16 of Business and Industry appoints Nevada's Labor Commissioner as the head of the Office of
17 Labor Commissioner. The Labor Commissioner, pursuant to NRS 607.160, is vested with
18 authority to enforce Nevada's labor laws and adopt regulations to carry out those laws.

19 14. Under NRS 608.250, and prior to November 2006, the Labor Commissioner was
20 authorized to "establish by regulation the minimum wage" and "prescribe increases in the
21 minimum wage in accordance with those prescribed by federal law, unless the Labor
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23
24 ¹ *Diaz v. MDC Restaurants, LLC*, Eighth Judicial District Court, Clark County, Nevada, A-
25 701633; *McLaughlin v. Deli Planet, Inc.*, Eighth Judicial District Court, Clark County, Nevada,
26 A-703656; *Gemma v. Boyd Gaming Corp.*, Eighth Judicial District Court, Clark County, Nevada,
27 A-703790; *Williams v. Claim Jumper Acquisition Co., LLC*, Eighth Judicial District Court, Clark
28 County, Nevada, A-702048; *Perry v. Terrible Herbst, Inc.*, Eighth Judicial District Court, Clark
County, Nevada, A-704428; *Lopez v. Landry's Inc.*, Eighth Judicial District Court, Clark County,
Nevada, A-706449; *Perera v. Western Cab Co.*, Eighth Judicial District Court, Clark County,
Nevada, A-707425; *Tyus v. Wendy's of Las Vegas, Inc.*, Federal District Court for the District of
Nevada, 2:14-cv-729-GMN-VCF; *Hanks v. Briad Restaurant Group, LLC*, Federal District Court
for the District of Nevada, 2:14-cv-786-GMN-PAL.

1 Commissioner determine[d] that those increases [we]re contrary to the public interest." Neither
2 NRS 608.250 nor any other labor law required or authorized the Labor Commissioner to regulate
3 or otherwise enforce employer-provided health benefits.

4 15. Nevada's 2004 general election presented Nevadans with a ballot initiative known
5 as "Question 6" or "Raise the Minimum Wage for Working Nevadans." Among other things,
6 Question 6 sought to amend Nevada's Constitution to include a two-tiered minimum wage, the
7 rates of which would deviate from the federal minimum wage based on cost of living increases.
8 The specific question on the ballot posed to voters stated, "Shall the Nevada Constitution be
9 amended to raise the minimum wage paid to employees?"² The voters approved Question 6.

10 16. Question 6, however, went far beyond simply raising the minimum wage and
11 altering the manner in which the minimum wage would be calculated. Indeed, the proposed
12 amendment's terms introduced a "health benefits" component that would dictate the type of health
13 plan an employer would be required to offer to its employees.

14 17. Pursuant to Nevada law, voters must approve a proposed constitutional
15 amendment in two consecutive general elections. Accordingly, Question 6 was again proposed to
16 Nevada's voters in the 2006 general election. Once again, the description appearing on the ballot
17 stated, "Shall the Nevada Constitution be amended to raise the minimum wage paid to
18 employees?". And once again, Nevada's voters approved Question 6.

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25 ² Although not included on the ballot, the voter's guide provided the following explanation:
26 "The proposed amendment, if passed, would create a new section to Article 15 of the Nevada
27 Constitution. The amendment would require employers to pay Nevada employees \$5.15 per hour
28 worked if the employer provides health benefits, or \$6.15 per hour worked if the employer does
not provide health benefits. The rates 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
measured by the Consumer Price Index (CPI), with no CPI adjustment for any one-year period
greater than 3%." *Nevada Legislative Counsel Bureau – Research Division.*

1 18. On November 28, 2006, the Minimum Wage Amendment became effective and
2 was codified as Article XV, Section 16 to the Nevada Constitution. As codified in the
3 Constitution, the Minimum Wage Amendment is entitled "Payment of minimum compensation to
4 employees" and states, in relevant part:

5 A. Each employer shall pay a wage to each employee of not less than the
6 hourly rates set forth in this section. The rate shall be five dollars and fifteen cents
7 (\$5.15) per hour worked, if the employer provides health benefits as described
8 herein, or six dollars and fifteen cents (\$6.15) per hour if the employer does not
9 provide such benefits. Offering health benefits within the meaning of this section
10 shall consist of making health insurance available to the employee for the
11 employee and the employee's dependents at a total cost to the employee for
12 premiums of not more than 10 percent of the employee's gross taxable income
13 from the employer. These rates of wages shall be adjusted by the amount of
14 increases in the federal minimum wage over \$5.15 per hour, or, if greater, by the
15 cumulative increase in the cost of living. The cost of living increase shall be
16 measured by the percentage increase as of December 31 in any year over the level
17 as of December 31, 2004 of the Consumer Price Index (All Urban Consumers,
18 U.S. City Average) as published by the Bureau of Labor Statistics, U.S.
19 Department of Labor or the successor index or federal agency. No CPI adjustment
20 for any one-year period may be greater than 3%. The Governor or the State agency
21 designated by the Governor shall publish a bulletin by April 1 of each year
22 announcing the adjusted rates, which shall take effect the following July 1 . . . Tips
23 or gratuities received by employees shall not be credited as being any part of or
24 offset against the wage rates required by this section.

15 19. As is apparent from the Amendment's text, there is virtually no guidance regarding
16 "health benefits." The Amendment's only description of "health benefits" states: "Offering health
17 benefits within the meaning of this section shall consist of making health insurance available to
18 the employee for the employee and the employee's dependents at a total cost to the employee for
19 premiums of not more than 10 percent of the employee's gross taxable income from the
20 employer." Art. 15, § 16(A).

21 20. Moreover, the Amendment does not authorize the Labor Commissioner to regulate
22 or enforce its provisions. Rather, it merely states, "The Governor or the State agency designated
23 by the Governor shall publish a bulletin by April 1 of each year announcing the adjusted rates,"
24 and that the "bulletin will be made available to all employers and to any other person who has
25 filed with the Governor or the designated agency a request to receive such notice[.]" Art. 15, §
26

1 16(A). Therefore, beyond announcing and publishing the new rates, the Minimum Wage
2 Amendment does not authorize the Governor, Labor Commissioner, or any other agency or
3 officer, to establish or enforce health benefits regulations.

4 21. Shortly after the Amendment became effective, however, Nevada's Labor
5 Commissioner began issuing regulations. The permanent implementing regulations are found in
6 NAC 608.100 through 608.108.

7 22. Through NAC 608.102, the Labor Commissioner adopted a regulation that dictates
8 the type of health care an employer must offer to "qualify to pay an employee" the lower tier
9 minimum wage rate. Specifically, NAC 608.102 states that the health plan must include "those
10 categories of health care expenses that are generally deductible by an employee on his individual
11 federal income tax return pursuant to 26 U.S.C. § 213 and any federal regulations relating thereto,
12 if such expenses had been borne directly by the employee" or provide benefits under the Taft-
13 Hartley trust formed pursuant to 29 U.S.C. § 186(c)(5) and which qualifies as a "welfare benefit
14 plan" under IRS guidelines or ERISA. Moreover, the health plan "must be made available to the
15 employee and any dependents," subject to a six-month waiting period, and at a rate where the
16 employee's cost is no more than "10 percent of the gross taxable income of the employee
17 attributable to the employer under the Internal Revenue Code," further referencing NAC 608.104.

18 23. In turn, NAC 608.104 purports to establish "qualified health insurance," a concept
19 without a basis in the Minimum Wage Amendment. This Regulation further dictates how the 10
20 percent figure of NAC 608.102 and Article 15, § 16(A) is calculated.

21 24. Under NAC 608.106, the employer is required to retain documentation when an
22 employee declines coverage. Referencing the Minimum Wage Amendment, NRS 607.160 and
23 608.250 (the minimum wage statute), NAC 608.108 provides that an employer that "does not
24 offer a health insurance plan" as prescribed in NAC 608.102, or it is not made available to the
25 employee "within 6 months of employment," then the employee is to receive the upper-tier
26 minimum wage rate "until such time as the employee becomes eligible for and is offered
27 coverage" under a plan that satisfies NAC 608.102's requirements.

28

CLAIMS FOR RELIEF

CLAIM I

Declaration that ERISA Preempts the Amendment and Regulations

25. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1-24 of this Complaint.

26. ERISA is a federal law concerning private employer sponsored pensions and health plans. ERISA has broad preemptive force on state law and regulation of employee benefits. The primary objective of ERISA is to "provide a uniform regulatory regime over employee benefit plans." *Aetna Health Inc. v. Davila*, 542 U.S. 200, 208 (2004); *see also Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 91 (1983).

27. To accomplish this objective, Section 514(a) of ERISA broadly preempts "any and all State laws insofar as they may now or hereafter relate to any employee benefit plan" covered by ERISA. 29 U.S.C. § 1144(a). This preemption provision aims "to minimize the administrative and financial burden of complying with conflicting directives among States or between States and the Federal Government" and to reduce "the tailoring of plans and employer conduct to the peculiarities of the law of each jurisdiction." *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133, 142 (1990).

28. A state law "relates to" an ERISA plan "if it has a *connection with or reference to* such a plan." *Shaw*, 463 U.S. at 97 (emphasis added). To make this determination, courts must look "to the objectives of the ERISA statute" as well as "to the nature of the effect of the state law on ERISA plans[.]" *California Div. of Labor Standards Enforcement v. Dillingham Constr.*, 519 U.S. 316, 325, (1997). State laws that "mandate employee benefit structures or their administration" are preempted by ERISA. *New York State Conf. of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 658 (1995). Such state-imposed regulation of an employer's provision of employee benefits conflicts with ERISA's goal of establishing uniform, nationwide regulation of employee benefit plans. *Id.* at 657-58. Thus, courts have readily and routinely found preemption of state laws that act directly upon an employee benefit plan or effectively require it to establish a particular ERISA-governed benefit.

1 29. Here, beyond altering the subject of minimum wage law in Nevada, the
2 Amendment and Regulations radically impacted and altered health benefits offered by Nevada's
3 private employers, such as the Plaintiffs in this matter. In doing so, the Minimum Wage
4 Amendment and implementing regulations unlawfully encroach on employee benefits plans,
5 which fall under ERISA's purview. The Amendment and Regulations, therefore, subject
6 employers to uncertainty and additional costs, seek to substantively change health benefits, create
7 inconsistent and undecipherable health benefits standards, and otherwise frustrate ERISA's
8 purpose of establishing a uniform, nationwide regulation of employee benefit plans.

9 30. The Minimum Wage Amendment relates to employee benefits plans because it
10 dictates that, "Offering health benefits within the meaning of this section shall consist of making
11 health insurance available to the employee for the employee and the employee's dependents at a
12 total cost to the employee for premiums of not more than 10 percent of the employee's gross
13 taxable income from the employer." Art. 15, § 16(A).

14 31. The Regulations relate to, and have a connection with, employee benefit plans
15 because NAC Chapter 608.100 – 608.108 dictates requirements for "qualified" health plans.
16 Specifically, the Regulations (1) mandate the provision of benefits ("if employer does not offer a
17 health insurance plan . . . the employee must be paid [the higher wage set forth in
18 NAC608.100(b)]"); (2) regulate the premium amount that can be charged to employee (limited to
19 10% of gross taxable income and has to be calculated on an annual, per employee basis); and (3)
20 mandate the scope of coverage that must be offered ("to qualify to pay an employee the minimum
21 wage set forth in [NAC 608.100(a)], an employer must . . . offer a health insurance plan which . .
22 . covers those categories of health care expenses that are generally deductible by an employee . .
23 pursuant to 26 U.S.C. § 21[.]").

24 32. The Regulations also impermissibly impose reporting requirements on health
25 benefits plans through the employer-plan sponsors not required by ERISA. Specifically, under
26 NAC 608.106, "[i]f an employee declines coverage under a health insurance plan that meets the
27 requirements of NAC 608.102 and which is offered by the employer, the employer must maintain
28 documentation that the employee has declined coverage."

39. The Minimum Wage Amendment and Regulations require national entities to develop unique benefit plans exclusively for their Nevada locations and employees which impose costs and other burdens far in excess of those imposed by other states and the federal government. These costs and burdens deter entities from conducting commerce in or through Nevada.

CLAIM III

Declaration that the Regulations Are Unconstitutional Because They Exceed the Labor Commissioner's Authority

40. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1-39 of this Complaint.

41. The Fourteenth Amendment to the Constitution of the United States, establishes that States may not "deprive any person of life, liberty, or property, without due process of law." Similarly, Article 1, Section 8, Clause 5 of the Constitution of the State of Nevada provides, "No person shall be deprived of life, liberty, or property, without due process of law."

42. Pursuant to 42 U.S.C. § 1983, "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

43. In Nevada, the Governor appoints a Director as the head of the Department of Business and Industry. The Director of the Department of Business appoints a Labor Commissioner. As an officer of Nevada's Executive Department, the Labor Commissioner is generally authorized to enforce Nevada's "labor laws" and, to the extent properly delegated, adopt regulations in furtherance of enforcing those labor laws. NRS 607.160.

44. The Minimum Wage Amendment provides that the applicable minimum wage depends on whether the "employer provides health benefits." Art. 15, § 16(A). "Offering health benefits" under the Amendment "consist[s] of making health insurance available to the employee

1 for the employee and the employee's dependents at a total cost to the employee for premiums of
2 not more than 10 percent of the employee's gross taxable income from the employer." *Id.*

3 45. The Amendment does not authorize any person or entity to enforce, administer or
4 regulate "health benefits." *Id.* Indeed, the Minimum Wage Amendment's provision that "[t]he
5 Governor or the State agency designated by the Governor shall publish a bulletin by April 1 of
6 each year announcing the adjusted rates, which shall take effect the following July 1" is the only
7 aspect of the law that anticipates subsequent state action. *Id.*

8 46. Neither Nevada's voters, nor the Legislative Department, nor the Governor, to the
9 extent he could exercise this power, have delegated to the Labor Commissioner authority to
10 enforce or regulate the Minimum Wage Amendment's health benefits provisions.

11 47. The Governor and Labor Commissioner are "persons" acting under the color of
12 law. By promulgating and enforcing the Regulations concerning "qualified" health benefits,
13 when not authorized to do so, Defendants have deprived and will continue to deprive Plaintiffs of
14 rights, privileges, or immunities secured by the Constitution and laws.

15 48. As a consequence, the Regulations should be declared null and void from their
16 inception, and Defendants should be enjoined from enforcing or regulating such provisions and
17 causing irreparable harm. Pursuant to 42 U.S.C. § 1988, Plaintiffs are also entitled to recover the
18 fees and costs incurred in obtaining redress for Defendants' conduct.

19 **CLAIM IV**

20 **Declaration that the Amendment and Regulations Violate**
21 **Due Process Protected by the Fifth and Fourteenth Amendments**
22 **to the U.S. Constitution and Nevada Constitution**

23 49. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1-
24 48 of this Complaint.

25 50. The Regulations do not give fair notice to a person of ordinary intelligence to
26 understand what conduct is required or prohibited.

27 51. The Regulations lack specific standards, thereby encouraging, authorizing, or even
28 failing to prevent arbitrary and discriminatory enforcement.

1 52. Notwithstanding these deficiencies, the Labor Commissioner is enforcing the
2 Regulations, including the Regulations concerning health benefits, against employers in Nevada.
3 Furthermore, and based on the Labor Commissioner's regulations, employers, including Plaintiffs
4 are being subjected to lawsuits for the violation of regulations that do not give employers fair
5 notice of what is required or prohibited and regulations that lack specific standards.

6 53. The Regulations, therefore, are impermissibly vague and violate the Due Process
7 Clause of the Nevada Constitution and the Due Process Clause of the Fifth and Fourteenth
8 Amendments to the United States Constitution.

9 **WHEREFORE**, Plaintiffs pray for judgment against Defendants as follows:

10 1. That the Court construe the Minimum Wage Amendment and Regulations and
11 enter a declaratory judgment stating that these laws are invalid because they are preempted by
12 ERISA;

13 2. That the Court construe the Regulations and Minimum Wage Amendment and
14 enter a declaratory judgment stating that these laws are invalid because they impose an excessive
15 burden on interstate commerce in violation of the U.S. Constitution;

16 3. That the Court construe the Regulations and enter a declaratory judgment stating
17 that these laws are void because, due to their vagueness, they violate due process protected by the
18 Fifth and Fourteenth Amendments to the U.S. Constitution and Nevada Constitution;

19 4. That the Court construe the Regulations and enter a declaratory judgment stating
20 that these laws are invalid because the Office of the Labor Commissioner has exceeded its
21 statutory authority in promulgating the Regulations;

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1 5. For preliminary and permanent injunctive relief, enjoining the enforcement,
2 whether private or public, of Minimum Wage Amendment and the Regulations;

3 6. For attorneys' fees and cost of suit; and

4 7. For such other relief as the Court may deem just and proper.

5 Dated this 19th day of June, 2015.

6 JACKSON LEWIS P.C.

7
8 /s/ Elayna J. Youchah

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APPENDIX 20

APPENDIX 20

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11 **UNITED STATES DISTRICT COURT**

12 **DISTRICT OF NEVADA**

13 LANDRY'S, INC., a Delaware corporation;
14 CLAIM JUMPER ACQUISITION
COMPANY, LLC, a Nevada limited liability
15 company; BUBBA GUMP SHRIMP CO.
RESTAURANTS, INC., a Delaware
16 corporation; NEVADA RESTAURANT
SERVICES, INC. d/b/a DOTTY'S GAMING
17 AND SPIRITS, a Nevada corporation;
NEVADA RESTAURANT SERVICES, INC.
18 d/b/a LAUGHLIN RIVER LODGE, a Nevada
corporation; NEVADA RESTAURANT
19 SERVICES, INC. d/b/a HOOVER DAM
LODGE, a Nevada corporation,

20 Plaintiffs,

21 v.

22 BRIAN SANDOVAL, in his official capacity as
23 Governor of the State of Nevada; SHANNON
CHAMBERS, in her official capacity as Labor
24 Commissioner of the State of Nevada, AMY L.
PARKS, in her official capacity as Acting
25 Insurance Commissioner of the State of Nevada,

26 Defendants.

Case No. 2:15-cv-01160-GMN-PAL

**FIRST AMENDED COMPLAINT
FOR INJUNCTIVE, DECLARATORY
AND OTHER RELIEF**

1 Plaintiffs, Landry's, Inc.; Bubba Gump Restaurants, Inc.; Claim Jumper Acquisition
2 Company, LLC; Nevada Restaurant Services, Inc. d/b/a Dotty's Gaming and Spirits; Nevada
3 Restaurant Services, Inc. d/b/a Laughlin River Lodge; and Nevada Restaurant Services, Inc. d/b/a
4 Hoover Dam Lodge (collectively, "Plaintiffs") allege as follows:

5 **INTRODUCTION**

6 1. This action involves a challenge to Nevada's Minimum Wage Amendment, found
7 in Article 15, Section 16 of the Constitution of the State of Nevada ("Minimum Wage
8 Amendment" or "Amendment") and the implementing regulations found in NAC Chapter
9 608.100 – 608.108 (the "Regulations"). As set forth below, the Employee Retirement Income
10 Security Act of 1974 ("ERISA") preempts the voter-passed Minimum Wage Amendment and
11 Regulations. In addition, the Minimum Wage Amendment and Regulations are unconstitutional
12 under the commerce clause of Article I, Section 8 of the Constitution of the United States, the
13 Due Process Clause of the Fourteenth Amendment to the Constitution of the United States, and
14 the Constitution of the State of Nevada.

15 2. For these reasons, Plaintiffs ask the Court to preliminarily and permanently enjoin
16 all enforcement of the Minimum Wage Amendment, and Regulations and declare the Minimum
17 Wage Amendment and Regulations to be preempted under ERISA and in violation of the
18 Constitution of the United States.

19 **JURISDICTION AND VENUE**

20 3. The Court has jurisdiction over this action pursuant to the federal question statute,
21 28 U.S.C. § 1331, because this is a civil action arising under the Constitution and laws of the
22 United States. More specifically, Plaintiffs bring this action because ERISA, 29 U.S.C. §§ 1001-
23 1461, as amended, preempts Nevada's Minimum Wage Amendment and Regulations. Thus,
24 jurisdiction is also proper under ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1). Furthermore,
25 Plaintiffs bring this suit under 42 U.S.C. § 1983, which provides a cause of action for "the
26 deprivation of any rights, privileges, or immunities secured by the Constitution and laws" of the
27 United States. The Court, therefore, has jurisdiction pursuant to 28 U.S.C. § 1343(a)(3). Under
28 28 U.S.C. § 1367(a), the Court has supplemental jurisdiction over Plaintiffs' claims arising under

1 the laws of the State of Nevada because those claims are so closely related to Plaintiffs' federal
2 claims that they form part of the same case or controversy for purposes of Article III of the U.S.
3 Constitution. In addition, the Court may grant declaratory and related relief pursuant to the
4 Declaratory Judgment Act, 28 U.S.C. §§ 2201(a) and 2202.

5 4. Venue is proper in this District under 28 U.S.C. § 1391(b)(1)-(2) because the
6 Defendants are located in this District, private property affected by the Ordinance is situated in
7 this District, and the events giving rise to Plaintiffs' claims occurred in this District. Venue in the
8 U.S. District Court for the District of Nevada is also proper under ERISA § 502(e)(2), 29 U.S.C. §
9 1132(e)(2).

10 THE PARTIES

11 5. Landry's, Inc. ("Landry's") is a privately owned, multi-brand dining, hospitality,
12 entertainment and gaming corporation incorporated in Delaware. Landry's owns and operates
13 more than 500 restaurant and entertainment destinations in 35 states and the District of Columbia,
14 including multiple locations in Nevada.

15 6. Claim Jumper Acquisition Company, LLC ("Claim Jumper") is a domestic limited
16 liability company which owns and operates six restaurants in Nevada.

17 7. Bubba Gump Shrimp Co. Restaurants, Inc. ("Bubba Gump"), a Delaware
18 corporation, operates forty-three Bubba Gump Shrimp Co. restaurants worldwide, including
19 twenty-nine restaurants in the United States. Bubba Gump registered to do business in Nevada on
20 June 14, 2012, and began operating its first restaurant in Nevada on December 15, 2012.

21 8. Nevada Restaurant Services, Inc. d/b/a Dotty's Gaming and Spirits ("Dotty's") is a
22 Nevada corporation which owns and operates more than 100 taverns within the state.

23 9. Nevada Restaurant Services, Inc. d/b/a Laughlin River Lodge ("Laughlin River
24 Lodge") is a Nevada corporation which purchased and began operating a hotel-casino in
25 Laughlin, Nevada in September 2014.

26 10. Nevada Restaurant Services, Inc. d/b/a Hoover Dam Lodge ("Hoover Dam
27 Lodge") is a Nevada corporation which purchased and began operating a hotel-casino in Boulder
28 City, Nevada in December 2013.

11. As employers in Nevada, Plaintiffs are subject to the Minimum Wage Amendment and its Regulations. Plaintiffs are further subject to ERISA. In 2014 and 2015, Plaintiffs Landry's, Claim Jumper, Bubba Gump, and Dotty's were sued for alleged violations of the health benefits provisions in the Minimum Wage Amendment and Regulations even though these Plaintiffs offered health benefits plans to their employees. Such putative class-action lawsuits have become increasingly common, as at least 11 lawsuits have been filed in Nevada in the last 18 months.¹

12. Defendant Brian Sandoval is the Governor of the State of Nevada. In his official capacity, the Governor is the chief executive officer of Nevada. He must ensure that the laws of the State are properly enforced.

13. Defendant Shannon Chambers is the Labor Commissioner of the State of Nevada. In her official capacity, the Labor Commissioner is responsible for, among other things, enforcing and regulating the State's labor laws. The Labor Commissioner has promulgated the Regulations and investigated wage claims based on the Minimum Wage Amendment and Regulations relating to health benefits. As recently as April 2015, the Labor Commissioner has enforced the Minimum Wage Amendment and Regulations in a manner that violates federal and Nevada law.

14. Defendant Amy L. Parks is the Acting Insurance Commissioner of the State of Nevada. In her official capacity, the Insurance Commissioner is responsible for, among other things, enforcing and regulating the State's insurance laws. The Office of the Labor Commissioner relies on the Nevada Division of Insurance to determine whether an insurance plan offered by an employer qualifies as an actual health insurance plan under the two-tier minimum wage system established by the Minimum Wage Amendment.

¹ *Diaz v. MDC Restaurants, LLC*, Eighth Judicial District Court, Clark County, Nevada, A-701633; *McLaughlin v. Deli Planet, Inc.*, Eighth Judicial District Court, Clark County, Nevada, A-703656; *Gemma v. Boyd Gaming Corp.*, Eighth Judicial District Court, Clark County, Nevada, A-703790; *Williams v. Claim Jumper Acquisition Co., LLC*, Eighth Judicial District Court, Clark County, Nevada, A-702048; *Perry v. Terrible Herbst, Inc.*, Eighth Judicial District Court, Clark County, Nevada, A-704428; *Lopez v. Landry's Inc.*, Eighth Judicial District Court, Clark County, Nevada, A-706449; *Perera v. Western Cab Co.*, Eighth Judicial District Court, Clark County, Nevada, A-707425; *Tyus v. Wendy's of Las Vegas, Inc.*, U.S. District Court for the District of Nevada, 2:14-cv-729-GMN-VCF; *Hanks v. Briad Restaurant Group, LLC*, U.S. District Court for the District of Nevada, 2:14-cv-786-GMN-PAL.

FACTS

15. Pursuant to NRS 232, the Governor may appoint a Director of the Department of Business and Industry. The Director of the Department of Business and Industry "serves at the pleasure of the Governor." NRS 232.515. Under NRS 607.020, the Director of the Department of Business and Industry appoints Nevada's Labor Commissioner as the head of the Office of Labor Commissioner. The Labor Commissioner, pursuant to NRS 607.160, is vested with authority to enforce Nevada's labor laws and adopt regulations to carry out those laws.

16. Under NRS 608.250, and prior to November 2006, the Labor Commissioner was authorized to "establish by regulation the minimum wage" and "prescribe increases in the minimum wage in accordance with those prescribed by federal law, unless the Labor Commissioner determine[d] that those increases [we]re contrary to the public interest." Neither NRS 608.250 nor any other labor law required or authorized the Labor Commissioner to regulate or otherwise enforce employer-provided health benefits.

17. Nevada's 2004 general election presented Nevadans with a ballot initiative known as "Question 6" or "Raise the Minimum Wage for Working Nevadans." Among other things, Question 6 sought to amend Nevada's Constitution to include a two-tiered minimum wage, the rates of which would deviate from the federal minimum wage based on cost of living increases. The specific question on the ballot posed to voters stated, "Shall the Nevada Constitution be amended to raise the minimum wage paid to employees?"² The voters approved Question 6.

18. Question 6, however, went far beyond simply raising the minimum wage and altering the manner in which the minimum wage would be calculated. Indeed, the proposed amendment's terms introduced a "health benefits" component that would dictate the type of health plan an employer would be required to offer to its employees.

² Although not included on the ballot, the voter's guide provided the following explanation: "The proposed amendment, if passed, would create a new section to Article 15 of the Nevada Constitution. The amendment would require employers to pay Nevada employees \$5.15 per hour worked if the employer provides health benefits, or \$6.15 per hour worked if the employer does not provide health benefits. The rates 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 measured by the Consumer Price Index (CPI), with no CPI adjustment for any one-year period greater than 3%." *Nevada Legislative Counsel Bureau – Research Division*.

1 19. Pursuant to Nevada law, voters must approve a proposed constitutional
2 amendment in two consecutive general elections. Accordingly, Question 6 was again proposed to
3 Nevada's voters in the 2006 general election. Once again, the description appearing on the ballot
4 stated, "Shall the Nevada Constitution be amended to raise the minimum wage paid to
5 employees?". And once again, Nevada's voters approved Question 6.

6 20. On November 28, 2006, the Minimum Wage Amendment became effective and
7 was codified as Article XV, Section 16 to the Nevada Constitution. As codified in the
8 Constitution, the Minimum Wage Amendment is entitled "Payment of minimum compensation to
9 employees" and states, in relevant part:

10 A. Each employer shall pay a wage to each employee of not less than the
11 hourly rates set forth in this section. The rate shall be five dollars and fifteen
12 cents (\$5.15) per hour worked, if the employer provides health benefits as
13 described herein, or six dollars and fifteen cents (\$6.15) per hour if the employer
14 does not provide such benefits. Offering health benefits within the meaning of
15 this section shall consist of making health insurance available to the employee for
16 the employee and the employee's dependents at a total cost to the employee for
17 premiums of not more than 10 percent of the employee's gross taxable income
18 from the employer. These rates of wages shall be adjusted by the amount of
19 increases in the federal minimum wage over \$5.15 per hour, or, if greater, by the
20 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 . . . 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.

21 B. The provisions of this section may not be waived by agreement
22 between an individual employee and an employer. All of the provisions of this
23 section, or any part hereof, may be waived in a bona fide collective bargaining
24 agreement, but only if the waiver is explicitly set forth in such agreement in clear
25 and unambiguous terms. Unilateral implementation of terms and conditions of
26 employment by either party to a collective bargaining relationship shall not
27 constitute, or be permitted, as a waiver of all or any part of the provisions of this
28 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

1 remedy any violation of this section, including but not limited to back pay,
2 damages, reinstatement or injunctive relief. An employee who prevails in any
3 action to enforce this section shall be awarded his or her reasonable attorney's fees
4 and costs.

5 21. As is apparent from the Amendment's text, there is virtually no guidance regarding
6 "health benefits." In fact, the Amendment's only description of "health benefits" states: "Offering
7 health benefits within the meaning of this section shall consist of making health insurance
8 available to the employee for the employee and the employee's dependents at a total cost to the
9 employee for premiums of not more than 10 percent of the employee's gross taxable income from
10 the employer." Art. 15, § 16(A).

11 22. Moreover, the Amendment does not authorize the legislature, the Governor, the
12 Labor Commissioner, the Insurance Commissioner or any other person or agency to promulgate
13 regulations or enforce its provisions. Rather, it merely states, "The Governor or the State agency
14 designated by the Governor shall publish a bulletin by April 1 of each year announcing the
15 adjusted rates," and that the "bulletin will be made available to all employers and to any other
16 person who has filed with the Governor or the designated agency a request to receive such
17 notice." Art. 15, § 16(A). The only language speaking to how the provisions may be enforced
18 reads: "An employee claiming violation of this section may bring an action against his or her
19 employer in the courts of this State to enforce the provisions of this section and shall be entitled
20 to all remedies available under the law or in equity appropriate to remedy any violation of this
21 section[.]" Art. 15, § (B).

22 23. Therefore, beyond announcing and publishing the new rates, the Minimum Wage
23 Amendment does not authorize the Governor, Labor Commissioner, the Insurance Commissioner,
24 or any other agency or officer, to establish or enforce corresponding regulations.

25 24. Upon information and belief, the Governor has not designated a state agency to
26 publish a bulletin by April 1 of each year announcing the adjusted rates, which shall take effect
27 the following July 1, as allowed by the Amendment.

28 25. Shortly after the Amendment became effective, however, Nevada's Labor
Commissioner began issuing regulations. The permanent implementing regulations are found in
NAC 608.100 through 608.108.

1 26. Through NAC 608.102, the Labor Commissioner adopted a regulation that dictates
2 the type of health care an employer must offer to "qualify to pay an employee" the lower tier
3 minimum wage rate. Specifically, NAC 608.102 states that the health plan must include "those
4 categories of health care expenses that are generally deductible by an employee on his individual
5 federal income tax return pursuant to 26 U.S.C. § 213 and any federal regulations relating thereto,
6 if such expenses had been borne directly by the employee" or provide benefits under the Taft-
7 Hartley trust formed pursuant to 29 U.S.C. § 186(c)(5) and which qualifies as a "welfare benefit
8 plan" under IRS guidelines or ERISA. Moreover, the health plan "must be made available to the
9 employee and any dependents," subject to a six-month waiting period, and at a rate where the
10 employee's cost is no more than "10 percent of the gross taxable income of the employee
11 attributable to the employer under the Internal Revenue Code," further referencing NAC 608.104.

12 27. In turn, NAC 608.104 purports to establish "qualified health insurance," a concept
13 without a basis in the Minimum Wage Amendment. This Regulation further dictates how the 10
14 percent figure of NAC 608.102 and Article 15, § 16(A) is calculated.

15 28. The Office of the Labor Commissioner is enforcing the Amendment, determining
16 whether employers are in compliance with the Amendment and the Regulations, issuing
17 Determinations of Wage Claims pursuant to the Regulations, and relying upon the Nevada
18 Division of Insurance to determine whether an insurance plan offered by an employer qualifies as
19 an actual health insurance plan under the two-tier minimum wage system established by the
20 Minimum Wage Amendment.

21 29. The Division of Insurance is not authorized, expressly or impliedly, to issue
22 regulations, provide guidance, or to otherwise take any act for the purpose of implementing or
23 enforcing the Amendment.

24 30. Under NAC 608.106, the employer is required to retain documentation when an
25 employee declines coverage. Referencing the Minimum Wage Amendment, NRS 607.160 and
26 608.250 (the minimum wage statute), NAC 608.108 provides that an employer that "does not
27 offer a health insurance plan" as prescribed in NAC 608.102, or it is not made available to the
28

1 employee "within 6 months of employment," then the employee is to receive the upper-tier
2 minimum wage rate "until such time as the employee becomes eligible for and is offered
3 coverage" under a plan that satisfies NAC 608.102's requirements.

4 **CLAIMS FOR RELIEF**

5 **CLAIM I**

6 **Declaration that ERISA Preempts the**
7 **Amendment and Regulations**

8 31. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1-
9 30 of this Complaint.

10 32. ERISA is a federal law concerning private employer sponsored pensions and
11 health plans. ERISA has broad preemptive force on state law and regulation of employee
12 benefits. The primary objective of ERISA is to "provide a uniform regulatory regime over
13 employee benefit plans." *Aetna Health Inc. v. Davila*, 542 U.S. 200, 208 (2004); *see also Shaw v.*
14 *Delta Air Lines, Inc.*, 463 U.S. 85, 91 (1983).

15 33. To accomplish this objective, Section 514(a) of ERISA broadly preempts "any and
16 all State laws insofar as they may now or hereafter relate to any employee benefit plan" covered
17 by ERISA. 29 U.S.C. § 1144(a). This preemption provision aims "to minimize the
18 administrative and financial burden of complying with conflicting directives among States or
19 between States and the Federal Government" and to reduce "the tailoring of plans and employer
20 conduct to the peculiarities of the law of each jurisdiction." *Ingersoll-Rand Co. v. McClendon*,
21 498 U.S. 133, 142 (1990).

22 34. A state law "relates to" an ERISA plan "if it has a *connection with or reference to*
23 *such a plan.*" *Shaw*, 463 U.S. at 97 (emphasis added). To make this determination, courts must
24 look "to the objectives of the ERISA statute" as well as "to the nature of the effect of the state law
25 on ERISA plans[.]" *California Div. of Labor Standards Enforcement v. Dillingham Constr.*, 519
26 U.S. 316, 325, (1997). State laws that "mandate employee benefit structures or their
27 administration" are preempted by ERISA. *New York State Conf. of Blue Cross & Blue Shield*
28 *Plans v. Travelers Ins. Co.*, 514 U.S. 645, 658 (1995). Such state-imposed regulation of an

1 employer's provision of employee benefits conflicts with ERISA's goal of establishing uniform,
2 nationwide regulation of employee benefit plans. *Id.* at 657-58. Thus, courts have readily and
3 routinely found preemption of state laws that act directly upon an employee benefit plan or
4 effectively require it to establish a particular ERISA-governed benefit.

5 35. Here, beyond altering the subject of minimum wage law in Nevada, the
6 Amendment and Regulations radically impacted and altered health benefits offered by Nevada's
7 private employers, such as the Plaintiffs in this matter. In doing so, the Minimum Wage
8 Amendment and implementing regulations unlawfully encroach on employee benefits plans,
9 which fall under ERISA's purview. The Amendment and Regulations, therefore, subject
10 employers to uncertainty and additional costs, seek to substantively change health benefits, create
11 inconsistent and undecipherable health benefits standards, and otherwise frustrate ERISA's
12 purpose of establishing a uniform, nationwide regulation of employee benefit plans.

13 36. The Minimum Wage Amendment relates to employee benefits plans because it
14 dictates that, "Offering health benefits within the meaning of this section shall consist of making
15 health insurance available to the employee for the employee and the employee's dependents at a
16 total cost to the employee for premiums of not more than 10 percent of the employee's gross
17 taxable income from the employer." Art. 15, § 16(A).

18 37. The Regulations relate to, and have a connection with, employee benefit plans
19 because NAC Chapter 608.100 – 608.108 dictates requirements for "qualified" health plans.
20 Specifically, the Regulations (1) mandate the provision of benefits ("if employer does not offer a
21 health insurance plan . . . the employee must be paid [the higher wage set forth in
22 NAC608.100(b)]"); (2) regulate the premium amount that can be charged to employee (limited to
23 10% of gross taxable income and has to be calculated on an annual, per employee basis); and (3)
24 mandate the scope of coverage that must be offered ("to qualify to pay an employee the minimum
25 wage set forth in [NAC 608.100(a)], an employer must . . . offer a health insurance plan which . .
26 . covers those categories of health care expenses that are generally deductible by an employee . . .
27 pursuant to 26 U.S.C. § 21[.]").
28

38. The Regulations also impermissibly impose reporting requirements on health benefits plans through the employer-plan sponsors not required by ERISA. Specifically, under NAC 608.106, "[i]f an employee declines coverage under a health insurance plan that meets the requirements of NAC 608.102 and which is offered by the employer, the employer must maintain documentation that the employee has declined coverage."

39. In addition, the Regulations conflict with and are preempted by ERISA because they frustrate ERISA's objective of uniform plan administration. The Regulations impose on employers with operations in Nevada different health care obligations and reporting requirements than in other states. An employer with employees in Nevada and elsewhere must offer its Nevada employees a "qualified" plan or else it will receive disfavorable treatment under the Regulations. Today, for example, such an employer cannot offer a single ERISA and Affordable Care Act-compliant plan to all of its employees without being penalized by the State of Nevada. Thus, the Amendment and the Regulations illegally compel employers to change the administration of their ERISA-governed plans, and/or to create separate and independent plans for Nevada employees.

40. In sum, the Amendment and the Regulations relate to, have a connection with and directly regulate employers' provision of healthcare benefits. As a consequence, ERISA preempts the Amendment and Regulations.

CLAIM II

Declaration that the Amendment and Regulations Violate the U.S. Constitution's Commerce Clause

41. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1-40 of this Complaint.

42. The Commerce Clause of the U.S. Constitution provides, "Congress shall have Power . . . [t]o regulate Commerce . . . among the several States." U.S. Const. Art. I, § 8, cl 3. That affirmative grant of power to Congress also limits the power of state and local governments to pass legislation affecting interstate commerce (the "Dormant Commerce Clause").

43. The Dormant Commerce Clause prohibits state laws that impose an excessive burden on interstate commerce.

44. The Minimum Wage Amendment and Regulations impose an excessive burden on interstate commerce. They prevent entities operating in multiple states and moving goods and services into and out of Nevada from maintaining uniform employee benefits provisions consistent with ERISA and the Affordable Care Act.

45. The Minimum Wage Amendment and Regulations require national entities to develop unique benefit plans exclusively for their Nevada locations and employees which impose costs and other burdens far in excess of those imposed by other states and the federal government. These costs and burdens deter entities from conducting commerce in or through Nevada.

CLAIM III

**Declaration that the Governor's Delegation of Authority
to Promulgate the Regulations and Enforce the Regulations
and Amendment Violates the United States and Nevada Constitutions**

46. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1-45 of this Complaint.

47. The Fourteenth Amendment to the Constitution of the United States establishes that States may not "deprive any person of life, liberty, or property, without due process of law." Similarly, Article 1, Section 8, Clause 5 of the Constitution of the State of Nevada provides, "No person shall be deprived of life, liberty, or property, without due process of law."

48. Pursuant to 42 U.S.C. § 1983, "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

49. In Nevada, the Governor appoints a Director as the head of the Department of Business and Industry. The Director of the Department of Business appoints a Labor Commissioner and an Insurance Commissioner. As an officer of Nevada's Executive Department, the Labor Commissioner is generally authorized to enforce Nevada's "labor laws"

1 and, to the extent properly delegated, adopt regulations in furtherance of enforcing those labor
2 laws. NRS 607.160. The Insurance Commissioner is responsible for the administration of the
3 provisions of NRS Title 57, "Insurance." NRS 232.825.

4 50. The Minimum Wage Amendment makes a specific and limited grant of authority
5 to the Governor stating only: [t]he Governor or the State agency designated by the Governor shall
6 publish a bulletin by April 1 of each year announcing the adjusted rates, which shall take effect
7 the following July 1." This is the only aspect of the law that anticipates subsequent state action.
8 *Id.*

9 51. Upon information and belief, the Governor has approved the Regulations.

10 52. The only delegation authority provided to the Governor under the Amendment is
11 for the limited purpose of designating a state agency to publish a bulletin announcing adjusted
12 minimum wage rates. Upon information and belief, the Governor has exceeded this authority by
13 delegating functions of rule-making and enforcement to the Labor Commissioner and Insurance
14 Commissioner.

15 53. To the extent the Governor has delegated formally or informally, authority (a) to
16 the Labor Commissioner to promulgate regulations and enforce the Amendment, and (b) to the
17 Insurance Commissioner the authority enforcing the Regulations through interpretative acts which
18 are unknown to the public, when not authorized to do so, the Governor has deprived and will
19 continue to deprive Plaintiffs of rights, privileges, or immunities secured by the Constitution and
20 laws.

21 54. As a consequence, the Regulations should be declared null and void from their
22 inception, and the Governor should be enjoined from enforcing or regulating such provisions and
23 causing irreparable harm. Pursuant to 42 U.S.C. § 1988, Plaintiffs are also entitled to recover the
24 fees and costs incurred in obtaining redress for the Governor's conduct.

CLAIM IV

**Declaration that the Regulations Are Unconstitutional
Because They Exceed the Labor Commissioner's
and the Insurance Commissioner's Authority**

55. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1-54 of this Complaint.

56. The Fourteenth Amendment to the Constitution of the United States establishes that States may not "deprive any person of life, liberty, or property, without due process of law." Similarly, Article 1, Section 8, Clause 5 of the Constitution of the State of Nevada provides, "No person shall be deprived of life, liberty, or property, without due process of law."

57. Pursuant to 42 U.S.C. § 1983, "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

58. In Nevada, the Governor appoints a Director as the head of the Department of Business and Industry. The Director of the Department of Business and Industry appoints a Labor Commissioner and an Insurance Commissioner. As an officer of Nevada's Executive Department, the Labor Commissioner is generally authorized to enforce Nevada's "labor laws" and, to the extent properly delegated, adopt regulations in furtherance of enforcing those labor laws. NRS 607.160. The Insurance Commissioner is responsible for the administration of the provisions of NRS Title 57, "Insurance." NRS 232.825.

59. The Minimum Wage Amendment provides that the applicable minimum wage depends on whether the "employer provides health benefits." Art. 15, § 16(A). "Offering health benefits" under the Amendment "consist[s] 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." *Id.*

60. The Amendment does not authorize any person or entity to enforce, administer or regulate its provisions. *Id.* Indeed, the Minimum Wage Amendment's provision that "[t]he 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" is the only aspect of the law that anticipates subsequent state action. *Id.*

61. Neither Nevada's voters, nor the Legislature, nor the Governor, to the extent he could exercise this power, have delegated to the Labor Commissioner or Insurance Commissioner authority to enforce or regulate the Minimum Wage Amendment's provisions.

62. Moreover, the Insurance Commissioner evaluates health benefits offered by private employers without providing any notice or publishing any standards against which it makes its determination.

63. The Labor Commissioner and Insurance Commissioner are "persons" acting under the color of law. By promulgating and enforcing the Regulations, when not authorized to do so, The Insurance Commissioner and Labor Commissioner have deprived and will continue to deprive Plaintiffs of rights, privileges, or immunities secured by the Constitution and laws.

64. As a consequence, the Regulations should be declared null and void from their inception, and the Labor Commissioner and Insurance Commissioner should be enjoined from enforcing or regulating such provisions and causing irreparable harm. Pursuant to 42 U.S.C. § 1988, Plaintiffs are also entitled to recover the fees and costs incurred in obtaining redress for the Labor Commissioner's and Insurance Commissioner's conduct.

CLAIM V

Declaration that the Amendment and Regulations Violate Due Process Protected by the Fifth and Fourteenth Amendments to the U.S. Constitution and Nevada Constitution

65. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1-64 of this Complaint.

66. The Regulations do not give fair notice to a person of ordinary intelligence to understand what conduct is required or prohibited.

1 67. The Regulations lack specific standards, thereby encouraging, authorizing, or even
2 failing to prevent arbitrary and discriminatory enforcement.

3 68. Notwithstanding these deficiencies, the Labor Commissioner is enforcing the
4 Regulations against employers in Nevada.

5 69. The Insurance Commissioner is engaged in ad hoc rule making and/or enforcement
6 of the Amendment, in excess of any authority granted under the Amendment, by evaluating the
7 sufficiency of employer-offered health benefits under the Amendment and advising the Labor
8 Commissioner as to whether an employer's plan meets the requirements of the Labor
9 Commissioner's regulations which are unconstitutional.

10 70. Furthermore, and based on the Labor Commissioner's regulations, employers,
11 including Plaintiffs, are being subjected to lawsuits for the violation of regulations that do not
12 give employers fair notice of what is required or prohibited and which lack specific standards.

13 71. The Regulations, therefore, are impermissibly vague and violate the Due Process
14 Clause of the Nevada Constitution and the Due Process Clause of the Fifth and Fourteenth
15 Amendments to the United States Constitution.

16 **WHEREFORE**, Plaintiffs pray for judgment against Defendants as follows:

17 1. That the Court construe the Minimum Wage Amendment and Regulations and
18 enter a declaratory judgment stating that these laws are invalid because they are preempted by
19 ERISA;

20 2. That the Court construe the Regulations and Minimum Wage Amendment and
21 enter a declaratory judgment stating that these laws are invalid because they impose an excessive
22 burden on interstate commerce in violation of the U.S. Constitution;

23 3. That the Court construe the Regulations and enter a declaratory judgment stating
24 that these laws are void because, due to their vagueness, they violate due process protected by the
25 Fifth and Fourteenth Amendments to the U.S. Constitution and Nevada Constitution;

26 4. That the Court construe the Regulations and enter a declaratory judgment stating
27 that these laws are invalid because the Office of the Labor Commissioner has exceeded its
28 statutory authority in promulgating the Regulations;

1 5. For preliminary and permanent injunctive relief, enjoining the enforcement,
2 whether private or public, of Minimum Wage Amendment and the Regulations;

3 6. For attorneys' fees and cost of suit; and

4 7. For such other relief as the Court may deem just and proper.

5 Dated this 15th day of July, 2015.

6 JACKSON LEWIS P.C.

7
8 /s/ Elayna J. Youchah

9 Elayna J. Youchah, NV Bar No. 5837
10 Phillip C. Thompson, NV Bar No. 12114
 3800 Howard Hughes Parkway, Suite 600
 Las Vegas, Nevada 89169

11 René E. Thorne, LA Bar No. 22875
12 650 Poydras Street, Suite 1900
13 New Orleans, Louisiana 70130
 Admitted Pro Hac Vice

14 *Attorneys for Plaintiffs*

APPENDIX 21

APPENDIX 21

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Attorneys for Proposed Intervenor Nevada AFL-CIO

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA – SOUTHERN DIVISION

LANDRYS, INC., a Delaware corporation; BUBBA
GUMP SHRIMP CO., RESTAURANTS, INC., a
Delaware corporation; NEVADA RESTAURANT
SERVICES, INC. d/b/a DOTTY'S GAMING AND
SPIRITS, a Nevada Corporation; NEVADA
RESTAURANT SERVICES, INC. d/b/a
LAUGHLIN RIVER LODGE, a Nevada
corporation; NEVADA RESTAURANT
SERVICES, INC. d/b/a/ HOOVER DAM LODGE, a
Nevada Corporation,

Plaintiffs,

vs.

BRIAN SANDOVAL, in his official capacity as
Governor of the State of Nevada; SHANNON
CHAMBERS, in her official capacity as Labor
Commissioner in the State of Nevada ex rel,

Defendants.

NEVADA AFL-CIO,

Proposed Intervenor-Defendant

Case No. 2:15-cv-01160-GMN-PAL

**SUPPLEMENTAL DECLARATION OF
DANNY THOMPSON IN SUPPORT OF
NEVADA AFL-CIO's MOTION TO
INTERVENE**

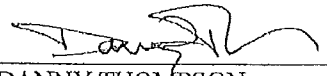
I, Danny Thompson, declare:

1. I am the Executive Secretary-Treasurer of the Nevada AFL-CIO and am competent to testify to the following: members of some Nevada AFL-CIO affiliates receive wages below \$8.25 per hour but also

1 receive health benefits from their employer which qualify their employer to the lower minimum rate under
2 the State Constitution. They work as cab drivers and casino dealers.

3 2. Unionized employers in this State compete constantly with non-union employers paying only the state
4 minimum wage, particularly in the restaurant industry. If those non-union employers were allowed to
5 lower wages to pay only the lower federal minimum wage, there would be large amounts of business lost
6 by unionized employers, and hence losses to union members of paid hours worked, tips, and jobs, and
7 losses in dues income to AFL-CIO affiliates.
8

9 I declare under penalty of perjury of the laws of the United States and Nevada that the foregoing
10 is true and correct. Executed this __ day of August 2015.

11 
12 DANNY THOMPSON
13
14
15
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23
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25
26
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28

APPENDIX 22

APPENDIX 22

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10 *Attorneys for Proposed Intervenor Nevada AFL-CIO*

11 UNITED STATES DISTRICT COURT

12 DISTRICT OF NEVADA – SOUTHERN DIVISION

13 LANDRYS, INC., a Delaware corporation; BUBBA
14 OUMP SHRIMP CO., RESTAURANTS, INC., a
15 Delaware corporation; NEVADA RESTAURANT
16 SERVICES, INC. d/b/a DOTTY'S GAMING AND
17 SPIRITS, a Nevada Corporation; NEVADA
18 RESTAURANT SERVICES, INC. d/b/a
19 LAUGHLIN RIVER LODGE, a Nevada
20 corporation; NEVADA RESTAURANT
21 SERVICES, INC. d/b/a/ HOOVER DAM LODGE, a
22 Nevada Corporation,

23 Plaintiffs,

24 vs.

25 BRIAN SANDOVAL, in his official capacity as
26 Governor of the State of Nevada; SHANNON
27 CHAMBERS, in her official capacity as Labor
28 Commissioner in the State of Nevada ex rel,

Defendants.

NEVADA AFL-CIO.

Proposed Intervenor-Defendant

Case No. 2:15-cv-01160-GMN-PAL

SECOND SUPPLEMENTAL
DECLARATION OF DANNY
THOMPSON IN SUPPORT OF NEVADA
AFL-CIO's MOTION TO INTERVENE

I, Danny Thompson, declare:

1. I am the Executive Secretary-Treasurer of the Nevada AFL-CIO and am competent to testify to the following: members of some Nevada AFL-CIO affiliates receive wages below \$8.25 per hour but also receive health benefits from their employer which qualify their employer to the lower minimum rate under

1 the State Constitution. These include those working as new hires at a number of Las Vegas downtown
2 casinos belonging to Culinary Workers Union Local 226, as its contracts at eight facilities call for such
3 rates for certain benefitted workers hired recently: Binions, Four Queens, Fremont, Main Street, Plaza,
4 Las Vegas Club, Dupars and Golden Gate.

5 2. Unionized employers in this State compete constantly with non-union employers paying only the state
6 minimum wage, particularly in the restaurant industry. If those non-union employers were allowed to
7 lower wages to pay only the lower federal minimum wage, there would be large amounts of business lost
8 by unionized employers, and hence losses to union members of paid hours worked, tips, and jobs, and
9 losses in dues income to AFL-CIO affiliates.
10

11 I declare under penalty of perjury of the laws of the United States and Nevada that the foregoing
12 is true and correct. Executed this ___ day of August 2015.
13

14 
15 DANNY THOMPSON

APPENDIX 23

APPENDIX 23

BRIAN SANDOVAL
Governor

BRUCE BRESLOW
Director

SHANNON CHAMBERS
Labor Commissioner

STATE OF NEVADA



Department of Business & Industry
OFFICE OF THE LABOR COMMISSIONER

<http://www.LaborCommissioner.com>

REPLY TO:

- OFFICE OF THE LABOR COMMISSIONER
555 E. WASHINGTON AVENUE, SUITE 4100
LAS VEGAS, NEVADA 89101
PHONE (702) 486-2650
FAX (702) 486-2600
- OFFICE OF THE LABOR COMMISSIONER
675 FAIRVIEW DRIVE, SUITE 226
CARSON CITY, NEVADA 89701
PHONE (775) 687-4850
FAX (775) 687-6400

**STATE OF NEVADA
MINIMUM WAGE
2015 ANNUAL BULLETIN
POSTED APRIL 1, 2015**

PURSUANT TO ARTICLE 15, SECTION 16(A) OF THE CONSTITUTION OF THE STATE OF NEVADA, THE GOVERNOR HEREBY ANNOUNCES THAT THE FOLLOWING MINIMUM WAGE RATES SHALL APPLY TO ALL EMPLOYEES IN THE STATE OF NEVADA UNLESS OTHERWISE EXEMPTED. THESE RATES ARE EFFECTIVE AS OF JULY 1, 2015.

FOR EMPLOYEES TO WHOM QUALIFYING HEALTH BENEFITS HAVE BEEN MADE AVAILABLE BY THE EMPLOYER:

NO LESS THAN \$7.25 PER HOUR

FOR ALL OTHER EMPLOYEES:

NO LESS THAN \$8.25 PER HOUR

Copies may also be obtained from the Labor Commissioner's Offices at

675 Fairview Drive, Suite 226
Carson City, Nevada 89701
(775) 687-4850

or

555 East Washington, Suite 4100
Las Vegas, Nevada 89101
(702) 486-2650

Alvin D. Quinn

CLERK OF THE COURT

1 **ORDR**

2 **JEFFERY A. BENDAVID, ESQ.**

3 Nevada Bar No. 6220

4 **MORAN BRANDON BENDAVID MORAN**

5 630 South 4th Street

6 Las Vegas, Nevada 89101

7 (702) 384-8424

8 **GREGORY J. KAMER, ESQ.**

9 Nevada Bar No. 0270

10 **BRYAN J. COHEN, ESQ.,**

11 Nevada Bar No. 8033

12 **KAMER ZUCKER ABBOTT**

13 3000 W. Charleston Blvd., #3

14 Las Vegas, Nevada 89102

15 (702) 259-8640

16 *Attorneys for Defendant*

17 **DISTRICT COURT**

18 **CLARK COUNTY, NEVADA**

19 Barbara Gilmour, individually and on
20 Behalf of all others similarly situated

21 Plaintiff,

22 vs.

23 DESERT CAB, INC.,

24 Defendant.

Case No.: A-12-668502-C

Dept. No.: III

25 **ORDER GRANTING IN PART AND STAYING IN PART DEFENDANT,**
26 **DESERT CAB, INC.'S MOTION TO DISMISS PLAINTIFF'S FIRST "CLAIMS"**

27 **FOR RELIEF**

28 **AND/OR MOTION TO STRIKE PLAINTIFF'S FIRST CLAIM FOR RELIEF**

AND/OR PRAYER FOR PUNITIVE DAMAGES AND PRAYER FOR

INJUNCTIVE AND EQUITABLE RELIEF

AND

DENYING PLAINTIFF'S BARBARA GILMOUR'S COUNTERMOTION FOR

DISCOVERY UNDER N.R.C.P. 56(f)



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1 Defendant, DESERT CAB, INC.'s Motion to Dismiss Plaintiff, BARBARA
2 GILMOUR's, individually and on behalf of all other similarly situated (collectively, the
3 "Plaintiff") First "Claims" for Relief pursuant to Nevada Rule of Civil Procedure
4 ("N.R.C.P.") 12(b)(5), and/or Defendant's Motion to Strike Plaintiff, 's First Claim for
5 Relief and/or Prayer for Punitive Damages and Prayer Injunctive and Equitable Relief
6 Pursuant to N.R.C.P. 12(f), and Plaintiff's Countermotion for Discovery Under N.R.C.P.
7 56(f) having come regularly for hearing on Wednesday, July 22, 2015, at 09:00 a.m., in
8 Department III of the above-entitled Court, the Honorable Douglas W. Herndon presiding,
9 LEON GREENBERG, ESQ., having appeared on behalf of Plaintiff and JEFFERY A.
10 BENDAVID, ESQ., of MORAN BRANDON BENDAVID MORAN, having appeared on
11 behalf of Defendant.
12

13
14 The Court having considered the pleadings and papers filed herein, the arguments of
15 counsel, and all other evidence presented **HEREBY GRANTS IN PART AND STAYS**
16 **IN PART** Defendant's Motion to Dismiss Plaintiff, BARBARA GILMOUR's, individually
17 and on behalf of all other similarly situated (collectively, the "Plaintiff") First "Claims" for
18 Relief pursuant to Nevada Rule of Civil Procedure ("N.R.C.P.") 12(b)(5), and/or
19 Defendant's Motion to Strike Plaintiff, 's First Claim for Relief and/or Prayer for Punitive
20 Damages and Prayer Injunctive and Equitable Relief Pursuant to N.R.C.P. 12(f), **HEREBY**
21 **DENIES** Plaintiff's Countermotion for Discovery Under N.R.C.P. 56(f), and **FINDS,**
22 **CONCLUDES, AND ORDERS** as follows:
23

24 **THE COURT FINDS** that the Nevada Supreme Court's decision in *Thomas v.*
25 *Yellow Cab Corp.*, 130 Nev. Adv. 52, 327 P.3d 518 (2014), did not implicitly repeal NRS
26 608.260.
27
28



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1 **THE COURT FURTHER FINDS** that NRS 608.260 is an "available" and
2 "appropriate" remedy available to an "employee" to rectify an alleged violation of
3 Nevada's Minimum Wage Amendment.

4 **THE COURT THEREFORE CONCLUDES** that Plaintiff's First Claim for
5 Relief is subject to the two (2) year statute of limitation expressly provided in NRS 608.260
6 since NRS 608.260 is an "available" and "appropriate" remedy available to Plaintiff to
7 rectify Defendant's alleged violation of Nevada's Minimum Wage Amendment.
8

9 **THE COURT HEREBY ORDERS** that Plaintiff's First Claim for Relief is
10 dismissed with prejudice but only to the extent Plaintiff's claim for unpaid minimum wage
11 is barred by the applicable two (2) year statute of limitation provided in NRS 608.260.
12

13 **THE COURT FURTHER FINDS** that to the extent any allegations in Plaintiff's
14 First Claim for Relief are intended to be construed, or could be construed, as a claim for
15 Conversion, the Plaintiff has failed to state a claim for relief for Conversion under Nevada
16 law upon which relief may be granted.
17

18 **THE COURT HEREBY ORDERS** Plaintiff's allegations, to the extent they are
19 intended to be construed, or could be construed, as involving Defendant's alleged
20 Conversion of Plaintiff's personal property are dismissed with prejudice and struck from
21 Plaintiff's First and Second Claims for Relief since Plaintiff has failed to state a claim for
22 Conversion upon which relief may be granted.
23

24 **THE COURT FURTHER FINDS** that the issue of whether Plaintiff's prayer for
25 injunctive/equitable relief should be struck from Plaintiff's First Amended Complaint is an
26 issue better suited for consideration at the time Plaintiff seeks to certify her class of similarly
27 situated individuals.
28



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1 THE COURT THEREFORE ORDERS that Defendant's Motion to Strike
2 Plaintiff's Prayer for Injunctive Relief is stayed until such time as Plaintiff moves to certify
3 her class of similarly situated individuals.

4
5 THE COURT FURTHER FINDS that NRS 42.005 provides that a plaintiff only
6 may obtain an award of exemplary and punitive damages in an action for the breach of an
7 obligation not arising from a contract.

8 THE COURT FURTHER FINDS that *Sprouse v. Wentz*, 105 Nev. 597, 603, 181
9 P.2d 1136, 1139 (1989), requires that an award of exemplary or punitive damages pursuant
10 to NRS 42.005 must be based upon a cause of action sounding in tort and not based on a
11 contract theory.

12
13 THE COURT FURTHER FINDS that Plaintiff's claims are based on Defendant's
14 alleged failure to pay Plaintiff Nevada's minimum wage while working as employees of
15 Defendant and/or at the time of each Plaintiff's resignation, termination, or discharge.

16
17 THE COURT FURTHER FINDS that none of Plaintiff's claims as alleged in
18 Plaintiff's First Amended Complaint sound in tort.

19 THE COURT THEREFORE ORDERS that Plaintiff's prayer for punitive
20 damages is hereby struck from Plaintiff's First Amended Complaint.

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1 THE COURT FURTHER ORDERS that since the Court has Granted Defendant's
2 Motion to Strike Defendant's Prayer for Punitive Damages, Plaintiff's Countermotion for
3 Discovery Under N.R.C.P. 56(f) is denied as moot.

4
5 IT IS SO ORDERED this 18 day of August, 2015.

6
7 
DISTRICT COURT JUDGE

8 Submitted by:

9 KAMER ZUCKER ABBOTT

10 
11 GREGORY J. KAMER, ESQ.

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25 Attorneys for Defendant

26 Approved as to form By:

27 LEON GREENBERG PROFESSIONAL CORPORATION

28 
LEON GREENBERG, ESQ.

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APPENDIX 25

APPENDIX 25

U.S. DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS

Western Information Office, 90 7th St., Suite 14-100, San Francisco, CA 94103

Information Staff (415) 625-2270 / Fax (415) 625-2351

10/15/15

Consumer Price Index, All Items, 1982-84=100 for All Urban Consumers (CPI-U)

U.S. CITY AVERAGE

YEAR	JAN	FEB	MARCH	APRIL	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	SEMIANNUAL		ANNUAL AVERAGE
													1ST HALF	2ND HALF	
1996	154.4	154.9	155.7	156.3	156.6	156.7	157.0	157.3	157.8	158.3	158.6	158.6	155.8	157.9	156.9
1997	159.1	159.6	160.0	160.2	160.1	160.3	160.5	160.8	161.2	161.6	161.5	161.3	159.9	161.2	160.5
1998	161.6	161.9	162.2	162.5	162.8	163.0	163.2	163.4	163.6	164.0	164.0	163.9	162.3	163.7	163.0
1999	164.3	164.5	165.0	166.2	166.2	166.2	166.7	167.1	167.9	168.2	168.3	168.3	165.4	167.8	166.6
2000	168.8	169.8	171.2	171.3	171.5	172.4	172.8	172.8	173.7	174.0	174.1	174.0	170.8	173.6	172.2
2001	175.1	175.8	176.2	176.9	177.7	178.0	177.5	177.5	178.3	177.7	177.4	176.7	176.6	177.5	177.1
2002	177.1	177.8	178.8	179.8	179.8	179.9	180.1	180.7	181.0	181.3	181.3	180.9	178.9	180.9	179.9
2003	181.7	183.1	184.2	183.8	183.5	183.7	183.9	184.6	185.2	185.0	184.5	184.3	183.3	184.6	184.0
2004	185.2	186.2	187.4	188.0	189.1	189.7	189.4	189.5	189.9	190.9	191.0	190.3	187.6	190.2	188.9
2005	190.7	191.8	193.3	194.6	194.4	194.5	195.4	196.4	198.8	199.2	197.6	196.8	193.2	197.4	195.3
2006	198.3	198.7	199.8	201.5	202.5	202.9	203.5	203.9	202.9	201.8	201.5	201.8	200.6	202.6	201.6
2007	202.4	203.5	205.4	206.7	207.9	208.4	208.3	207.9	208.5	208.9	210.2	210.0	205.7	209.0	207.3
2008	211.080	211.693	213.528	214.823	216.632	218.815	219.964	219.086	218.783	216.573	212.425	210.228	214.429	216.177	215.303
2009	211.143	212.193	212.709	213.240	213.856	215.693	215.351	215.834	215.969	216.177	216.330	215.949	213.139	215.935	214.537
2010	216.687	216.741	217.631	218.009	218.178	217.965	218.011	218.312	218.439	218.711	218.803	219.179	217.535	218.576	218.066
2011	220.223	221.309	223.467	224.906	225.964	225.722	225.922	226.545	226.889	226.421	226.230	225.672	223.598	226.280	224.939
2012	226.665	227.663	229.392	230.085	229.815	229.478	229.104	230.379	231.407	231.317	230.221	228.601	228.850	230.338	228.594
2013	230.280	232.166	232.773	232.531	232.945	233.504	233.596	233.877	234.149	233.546	233.069	233.049	232.366	233.548	232.957
2014	233.916	234.781	236.293	237.072	237.900	238.343	238.250	237.852	238.031	237.433	236.151	234.812	236.384	237.088	236.736
2015	233.707	234.722	236.119	236.599	237.805	238.638	238.654	238.316	237.945				236.265		

Table of over-the-year percent increases. An entry for Feb. 2006 indicates the percentage increase from Feb. 2005 to Feb. 2006.

1997	3.0	3.0	2.8	2.5	2.2	2.3	2.2	2.2	2.2	2.1	1.8	1.7	2.6	2.1	2.3
1998	1.6	1.4	1.4	1.4	1.7	1.7	1.7	1.6	1.5	1.5	1.5	1.6	1.5	1.6	1.6
1999	1.7	1.6	1.7	2.3	2.1	2.0	2.1	2.3	2.6	2.6	2.6	2.7	1.9	2.5	2.2
2000	2.7	3.2	3.8	3.1	3.2	3.7	3.7	3.4	3.5	3.4	3.4	3.4	3.3	3.5	3.4
2001	3.7	3.5	2.9	3.3	3.6	3.2	2.7	2.7	2.6	2.1	1.9	1.6	3.4	2.2	2.8
2002	1.1	1.1	1.5	1.6	1.2	1.1	1.5	1.8	1.5	2.0	2.2	2.4	1.3	1.9	1.6
2003	2.6	3.0	3.0	2.2	2.1	2.1	2.1	2.2	2.3	2.0	1.8	1.9	2.5	2.0	2.3
2004	1.9	1.7	1.7	2.3	3.1	3.3	3.0	2.7	2.5	3.2	3.5	3.3	2.3	3.0	2.7
2005	3.0	3.0	3.1	3.5	2.8	2.5	3.2	3.6	4.7	4.3	3.5	3.4	3.0	3.8	3.4
2006	4.0	3.6	3.4	3.5	4.2	4.3	4.1	3.8	2.1	1.3	2.0	2.5	3.8	2.6	3.2
2007	2.1	2.4	2.8	2.6	2.7	2.7	2.4	2.0	2.8	3.5	4.3	4.1	2.5	3.1	2.8
2008	4.3	4.0	4.0	3.9	4.2	5.0	5.6	5.4	4.9	3.7	1.1	0.1	4.2	3.4	3.8
2009	0.0	0.2	-0.4	-0.7	-1.3	-1.4	-2.1	-1.5	-1.3	-0.2	1.8	2.7	-0.6	-0.1	-0.4
2010	2.6	2.1	2.3	2.2	2.0	1.1	1.2	1.1	1.1	1.2	1.1	1.5	2.1	1.2	1.6
2011	1.6	2.1	2.7	3.2	3.6	3.5	3.6	3.8	3.9	3.5	3.4	3.0	2.8	3.5	3.2
2012	2.9	2.9	2.7	2.3	1.7	1.7	1.4	1.7	2.0	2.2	1.8	1.7	2.3	1.8	2.1
2013	1.6	2.0	1.5	1.1	1.4	1.8	2.0	1.5	1.2	1.0	1.2	1.5	1.5	1.4	1.5
2014	1.6	1.1	1.5	2.0	2.1	2.1	2.0	1.7	1.7	1.7	1.3	0.8	1.7	1.5	1.6
2015	-0.1	0.0	-0.1	-0.2	0.0	0.1	0.2	0.2	0.0				-0.1		