

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

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3
4 ERIN HANKS, *et al.*,

5 Appellants,

6 vs.

7 BRIAD RESTAURANT GROUP,
8 LLC, a New Jersey Limited Liability
Company,

9 Respondent,

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Tracie K. Lindeman
Clerk of Supreme Court

Case No. 68845

United States District Court
Case No.: 2:14-cv-00786-GMN-PAL

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12 **APPELLANTS' APPENDIX**

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CERTIFICATE OF SERVICE

STATE OF NEVADA, COUNTY OF CLARK

At the time of service, I was over 18 years of age and not a party to this 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.

On November 4, 2015, I served true copies of the following document(s) described as **APPELLANTS' APPENDIX** on the interested parties in this action as follows:

BY CM/ECF: Pursuant to N.E.F.R., 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.

Rick D. Roskelley, Esq.
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BY U.S. MAIL: I enclosed the document(s) listed above in a sealed envelope or package addressed to the persons at the addresses listed above and placed the envelopes for collection and mailing, following our ordinary business practices. I am readily familiar with Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP's practice for collecting and processing correspondence for mailing. On the 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, in a sealed envelope with postage fully prepaid.

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

Executed on November 4, 2015, at Las Vegas, Nevada.

By: /s/ Christie Rehfeld
Christie Rehfeld, an Employee of
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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

ERIN HANKS, an individual, on behalf of
herself and all similarly-situated individuals,

Plaintiff,

vs.

BRIAD RESTAURANT GROUP, LLC., a
New Jersey limited liability company; and
DOES 1 through 100, Inclusive,

Defendants.

CLASS ACTION COMPLAINT

The above-referenced Plaintiff (herein “Plaintiff”) through undersigned counsel, on behalf of herself and all persons similarly situated, complains and alleges as follows:

INTRODUCTION

1. This lawsuit is an individual and class action brought by Plaintiff, on behalf of herself and all similarly-situated employees of BRIAD RESTAURANT GROUP, LLC (“Defendant”), owner and operator of TGI Friday’s restaurants in Nevada (the “Restaurants”).

2. This lawsuit is a result of the Restaurants’ failure to pay Plaintiff and other

1 similarly-situated employees who are members of the Class the lawful minimum wage, because
2 the Restaurants improperly claim, or have claimed, the right to compensate employees at a
3 reduced minimum wage rate under Nev. Const. art. XV, § 16.

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

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

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

16 6. This means employees earning the reduced amount per hour can make up to 12.2%
17 less than minimum wage workers paid at the \$8.25 level.

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

23 8. Furthermore, in order to qualify to pay employees at a reduced minimum wage rate,
24 the health insurance benefits plan provided, offered, and/or maintained must be truly
25 comprehensive in its coverage, and cover “those categories of health care expenses that are
26 generally deductible by an employee on his/her individual federal income tax return pursuant to 26

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

1 U.S.C. § 213 and any federal regulations relating thereto, if such expenses had been borne directly
 2 by the employee.” N.A.C. 608.102(1)(a).

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

6 10. The Restaurants do pay, or have paid, Plaintiff and members of the Class at the
 7 reduced minimum wage rate.

8 11. The Restaurants do not provide, offer, and/or maintain qualifying health insurance
 9 plan benefits for the benefit of Plaintiff and members of the Class, and therefore Defendant is not,
 10 and has not been, eligible to pay Plaintiff and members of the Class at the reduced minimum wage
 11 rate. Either the Restaurants simply do not offer benefit plans to Plaintiff, or the plans offered do
 12 not meet constitutional coverage or cost requirements.

13 **PARTIES**

14 **A. Plaintiff**

15 12. Plaintiff ERIN HANKS is a resident of Nevada, and has worked as a server at TGI
 16 Friday’s restaurants owned and operated by Defendant in Clark County, Nevada. Defendant paid
 17 her \$7.25 per hour. She has one dependent child.

18 **B. Defendants**

19 13. Plaintiff is informed and believes and thereon alleges that at all times material
 20 hereto Defendant BRIAD RESTAURANT GROUP, LLC. was and is a New Jersey limited
 21 liability company, and it and any subsidiaries or affiliated companies were and are engaged in the
 22 ownership and operation of franchise and non-franchise restaurants located in Clark County and
 23 throughout Nevada. Upon information and belief, this Defendant owns and operates
 24 approximately seven TGI Friday’s restaurants in Clark County, Nevada, employs Plaintiff and
 25 Class members, and is conducting business in good standing in the State of Nevada.

26 14. Plaintiff sues fictitious Defendants DOES 1 through 100, inclusive, as Plaintiff do
 27 not know their true names and/or capacities, and upon ascertainment, will amend the Complaint
 28 with their true names and capacities. Plaintiff are informed and believe and on that basis allege

1 that each of said fictitiously named Defendants is responsible in some manner for the occurrences
 2 herein alleged, and that Plaintiff' damages were proximately caused by their conduct mentioned
 3 herein, each of the Defendants, including DOES 1 through 100, was an agent, joint-venturer,
 4 representative, alter ego, and/or employee of the other defendants, and was acting both
 5 individually and in the course and scope of said relationship at the time of the events herein
 6 alleged, and all aided and abetted the wrongful acts of the others.

7 **JURISDICTION AND VENUE**

8 15. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §
 9 1332(d), because diversity of the parties exists and the aggregate amount in controversy exceeds
 10 \$5,000,000.00.

11 16. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(ii) because acts
 12 giving rise to the claims of the Plaintiff herein occurred within this judicial district, and Defendant
 13 regularly conducts business in and have engaged and continue to engage in the wrongful conduct
 14 alleged herein—and, thus, are subject to personal jurisdiction—in this judicial district.

15 **GENERAL ALLEGATIONS**

16 **A. Plaintiff' Allegations**

17 17. Plaintiff Hanks works as a server at TGI Friday's restaurants owned and operated
 18 by Defendant in Clark County, Nevada, where she earned \$7.25 per hour, below the constitutional
 19 minimum wage under Nev. Const. art XV, § 16 of \$8.25 per hour.

20 18. Upon her initial hiring in December 2008, Ms. Hanks' was offered the company
 21 health insurance plan (the "Plan"). She declined insurance coverage at that time due to its high
 22 cost and its lack of coverage.

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

1 20. Furthermore, the Plan offered to Ms. Hanks (which, upon information and belief, is
2 the plan contracted for by Defendant for workers in its TGI Friday's locations in Nevada) is not,
3 and was not, in compliance with Nev. Const. art XV, § 16 or N.A.C. 608.104, as the premium
4 costs to her and her dependents exceeded the constitutionally-prescribed maximums.

5 21. The Restaurants, therefore, have been unlawfully paying Ms. Hanks sub-minimum
6 wage for the entirety of her employment.

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

8 22. Defendant maintains control, oversight, and direction over the operation of the
9 Restaurants, including their employment and/or labor practices.

10 23. Defendant (i) creates uniform wage and benefit policies and practices for use at the
11 Restaurants, (ii) imposes its uniform wage and benefit policies and practices at the Restaurants,
12 and (iii) maintains centralized human resource functions which implement wage and benefit
13 policies and practices at the Restaurants.

14 24. Defendants contract for and/or maintain the non-compliant Plan or Plan(s) which
15 are the subject of this lawsuit.

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

17 25. The Restaurants claim eligibility to pay, do pay, and have paid Plaintiff and
18 members of the Class at a reduced minimum wage rate pursuant to Nev. Const. art. XV, § 16.

19 26. The Restaurants do not provide, offer, and/or maintain health insurance plan
20 benefits that meet necessary requirements in order to qualify to pay Plaintiff and members of the
21 Class at the reduced minimum wage level.

22 27. The Plan, where provided, offered, and/or maintained by the Restaurants for the
23 benefit of Plaintiff and members of the Class, does not meet, and has not met, the minimum
24 coverage requirements under law for Plaintiff and members of the Class and their dependents, and
25 therefore the Restaurants are not, and have not been, eligible to pay Plaintiff and members of the
26 Class at the reduced minimum wage rate.

27 28. The Plan provided, offered, and/or maintained by the Restaurants for the benefit of
28 Plaintiff and members of the Class does not meet, and has not met, the maximum premium cost

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

4 29. Upon information and belief, members of the Class have been provided and/or
 5 offered the same non-qualifying Plan, or Plans, as Plaintiff while being paid at a reduced
 6 minimum wage rate. The Restaurants, therefore, have been unlawfully paying all Class members a
 7 sub-minimum wage and unlawfully-reduced overtime wages during employment by the
 8 Restaurants.

9 30. As a result, Plaintiff and the members of the Class are owed back pay and damages
 10 for every hour worked during the applicable period.

11 31. Defendants are aware of, and perpetuate, this ongoing violation of Nevada's
 12 constitutional provision regarding minimum wage, and associated regulatory provisions
 13 implementing same.

14 **CLASS ACTION ALLEGATIONS**

15 32. Plaintiff re-alleges and incorporates herein by this reference all the paragraphs
 16 above in this Complaint as though fully set forth herein.

17 33. Plaintiff brings this action pursuant to F.R.C.P. 23 on behalf of herself and all
 18 others similarly situated, as representative member of the following proposed Class:

19 **All current and former employees of Defendant at its Nevada**
 20 **TGI Friday's locations at any time during the applicable**
 21 **statutes of limitation who were compensated at less than the**
 22 **hourly minimum wage set forth in paragraph (b) of subsection**
 23 **1 of N.A.C. 608.100 at any time**

24 34. Numerosity: The members of the proposed Class are so numerous that individual
 25 joinder of all members is impracticable under the circumstances of this case, and the disposition of
 26 their claims as a Class will benefit the parties and the Court. The precise number of members
 27 should be readily available from a review of the Restaurants' personnel, payroll, and benefits
 28 records, and upon information and belief numbers in the thousands.

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

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

19 36. Typicality: Plaintiff's claims are typical of those of the proposed Class, and the
 20 relief sought is typical of the relief which would be sought by each member of the Class in
 21 separate actions. Plaintiff and all other proposed Class members sustained similar losses, injuries,
 22 and damages as a direct and proximate result of the Restaurants' same unlawful policies and/or
 23 practices. Plaintiff's claims arise from the Restaurants' same unlawful policies, practices, and/or
 24 course of conduct as all other proposed Class members' claims in that Plaintiff was denied lawful
 25 wages for hours worked, and Plaintiff's legal theories are based on the same legal theories as all
 26 other proposed Class members. The Restaurants' compensation and benefit policies and practices
 27 affected all Class members similarly, and the Restaurants benefited from the same type of unfair
 28 and/or wrongful acts done to each Class member.

1 37. Adequacy: Plaintiff is an adequate representative of the proposed Class because
2 Plaintiff is a member of the proposed Class she seeks to represent and her interests do not conflict
3 with the interests of the other members of the proposed Class that Plaintiff seeks to represent.
4 Plaintiff has retained counsel that is competent and experienced in complex class action litigation,
5 and Plaintiff intends to prosecute this action vigorously. The interests of members of the proposed
6 Class will be fairly and adequately protected by Plaintiff and her counsel. Neither Plaintiff nor her
7 counsel has interests that are contrary to, or conflicting with, the interests of the proposed Class.

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

21 39. The case will be manageable as a class action. Plaintiff and her counsel know of no
22 unusual difficulties in the case and the Restaurants have advanced networked computer, payroll,
23 and benefit systems that will allow the class, wage, benefits, and damages issues in the case to be
24 resolved with relative ease.

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

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FIRST CLAIM FOR RELIEF

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

Failure to Pay Lawful Minimum Wage

(On Behalf of Plaintiff and the Class against Defendant)

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

42. As described and alleged herein, the Restaurants pay, and have paid, Plaintiff 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.

43. The Restaurants are not, and/or were not, eligible to pay Plaintiff and members of the Class at a reduced minimum wage during any period where qualifying benefits were not provided, offered, or maintained by the Restaurants.

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

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 Plaintiff and the Class against Defendant)

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

46. As described and alleged herein, the Restaurants pay, and have paid, Plaintiff 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.

47. Health insurance benefits provided and/or offered to Plaintiff and members of the Class and their dependents did not meet coverage requirements under Nev. Const. art XV, § 16

1 and N.A.C. 608.102, and therefore the Restaurants are not, and/or were not, eligible to pay
 2 Plaintiff and members of the Class at the reduced minimum wage tier during any period where
 3 such qualifying benefits were not provided, offered, and/or maintained by the Restaurants.

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

9 **THIRD CLAIM FOR RELIEF**

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

11 **Failure to Pay Lawful Minimum Wage**

12 **(On Behalf of Plaintiff and the Class against Defendant)**

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

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

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

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and all other similarly-situated members of the Class, request that this Court enter an Order:

- A. Certifying this matter as a class action pursuant to F.R.C.P. 23, designating Plaintiff as Class representative, and appointing undersigned as Class counsel;
- B. Declaring the practices here complained of as unlawful under appropriate law;
- C. Granting judgment to Plaintiff and the members of the Class on their claims of unpaid wages as secured by law, as well as damages, interest, attorneys' fees and costs as applicable and appropriate;
- D. Granting punitive damages against the Defendant;
- E. Ordering such other relief as the Court may deem necessary and just; and

JURY TRIAL DEMAND

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

DATED this 19th day of May, 2014.

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

By: /s/ Don Springmeyer, Esq.
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9
10 **UNITED STATES DISTRICT COURT**
11 **DISTRICT OF NEVADA**

12 ERIN HANKS, an individual; DEATRA
13 ENARI, an individual; JEFFREY
14 ANDERSON, an individual; TOBY EARL,
an individual; SHYHEEM SMITH, an
15 individual; ROBERT BAKER, an
individual, JAMES SKADOWSKI, an
16 individual, MICHELLE PICKTHALL, an
individual, all on behalf of themselves and
17 all similarly-situated individuals,

18 Plaintiffs,

19 vs.

20 BRIAD RESTAURANT GROUP, LLC., a
21 New Jersey limited liability company; and
DOES 1 through 100, Inclusive,

22 Defendants.
23

Case No: 2:14-cv-00786-GMN-PAL

**FIRST AMENDED CLASS
ACTION COMPLAINT**

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

26 **INTRODUCTION**

27 1. This lawsuit is an individual and class action brought by Plaintiffs, on behalf of
28

1 themselves and all similarly-situated employees of BRIAD RESTAURANT GROUP, LLC
2 (“Defendant”), owner and operator of TGI Friday’s restaurants in Nevada (the “Restaurants”).

3 2. This lawsuit is a result of the Restaurants’ failure to pay Plaintiffs and other
4 similarly-situated employees who are members of the Class the lawful minimum wage, because
5 the Restaurants have improperly claimed eligibility 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 since 2010 the
17 Nevada minimum wage level is \$7.25 per hour if the employer provides qualifying health benefits,
18 or \$8.25 per hour if the employer does not provide such qualifying health benefits. Employers,
19 like Defendants, who claim eligibility to pay the reduced wage rate, therefore, can pay employees
20 up to 12.2% less than workers paid at the \$8.25 level.

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

24 7. The opportunity to compensate employees at a level beneath the standard minimum
25 wage rate is a privilege offered to employers by the voters of Nevada. Employers must qualify for
26 that privilege by providing, offering, and maintaining health insurance plans for their employees

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

1 that meet very specific regulatory standards.

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

8 9. Furthermore, the cost of health insurance benefit premiums for the employee, and
9 all his or her dependents, may not exceed “10 percent of the employee’s gross taxable income
10 from the employer.” Nev. Const. art. XV, § 16.

11 10. Failure to meet the specific requirements that establish a qualified health insurance
12 benefits plan means that the employer forfeits the right to pay employees at anything less than the
13 full minimum wage rate under Nev. Const. art. XV, § 16, currently \$8.25 per hour.

14 11. Defendant here pays Plaintiffs and members of the Class at the reduced minimum
15 wage rate.

16 12. Defendant does not provide, offer, and/or maintain qualifying health insurance plan
17 benefits for the benefit of Plaintiffs and members of the Class. In some instances, Defendants has
18 failed to offer benefit plans at all. In others, the plans offered are not cost-compliant for Plaintiffs
19 and their dependents. In all cases, Defendant’s plans do not meet specific coverage requirements
20 under law.

21 13. Defendant is not, and has not been, eligible to pay Plaintiffs and members of the
22 Class at the reduced minimum wage rate. It has forfeited the privilege extended to it under Article
23 XV, § 16. Instead, it now owes back pay and damages to all employees it has unlawfully
24 underpaid since passage of the minimum wage amendment in 2006.

25 **PARTIES**

26 **A. Plaintiffs**

27 14. Plaintiff ERIN HANKS is a resident of Nevada, and has worked as a server at TGI
28 Friday’s restaurants owned and operated by Defendant in Clark County, Nevada since December

1 2008. Her wage is, and has been since she began working for Defendant, \$7.25 per hour. She has
2 one dependent child.

3 15. Plaintiff DEATRA ENARI is a resident of Nevada, and has worked as a server at
4 TGI Friday's restaurants owned and operated by Defendant in Clark County, Nevada since 2008.
5 Her wage is, and has been since she began working for Defendant, \$7.25 per hour.

6 16. Plaintiff JEFFREY ANDERSON is a resident of Nevada, and worked as a server at
7 TGI Friday's restaurants owned and operated by Defendant in Clark County, Nevada between July
8 2009 and March 2013. He earned \$7.25 per hour between July 2010 and March 2013.

9 17. Plaintiff TOBY EARL is a resident of Nevada, and has worked as a bartender at
10 TGI Friday's restaurants owned and operated by Defendant in Clark County, Nevada, since
11 September 2008. His wage is, and has been since he began working for Defendant, \$7.25 per hour.

12 18. Plaintiff SHYHEEM SMITH is a resident of Nevada, and has worked as a busser at
13 TGI Friday's restaurants owned and operated by Defendant in Clark County, Nevada, since
14 February 2014. His wage is, and has been since he began working for Defendant, \$7.25 per hour.
15 He has four dependent children.

16 19. Plaintiff ROBERT BAKER is a resident of Nevada, and has worked as a server at
17 TGI Friday's restaurants owned and operated by Defendant in Clark County, Nevada, since
18 September 2013. His wage is, and has been since he began working for Defendant, \$7.25 per hour.

19 20. Plaintiff JAMES SKADOWSKI is a resident of California, and he worked as a
20 busser at TGI Friday's restaurants owned and operated by Defendant in Clark County, Nevada,
21 since December 2011. His wage is, and has been since he began working for Defendant, \$7.25 per
22 hour.

23 21. Plaintiff MICHELLE PICKTHALL is a resident of Nevada, and has worked as a
24 server at TGI Friday's restaurants owned and operated by Defendant in Clark County, Nevada,
25 since 2009. Her wage, between 2009 and March 2014, was \$7.25 per hour.

26 **B. Defendants**

27 22. Plaintiffs are informed and believe and thereon allege that at all times material
28 hereto Defendant BRIAD RESTAURANT GROUP, LLC. was and is a New Jersey limited

1 liability company, and it and any subsidiaries or affiliated companies were and are engaged in the
2 ownership and operation of franchise and non-franchise restaurants located in Clark County and
3 throughout Nevada. Upon information and belief, this Defendant owns and operates
4 approximately seven TGI Friday's restaurants in Clark County, Nevada, employs Plaintiffs and
5 Class members, and is conducting business in good standing in the State of Nevada.

6 23. Plaintiffs sue fictitious Defendants DOES 1 through 100, inclusive, as Plaintiffs do
7 not know their true names and/or capacities, and upon ascertainment, will amend the Complaint
8 with their true names and capacities. Plaintiffs are informed and believe and on that basis allege
9 that each of said fictitiously named Defendants is responsible in some manner for the occurrences
10 herein alleged, and that Plaintiffs' damages were proximately caused by their conduct mentioned
11 herein, each of the Defendants, including DOES 1 through 100, was an agent, joint-venturer,
12 representative, alter ego, and/or employee of the other defendants, and was acting both
13 individually and in the course and scope of said relationship at the time of the events herein
14 alleged, and all aided and abetted the wrongful acts of the others.

15 **JURISDICTION AND VENUE**

16 24. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §
17 1332(d), because diversity of the parties exists and the aggregate amount in controversy exceeds
18 \$5,000,000.00.

19 25. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(ii) because acts
20 giving rise to the claims of the Plaintiffs herein occurred within this judicial district, and
21 Defendant regularly conducts business in and have engaged and continue to engage in the
22 wrongful conduct alleged herein—and, thus, are subject to personal jurisdiction—in this judicial
23 district.

24 **GENERAL ALLEGATIONS**

25 **A. Plaintiffs' Allegations**

26 26. Plaintiff Hanks works as a server at TGI Friday's restaurants owned and operated
27 by Defendant in Clark County, Nevada, where she earns \$7.25 per hour, below the constitutional
28 minimum wage under Nev. Const. art XV, § 16 of \$8.25 per hour.

1 27. Upon her initial hiring in December 2008, Ms. Hanks' was offered the company
2 health insurance plan (the "Plan", which, upon information and belief, is the plan contracted for by
3 Defendant for employees in its TGI Friday's locations in Nevada). She declined insurance
4 coverage at that time due to its high cost and its lack of coverage.

5 28. The Plan offered to Ms. Hanks is not, and was not, in compliance with Nev. Const.
6 art XV, § 16 or N.A.C. 608.102, as it did not cover those categories of health care expenses that
7 are generally deductible by an employee on his/her individual federal income tax return pursuant
8 to 26 U.S.C. § 213 and any federal regulations relating thereto, if such expenses had been borne
9 directly by the employee.

10 29. Furthermore, the Plan offered to Ms. Hanks is not, and was not, in compliance with
11 Nev. Const. art XV, § 16 or N.A.C. 608.104, as the premium costs to her and her dependents
12 exceeded the constitutionally-prescribed maximums.

13 30. Defendant, therefore, has been unlawfully paying Ms. Hanks sub-minimum wage
14 for the entirety of her employment.

15 31. Plaintiff Enari works as a server at TGI Friday's restaurants owned and operated by
16 Defendant in Clark County, Nevada, where she earns \$7.25 per hour, below the constitutional
17 minimum wage under Nev. Const. art XV, § 16 of \$8.25 per hour.

18 32. Upon her initial hiring in 2008, Ms. Enari's was offered the company health
19 insurance Plan. She accepted the Plan during 2008 and 2009, and thereafter declined insurance
20 coverage due to its high cost and its lack of coverage.

21 33. The Plan offered to Ms. Enari is not, and was not, in compliance with Nev. Const.
22 art XV, § 16 or N.A.C. 608.102, as it did not cover those categories of health care expenses that
23 are generally deductible by an employee on his/her individual federal income tax return pursuant
24 to 26 U.S.C. § 213 and any federal regulations relating thereto, if such expenses had been borne
25 directly by the employee.

26 34. Furthermore, the Plan offered to Ms. Enari is not, and was not, in compliance with
27 Nev. Const. art XV, § 16 or N.A.C. 608.104, as the premium costs to her exceeded the
28 constitutionally-prescribed maximums.

1 35. Defendant, therefore, has been unlawfully paying Ms. Enari sub-minimum wage
2 for the entirety of her employment.

3 36. Plaintiff Anderson worked as a server at TGI Friday's restaurants owned and
4 operated by Defendant in Clark County, Nevada, where he earned \$7.25 per hour, below the
5 constitutional minimum wage under Nev. Const. art XV, § 16 of \$8.25 per hour.

6 37. Upon his initial hiring in July 2009, Mr. Anderson was offered the company health
7 insurance Plan. He declined insurance coverage at that time.

8 38. The Plan offered to Mr. Anderson is not, and was not, in compliance with Nev.
9 Const. art XV, § 16 or N.A.C. 608.102, as it did not cover those categories of health care expenses
10 that are generally deductible by an employee on his/her individual federal income tax return
11 pursuant to 26 U.S.C. § 213 and any federal regulations relating thereto, if such expenses had been
12 borne directly by the employee.

13 39. Defendant, therefore, was unlawfully paying Mr. Anderson sub-minimum wage for
14 the entirety of his employment.

15 40. Plaintiff Earl works as a bartender at TGI Friday's restaurants owned and operated
16 by Defendant in Clark County, Nevada, where he earns \$7.25 per hour, below the constitutional
17 minimum wage under Nev. Const. art XV, § 16 of \$8.25 per hour.

18 41. Defendant never offered or provided Mr. Earl health insurance benefits for himself.

19 42. Defendants, therefore, has been unlawfully paying Mr. Earl sub-minimum wage for
20 the entirety of his employment.

21 43. Plaintiff Smith works as a busser at TGI Friday's restaurants owned and operated
22 by Defendant in Clark County, Nevada, where he earns \$7.25 per hour, below the constitutional
23 minimum wage under Nev. Const. art XV, § 16 of \$8.25 per hour.

24 44. Defendant never offered or provided Mr. Smith health insurance benefits for
25 himself or his dependent children.

26 45. Defendant therefore, has been unlawfully paying Mr. Smith sub-minimum wage for
27 the entirety of his employment.

28 46. Plaintiff Baker works as a server at TGI Friday's restaurants owned and operated

1 by Defendant in Clark County, Nevada, where he earns \$7.25 per hour, below the constitutional
2 minimum wage under Nev. Const. art XV, § 16 of \$8.25 per hour.

3 47. Defendant never offered or provided Mr. Baker health insurance benefits for
4 himself.

5 48. Defendant therefore, has been unlawfully paying Mr. Baker sub-minimum wage for
6 the entirety of his employment.

7 49. Plaintiff Skadowski worked as a busser at TGI Friday's restaurants owned and
8 operated by Defendant in Clark County, Nevada, where he earned \$7.25 per hour, below the
9 constitutional minimum wage under Nev. Const. art XV, § 16 of \$8.25 per hour.

10 50. Defendant never offered or provided Mr. Skadowski health insurance benefits for
11 himself.

12 51. Defendant therefore, unlawfully paid Mr. Skadowski sub-minimum wage for the
13 entirety of his employment

14 52. Plaintiff Pickthall works as a server at TGI Friday's restaurants owned and
15 operated by Defendant in Clark County, Nevada, where, between 2009 and March, 2014, she
16 earned \$7.25 per hour, below the constitutional minimum wage under Nev. Const. art XV, § 16 of
17 \$8.25 per hour.

18 53. Defendant never offered or provided Ms. Pickthall health insurance benefits for
19 herself, and she was repeatedly told that she did not qualify for any such benefits in any event.

20 54. Defendant therefore, unlawfully paid Ms. Pickthall sub-minimum wage for
21 approximately five years of her employment.

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

23 55. Defendant maintains control, oversight, and direction over the operation of the
24 Restaurants, including their employment and/or labor practices.

25 56. Defendant (i) creates uniform wage and benefit policies and practices for use at the
26 Restaurants, (ii) imposes its uniform wage and benefit policies and practices at the Restaurants,
27 and (iii) maintains centralized human resource functions which implement wage and benefit
28 policies and practices at the Restaurants.

57. Defendant contracts for and/or maintains the non-compliant Plan or Plan(s) which are the subject of this lawsuit.

C. Defendant's Unlawful Minimum Wage Practices

58. The Restaurants claim eligibility to pay, do pay, and have paid Plaintiffs and members of the Class for many years at a reduced minimum wage rate pursuant to Nev. Const. art. XV, § 16.

59. Defendant does not provide, offer, and/or maintain health insurance plan benefits that meet necessary requirements in order to qualify to pay Plaintiffs and members of the Class at the reduced minimum wage level.

60. Upon information and belief, members of the Class have been provided and/or offered the same non-qualifying Plan, or Plans, as Plaintiffs while being paid at a reduced minimum wage rate. Defendant, therefore, has been unlawfully paying all Class members a sub-minimum wage during employment at the Restaurants.

61. Defendant is aware of, and perpetuate, this ongoing violation of Nevada's constitutional provision regarding minimum wage, and associated regulatory provisions implementing same

62. As a result, pursuant to Nev. Const. art. XV, § 16, Plaintiffs and the members of the Class are owed back pay and damages for every hour worked during the applicable period.

CLASS ACTION ALLEGATIONS

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

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

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

1 65. Numerosity: The members of the proposed Class are so numerous that individual
 2 joinder of all members is impracticable under the circumstances of this case, and the disposition of
 3 their claims as a Class will benefit the parties and the Court. The precise number of members
 4 should be readily available from a review of Defendant's personnel, payroll, and benefits records,
 5 and upon information and belief numbers in the thousands.

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

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

24 67. Typicality: Plaintiffs' claims are typical of those of the proposed Class, and the
 25 relief sought is typical of the relief which would be sought by each member of the Class in
 26 separate actions. Plaintiffs and all other proposed Class members sustained similar losses, injuries,
 27 and damages as a direct and proximate result of Defendant's same unlawful policies and/or
 28 practices. Plaintiffs' claims arise from Defendant's same unlawful policies, practices, and/or

1 course of conduct as all other proposed Class members' claims in that Plaintiffs were denied
2 lawful wages for hours worked, and Plaintiffs' legal theories are based on the same legal theories
3 as all other proposed Class members. Defendant's compensation and benefit policies and practices
4 affected all Class members similarly, and Defendant benefited from the same type of unfair and/or
5 wrongful acts done to each Class member.

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

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

27 70. The case will be manageable as a class action. Plaintiffs and their counsel know of
28 no unusual difficulties in the case and Defendant has advanced networked computer, payroll, and

1 benefit systems that will allow the class, wage, benefits, and damages issues in the case to be
2 resolved with relative ease.

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

5 **FIRST CLAIM FOR RELIEF**

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

7 **Failure to Pay Lawful Minimum Wage**

8 **(On Behalf of Plaintiffs and the Class against Defendant)**

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

11 73. As described and alleged herein, Defendant pays, and has paid, Plaintiffs and
12 members of the Class at a reduced minimum wage level pursuant to Nev. Const. art XV, § 16
13 without providing qualifying health insurance benefits as required by that provision.

14 74. Defendant is not, and/or was not, eligible to pay Plaintiffs and members of the
15 Class at a reduced minimum wage during any period where qualifying benefits were not provided,
16 offered, or maintained by Defendant.

17 75. Pursuant to Nev. Const. art XV, § 16, Defendant is liable to Plaintiffs and members
18 of the Class for their unpaid wages for any period during which the Restaurants were ineligible to
19 compensate Plaintiffs and members of the Class at a reduced minimum wage; an award of
20 damages; costs of the action; reasonable attorneys' fees; and any other relief deemed appropriate
21 by this Court.

22 **SECOND CLAIM FOR RELIEF**

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

24 **Failure to Pay Lawful Minimum Wage**

25 **(On Behalf of Plaintiffs and the Class against Defendant)**

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

83. Pursuant to Nev. Const. art XV, § 16, Defendant is liable to Plaintiffs and members of the Class for their unpaid wages for any period during which Defendant was 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.

PRAYER FOR RELIEF

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

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

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

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

D. Granting punitive and exemplary damages against the Defendant pursuant to law; and

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

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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 23rd day of May, 2014.

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

By: /s/ Don Springmeyer, Esq.

DON SPRINGMEYER, ESQ.

Nevada State Bar No. 1021

BRADLEY SCHRAGER, ESQ.

Nevada State Bar No. 10217

DANIEL BRAVO, ESQ.

Nevada State Bar No. 13078

3556 E. Russell Road, Second Floor

Las Vegas, Nevada 89120

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 Defendant

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

ERIN HANKS, an individual; DEATRA
ENARI, an individual; JEFFREY
ANDERSON, an individual; TOBY EARL,
an individual; SHYHEEM SMITH, an
individual; ROBERT BAKER, an
individual; JAMES SKADOWSKI, an
individual; MICHELLE PICKTHALL, an
individual, all on behalf of themselves and
all similarly-situated individuals;

Plaintiffs,

vs.

BRIAD RESTAURANT GROUP, LLC., a
New Jersey limited liability company; and
DOES 1 through 100, inclusive,

Defendant.

Case No. 2:14-cv-00786-GMN-PAL

**DEFENDANT'S ANSWER TO
PLAINTIFFS' FIRST AMENDED CLASS
ACTION COMPLAINT**

Defendant Briad Restaurant Group, LLC ("Briad" or "Defendant"), by and through their
attorneys of record, Littler Mendelson, P.C., hereby answers Plaintiffs' Complaint as follows:

INTRODUCTION

1. Answering paragraph 1 of the First Amended Class Action Complaint, Defendant
responds that the allegations of this paragraph do not allege any act or omission by Defendant and do
not require a response. To the extent that a response is required, Defendant lacks knowledge or

1 information sufficient to form a belief about the truth of said allegation, which statement has the
2 effect of a denial.

3 2. Defendant denies the allegations set forth in paragraph 2 of the First Amended Class
4 Action Complaint.

5 3. Answering paragraph 3 of the First Amended Class Action Complaint, Defendant
6 responds that the allegations of this paragraph do not allege any act or omission by Defendant and do
7 not require a response. To the extent that a response is required, Defendant lacks 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 4. Answering paragraph 4 of the First Amended Class Action Complaint, Defendant
11 responds that the allegations of this paragraph do not allege any act or omission by Defendant and do
12 not require a response. To the extent that a response is required, Defendant lacks 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 5. Answering paragraph 5 of the First Amended Class Action Complaint, Defendant
16 responds that the allegations of this paragraph do not allege any act or omission by Defendant and do
17 not require a response. To the extent that a response is required, Defendant lacks knowledge or
18 information sufficient to form a belief about the truth of said allegation, which statement has the
19 effect of a denial.

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

25 7. Answering paragraph 7 of the First Amended Class Action Complaint, Defendant
26 responds that the allegations of this paragraph do not allege any act or omission by Defendant and do
27 not require a response. To the extent that a response is required, Defendant lacks knowledge or
28 information sufficient to form a belief about the truth of said allegation, which statement has the

1 effect of a denial.

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

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

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

17 11. Answering paragraph 11 of the First Amended Class Action Complaint, Defendant
18 responds that it pays or paid some employees an hourly rate below \$8.25 but at or above \$7.25 per
19 hour. Defendant lacks knowledge or information sufficient to form a belief about the truth of the
20 remaining allegations of paragraph 11, which has the effect of a denial.

21 12. Defendant denies the allegations set forth in paragraph 12 of the First Amended Class
22 Action Complaint.

23 13. Defendant denies the allegations set forth in paragraph 13 of the First Amended Class
24 Action Complaint.

25 PARTIES

26 A. Plaintiffs

27 14. Answering paragraph 14 of the First Amended Class Action Complaint, Defendant
28 admits that Plaintiff Erin Hanks is an employee of Briad and worked as a server at TGI Friday's

1 restaurants owned and operated by Briad in Clark County, Nevada, and that as a server she was paid
2 \$7.25 per hour. Defendant lacks knowledge or information sufficient to form a belief about the truth
3 of the remaining allegations of paragraph 14 of the First Amended Class Action Complaint, which
4 has the effect of a denial.

5 15. Answering paragraph 15 of the First Amended Class Action Complaint, Defendant
6 admits that Plaintiff Deatra Enari is an employee of Briad and worked as a server at TGI Friday's
7 restaurants owned and operated by Briad in Clark County, Nevada, and that as a server she was paid
8 \$7.25 per hour. Defendant lacks knowledge or information sufficient to form a belief about the truth
9 of the remaining allegations of paragraph 15 of the First Amended Class Action Complaint, which
10 has the effect of a denial.

11 16. Answering paragraph 16 of the First Amended Class Action Complaint, Defendant
12 admits that Plaintiff Jeffrey Anderson is an employee of Briad and worked as a server at TGI
13 Friday's restaurants owned and operated by Briad in Clark County, Nevada, and that as a server he
14 was paid \$7.25 per hour. Defendant lacks knowledge or information sufficient to form a belief about
15 the truth of the remaining allegations of paragraph 16 of the First Amended Class Action Complaint,
16 which has the effect of a denial.

17 17. Answering paragraph 17 of the First Amended Class Action Complaint, Defendant
18 admits that Plaintiff Toby Earl is an employee of Briad and worked as a bartender at TGI Friday's
19 restaurants owned and operated by Briad in Clark County, Nevada, and that as a bartender he was
20 paid \$7.25 per hour. Defendant lacks knowledge or information sufficient to form a belief about the
21 truth of the remaining allegations of paragraph 17 of the First Amended Class Action Complaint,
22 which has the effect of a denial.

23 18. Answering paragraph 18 of the First Amended Class Action Complaint, Defendant
24 admits that Plaintiff Shyheem Smith was an employee of Briad and worked as a busser at TGI
25 Friday's restaurants owned and operated by Briad in Clark County, Nevada, and that as a busser he
26 was paid \$7.25 per hour. Defendant lacks knowledge or information sufficient to form a belief about
27 the truth of the remaining allegations of paragraph 18 of the First Amended Class Action Complaint,
28 which has the effect of a denial.

1 19. Answering paragraph 19 of the First Amended Class Action Complaint, Defendant
2 admits that Plaintiff Robert Baker is an employee of Briad and worked as a server at TGI Friday's
3 restaurants owned and operated by Briad in Clark County, Nevada, and that as a server he was paid
4 \$7.25 per hour. Defendant lacks knowledge or information sufficient to form a belief about the truth
5 of the remaining allegations of paragraph 19 of the First Amended Class Action Complaint, which
6 has the effect of a denial.

7 20. Answering paragraph 20 of the First Amended Class Action Complaint, Defendant
8 admits that Plaintiff James Skadowski is an employee of Briad and worked as a busser at TGI
9 Friday's restaurants owned and operated by Briad in Clark County, Nevada, and that as a server he
10 was paid \$7.25 per hour. Defendant lacks knowledge or information sufficient to form a belief about
11 the truth of the remaining allegations of paragraph 20 of the First Amended Class Action Complaint,
12 which has the effect of a denial.

13 21. Answering paragraph 21 of the First Amended Class Action Complaint, Defendant
14 admits that Plaintiff Michelle Pickthall was an employee of Briad and worked as a server at TGI
15 Friday's restaurants owned and operated by Briad in Clark County, Nevada, and that as a server she
16 was paid \$7.25 per hour. Defendant lacks knowledge or information sufficient to form a belief about
17 the truth of the remaining allegations of paragraph 21 of the First Amended Class Action Complaint,
18 which has the effect of a denial.

19 **B. Defendants**

20 22. Answering paragraph 22 of the First Amended Class Action Complaint, Defendant
21 denies all allegations concerning "any subsidiaries or affiliated companies." Defendant further
22 denies that it is engaged in the ownership and operation of non-franchise restaurants. Defendant
23 admits the remaining allegations of paragraph 22 of the First Amended Class Action Complaint.

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

JURISDICTION AND VENUE

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

25. Defendants denies 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, Defendant admits that Plaintiff Hanks works as a server at a TGI Friday's restaurant owned and operated by Briad and that she earns \$7.25 per hour. Defendant denies the remaining allegations of paragraph 26 of the First Amended Class Action Complaint.

27. Answering paragraph 27 of the First Amended Class Action Complaint, Defendant admits that Plaintiff Hanks was offered a health insurance plan. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations of paragraph 27 of the First Amended Class Action Complaint, which has the effect of a denial.

28. Defendant denies the allegations set forth in paragraph 28 of the First Amended Class Action Complaint.

29. Defendant denies the allegations set forth in paragraph 29 of the First Amended Class Action Complaint.

30. Defendant denies the allegations set forth in paragraph 30 of the First Amended Class Action Complaint.

31. Answering paragraph 31 of the First Amended Class Action Complaint, Defendant admits that Plaintiff Enari works as a server at a TGI Friday's owned and operated by Briad and that she earns \$7.25 per hour. Defendant denies the remaining allegations of paragraph 31 of the First Amended Class Action Complaint.

1 32. Answering paragraph 32 of the First Amended Class Action Complaint, Defendant
2 admits that Plaintiff Enari was offered a health insurance plan. Defendant denies the remaining
3 allegations of paragraph 32 of the First Amended Class Action Complaint.

4 33. Defendant denies the allegations set forth in paragraph 33 of the First Amended Class
5 Action Complaint.

6 34. Defendant denies the allegations set forth in paragraph 34 of the First Amended Class
7 Action Complaint.

8 35. Defendant denies the allegations set forth in paragraph 35 of the First Amended Class
9 Action Complaint.

10 36. Answering paragraph 36 of the First Amended Class Action Complaint, Defendant
11 admits that Plaintiff Anderson works as a server at a TGI Friday's owned and operated by Briad and
12 that he earns \$7.25 per hour. Defendant denies the remaining allegations of paragraph 36 of the First
13 Amended Class Action Complaint.

14 37. Defendant admits the allegations set forth in paragraph 37 of the First Amended Class
15 Action Complaint.

16 38. Defendant denies the allegations set forth in paragraph 38 of the First Amended Class
17 Action Complaint.

18 39. Defendant denies the allegations set forth in paragraph 39 of the First Amended Class
19 Action Complaint.

20 40. Answering paragraph 40 of the First Amended Class Action Complaint, Defendant
21 admits that Plaintiff Earl works as a bartender at a TGI Friday's restaurant owned and operated by
22 Briad and that he earns \$7.25 per hour. Defendant denies the remaining allegations set forth in
23 paragraph 40 of the First Amended Class Action Complaint.

24 41. Defendant denies the allegations set forth in paragraph 41 of the First Amended Class
25 Action Complaint.

26 42. Defendant denies the allegations set forth in paragraph 42 of the First Amended Class
27 Action Complaint.

28 43. Answering paragraph 43 of the First Amended Class Action Complaint, Defendants

1 admit that Plaintiff Smith works as a busser at a TGI Friday's restaurant owned and operated by
2 Briad in Clark County, Nevada and that he earns \$7.25 per hour. Defendant denies the remaining
3 allegations of paragraph 43 of the First Amended Class Action Complaint.

4 44. Defendant denies the allegations set forth in paragraph 44 of the First Amended Class
5 Action Complaint.

6 45. Defendant denies the allegations set forth in paragraph 45 of the First Amended Class
7 Action Complaint.

8 46. Answering paragraph 46 of the First Amended Class Action Complaint, Defendant
9 admits that Plaintiff Baker works as a server at a TGI Friday's owned and operated by Briad in Clark
10 County, Nevada and that he has earned \$7.25 per hour. Defendant denies the remaining allegations
11 of paragraph 46 of the First Amended Class Action Complaint.

12 47. Defendant denies the allegations set forth in paragraph 47 of the First Amended Class
13 Action Complaint.

14 48. Defendant denies the allegations set forth in paragraph 48 of the First Amended Class
15 Action Complaint.

16 49. Answering paragraph 49 of the First Amended Class Action Complaint, Defendant
17 admits that Plaintiff Skadowski worked as a busser at a TGI Friday's restaurant owned and operated
18 by Briad in Clark County, Nevada and that he earned \$7.25 per hour. Defendant denies the
19 remaining allegations of paragraph 49 of the First Amended Class Action

20 50. Defendant denies the allegations set forth in paragraph 50 of the First Amended Class
21 Action Complaint.

22 51. Defendant denies the allegations set forth in paragraph 51 of the First Amended Class
23 Action Complaint.

24 52. Answering paragraph 52 of the First Amended Class Action Complaint, Defendant
25 admits that Plaintiff Pickthall works as a server at a TGI Friday's restaurant owned and operated by
26 Briad in Clark County, Nevada and that she earns \$7.25 per hour. Defendants deny the remaining
27 allegations of paragraph 52 of the First Amended Class Action Complaint.

28 53. Defendant denies the allegations set forth in paragraph 53 of the First Amended Class

1 Action Complaint.

2 54. Defendant denies the allegations set forth in paragraph 54 of the First Amended Class
3 Action Complaint.

4 **B. Defendant's Control of the Companies**

5 55. Defendant denies the allegations set forth in paragraph 55 of the First Amended Class
6 Action Complaint.

7 56. Defendant denies the allegations set forth in paragraph 56 of the First Amended Class
8 Action Complaint.

9 57. Defendant denies the allegations set forth in paragraph 57 of the First Amended Class
10 Action Complaint.

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

12 58. Answering paragraph 58 of the First Amended Class Action Complaint, Defendant
13 admits that Defendant TGI Friday's pays and has paid certain employees a reduced minimum wage
14 pursuant to Nev. Const. art. XV, § 16. Defendant denies the remaining allegations of paragraph 58 of
15 the First Amended Class Action Complaint.

16 59. Defendant denies the allegations set forth in paragraph 59 of the First Amended Class
17 Action Complaint.

18 60. Defendant denies the allegations set forth in paragraph 60 of the First Amended Class
19 Action Complaint.

20 61. Defendant denies the allegations set forth in paragraph 61 of the First Amended Class
21 Action Complaint.

22 62. Defendant denies the allegations set forth in paragraph 62 of the First Amended Class
23 Action Complaint.

24 **CLASS ACTION ALLEGATIONS**

25 63. Answering paragraph 63 of the First Amended Class Action Complaint, Defendant
26 repeats and re-alleges by reference each and every response, denial and admission contained in
27 Paragraphs 1 through 62, and incorporate the same as though fully set forth herein.

28 64. Answering paragraph 64 of the First Amended Class Action Complaint, Defendant

1 responds that the allegations of this paragraph do not allege any act or omission by Defendant and do
 2 not require a response. To the extent that a response is required, Defendant lacks 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 65. Defendant denies the allegations set forth in paragraph 65 of the First Amended Class
 6 Action Complaint.

7 66. Defendant denies the allegations set forth in paragraph 66 of the First Amended Class
 8 Action Complaint.

9 67. Defendant denies the allegations set forth in paragraph 67 of the First Amended Class
 10 Action Complaint.

11 68. Defendant denies the allegations set forth in paragraph 68 of the First Amended Class
 12 Action Complaint.

13 69. Defendant denies the allegations set forth in paragraph 69 of the First Amended Class
 14 Action Complaint.

15 70. Defendant denies the allegations set forth in paragraph 70 of the First Amended Class
 16 Action Complaint.

17 71. Defendant denies the allegations set forth in paragraph 71 of the First Amended Class
 18 Action Complaint.

19 **FIRST CLAIM FOR RELIEF**

20 **(Violation of Nev. Const. art. XV, § 16 – Failure to Pay Lawful Minimum Wage on Behalf of** 21 **Plaintiffs and the Class against Defendants)**

22 72. Answering paragraph 72 of the First Amended Class Action Complaint, Defendant
 23 repeats and re-alleges by reference each and every response, denial and admission contained in
 24 Paragraphs 1 through 71, and incorporate the same as though fully set forth herein

25 73. Defendant denies the allegations set forth in paragraph 73 of the First Amended Class
 26 Action Complaint.

27 74. Defendant denies the allegations set forth in paragraph 74 of the First Amended Class
 28 Action Complaint.

75. Defendant denies the allegations set forth in paragraph 75 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)

76. Defendant is not required to answer Paragraphs 76-79 as Plaintiffs Second Claim for Relief was dismissed with prejudice pursuant to the Court's Order of February 24, 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)

80. Defendant is not required to answer Paragraphs 80-83 as Plaintiffs Third Claim for Relief was dismissed with prejudice pursuant to the Court's Order of February 24, 2015.

PRAYER FOR RELIEF

Defendant is not required to respond to Plaintiffs' prayer for relief. However, to the extent Plaintiffs' prayer asserts allegations, Defendant denies the allegations in Plaintiffs' prayer.

AFFIRMATIVE DEFENSES

1. For and as a first, separate defense to the First Amended Class Action Complaint, Defendant alleges 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, Defendant alleges 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, Defendant alleges 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,

1 Defendant alleges that the First Amended Class Action Complaint is barred to the extent Plaintiffs or
2 any member of the alleged class which Plaintiffs purports to represent, the existence of which is
3 expressly denied, have executed a compromise and release of any claims asserted in this lawsuit.

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

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

10 7. For and as a seventh, separate defense to the First Amended Class Action Complaint,
11 Defendant alleges that with respect to some or all of the claims brought by Plaintiffs that any act(s)
12 and/or omissions which may be found to be in violation of state law, occurred in good faith in
13 conformity with and in reliance on a written administrative regulation, order, ruling, approval and/or
14 interpretation by the Nevada Labor Commissioner, with respect to the class of employers to which
15 Defendant belongs.

16 8. For and as a eighth, separate defense to the First Amended Class Action Complaint,
17 Defendant alleges that Plaintiffs have failed to timely make demand in writing for wages due and
18 payable.

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

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

26 11. For and as an eleventh, separate defense to the First Amended Class Action
27 Complaint, Defendant alleges that the First Amended Class Action Complaint is barred to the extent
28 that the claims alleged by Plaintiffs are neither common to nor typical of those, if any, of the alleged

1 class of persons whom they purport to represent, the existence of which is expressly denied.

2 12. For and as a twelfth, separate defense to the First Amended Class Action Complaint,
3 Defendant alleges that the First Amended Class Action Complaint is barred to the extent that
4 Plaintiffs are inadequate representatives of the alleged class of persons whom they purport to
5 represent, the existence of which is expressly denied.

6 13. For and as a thirteenth, separate defense to the First Amended Class Action
7 Complaint, Defendant alleges that the types of claims alleged by Plaintiffs on behalf of themselves
8 and the class of persons whom Plaintiffs purport to represent, the existence of which is expressly
9 denied, are matters in which individual questions predominate and not appropriate for class
10 treatment.

11 14. For and as a fourteenth, separate defense to the First Amended Class Action
12 Complaint, Defendant alleges that because liability may not be determined by a single jury on a class
13 wide basis, allowing this action to proceed as a collective action would violate Defendants' rights
14 under the Seventh Amendment.

15 15. For and as a fifteenth, separate defense to the First Amended Class Action Complaint,
16 Defendant alleges that Plaintiffs have failed to exhaust their administrative, statutory, and/or
17 contractual remedies.

18 16. For and as a sixteenth, separate defense to the First Amended Class Action
19 Complaint, Defendant alleges that Defendant acted in a good faith belief that it was in compliance
20 with all applicable statutes, law, and regulations concerning payment of wages and any other
21 compensation owed to Plaintiffs.

22 17. For and as a seventeenth, separate defense to the First Amended Class Action
23 Complaint, Defendant alleges that at no time did Defendant pay Plaintiffs in a manner known or
24 believed to violate any applicable minimum wage laws, nor did Defendant compensate Plaintiffs in
25 willful disregard of any applicable minimum wage laws.

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

1 WHEREFORE, Defendant prays as follows:

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

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

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

7 Dated: March 4, 2015

8 Respectfully submitted,

9 

10 RICK D. ROSKELLEY, ESQ.
11 ROGER L. GRANDGENETT II, ESQ.
12 MONTGOMERY Y. PAEK, ESQ.
13 KATIE B. BLAKEY, ESQ.
14 LITTLER MENDELSON, P.C.

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 March 4, 2015, I served the within document:

DEFENDANT'S 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.
Daniel Bravo, Esq.
Roi Moas, Esq.
Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP
3556 E. Russell Road, 2nd Floor
Las Vegas, NV 89120-2234

4 I declare under penalty of perjury that the foregoing is true and correct. Executed on March 4, 2015, at Las Vegas, Nevada.



Debra Perkins

Firmwide:131964695.1 058582.1012

RICK D. ROSKELLEY, ESQ., Bar # 3192
ROGER L. GRANDGENETT II, ESQ., Bar # 6323
MONTGOMERY Y. PAEK, ESQ., Bar # 10176
KATHRYN B. BLAKEY, ESQ., Bar # 12701
LITTLER MENDELSON, P.C.
3960 Howard Hughes Parkway
Suite 300
Las Vegas, NV 89169-5937
Telephone: 702.862.8800
Fax No.: 702.862.8811

Attorneys for Defendant
Briad Restaurant Group, LLC

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

ERIN HANKS, et al.;
Plaintiffs,

vs.

BRIAD RESTAURANT GROUP, LLC., a
New Jersey limited liability company; and
DOES 1 through 100, inclusive,
Defendant.

Case No. 2:14-cv-00786-GMN-PAL

**JOINT MOTION FOR CERTIFICATION
OF QUESTION OF LAW TO THE
NEVADA SUPREME COURT**

Plaintiffs Erin Hanks (“Plaintiffs”) and Defendant BRIAD RESTAURANT GROUP, LLC, (“Defendant” or “Briad”), by and through its counsel of record, hereby file their Joint Motion for Certification of Question of Law to the Nevada Supreme Court under Rule 5 of the Nevada Rules of Appellate Procedure.

On September 8, 2015 Plaintiffs filed their motion for Partial Summary Judgment as to Liability asserting that they are “entitled to partial summary judgment on their first claim for relief, because Defendant could only pay the lower-tier wage if it *actually provided* (or supplied or furnished) a qualifying health plan, which they did not, but must have paid the upper-tier wage to him if they did not *actually provide* (or supply or furnish) such benefits, for any reason.” *See Diaz v. MDC Restaurants, LLC*, A-14-701633-C, Eighth Judicial Dist., Dept. XVI (July 17, 2015); *Hancock v. The State of Nevada*, 14 OC 00080 1B, First Judicial Dist., Dept. II (Aug. 14, 2015).

1 It is Defendant's position that if an employer provides health insurance to its employees, it
 2 may pay those employees the lower-tier minimum wage and that the plain and ordinary meaning of
 3 the word "provide" is "to make available." Therefore, Defendant contends that if an employer makes
 4 health insurance available to its employees, it may pay the lower tier minimum wage. *See* NAC §
 5 608.102 ("To qualify to pay an employee the [lower-tier] minimum wage...[t]he employer must
 6 offer a health insurance plan...[and] [t]he health insurance plan must be made available to the
 7 employee and any dependents of the employee.") (emphasis added); see also NAC §§ 608.100, 106–
 8 08.

9 Thus, the parties disagree as to whether "provide" in the context of the Minimum Wage
 10 Amendment means that an employer's offer of health benefits is sufficient to pay the lower wage
 11 rate under the Minimum Wage Amendment.

12 This Court has previously reviewed and decided this issue in a virtually identical motion in
 13 *Tyus v. Cedar Enterprises, et. al*, Case No. 2:14-cv-00729-GMN-VCF (Doc. No. 71). In that matter,
 14 the Court denied plaintiffs' motion without prejudice with permission to renew the motion within
 15 thirty days of the resolution of the following question which the Court certified to the Nevada
 16 Supreme Court:

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

20 Additionally, the Court denied all other pending motions in that matter without prejudice with
 21 permission to re-file upon resolution of the Certified Question to the Nevada Supreme Court.

22 In the instant matter, the parties jointly request that the Court take similar action with respect
 23 to Plaintiffs' Partial Summary Judgment as to Liability in this case and certify the above question to
 24 the Nevada Supreme Court. **See Proposed Order attached hereto as Exhibit A.** However, in lieu
 25 of denying all pending motions, the parties request that the Court approve their stipulation to Stay
 26 Pending Motions filed concurrently herein as it is in the best interest of judicial economy.
 27 Specifically, that stipulation seeks to stay briefing on all motions with the exception of Plaintiff's
 28 Motion for Certification of Court's July 26, 2015 Order Pursuant to Rule 54 (Doc. 101) and

1 Defendant's Motion to Compel Arbitration (Doc. 104) which can be decided irrespective of any
2 ruling by the Nevada Supreme Court on the meaning of the word "provide" as used in the Minimum
3 Wage Amendment. That stipulation further seeks to extend the deadline filing of Plaintiffs' renewed
4 motion for class certification until after a ruling by the Nevada Supreme Court.

5 Accordingly, the parties hereby jointly request that the Court certify the above question of
6 law to the Nevada Supreme Court as specified in the attached Proposed Order. **See Exhibit A.**

7
8 Dated: September 8, 2015

9 Respectfully submitted,

Respectfully submitted,

10
11 /s/ Bradley Schrager, Esq.
DON SPRINGMEYER, ESQ.
BRADLEY SCHRAGER, ESQ.
12 DANIEL BRAVO, ESQ.
WOLF, RIFKIN, SHAPIRO,
13 SCHULMAN & RABKIN, LLP

14 Attorneys for Plaintiffs

15
16 /s/ Kathryn B. Blakey, Esq.
RICK D. ROSKELLEY, ESQ.
ROGER L. GRANDGENETT II, ESQ.
17 MONTGOMERY Y. PAEK, ESQ.
KATHRYN B. BLAKEY, ESQ.
18 LITTLER MENDELSON, P.C.

19 Attorneys for Defendant

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 September 8, 2015, I served the within document:

JOINT MOTION AND PROPOSED ORDER FOR CERTIFICATION OF QUESTION OF LAW TO THE NEVADA SUPREME COURT

☒ 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.
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 September 8, 2015, at Las Vegas, Nevada.

/s/ Debra Perkins

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ERIN HANKS, et al.;
 Plaintiffs,

vs.

BRIAD RESTAURANT GROUP, LLC., a
 New Jersey limited liability company; and
 DOES 1 through 100, inclusive,
 Defendant.

Case No. 2:14-cv-00786-GMN-PAL

**PROPOSED ORDER FOR
 CERTIFICATION OF QUESTION OF
 LAW TO THE NEVADA SUPREME
 COURT**

On September 8, 2015 Plaintiffs filed their motion for Partial Summary Judgment as to Liability asserting that they are “entitled to partial summary judgment on their first claim for relief, because Defendant could only pay the lower-tier wage if it *actually provided* (or supplied or furnished) a qualifying health plan, which they did not, but must have paid the upper-tier wage to him if they did not *actually provide* (or supply or furnish) such benefits, for any reason.” *See Diaz v. MDC Restaurants, LLC*, A-14-701633-C, Eighth Judicial Dist., Dept. XVI (July 17, 2015); *Hancock v. The State of Nevada*, 14 OC 00080 1B, First Judicial Dist., Dept. II (Aug. 14, 2015).

It is Defendant’s position that if an employer provides health insurance to its employees, it may pay those employees the lower-tier minimum wage and that the plain and ordinary meaning of the word “provide” is “to make available.” Therefore, Defendant contends that if an employer makes health insurance available to its employees, it may pay the lower tier minimum wage. *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 This Court has previously reviewed and decided this issue in a virtually identical motion in
 2 *Tyus v. Cedar Enterprises, et. al*, Case No. 2:14-cv-00729-GMN-VCF (Doc. No. 71). In that matter,
 3 the Court denied plaintiffs' motion without prejudice with permission to renew the motion within
 4 thirty days of the resolution of the following question which the Court certified to the Nevada
 5 Supreme Court:

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

9 Additionally, the Court denied all other pending motions in that matter without prejudice with
 10 permission to re-file upon resolution of the Certified Question to the Nevada Supreme Court.

11 In the instant matter, the parties jointly request that the Court take similar action with respect
 12 to Plaintiffs' Partial Summary Judgment as to Liability in this case and certify the above question to
 13 the Nevada Supreme Court.

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

15 Each employer shall pay a wage to each employee of not less than the
 16 hourly rates set forth in this section. The rate shall be five dollars and
 17 fifteen cents (\$5.15) per hour worked, if the employer provides health
 18 benefits as described herein, or six dollars and fifteen cents (\$6.15) per
 19 hour if the employer does not provide such benefits. Offering health
 20 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 employer for premiums of
 not more than 10 percent of the employee's gross taxable income from
 the employer.

21 Nev. Const. art. XV, § 16. Because Plaintiffs' claims depend on whether Defendant's offer of health
 22 benefits was sufficient to pay the lower-tier wage, a dispositive question exists as to the
 23 interpretation of "provide" in the context of the Minimum Wage Amendment. The parties agree that
 24 the sole dispositive issue before the Court is the interpretation of "provide" in the context of the
 25 Minimum Wage Amendment.

26 Plaintiffs argue that "provide" within the context of the Minimum Wage Amendment means
 27 to actually provide or furnish qualifying health benefits to employees. However, Defendants contend
 28 that "provide" means to offer or make qualifying health benefits available to employees.

Pursuant to Rule 5 of the Nevada Rules of Appellate Procedure (“Rule 5”), a United States District Court may certify a question of law to the Nevada Supreme Court “upon the court’s own motion.” Nev. R. App. P. 5(a)-(b). Under Rule 5, the Nevada Supreme Court has the power to answer such a question that “may be determinative of the cause then pending in the certifying court and . . . it appears to the certifying court there is no controlling precedent in the decisions of the Supreme Court of this state.” Nev. R. App. P. 5(a). In this case, the Court is sitting in diversity jurisdiction; thus Nevada substantive law controls. Moreover, the parties fail to cite and the Court has not found any controlling decisions from the Nevada Supreme Court that interprets “provide” in the context of the Minimum Wage Amendment. Accordingly, under Rule 5, answering this certified question is within the power of the Nevada Supreme Court.

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

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

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

The parties disagree as to whether “provide” in the context of the Minimum Wage Amendment means that an employer’s offer of health benefits is sufficient to pay the lower wage rate under the Minimum Wage Amendment. In support of his argument, Plaintiff has brought to the Court’s attention two recent state district court decisions in support of his position. *See Diaz v. MDC Restaurants, LLC*, A-14-701633-C, Eighth Judicial Dist., Dept. XVI (July 17, 2015); *Hancock v. The State of Nevada*, 14 OC 00080 1B, First Judicial Dist., Dept. II (Aug. 14, 2015). On the other hand, Defendants cite various regulations enacted by the Labor Commissioner to support their

position, which clarify and implement the Minimum Wage 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.

Accordingly,

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

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.

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

Counsel for Plaintiff

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

Counsel for Defendants

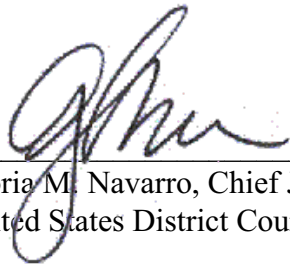
Rick D. Roskelley, Roger L. Grandgenett, Montgomery Y. Paek, and Kathryn Blakey
Littler Mendelson, PC
3960 Howard Hughes Parkway, Suite 300
Las Vegas, NV 89169

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

1 for the District of Nevada. See Nev. R. App. P. 5(d).

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4 Dated: September 15, 2015

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6 
Gloria M. Navarro, Chief Judge
United States District Court

7
8
9 Respectfully submitted,

Respectfully submitted,

10
11 /s/ Bradley Schrager, Esq.
12 DON SPRINGMEYER, ESQ.
13 BRADLEY SCHRAGER, ESQ.
14 DANIEL BRAVO, ESQ.
WOLF, RIFKIN, SHAPIRO,
SCHULMAN & RABKIN, LLP

15 Attorneys for Plaintiffs

16 /s/ Kathryn B. Blakey, Esq.
17 RICK D. ROSKELLEY, ESQ.
18 ROGER L. GRANDGENETT II, ESQ.
19 MONTGOMERY Y. PAEK, ESQ.
20 KATHRYN B. BLAKEY, ESQ.
21 LITTLER MENDELSON, P.C.

22 Attorneys for Defendant

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IN THE SUPREME COURT OF THE STATE OF NEVADA

ERIN HANKS,
Appellant,
vs.
BRIAD RESTAURANT GROUP, LLC, A
NEW JERSEY LIMITED LIABILITY
COMPANY,
Respondent.

No. 68845

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.

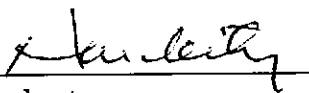
As no clearly controlling Nevada precedent exists with respect to this important legal question and its answer may determine part of the federal case, we accept the certified question. *See* NRAP 5(a); *Volvo Cars of N. Am., Inc. v. Ricci*, 122 Nev. 746, 137 P.3d 1161 (2006).

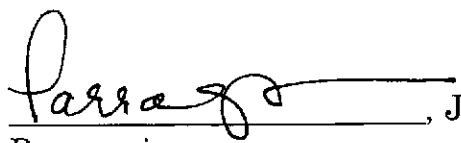
Accordingly, appellant shall have 30 days from the date of this order to file and serve an opening brief and appendix. Respondent shall have 30 days from the date the opening brief is served to file and serve an answering brief. Appellant shall then have 20 days from the date the answering brief is served 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).




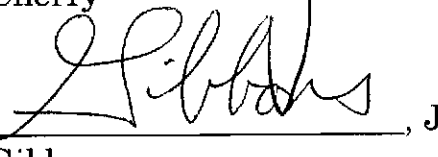
Lastly, in any proceeding under NRAP 5, fees "shall be the same as in civil appeals . . . and shall be equally divided between the parties unless otherwise ordered by the certifying court." NRAP 5(e). The District Court's order does not address the payment of this court's fees. Accordingly, appellant and respondent 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).

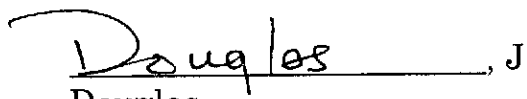
It is so ORDERED.

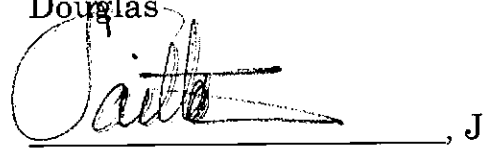
, C.J.
Hardesty

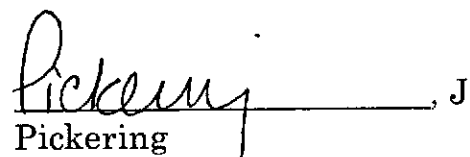
, J.
Parraguirre

, J.
Cherry

, J.
Gibbons

, J.
Douglas

, J.
Saitta

, J.
Pickering

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