

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

2 HG STAFFING, LLC, and MEI-GSR
3 HOLDINGS, LLC d/b/a GRAND SIERRA
4 RESORT

4 Petitioners-Defendants,

5 vs.

6 EIGHTH JUDICIAL DISTRICT COURT
7 FOR THE STATE OF NEVADA IN AND
8 FOR THE COUNTY OF CLARK, THE
9 HONORABLE LYNNE K. SIMONS,
10 DISTRICT COURT JUDGE,

9 Respondents,

10 and

11 EDDY MARTEL (also known as
12 MARTEL-RORIGUEZ), MARY ANNE
13 CAPILLA, JANICE JACKSON-
14 WILLIAMS and WHITNEY VAUGHAN,

14 Real Parties in Interest - Plaintiffs.

Supreme Court No. 79118
District Court No. CV16-01264
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Clerk of Supreme Court

15 **MOTION TO STRIKE**

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1 **I. MOTION TO STRIKE**

2 Defendants-Petitioners HG Staffing, LLC, and MEI-GSR Holdings, LLC
3 d/b/a Grand Sierra Resort, by and through their counsel of record, pursuant to
4 Nev. R. App. P. 27, move to strike Plaintiffs-Real Parties in Interest Eddy Martel
5 (“Martel”), Mary Anne Capilla (“Capilla”), Janice Jackson-Williams
6 (“Williams”) and Whitney Vaughan (“Vaughan”) (collectively, “Plaintiffs”)
7 Notice of Intent to Rely on Supplement to the Record in Plaintiff-Petitioner’s
8 Reply Brief, filed on January 22, 2020, as an unauthorized supplemental brief
9 which improperly attempts to augment the record on appeal with inadmissible
10 hearsay that was not part of the record before the district court.

11 **II. POINTS AND AUTHORITIES SUPPORTING THE MOTION**

12 Without seeking leave from this Court, on January 22, 2020, Plaintiffs filed
13 a Notice of Intent to Rely on Supplement to the Record in Plaintiff-Petitioner’s
14 Reply Brief, which is simply an unauthorized supplemental brief. Attached, as
15 Exhibit 1 to the supplement brief, is an email which purports to be an email from
16 the Labor Commissioner in response to an email from an attorney making an
17 informal inquiry to the Labor Commissioner. Both the supplemental brief and the
18 attached email are improper, should be not be considered by this Court, and
19 therefore should be stricken.

1 In this Court’s Order Directing Answer at 1, filed on August 1, 2019, this
2 Court granted Plaintiffs permission “to file to and serve an answer” and did not
3 provide for any further briefing by Plaintiff. In *Nevada Attorney for Injured*
4 *Workers v. Nevada Self-Insurers Ass’n*, 126 Nev. 74, 77 n.1, 225 P.3d 1265, 1266
5 n.1 (2010), this Court granted “a motion to strike [a] supplemental brief” when
6 the party that filed the brief “did not seek leave from this court to file the
7 supplemental brief.” Plaintiffs, likewise, have not sought leave to file a
8 supplemental brief and therefore this Court should order the clerk of court to
9 strike the supplemental brief and its attached email.

10 Additionally, the email attached to the brief was not part of the record
11 below. In *Carson Ready Mix, Inc. v. First Nat. Bank of Nevada*, 97 Nev. 474,
12 476, 635 P.2d 276, 277 (1981), this Court held: “We have no power to look
13 outside of the record of a case.” The email, attached to supplemental brief,
14 involves the claims of an employee who is not a party to this case, has nothing to
15 do with Plaintiffs’ claims before this Court, and was not filed with the district
16 court below. Accordingly, this Court has no power to consider the email and it
17 should be disregarded.

18 Moreover, the email attached to the supplemental brief is unauthenticated
19 hearsay and therefore is inadmissible. See *Nevada Attorney for Injured Workers*
20 *v. Nevada Self-Insurers Ass’n*, 126 Nev. 74, 77, 225 P.3d 1265, 1266 (2010)

1 (holding “memo was . . . inadmissible because of a lack of foundation as to its
2 authenticity and identity” and because it was “an out-of-court statement offered to
3 prove the truth of the matter asserted” and therefore was inadmissible hearsay”).
4 Because the email is inadmissible, this Court should not consider it.

5 Finally, even if the email had been properly part of the record before the
6 district court, this Court should not consider the purported email from the Labor
7 Commissioner. In *Lucas v. Bell Trans*, Case No. 208-CV-01792-RCJ-RJJ, 2009
8 WL 3336112, at *4 (D. Nev. Oct. 14, 2009), the federal district court held that
9 unofficial opinions of the labor commissioner are “not legal authority at all,”
10 [n]or are they persuasive.” In fact, Plaintiff’s proffered email contains a
11 disclaimer refuting any claim that the email could be relied upon as authority.
12 The emails states: “**Answers contained in this email are based on the facts you
13 provided. If the facts differ from those you provided, the answer may be
14 different.**” In *Tom v. Innovative Home Sys., LLC*, 132 Nev. 161, 173, 368 P.3d
15 1219, 1227 (Nev. App. 2016), the Nevada Court of Appeals held that a similar
16 disclaimer prevented an administrative opinion from being deemed persuasive
17 authority. The court further held that when agency “opinions are very brief, . . .
18 consisting only of a one-sentence statement of the issue and one or two sentences
19 for the opinion” without “a section for a description of the fact,” then the
20 “advisory opinions lack the factual detail necessary for the opinions to be used as

1 persuasive authority.” *Id.* at 175, 368 P.3d 1219, 1228–29. The unauthenticated
2 email provided by Plaintiffs amounts to no more than three (3) sentences, with no
3 detail, and only the briefest description of the issues involved. Accordingly, the
4 purported email of the Labor Commissioner cannot assist this Court in resolving
5 the issues in this action, and therefore should not be considered. *See Nevada*
6 *Attorney for Injured Workers*, 126 Nev. at 77, 225 P.3d at 1266 (2010) (refusing
7 to consider supplements to the record that “do not assist this court in resolving the
8 issues in this appeal”).

9 **III. CONCLUSION**

10 Based on the foregoing, this Court should grant Defendants’ motion and
11 strike Plaintiffs’ Notice of Intent to Rely on Supplement to the Record in
12 Plaintiff-Petitioner’s Reply Brief, along with the email attached as Exhibit 1.

13 Dated this 23rd day of January, 2020

14 CHRIS DAVIS, ESQ.

15 By: /s/ Chris Davis

16 H. Stan Johnson, Esq.
Nevada Bar No. 00265
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18 Attorneys for Petitioners-Defendants
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CERTIFICATE OF SERVICE

I certify that on 23rd day of January, 2020, I served the **MOTION TO STRIKE** upon the following parties by placing a true and correct copy thereof in the United States Mail, postage fully prepaid:

The Honorable Lynne K. Simons
Second Judicial District Court Judge
75 Court Street
Reno, NV 89501
Respondent Court

Mark R. Thierman, Esq.
Leah L. Jones, Esq.
THIERMAN | BUCK LAW FIRM
7287 Lakeside Drive
Reno, Nevada 89511
Attorney for Real Party in Interest/Plaintiff

DATED the 23rd day of January 2020.

/s/ Sarah Gondek
An employee of
COHEN | JOHNSON | PARKER | EDWARDS