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Attorneys for Plaintiffs-Petitioners

**IN THE SECOND JUDICIAL DISTRICT COURT OF
THE STATE OF NEVADA IN AND FOR THE
COUNTY OF WASHOE**

EDDY MARTEL (also known as MARTEL-
RODRIGUEZ), MARY ANNE CAPILLA,
JANICE JACKSON-WILLIAMS, and
WHITNEY VAUGHAN on behalf of
themselves and all others similarly situated,

Case No.: 16-cv-01264

**PLAINTIFFS'-PETITIONERS' NOTICE
OF APPEAL PURSUANT TO NRAP
3(c)**

Plaintiffs-Appellants,

HG STAFFING, LLC, MEI-GSR HOLDINGS
LLC d/b/a GRAND SIERRA RESORT

Defendants-Respondents

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN THAT Plaintiffs-Petitioners EDDY MARTEL (also known as MARTEL-RODRIGUEZ), MARY ANNE CAPILLA, JANICE JACKSON-WILLIAMS, and WHITNEY VAUGHAN ("Plaintiffs-Petitioners") on behalf of themselves and all others similarly situated, hereby appeal to the Supreme Court of Nevada from the Second Judicial District Court's November 2, 2020 Order and the Second Judicial District Court's June 7, 2019 Order.

1. A copy of the 11/2/20 Order Granting Motion for Summary Judgment is attached as Exhibit 1.
2. A copy of the 6/7/19 Order Granting in Part and Denying in Part Defendants' Motion to Dismiss is as Exhibit 2.

AFFIRMATION

The undersigned does hereby affirm that the proceeding document to be filed in the Second Judicial District Court in the State of Nevada, County of Washoe, does not contain the social security number of any person.

DATED: November 25, 2020

Respectfully Submitted,

THIERMAN BUCK LLP

/s/Leah L. Jones

Mark R. Thierman

Joshua D. Buck

Leah L. Jones

Joshua R. Hendrickson

Attorneys for Plaintiffs-Petitioners

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INDEX OF EXHIBITS

Exhibit No.	Description	Pages
1.	November 2, 2020 Order Granting Motion for Summary Judgment	24
2.	June 7, 2019 Order Granting in Part and Denying in Part Defendants' Motion to Dismiss	16

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that on this date I electronically filed the
3 foregoing **PLAINTIFFS'-PETITIONERS' NOTICE OF APPEAL PURSUANT TO NRAP**
4 **3(c)** with the Clerk of the Court by using the e-Flex filing system which will send a notice
5 of electronic filing to the following:

6 H. JOHNSON, ESQ. for HG STAFFING, LLC, et al
7 SUSAN HILDEN, ESQ. for HG STAFFING, LLC, et al
8

9 Pursuant to NRCP 5(b), I hereby further certify that service of the foregoing was
10 also made by depositing a true and correct copy of the same for mailing, first class mail,
11 postage prepaid thereon, at Reno, Nevada to the following:

12
13 Chris Davis, Esq.
14 2500 East Second Street
15 Reno, NV 89595

16 *Attorney for Defendants*

17 DATED this 25th day of November, 2020
18

19 /s/ Brittany Manning
20 An Employee of Thierman Buck LLP
21
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Clerk of the Court
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EXHIBIT 1

*November 2, 2020 Order Granting
Motion for Summary Judgment*

EXHIBIT 1

1 CODE NO. 3370

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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE
8

9
10 EDDY MARTEL (also known as MARTEL-
11 RODRIGUEZ), MARY ANNE CAPILLA,
12 JANICE JACKSON-WILLIAMS and WHITNEY
VAUGHAN on behalf of themselves and all
others similarly situated,

Case No. CV16-01264

Dept. No. 6

13 Plaintiffs,

14 vs.

15
16 HG STAFFING, LLC, MEI-GSR HOLDINGS,
17 LLC d/b/a GRAND SIERRA RESORT, and
DOES 1 through 50, inclusive,

18 Defendants.

19 _____ /
20 **ORDER GRANTING MOTION FOR SUMMARY JUDGMENT**
21

22 Before this Court is the *Defendants' Motion for Summary Judgment, or in the*
23 *Alternative, Summary Adjudication ("Motion")* filed by Defendants HG STAFFING, LLC and
24 MEI-GSR HOLDINGS, LLC d/b/a GRAND SIERRA RESORT (collectively, "GSR" unless
25 individually referenced), by and through their counsel, Cohen|Johnson|Parker|Edwards.
26

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1 Plaintiffs EDDY MARTEL (also known as MARTEL-RODRIGUEZ) ("Mr. Martel"),
2 MARY ANNE CAPILLA ("Ms. Capilla"), JANICE JACKSON-WILLIAMS ("Ms. Jackson-
3 Williams"), and WHITNEY VAUGHAN ("Ms. Vaughan") (collectively, "Plaintiffs"), on behalf of
4 themselves and all others similarly situated, filed *Plaintiffs' Response to Defendants' Motion*
5 *for Summary Judgment/Summary Adjudication* ("Response") by and through their counsel,
6 Thierman Buck, LLP. GSR filed its *Reply in Support of Defendants' Motion for Summary*
7 *Judgment, or in the Alternative, Summary Adjudication* ("Reply") and submitted the matter
8 for decision thereafter.
9

10
11 **I. FACTUAL AND PROCEDURAL HISTORY.**

12 This action arises out of an employment dispute between Plaintiffs, employees, and
13 GSR, employer, regarding wages paid by GSR to Plaintiffs and similarly situated
14 employees. Mr. Martel was employed as an attendant in the Bowling Center. Ms. Capilla
15 was employed as a dealer. Ms. Jackson-Williams was employed as a room attendant. And,
16 Ms. Vaughan was employed as a dancing dealer (part cards dealer, part go-go dancer).
17 See *Class Action Complaint* ("Complaint") and *First Amended Class Action Complaint*
18 *("FAC")*, generally. On June 14, 2016, Plaintiffs filed their *Complaint* alleging GSR
19 maintained the following policies, practices, and procedures which required various
20 employees to perform work activities without compensation:
21
22

- 23 (1) GSR's Cash Bank Policy;
- 24 (2) Dance Class Policy;
- 25 (3) Room Attendant Pre-Shift Policy;
- 26 (4) Pre-Shift Meeting Policy;
- 27

28 //

1 (5) Uniform Policy; and,

2 (6) Shift Jamming Policy.

3 *Complaint*, pp. 4-8. As a result of said policies, Plaintiffs assert four (4) claims for relief
4 against GSR:
5

6 (1) Failure to Pay Wages for All Hours Worked in Violation of NRS 608.140 and
7 608.016;

8 (2) Failure to Pay Minimum Wages in Violation of the Nevada Constitution;

9 (3) Failure to Pay Overtime Wages in Violation of NRS 608.140 and 608.018; and,
10

11 (4) Failure to Timely Pay All Wages Due and Owing Upon Termination Pursuant
12 to NRS 608.140 and 608.020-.050.

13 Id., pp. 11-15.

14 On October 9, 2018, this Court entered its *Order After Hearing Granting Defendants'*
15 *Motion to Dismiss* ("Order"). The Court found Plaintiffs failed to provide sufficient
16 information to support their claims and granted GSR's *Motion to Dismiss*. *Order*, pp. 9-10.
17 Thereafter, Plaintiffs filed *Plaintiffs' Motion for Reconsideration of the Court's Order Granting*
18 *Defendant's Motion to Dismiss or in the Alternative Leave to File an Amended Complaint*
19 *("Motion for Reconsideration")* requesting the Court reconsider its *Order* pursuant to NRCP
20 Rule 60(b). *Motion for Reconsideration*, p. 2. This Court entered its *Order Re Motion for*
21 *Reconsideration* on January 9, 2019 and denied Plaintiffs' request on the grounds they
22 failed to state a claim but granted Plaintiffs leave to amend their *Complaint*. *Order Re*
23 *Motion for Reconsideration*, pp. 8-9.
24
25

26 //

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1 On January 29, 2019, Plaintiffs filed their *FAC* asserting the same four (4) claims.
2 Thereafter, GSR filed its *Motion to Dismiss First Amended Complaint* (“*Motion to Dismiss*”),
3 requesting this Court dismiss the *FAC* pursuant to NRCP 12(b)(5). *Motion to Dismiss*, p. 2.
4 GSR argued the claims asserted in the *FAC* “have no more merit than Plaintiffs’ original
5 claims.” *Motion to Dismiss*, p. 2. On June 7, 2019, the Court entered its *Order Granting, in*
6 *Part, and Denying, in Part, Motion to Dismiss* (“*MTD Order*”) concluding a two-year statute
7 of limitation applies to the Plaintiffs’ claims. *MTD Order*, p. 7. As such, the Court dismissed
8 all of Ms. Capilla and Ms. Vaughan’s claims, all but one (1) month of Mr. Martel’s claims,
9 and all but eighteen (18) months of Ms. Jackson-Williams’ claims. *MTD Order*, p. 14.
10
11

12 On May 23, 2019, GSR filed its *Motion for Summary Judgment on all Claims*
13 *Asserted by Plaintiffs Martel, Capilla and Vaugh (sic)* (“*First MSJ*”) and argued Plaintiffs
14 claims are barred by claim preclusion. *First MSJ*, p. 4.
15

16 On June 28, 2019, GSR filed its *Answer to First Amended Class Action Complaint*
17 (“*Answer*”). In addition to admissions and denials to Plaintiffs’ allegations in the *FAC*, GSR
18 asserted, among other affirmative defenses: failure to state a claim; claims are barred, in
19 whole or in part, by the applicable statute of limitations; and, claims are barred due to GSR’s
20 full performance of underlying obligations. *Answer*, generally.
21

22 On July 8, 2019, GSR filed *Defendants’ Second Motion for Summary Judgment as to*
23 *Plaintiff Martel; Motion for Summary Adjudication on Plaintiffs’ Lack of Standing to*
24 *Represent Union Employees; and Motion for Summary Judgment as to Plaintiff Jackson-*
25 *Williams* (“*Second MSJ*”). GSR made the following arguments: (1) Mr. Martel’s claims are
26 time-barred; (2) Plaintiffs lack standing to represent union employees who are exclusively
27 represented by their unions; (3) Ms. Jackson-Williams’ claims are barred for failing to
28

1 exhaust grievance procedures of the Culinary Collective Bargaining Agreement (“CBA”)
2 and/or based on federal preemption; and, (4) Ms. Jackson-Williams’ claim for overtime is
3 barred pursuant to NRS 608.018 because the CBA provides otherwise for overtime. See
4 *Second MSJ*, generally.

5
6 On July 9, 2019, before this Court rendered its decision on the *First MSJ* and *Second*
7 *MSJ*, GSR filed its *Notice of Filing Petition for Writ of Mandamus and/or Prohibition*
8 (*Petition*) with the Supreme Court of Nevada. In the *Petition*, GSR argued the dismissal of
9 Plaintiffs’ first, third, and fourth claims for relief is mandatory on the grounds: Plaintiffs failed
10 to exhaust administrative remedies as required by NRS Chapter 607; legislative mandated
11 remedies must be exhausted despite an implied private right of action; and, NRS 607.215
12 requires Plaintiffs exhaust administrative remedies before pursuing wage claims under NRS
13 608.005 to 608.195. See *Petition*, generally.

14
15 This Court entered its *Order Re Stipulation to Stay All Proceedings and Toll of the*
16 *Five Year Rule* (“*Stipulation*”) on July 17, 2019 and withdrew GSR’s pending motions for
17 summary judgment from submission, without prejudice, allowing renewal upon the Supreme
18 Court of Nevada’s decision. *Stipulation*, p. 9.

19
20 On May 7, 2020, the Supreme Court of Nevada entered its *Order Denying Petition*.
21 The Supreme Court of Nevada reasoned Neville v. Eighth Judicial Dist. Court held, by
22 necessary implication, exhaustion of administrative remedies is not required before filing an
23 unpaid-wage claim in district court. 133 Nev. 77, 406 P.3d 499 (2017).

24
25 On June 9, 2020, GSR filed the instant *Motion* and renewed the claims presented in
26 the *Second MSJ* filed on May 23, 2019. GSR asserts Mr. Martel’s claims are time-barred
27 because the Court’s June 7, 2019, *Order Granting, in Part, and Denying, in Part, Motion to*
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1 *Dismiss* found a two-year statute of limitations applies, barring claims accruing prior to June
2 14, 2014. Mr. Martel worked his last shift on June 12, 2014. *Motion*, p. 3. GSR argues Ms.
3 Jackson-Williams' claims are barred for failing to exhaust grievance procedures of the
4 Culinary CBA and/or based on federal preemption because state law rights that can be
5 altered by CBAs are preempted by CBAs and employees must make use of the grievance
6 procedures in the CBAs or the claims will be dismissed as preempted by federal law.
7 *Motion*, p. 4; citing Allis-Chalmers Corp. v. Lueck, 471 U.S. 202, 210-20 (1985); MGM
8 Grand Hotel-Reno, Inc. v. Insley, 102 Nev. 513, 517, 728 P.2d 821, 824 (1986). GSR
9 contends Ms. Jackson-Williams' claim for overtime is barred because Article 9.01 of the
10 CBA entitled, "WORK, SHIFTS, WORKWEEK, AND OVERTIME," "provides otherwise" for
11 overtime, therefore exempting Ms. Jackson-Williams from the overtime provisions in
12 Sections 1 and 2 of NRS 608.018. *Motion*, pp. 5-6. GSR argues the Plaintiffs lack standing
13 to represent union employees who are exclusively represented by their respective unions.
14 This is so, GSR maintains, because they are not in the same unions and the bargaining
15 representatives of each union have not been given the opportunity to be present. *Motion*, p.
16 7; citing 29 U.S.C. § 159(a); Vaca v. Sipes, 386 U.S. 171, 186 (1967).

17
18 In the *Response*, Plaintiffs argue Mr. Martel's claim is not time-barred because an
19 employee's claim for unpaid wages accrues thirty (30) days after the employment
20 relationship ends. *Response*, p. 2; citing NRS 608.040-.050. Additionally, Plaintiffs argue
21 GSR admitted it violated overtime requirements when it sent Mr. Martel and hundreds of
22 other current and former employees checks for the unpaid overtime but did not pay
23 continuation wages as mandated by NRS 608.040 and 608.050. *Id.* Plaintiffs assert, based
24 on what they contend is black letter law, purported union employees are not required to
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1 exhaust internal union grievance procedures before filing suit. *Response*, p. 12; citing NRS
2 608.140 and 608.050. Plaintiffs next argue courts consistently find union and non-union
3 employees can sue for and on behalf of each other when all allege they are victims of
4 unlawful pay practices. *Response*, p. 13. Plaintiffs state Ms. Jackson-Williams is entitled to
5 statutory overtime protections because the Culinary CBA is not a valid and operable CBA
6 since it is an unsigned draft, and even if operable, the CBA does not provide overtime
7 benefits beyond those conferred by NRS 608.018. *Response*, pp. 17-18. Plaintiffs request
8 the opportunity to conduct further discovery on whether the Culinary Union and the CBA are
9 operational if the Court is inclined to hold the CBA is valid. *Response*, p. 17.

12 In its *Reply*, GSR argues Mr. Martel conceded his underlying wage claims are barred
13 by the applicable statute of limitation, and his derivative waiting time penalty claims under
14 NRS 608.040 and 608.050 fail because they are contrary to accrual of claims case law and
15 statutory language. *Reply*, p. 1. GSR argues Courts have repeatedly rejected assertions
16 similar to Plaintiffs' assertion the Culinary CBA is invalid due to lack of execution. *Reply*, p.
17 2. GSR further maintains the Culinary CBA has affirmed the validity of the CBA. *Id.* GSR
18 contends during the entire term of her GSR employment Ms. Jackson-Williams was subject
19 to the CBA, and the CBA "provides otherwise" for overtime, disqualifying Ms. Jackson-
20 Williams from receiving overtime compensation. *Reply*, p. 9-10. GSR argues Ms. Jackson-
21 Williams' claims for overtime are barred both because she did not exhaust the valid and
22 binding CBA grievance procedures. *Reply*, pp. 12-13. GSR states, pursuant to 29 U.S.C. §
23 159(a), the Culinary Union is the exclusive representative of the employees and Plaintiffs
24 have not alleged a breach of the duty of fair representation, thereby conceding Plaintiffs
25 cannot represent the employees. *Reply*, p. 16. Finally, GSR argues Plaintiffs are not

1 entitled to further discovery under NRCP 56(d) because Plaintiffs failed to provide the
2 requisite affidavit. *Reply*, p. 17; citing Choy v. Ameristar Casinos, Inc., 127 Nev. 870, 872,
3 265 P.3d 698, 700 (2011) and Bakerink v. Orthopaedic Assocs., Ltd., 94 Nev. 428, 431, 581
4 P.2d 9, 11 (1978).

6 **II. STANDARD OF REVIEW; APPLICABLE LAW AND ANALYSIS**

7 Summary judgment is appropriate under Rule 56 of the Nevada Rules of Civil
8 Procedure "when the pleadings, depositions, answers to interrogatories, admissions, and
9 affidavits, if any, that are properly before the court demonstrate that no genuine issue of
10 material fact exists, and the moving party is entitled to judgment as a matter of law." Cuzze v.
11 Univ. & Cmty. Coll. Sys. of Nevada, 123 Nev. 598, 602, 172 P.3d 131, 134 (2007). A factual
12 dispute is genuine when the evidence is such that a rational trier of fact could return a verdict
13 for the nonmoving party. Wood v. Safeway, Inc., 121 Nev. 724, 731, 121 P.3d 1026, 1031
14 (2005). Further, a fact is material if the fact "might affect the outcome of the suit under the
15 governing law." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S.Ct. 2505, 2510
16 (1986). The pleadings and other proof "must be construed in a light most favorable to the
17 nonmoving party," who bears the burden to "do more than simply show that there is some
18 metaphysical doubt as to the operative facts in order to avoid summary judgment" in favor of
19 the moving party. Id., 121 Nev. at 732, 121 P.3d at 1031. The substantive law controls which
20 factual disputes are material and will preclude summary judgment; other factual disputes are
21 irrelevant. Id., 121 Nev. at 731, 121 P.3d at 1031.

22 The manner in which each party may satisfy its burden of production depends on
23 which party will bear the burden of persuasion on the challenged claim at trial. Cuzze, 123
24 Nev. at 602, 172 P.3d at 134. If the moving party will bear the burden of persuasion, that

1 party must present evidence that would entitle it to a judgment as a matter of law in the
2 absence of contrary evidence. Id. If the nonmoving party will bear the burden of persuasion
3 at trial, the party moving for summary judgment may satisfy the burden of production in two
4 ways: (1) the moving party may submit evidence which negates an essential element of the
5 nonmoving party's claim, or (2) the moving party may merely point out the absence of
6 evidence to support the nonmoving party's case. Id. Therefore, in such instances, in order to
7 defeat summary judgment, the nonmoving party must transcend the pleadings and, by
8 affidavit or other admissible evidence, **introduce specific facts** that show a genuine issue of
9 material fact. Id. "The non-moving party must not simply rely on the pleadings and must do
10 more than make 'conclusory allegations [in] an affidavit.'" Choi v. 8th Bridge Capital, 2020
11 WL1446700, Slip Copy, March 25, 2020 (C.D. Cal.), citing, Lujan v. Nat'l Wildlife Fed'n, 497
12 U.S. 871, 888, 110 S.Ct. 3177, 3188 (1990); see also, Celotex Corp. v. Catrett, 477 U.S. 317,
13 324, 106 S.Ct. 2548, 2553 (1986). "Summary judgment must be granted for the moving
14 party if the nonmoving party 'fails to make showing sufficient to establish an element essential
15 to that party's case, and on which that party bears the burden of proof at trial.'" Choi v. 8th
16 Bridge Capital, 2020 WL1446700, Slip Copy, March 25, 2020 (citing same).

20 In this case, GSR is the moving party that may submit evidence negating an essential
21 element of Plaintiffs' claims, point out the absence of evidence, or establish the elements of
22 a defense. Plaintiffs are the nonmoving party who must introduce specific facts that show a
23 genuine issue of material fact exists.

25 //

26 //

1 Pursuant to NRCP 56, even if the undisputed factual matters are established, a party
2 must still establish the party is entitled to judgment as a matter of law. Kuptz-Blinkinsop v.
3 Blinkinsop, 136 Nev. ___, ___, 466 P.3d 1271, 1273 (2020) (citing Wood v. Safeway, Inc.,
4 121 Nev. at 729, 121 P.3d at 1029 (2005)).

6 **III. FINDINGS OF UNDISPUTED MATERIAL FACT.**

7 The Court finds the following material facts are undisputed:

- 8 1. The *Complaint* was filed in this matter on June 14, 2016.
- 9 2. GSR is an employer. *FAC*, ¶ 10; *Answer*, ¶ 8.
- 10 3. Mr. Martel was employed from on or about January 25, 2012 through June
11 13, 2014. *FAC*, ¶ 20, 34, 49; *Motion*, p. 2; *Response*, p. 6.
- 12 4. Mr. Martel was employed as an arcade attendant and was not covered by a
13 union or a collective bargaining agreement. *Response*, p. 7.
- 14 5. Mr. Martel voluntarily resigned from his employment with GSR on June 14,
15 2014. Decl. of Eddy Martel-Rodriguez, ¶ 4; *Reply*, p. 3, n.1.
- 16 6. Mr. Martel's timeclock indicates he clocked into his final shift at GSR at 6:10
17 p.m. on June 12, 2014. Mr. Martel clocked out on June 13, 2014 at 12:26 a.m. *Motion*, p.
18 2, Ex. 1, Decl. of Eric Candela; *Response*, p. 6.
- 19 7. Mr. Martel was paid every two weeks and last paycheck was paid on June 16,
20 2014. *Reply*, Ex. 1, Decl. of Cynthia Williams, ¶ 3.
- 21 8. Ms. Jackson-Williams was employed as a guest attendant from April 2014,
22 through December, 2015. *FAC*, ¶ 6; *Motion*, p. 2; *Response*, p. 7.
- 23 9. The Culinary CBA is unsigned. *Motion*, p. 7, n.1; *Response*, p. 16; Decl. of
24 Susan Heaney Hilden, ¶ 2.

1 10. Article 9.01 of the Culinary CBA provides:

2 The workweek pay period shall be from Friday through Thursday. For
3 purposes of computing overtime, for an employee scheduled to work five (5)
4 days in one (1) workweek, any hours in excess of eight (8) hours in a day or
5 forty (40) hours in a week shall constitute overtime. For an employee
6 scheduled to work four (4) days in one (1) workweek, any hours worked in
7 excess of ten (10) hours in a day or forty (40) hours in a week shall constitute
8 overtime. . . . Employees absent for personal reasons on one (1) or more of
9 their first five (5) scheduled days of work in their workweek shall work at the
10 Employee's request on a scheduled day off in the same workweek at straight
11 time.

12 *Motion*, p. 6; *Motion*, Ex. 2, Decl. of Susan Hilden, Ex. 1; *Response*, pp. 18-19.

13 11. Pursuant to the Operating Engineers CBA, GSR recognizes the International
14 Union of Operating Engineers Stationary Local No. 39 AFL-CIO as "the exclusive bargaining
15 representative for . . . all draftsmen, carpenters, engineers, locksmiths, painters, upholsters,
16 certified pool operators and engineering department laborers." *Motion*, Ex. 2, Decl. of
17 Susan Hilden, ¶ 11; *Response*, p. 6.

18 12. Pursuant to the IATSE CBA, GSR recognizes the International Alliance of
19 Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the
20 United States, its Territories and Canada, AFL-CIO, CLC LOCAL Union No. 362 ("IATSE")
21 as "the Exclusive collective bargaining representative for . . . all entertainment department
22 employees performing carpentry, electrical, electronic, sound and property work, including
23 stage hands, stage technicians, stage laborers, lounge technicians, convention technicians,
24 spotlight operators and technicians, stage electricians, sound personnel, projectionists,
25 operators of all audio-visual equipment used in connection with the Employer's
26 entertainment and convention operations and all wardrobe personnel . . ." *Motion*, Ex. 2,
27 Decl. of Susan Hilden, ¶ 12; *Response*, p. 6.

28 //

1 13. The Culinary Union has filed grievances under the Culinary CBA, and
2 arbitrations have taken place. *Motion*, Ex. 2, Decl. of Susan Heaney Hilden, ¶¶ 3-7; Ex. 3,
3 Decl. of Larry Montrose, ¶ 5.

4
5 14. To the extent any of the following conclusions of law include, or may be
6 construed to include, findings of fact, they are incorporated here.

7 **IV. CONCLUSIONS OF LAW.**

8 To the extent any of the foregoing findings of fact constitute, or may be construed
9 to constitute, conclusions of law they are incorporated here:

10
11 **A. STATUTE OF LIMITATION.**

12 1. The Minimum Wage Act (MWA) guarantees employees payment of a specified
13 minimum wage and gives an employee whose employer violates the MWA the right to bring
14 an action against his or her employer in Nevada. Perry v. Terrible Herbst, Inc., 383 P.3d
15 257, 258 (2016).

16
17 2. A two-year statute of limitation applies to actions for failure to pay the
18 minimum wage in violation of the Nevada constitution. Id. at 262.

19 3. The two-year statute of limitation period applies to NRS 608 statutory wage
20 claims that are analogous to a cause of action for failure to pay an employee the lawful
21 minimum wage. Id.

22
23 4. NRS 608.040 provides:

24 1. If an employer fails to pay:

25 (a) Within 3 days after the wages or compensation of a discharged
employee becomes due; or

26 (b) On the day the wages or compensation is due to an employee who
27 resigns or quits, the wages or compensation of the employee continues at the
same rate from the day the employee resigned, quit or was discharged until
paid or for 30 days, whichever is less.

28 2. Any employee who secretes or absents himself or herself to avoid
payment of his or her wages or compensation, or refuses to accept them when

1 fully tendered to him or her, is not entitled to receive the payment thereof for
2 the time he or she secretes or absents himself or herself to avoid payment.

3 NRS 608.040.

4 5. NRS 608.050 provides:

5 1. Whenever an employer of labor shall discharge or lay off employees
6 without first paying them the amount of any wages or salary then due them, in
7 cash and lawful money of the United States, or its equivalent, or shall fail, or
8 refuse on demand, to pay them in like money, or its equivalent, the amount of
9 any wages or salary at the time the same becomes due and owing to them
10 under their contract of employment, whether employed by the hour, day, week
11 or month, each of the employees may charge and collect wages in the sum
12 agreed upon in the contract of employment for each day the employer is in
13 default, until the employee is paid in full, without rendering any service
14 therefor; but the employee shall cease to draw such wages or salary 30 days
15 after such default.

16 2. Every employee shall have a lien as provided in NRS 108.221 to
17 108.246, inclusive, and all other rights and remedies for the protection and
18 enforcement of such salary or wages as the employee would have been
19 entitled to had the employee rendered services therefor in the manner as last
20 employed.

21 NRS 608.050.

22 6. When a derivative claim is dependent on the success of an underlying claim
23 and the underlying "claim having not been established," then the derivative claim "must fail
24 as well." Turner v. Mandalay Sports Entm't, LLC, 124 Nev. 213, 222 n.31, 180 P.3d 1172,
25 1178 n.31 (2008).

26 7. A two-year statute of limitation applies to the claims in this action. Claims
27 which accrued prior to June 14, 2014 are therefore barred by the statute of limitation. See
28 *Order Granting, in Part, and Denying, in Part, Motion to Dismiss* pp. 7-11.

8. Mr. Martel maintains his fourth cause of action for waiting time penalties under
NRS 608.040 and 608.050 is timely because his cause of action did not accrue until thirty
(30) days after his last day of work.

1 9. Based on its plain language, NRS 608.050 is inapplicable to Mr. Martel.
2 Section 608.050 applies to employees who are discharged or laid off by their employer.
3 See NRS 608.050(1). Mr. Martel resigned from his job.

4 10. Section 608.040 of the Nevada Revised Statutes does not apply to wages that
5 are not accrued during the final pay period of the employee.

6 11. No shift jamming, no off-the-clock banking, and no pre-shift meetings occurred
7 during Mr. Martel's final pay period. Mr. Martel's last shift ended on June 13, 2014.

8 12. Therefore, the two-year statute of limitation applies to Mr. Martel's claims.
9 The *Complaint* was filed on June 14, 2016.

10 13. NRS 608.040 does not save Mr. Martel's claims. "[W]hen a statute 'is clear on
11 its face, a court cannot go beyond the statute in determining legislative intent.'" State v.
12 Lucero, 249 P.3d 1226, 1228 (2011) (citing Robert E. v. Justice Court, 99 Nev. 443, 445
13 (1983)). The Court finds NRS 608.040 is clear on its face that it does not apply to all wages,
14 but rather wages due for the pay period before the employee is discharged or quits.
15 Nothing in the statute indicates the rule applies to previously unpaid wages or exists to
16 create a cause of action for those wages.

17 14. The two-year statute of limitation applies to: Plaintiffs' First Cause of Action for
18 Failure to Pay Wages for All Hours Worked in Violation of NRS 608.140 and 608.016;
19 Second Cause of Action for Failure to Pay Minimum Wages in Violation of the Nevada
20 Constitution; Third Cause of Action for Failure to Pay Overtime Wages in Violation of NRS
21 608.140 and 608.018; and, Fourth Cause of Action for Failure to Timely Pay All Wages Due
22 and Owing Upon Termination Pursuant to NRS 608.140 and 608.020-.050.

1 15. Defendants met their burden and established their statute of limitation defense
2 to Plaintiffs' claims as a matter of law.

3 16. Summary judgment should be entered on each of Mr. Martel's claims as they
4 are time-barred.

5 17. After application of the two-year statute of limitation, Ms. Jackson-Williams'
6 claims remain for an eighteen-month period only.

7
8 **B. CBA VALIDITY AND ABILITY TO PROVIDE OTHERWISE FOR OVERTIME**

9 **1. Validity of the CBA**

10 18. The CBA purportedly expired by its own terms on or about May 1, 2011. The
11 CBA has not been extended by signature, however, GSR contends the CBA has been
12 extended by ratification.

13 19. Unsigned CBAs have been found valid and operative when an employer has
14 continued to treat the CBA as binding and effective and employee could not point to
15 evidence to the contrary. Bloom v. Universal City Studios, 933 F.2d 1013, 1991 WL 80602
16 at *1 (9th Cir. 1991) (unpublished); See Retail Clerks Int'l Ass'n v. Lion Dry Goods, Inc., 369
17 U.S. 17, 24 n. 6 (1962) (finding CBA valid even when parties did not negotiate directly and
18 did not consolidate signatures on one document).

19 20. A union will generally be held defunct if it has ceased to exist as an effective
20 labor organization and is no long fulfilling responsibilities in administering the contract.
21 Hershey Chocolate Corp., 121 NLRB 901, 911, 42 LRRM 1460 (1958); see also Pioneer Inn
22 Associates v. N.L.R.B., 578 F.2d 835, 839-40 (1978) (explaining inactivity, failure to monitor
23 contract provisions, and failure to pursue grievances may indicate a failure to administer the
24 contract).

1 21. Signatures on collective bargaining agreements are “not a prerequisite to
2 finding an employer bound to that agreement.” Line Const. Ben. Fund v. Allied Elec.
3 Contractors, Inc., 591 F.3d 576, 580 (7th Cir. 2010); N.L.R.B. v. Electra-Food Mach. Inc.,
4 621 F.2d 956, 958 (9th Cir. 1980) (holding oral agreements are sufficient to create binding
5 collective bargaining agreements even when written agreement is unsigned); N.L.R.B. v.
6 Haberman Const. Co., 641 F.2d 351, 356 (5th Cir. 1981) (en banc) (“[A] union and
7 employer’s adoption of a labor contract is not dependent on the reduction to writing of their
8 intention to be bound”).
9
10

11 22. If the union and the employer continue to operate as if the CBA is operative,
12 the CBA is binding. Here, the union and GSR engaged in arbitration and negotiation when
13 mandated by the CBA. GSR continued to negotiate and arbitrate with the union on multiple
14 occasions. For example, Mr. Montrose confirmed he interacts with the Culinary Union
15 Representative Nicolaza De La Puente weekly and he was notified of at least two different
16 grievances in 2015. *Motion*, Decl. of Larry Montrose, Ex B., Ex. C. The CBA was “ratified
17 by the Union on November 17, 2011, and it was in effect through March 10, 2018, when a
18 subsequent Culinary CBA was ratified.” *Motion*, Decl. of Susan Heaney Hilden, ¶ 2. An
19 arbitration was held on August 25, 2016, in which the parties introduced the CBA as Joint
20 Exhibit 1. *Motion*, Decl. of Susan Heaney Hilden, ¶ 2. Following the August 25, 2016,
21 arbitration, the Culinary Union submitted a Post-Hearing Brief dated October 24, 2016 in
22 which the Union states, “Local 226 has been party to three successive collective-bargaining
23 agreements at the hotel casino that is now known as the Grand Sierra Resort.” *Id.* Plaintiffs
24 contend the CBA expired in May of 2011 but provide the Court with no evidence to dispute
25
26
27
28

1 that the union and the GSR continued to treat the CBA as binding. Undisputed evidence
2 confirms the CBA was valid and operative.

3 **2. The CBA “provides otherwise” for overtime**

4
5 23. NRS 608.018(1)-(2) governs compensation for overtime and reads:

6 1. An employer shall pay 1 1/2 times an employee's regular wage rate
7 whenever an employee who receives compensation for employment at a rate
8 less than 1 1/2 times the minimum rate set forth in NRS 608.250 works:

9 (a) More than 40 hours in any scheduled week of work; or

10 (b) More than 8 hours in any workday unless by mutual agreement the
11 employee works a scheduled 10 hours per day for 4 calendar days within any
12 scheduled week of work.

13 2. An employer shall pay 1 1/2 times an employee's regular wage rate
14 whenever an employee who receives compensation for employment at a rate
15 not less than 1 1/2 times the minimum rate set forth in NRS 608.250 works
16 more than 40 hours in any scheduled week of work.

17 NRS 608.018(1)-(2).

18 24. Section 608.018(3) of the Nevada Revised Statutes provides, “[t]he provisions
19 of subsections 1 and 2 do not apply to . . . (e) Employees covered by collective bargaining
20 agreements which provide otherwise for overtime . . .” NRS 608.018(3) (emphasis added).

21 25. The CBA provides:

22 The workweek pay period shall be from Friday through Thursday. For the
23 purposes of computing overtime, for an employee scheduled to work five (5)
24 days in one (1) workweek, any hours in excess of eight (8) hours in a day or
25 forty (40) hours in a week shall constitute overtime. For an employee
26 scheduled to work four (4) days in one (1) workweek, any hours worked in
27 excess of ten (10) hours in a day or forty (40) hours in a week shall constitute
28 overtime. Overtime shall be effective and paid only after the total number of
hours not worked due to early ours is first subtracted from the total number of
hours actually worked per shift, per workweek. Overtime shall not be paid
under this Section for more than one (1) reason for the same hours worked.
Employees absent for personal reasons on one (1) or more of their first five (5)
scheduled days of work in their workweek shall work at the Employer’s request
on a scheduled day off in the same workweek at straight time. If the employer
anticipates such scheduling, the Employer provide five (5) days’ advance
notice.

1 This provision will remain in effect for the duration of this Agreement.
2 However, at the expiration of the Agreement, the Employer shall have the
3 right to compute and pay overtime in accordance with the provisions of
4 existing federal and state law, and Union employees shall not have the right
to overtime pay above and beyond the applicable federal and state law
requirements.

5 See Motion, Ex. 2A, p. 15.

6 26. CBAs “provide otherwise” for overtime payments when the CBA “contains a
7 negotiated provision on the same subject but different from the statutory provision.”
8 Firestone v. Southern California Gas Co., 219 F.3d 1063, 1067, 164 L.R.R.M. 2897, 2897
9 (9th Cir. 2000); Jacobs v. Mandalay Corp., 378 F. App’x 685, 687 (9th Cir. 2010) (“[S]ection
10 608.018 exempts from coverage those employees ‘covered by collective bargaining
11 agreements which provide otherwise for overtime.’”).
12

13 27. The instant CBA “provides otherwise” for overtime. The CBA provides
14 otherwise for overtime because there are differences in both the practical effects of the
15 overtime provisions in NRS 608.018 and in the CBA’s overtime provisions, as well as the
16 textual provisions. For example, NRS 608.018(1) provides that an employer shall pay 1 1/2
17 times the employee’s regular wage when the employee works more than 40 hours in a week
18 or more than 8 hours in a day. The CBA does not specify what the pay rate shall be.
19 Additionally, the CBA provides for overtime regardless of the employee’s wage, while NRS
20 608.018 only mandates overtime for employees making more than 1 1/2 the minimum wage.
21 NRS 608.018 provides overtime regardless of how many days are worked in a week, while
22 the CBA allows overtime only when employees work five days in one workweek. NRS
23 608.018 does not limit overtime if an employee misses a scheduled day and works an
24 alternate day, however, the CBA does. Accordingly, the CBA “provides otherwise” for
25 overtime.
26
27
28

1 28. The CBA “provides otherwise” for Ms. Jackson-Williams’ claim for overtime
2 and NRS 608.018 does not provide a legal basis for her claim.

3 **3. Grievance Procedures of the Culinary CBA**

4 29. Section 301 of the Labor Management Relations Act states:

5 Suits for violation of contracts between an employer and a labor organization
6 representing employees in an industry affecting commerce ... may be brought
7 in any district court of the United States having jurisdiction of the parties....

8 Labor Management Relations Act of 1947 § 301(a), 29 U.S.C. § 185(a) (1982).

9 30. Employees may pursue claims for unpaid wages through a private cause of
10 action and without enforcing the claim through the Labor Commissioner. Neville v. Eighth
11 Judicial Dist. Court in & for Cty. of Clark, 133 Nev. 777, 782, 406 P.3d 499, 504 (2017).

12 31. State law rights and obligations that do not exist independently of private
13 agreements can be waived or altered by agreement as a result and are pre-empted by
14 those agreements. MGM Grand Hotel-Reno, Inc. v. Insley, 102 Nev. 513, 517, 728 P.2d
15 821, 824 (1986) (citing Allis Chalmers v. Lueck, 471 U.S. 202, 105 S.Ct. 1904 (1985)).

16 32. Workers do not have to submit to arbitration procedures when redressing
17 grievances because a CBA provides contractual rights, but workers may have an
18 independent statutory right to enforce individual rights. Albertson’s, Inc. v. United Food &
19 Commercial Workers Union, ALF-CIO & CLC, 157 F.3d 758, 762 (9th Cir.).

20 33. Whether Ms. Jackson-Williams must follow the grievance procedures
21 contained in the CBA depends on whether she has an independent statutory right to enforce
22 her claims for wages and overtime outside of the CBA. Ms. Jackson-Williams brought
23 claims for Failure to Pay Wages for All Hours Worked in Violation of NRS 608.140 and
24 608.016, Failure to Pay Overtime Wages in Violation of the Nevada Constitution, Failure to
25 Pay Minimum Wages in Violation of NRS 608.140 and 608.018, and Failure to Pay All

1 Wages Due and Owing Upon Termination Pursuant to NRS 608.140 and 608-040-050. The
2 State of Nevada provides independent statutory rights to each of Ms. Jackson-Williams'
3 claims through the Nevada Revised Statutes and the Nevada Constitution. Albertson's Inc.
4 explains, "in filing a lawsuit under [a statute], an employee asserts independent statutory
5 rights . . . The distinctly separate nature of these contractual and statutory rights is not
6 vitiated merely because both were violated as a result of the same factual occurrence." 157
7 F.3d at 761. Since there are state-law rights at issue, Ms. Jackson-Williams' claims are not
8 preempted, and the claims are not mandated to proceed through the grievance procedure of
9 the CBA.
10
11

12 **4. Lack of Standing to Represent Union Employees**

13 34. Section 159(a) of the United States Code states:

14 Representatives designated or selected for the purposes of collective
15 bargaining by the majority of the employees in a unit appropriate for such
16 purposes, shall be the exclusive representatives of all the employees in
17 such unit for the purposes of collective bargaining in respect to rates of pay,
wages, hours of employment, or other conditions of employment.

18 29 U.S.C. § 159(a).

19 35. Baristas, bartenders, and cocktail servers are represented by the Culinary
20 CBA; construction workers are covered by the Operating Engineers CBA; and, technicians
21 are represented by the AFL-CIO Local Union. Plaintiffs, as members of the "shift jamming
22 class" attempt to represent union members from other sub-classes.
23

24 36. Employees may bring an action against an employer without exhausting
25 contractual remedies, but the employees must "prove that the union as bargaining agent
26 breached its duty of fair representation in its handling of the employee's grievance." Vaca v.
27 Sipes, 386 U.S. 171, 186, 87 S.Ct. 903, 914 (1967).
28

1 37. When employees sue to vindicate “uniquely personal rights” as opposed to
2 rights reserved to unions like picketing, renegotiating a contract, or protesting relocation, the
3 employees have standing to sue on their own behalf and on behalf of other union members.
4
5 Lucas v. Bechtel Corp., 633 F.2d 757, 759 (9th Cir. 1980) (citing Hines v. Anchor Motor
6 Freight, Inc., 424 U.S. 554, 562, 96 S.Ct. 1048, 1055 (1976)).

7 38. In Baker v. IBP, Inc., 357 F.3d 685, 690 (7th Cir. 2004), the Seventh Circuit
8 held that where a “suit is at its core about the adequacy of the wages [the employer] pays,”
9 individual employees may not represent union workers in a class action when the union has
10 not breached its duty of fair representation.” The court reasoned union workers “have a
11 representative—one that under the NLRA is supposed to be ‘exclusive’ with respect to
12 wages” and therefore “Plaintiffs’ request to proceed on behalf of a class of all workers
13 shows that they seek to usurp the union’s role.” Id. at 686, 690.

14
15 39. Plaintiffs do not assert the Union has breached its duty of fair representation.
16 The CBA is valid and operative. Plaintiffs cannot represent those other union members who
17 are represented by separate unions without asserting those union representatives breached
18 their duty of fair representation.
19

20 **C. PLAINTIFFS’ REQUEST FOR ADDITIONAL DISCOVERY**
21 **PURSUANT TO NRCP 56.**

22 40. Nevada Rules of Civil Procedure Rule 56 provides:

- 23 (d) When Facts Are Unavailable to the Nonmovant. If a nonmovant
24 shows by affidavit or declaration that, for specified reasons, it cannot
25 present facts essential to justify its opposition, the court may:
26 (1) defer considering the motion or deny it;
27 (2) allow time to obtain affidavits or declarations or to take discovery; or
28 (3) issue any other appropriate order.

NRCP 56(d).

1 41. A party opposing summary judgment pursuant to NRCP 56(d) has the burden
2 of affirmatively demonstrating by a good-faith affidavit (1) the identification of the specific
3 facts that further discovery would reveal; (2) the specific reasons why such evidence is
4 presently unavailable; and (3) how those facts would preclude summary judgment. Family
5 Home & Fin. Ctr., Inc. v. Fed. Home Loan Mortgage Corp., 525 F.3d 822, 827 (9th Cir.
6 2008); Collins v. Union Fed. Sav. & Loan Ass'n, 99 Nev. 657, 669-70, 262 P.3d 705, 714
7 (2011).

8
9 42. Plaintiffs request additional discovery to ascertain whether the CBA is valid or
10 not. Plaintiffs have not provided an affidavit, have not articulated the specific reasons why
11 the evidence they need is unavailable to them, and have not stated how those facts would
12 preclude summary judgment.

13
14 **V. CONCLUSION AND ORDER.**

15 Based on the foregoing findings of fact and conclusions of law and good cause
16 appearing therefore,

17
18 IT IS HEREBY ORDERED summary judgment is entered in favor of GSR and against
19 the Plaintiffs.

20 DATED this 2nd day of November, 2020.

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24 DISTRICT JUDGE
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H. JOHNSON, ESQ.
JOSHUA BUCK, ESQ.
SUSAN HILDEN, ESQ.
LEAH JONES, ESQ.
MARK THIERMAN, ESQ.

Heidi Boe

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Clerk of the Court
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EXHIBIT 2

*June 7, 2019 Order Granting in Part and Denying in Part
Defendants' Motion to Dismiss*

EXHIBIT 2

1 CODE NO. 3370
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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE
8

9 EDDY MARTEL (also known as MARTEL-
10 RODRIGUEZ), MARY ANNE CAPILLA,
11 JANICE JACKSON-WILLIAMS and WHITNEY
12 VAUGHAN on behalf of themselves and all
13 others similarly situated,

Case No. CV16-01264

Dept. No. 6

14 Plaintiffs,

15 vs.

16 HG STAFFING, LLC, MEI-GSR HOLDINGS,
17 LLC d/b/a GRAND SIERRA RESORT, and
18 DOES 1 through 50, inclusive,

19 Defendants.
20 _____ /

21 **ORDER GRANTING, IN PART, AND DENYING, IN PART, MOTION TO DISMISS**

22 Before this Court is a *Motion to Dismiss First Amended Complaint* ("Motion") filed by
23 Defendants HG STAFFING, LLC and MEI-GSR HOLDINGS, LLC d/b/a GRAND SIERRA
24 RESORT (collectively, "GSR" unless individually referenced), by and through their counsel,
25 Cohen|Johnson|Parker|Edwards.

26 Plaintiffs EDDY MARTEL (also known as MARTEL-RODRIGUEZ) ("Mr. Martel"),
27 MARY ANNE CAPILLA ("Ms. Capilla"), JANICE JACKSON-WILLIAMS ("Ms. Jackson-
28 Williams"), and WHITNEY VAUGHAN ("Ms. Vaughan") (collectively, "Plaintiffs"), on behalf of

1 themselves and all others similarly situated, filed *Plaintiffs' Opposition to Defendants' Motion*
2 *to Dismiss Plaintiffs' First Amended Complaint* ("Opposition"), by and through their counsel,
3 Thierman Buck, LLP. GSR filed its *Reply in Support of Motion to Dismiss Amended*
4 *Complaint* ("Reply") and submitted the matter for decision thereafter.

6 **I. FACTUAL AND PROCEDURAL HISTORY**

7 This action arises out of an employment dispute between Plaintiffs and GSR
8 regarding wages paid by GSR to Plaintiffs and similarly situated employees. On June 14,
9 2016, Plaintiffs filed a *Class Action Complaint* ("Complaint") alleging GSR maintained the
10 following policies, practices, and procedures which required various employees to perform
11 work activities without compensation: (1) GSR's Cash Bank Policy, (2) Dance Class Policy,
12 (3) Room Attendant Pre-Shift Policy, (4) Pre-Shift Meeting Policy, (5) Uniform Policy, and (6)
13 Shift Jamming Policy. *Complaint*, pp. 4-8. As a result of said policies, Plaintiffs allege four
14 causes of action against GSR: (1) Failure to Pay Wages for All Hours Worked in Violation of
15 NRS 608.140 and 608.016, (2) Failure to Pay Minimum Wages in Violation of the Nevada
16 Constitution, (3) Failure to Pay Overtime Wages in Violation of NRS 608.140 and 608.018,
17 and (4) Failure to Timely Pay All Wages Due and Owing Upon Termination Pursuant to NRS
18 608.140 and 608.020-.050. *Id.*, pp. 11-15.

19 On October 9, 2018, this Court entered its *Order After Hearing Granting Defendants'*
20 *Motion to Dismiss* ("Order"). The Court found Plaintiffs failed to provide sufficient
21 information to support its claims, and therefore granted GSR's *Motion to Dismiss*.
22 Thereafter, Plaintiffs filed *Plaintiffs' Motion for Reconsideration of the Court's Order Granting*
23 *Defendant's Motion to Dismiss or in the Alternative Leave to File an Amended Complaint*
24 ("Motion for Reconsideration") requesting the Court reconsider its Order pursuant to NRCP
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1 Rule 60(b). *Motion for Reconsideration*, p. 2. This Court entered its *Order Re Motion for*
2 *Reconsideration* denying Plaintiffs request on the grounds they failed to state a claim but
3 granting Plaintiffs leave to amend their *Complaint*.
4

5 On January 29, 2019, Plaintiffs filed their *First Amended Complaint* ("FAC") asserting
6 the same four (4) claims. Thereafter, GSR filed the instant *Motion* requesting this Court
7 dismiss the FAC pursuant to NRCP 12(b)(5). *Motion*, p. 2. GSR contends the claims
8 asserted in the FAC "have no more merit than Plaintiffs' original claims." *Motion*, p. 2.
9

10 First, GSR contends all of Plaintiffs' claims asserted after June 14, 2014 are barred
11 by the two-year statute of limitations pursuant to NRS 608.260. *Motion*, p. 5. GSR asserts
12 the Nevada Supreme Court held claims made under the Minimum Wage Amendment
13 ("MWA") are governed by a two-year statute of limitations. *Motion*, p. 5; citing Perry v.
14 Terrible Herbst, Inc., 132 Nev. Adv. Op. 75, 383 P.3d 257, 260-62 (2016). GSR further
15 asserts, all individual and class claims brought prior to June 14, 2014 are not tolled pursuant
16 to Archon Corp. v. Eighth Judicial Dist. Court in & for Cty. of Clark, 407 P.3d 702 (Nev.
17 2017) and China Agritech, Inc. v. Resh, 138 S. Ct. 1800, 1804 (2018). *Motion*, p. 9.
18

19 Second, GSR maintains Plaintiffs' First, Third, and Fourth claims should be
20 dismissed for failure to exhaust administrative remedies with the labor commissioner as
21 required by NRS Chapter 607. *Motion*, p. 11. GSR argues Plaintiffs were required to first
22 file and pursue their state law wage claims with the Nevada Labor Commissioner before
23 seeking relief from this Court. *Motion*, p. 11; citing NRS 608.016; Allstate Ins. Co. v.
24 Thrope, 123 Nev. 565, 571-72, 170 P.3d 989, 993-94 (2007).
25

26 Third, GSR argues Plaintiffs First, Third, and Fourth Claims for Relief should be
27 dismissed for failing to make good faith attempt to collect their wages before filing their claim
28

1 for wages with the Court. *Motion*, p. 13; citing NAC 608.155(1).

2 Fourth, GSR asserts Plaintiffs lack standing to represent union employees because
3 they are exclusively represented by their respective unions pursuant to 29 U.S.C.A Section
4 159(a). *Motion*, p. 14.

5
6 Fifth, GSR contends Plaintiffs have again failed to state a claim for wages, including
7 minimum wages. *Motion*, p. 15. GSR argues Plaintiff do no allege any facts which would
8 show that any plaintiff was paid less than the minimum wage and do not allege how much
9 they were paid in any week. *Motion*, p. 16. GSR asserts Plaintiffs failure to claim how much
10 they worked in a week results in mere speculation as to whether Plaintiffs were underpaid.
11 *Motion*, p. 16.

12
13 Sixth, GSR maintains Ms. Jackson-Williams' claims for wages and overtime are
14 barred for failing to exhaust grievance procedures of the collective bargaining agreement.
15 *Motion*, p. 17. GSR argues Ms. Jackson-Williams is subject to a collective bargaining
16 agreement and, therefore, her statutory claims for wages or overtime are dependent upon
17 finding a breach of that agreement to maintain those claims. *Motion*, p. 18. Moreover, GSR
18 asserts Ms. Jackson-Williams is not entitled to overtime pursuant to NRS 608.018 because
19 the collective bargaining agreement provides otherwise. *Motion*, p. 19.

20
21 Seventh, GSR contends Plaintiffs' claims are barred by claim and issue preclusion.
22 *Motion*, p. 20. GSR maintains United States District Judge Hicks already determined
23 Plaintiffs' wage claims cannot proceed in a class action; and, they are therefore barred from
24 re-litigating the federal district court's judgment denying class certification. *Motion*, p. 2;
25 citing Five Star Capital Corp. v. Ruby, 124 Nev. 1048, 1054, 194 P.3d 709, 713 (2008).
26
27 Lastly, GSR argues Plaintiffs should not be able to re-litigate the federal action on principles
28

1 of comity and the first-to-file rule. *Motion*, p. 23.

2 In their *Opposition*, Plaintiffs first maintain they are not required to exhaust
3 administrative remedies with the Office of the Labor Commissioner prior to filing suit.
4 *Opposition*, p. 7; citing Neville v. Terrible Herbst, Inc., 133 Nev. Adv. Op. 95, 406 P.3d 499,
5 504 (Dec. 7 2017).
6

7 Second, Plaintiffs assert they meet the pleading standard because they alleged
8 specific work activities for which they are not paid their minimum wage, provided estimated
9 damages owed to Plaintiffs and the putative classes, and provided documentary evidence in
10 their possession and control specifying hours, dates, and times worked without pay.
11 *Opposition*, p. 9.
12

13 Third, Plaintiffs maintain their claims are not barred by issue or claim preclusion
14 because their Nevada wage claims were not certified in the Sargant action. *Opposition*, p.
15 13. Specifically, the federal court never reached determination of the state law claims
16 because it dismissed them on the “incorrect premise” that Nevada employees do not have a
17 private right of action for wage claims, at summary judgment, and prior to the court’s
18 decertification order. *Opposition*, p. 13.
19

20 Fourth, Plaintiffs contend its claims are not barred by any statutes of limitation.
21 *Opposition*, p. 22. Plaintiffs contend NRS 11.190(3)(a)’s three-year statute of limitation for
22 “an action upon liability created by statute, other than a penalty or forfeiture” applies to this
23 action because NRS Chapter 608 lacks an express limitation period and NRS 11.190
24 provides the three-year statute of limitation applies “unless further limited by specific statute.
25 . . .” *Opposition*, p. 22; citing NRS 11.190.
26

27 //

1 Plaintiffs further contend Defendants reliance on Perry is impermissibly broad
2 because the Court did not hold a two-year statute of limitation period applicable to the
3 Minimum Wage Amendment, extended to NRS 608 private causes of action claims.
4 *Opposition*, p. 23.

5
6 Fifth, Plaintiffs maintain their claims are not preempted by any alleged collective
7 bargaining agreement because they are only trying to enforce the statutory obligation to pay
8 overtime. *Opposition*, p. 29.

9
10 In their *Reply*, Defendants reiterate that a two-year statute of limitations applies to the
11 claims. *Reply*, p. 2. Defendants assert Plaintiffs concede they did not exhaust
12 administrative remedies or grievance procedures. *Reply*, p. 3. Lastly, Defendants assert
13 Plaintiff do not address or dispute that they are not entitled to seek class certification on
14 behalf of GSR employees represented by a union. *Reply*, p. 3.

15
16 **II. STANDARD OF REVIEW; LAW AND ANALYSIS**

17 A complaint should be dismissed under NRCP 12(b)(5) “only if it appears beyond a
18 doubt” that the plaintiff is entitled to no relief under any set of facts that could be proved in
19 support of the claim. Buzz Stew, LLC v. City of North Las Vegas, 124 Nev. 224, 228, 181
20 P.3d 670, 672 (2008); Blackjack Bonding v. City of Las Vegas Mun. Court, 116 Nev. 1213,
21 1217, 14 P.3d 1275, 1278 (2000). When analyzing the merits of a 12(b)(5) motion to
22 dismiss, the court recognizes all of the factual allegations in the plaintiff’s complaint as true,
23 and draws all inferences in favor of the non-moving party. *Id.* Dismissal is appropriate
24 “where the allegations are insufficient to establish the elements of a claim for relief.”
25
26 Stockmeier v. Nevada Dept. of Corr. Psychological Review Panel, 124 Nev. 313, 316, 183
27 P.3d 133, 135 (2008); see also Torres v. Nev. Direct Ins. Co., 131 Nev. Adv. Op. 54, 353
28

1 P.3d 1203, 1210 (2015) (same). Nevada is a notice-pleading jurisdiction, therefore, "[t]he
2 test for determining whether the allegations of a cause of action are sufficient to assert a
3 claim for relief is whether the allegations give fair notice of the nature and basis of the claim
4 and the relief requested." Ravera v. City of Reno, 100 Nev. 68, 70, 675 P.2d 407, 408
5 (1984); W. States Const., Inc. v. Michoff, 108 Nev. 931, 936, 840 P.2d 1220, 1223 (1992);
6 NRCP 8.
7

8 **A. All Claims Accruing Prior to June 14, 2014 are Barred by the Statute of**
9 **Limitations**

10 **1. A Two-Year Statute of Limitations Applies to all Claims**

11 The Minimum Wage Act (MWA) guarantees employees payment of a specified
12 minimum wage and gives an employee whose employer violates the MWA the right to bring
13 an action against his or her employer in Nevada. Perry v. Terrible Herbst, Inc., 383 P.3d
14 257, 258 (Nev. 2016). A two-year statute of limitation applies to actions for failure to pay the
15 minimum wage in violation of the Nevada constitution. Id. at 262. This two-year statute of
16 limitation period applies to NRS 608 statutory wage claims that are analogous to a cause of
17 action for failure to pay an employee the lawful minimum wage. Id. Accordingly, a two-year
18 statute of limitation applies to: Plaintiffs' First Cause of Action for Failure to Pay Wages for
19 All Hours Worked in Violation of NRS 608.140 and 608.016; Second Cause of Action for
20 Failure to Pay Minimum Wages in Violation of the Nevada Constitution; Third Cause of
21 Action for Failure to Pay Overtime Wages in Violation of NRS 608.140 and 608.018; and,
22 Fourth Cause of Action for Failure to Timely Pay All Wages Due and Owing Upon
23 Termination Pursuant to NRS 608.140 and 608.020-.050.
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2. Cross Jurisdictional Tolling Does Not Apply

Class-action tolling suspends the statutes of limitation for all purported members of the class until a formal decision on class certification has been made, or until the individual plaintiff opts out of the class. Archon Corp. v. Eighth Judicial Dist. Court in & for Cty. of Clark, 407 P.3d 702 (Nev. 2017). Cross-jurisdictional class-action tolling suspends the statutes of limitation for all purported class members even if the class action was pending in a different jurisdiction than where the later suit is brought. Id.

The United States Supreme Court in American Pipe held the timely filing of a class action tolls the applicable statutes of limitation for all persons encompassed by the class complaint. The Court further ruled that, where class action status has been denied, members of the failed class could timely intervene as individual plaintiffs in the still-pending action, shorn of its class character.

Recently, however, the United State Supreme Court declined to apply American Pipe tolling to successive class action claims, holding the maintenance of a follow-on class action past the expiration of the statute of limitations is not permitted. China Agritech, Inc. v. Resh, 138 S. Ct. 1800, 1803, 201 L. Ed. 2d 123 (2018). The Court explained that allowing tolling for successive class actions would allow the statute of limitation to be extended time and again; as each class is denied certification, a new named plaintiff could file a class complaint that resuscitates the litigation. Id.

Whether cross-jurisdictional tolling applies to a case like the present case is an issue that has not yet been decided by the Nevada Supreme Court. See Archon Corp. v. Eighth Judicial Dist. Court in & for Cty. of Clark, 407 P.3d 702 (Nev. 2017). In Achron Corp., the Court declined to consider the issue, finding an advisory mandamus was not warranted because the issue was not raised in the district court. Id. Nevertheless, the case presented

1 compelling grounds to refrain from recognizing cross-jurisdictional tolling. Specifically,
2 cross-jurisdictional class-action tolling would allow the federal judiciary's actions to
3 indefinitely extend the statutes of limitation beyond a five-year period of repose under NRS
4 11.500. *Id.* Moreover, Achron Corp was considered before the United States Supreme
5 Court's decision in China Agritech, Inc.

6 This issue has been similarly addressed in regards to individual actions. In Clemens
7 v. Daimler Chrysler Corp., 534 F.3d 1017, 1025 (9th Cir. 2008), the Ninth Circuit held
8 American Pipe does not "mandate cross-jurisdictional tolling as a matter of state procedure."
9 The Illinois Supreme Court addressed this issue in Portwood v. Ford Motor Co., 701 N.E.2d
10 1102, 1103-05 (Ill. 1998), holding a state "statute of limitations is not tolled during the
11 pendency of a class action in federal court," even though the court had previously "adopted
12 the American Pipe rule for class actions filed in Illinois state court." The Court reasoned
13 such cross-jurisdictional tolling of a state statute of limitation would "increase the burden on
14 that state's court system" because it would expose the state court system to the evils of
15 "forum shopping." *Id.* at 1104. The court further found that because "state courts have no
16 control over the work of the federal judiciary, . . . [s]tate courts should not be required to
17 entertain stale claims simply because the controlling statute of limitations expired while a
18 federal court considered whether to certify a class action." *Id.* at 1104.

19 Moreover, pursuant to NRS 11.500, the Nevada Legislature has determined that a
20 statute of limitation should only be tolled based on an action filed in another jurisdiction
21 when "the court lacked jurisdiction over the subject matter of the action," (which it did not
22 here), and then limited tolling to "[n]inety days after the action is dismissed."

23 Here, Plaintiffs filed their *Complaint* on June 14, 2016. As such, all claims accruing
24 before June 14, 2014 are barred unless cross-jurisdictional tolling applies. Under the
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1 unique facts of this case, the Court finds cross-jurisdictional tolling does not apply. The
2 Court looks to the history of this litigation. Specifically, Plaintiffs in this case previously
3 brought a substantially similar action in the Second Judicial District Court for the State of
4 Nevada. The case was removed to federal court where class certification was denied and
5 the case dismissed. Plaintiffs again seek recourse in the Second Judicial District Court and
6 assert their claims were tolled by the federal action.

7 To permit tolling claims under these specific circumstances provides for never-ending
8 successive class actions because the statute of limitation would never expire. Newly named
9 plaintiffs could always file a class complaint that would resurrect the litigation. Accordingly,
10 class action claims shouldn't be tolled. Therefore, all of Plaintiffs' class action claims that
11 accrued prior to June 14, 2014, two (2) years before Plaintiffs filed their *Complaint*, are
12 barred and shall be dismissed.

13 Plaintiffs' *Complaint* alleges that Plaintiff Capilla was employed by GSR from "March
14 2011" to "September 2013;" Plaintiff Vaughan was employed by GSR from "August 2012"
15 through "June 2013;" Plaintiff Martel was employed by GSR from "January 2012" to "July
16 2014;" and Plaintiff Williams was employed by GSR from "April 2014" to "December 2015."
17 See Complaint at 3, ¶¶ 5 - 8. Accordingly, all of Ms. Capilla and Ms. Vaughan's claims, all
18 but one (1) month of Mr. Martel's claims, and all but eighteen (18) months of Ms. Jackson-
19 Williams' claims are dismissed.

22 B. Remaining Claims

23 Two Plaintiffs remain pursuant to this Court's dismissal of all claims accrued prior to
24 June 14, 2016. First, Mr. Martel's claims regarding a one-month period remains; and,
25 second, Ms. Jackson-Williams' claims remains regarding an eighteen months period. GSR
26 assert the remaining claims should be dismissed for (1) failure to exhaust administrative
27 remedies of the collective bargaining agreement; (2) issue preclusion; (3) claim preclusion;
28 (4) lack of standing to represent union employees; and, (5) failure to state a claim.

1 The Court addresses each argument in turn.

2 **1. Mr. Martel and Ms. Jackson-Williams are not Required to Exhaust**
3 **Administrative Remedies**

4 Where an administrative agency has exclusive jurisdiction over statutory claims, the
5 failure to exhaust administrative remedies before proceeding in district court renders the
6 matter unripe for district court review. Allstate Ins. Co. v. Thorpe, 123 Nev. 565, 571, 170
7 P.3d 989, 993 (2007). A private cause of action generally cannot be implied when an
8 administrative official is expressly charged with enforcing a section of laws. Baldonado v.
9 Wynn Las Vegas, LLC, 124 Nev. 951, 194 P.3d 96 (2008). However, the Nevada Supreme
10 Court has determined an employee has a private right to pursue claims for unpaid wages
11 pursuant to NRS 608.140. Neville v. Eighth Judicial Dist. Court in & for Cty. of Clark, 406
12 P.3d 499, 504 (Nev. 2017). As such, the Labor Commissioner does not have exclusive
13 jurisdiction over statutory claims. Therefore, Plaintiffs were not required to exhaust
14 administrative remedies before proceeding to district court.
15

16
17 **2. Issue and Claim Preclusion Does not Apply**

18 In Five Star Capital Corp. v. Ruby, the Nevada Supreme Court set forth a three-part
19 test for determining whether claim preclusion applies to a later action: (1) [T]he parties or
20 their privies are the same, (2) the final judgment is valid, and (3) the subsequent action is
21 based on the same claims or any part of them that were or could have been brought in the
22 first case. 124 Nev. at 1054. In Five Star Capital Corp., the Court reasoned, claim
23 preclusion applies to preclude an entire second suit that is based on the same set of facts
24 and circumstances as the first suit. Id.
25

26 The Court also set forth a four-part test for determining whether issue preclusion
27 applies to a later action:
28

1 (1) the issue decided in the prior litigation must be identical to the issue
2 presented in the current action; (2) **the initial ruling must have been on the**
3 **merits and have become final**; ... (3) the party against whom the judgment is
4 asserted must have been a party or in privity with a party to the prior litigation";
5 and (4) the issue was actually and necessarily litigated.

6 124 Nev. 1048, 1055, 194 P.3d 709, 713 (2008) (citations omitted) (emphasis added).

7 Here, class certification was never addressed in Sargent for the Nevada wage claims
8 and the Court in Sargent has since reversed the grant of summary judgment in light of
9 Neville. There is no issue or claim preclusion because class certification was never
10 independently decided; there has been no ruling on the merits of any of the employees'
11 FLSA or Nevada wage claims; and, the Plaintiffs' NRS 608 and Nevada Constitution
12 minimum wage claims have not actually and necessarily been litigated.

13 3. Standing to Represent Union Employees

14 Pursuant to 29 U.S.C. § 159(a),

15
16 Representatives designated or selected for the purposes of collective
17 bargaining by the majority of the employees in a unit appropriate for such
18 purposes, shall be the exclusive representatives of all the employees in such
19 unit for the purposes of collective bargaining in respect to rates of pay, wages,
20 hours of employment, or other conditions of employment.

21 29 U.S.C. § 159(a). In Baker v. IBP, Inc., 357 F.3d 685, 690 (7th Cir. 2004), the Seventh
22 Circuit held that where a "suit is at its core about the adequacy of the wages [the employer]
23 pays," individual employees may not represent union workers in a class action when the
24 Union has not breached its duty of fair representation.

25 The court reasoned that union workers "have a representative—one that under the
26 NLRA is supposed to be 'exclusive' with respect to wages" and therefore "Plaintiffs' request
27 to proceed on behalf of a class of all workers shows that they seek to usurp the union's
28 role." Id. at 686, 690. Moreover, state law rights and obligations that do not exist

1 independently of private agreements, and that can be waived or altered by agreement as a
2 result, are pre-empted by those agreements. MGM Grand Hotel-Reno, Inc. v. Insley, 102
3 Nev. 513, 517, 728 P.2d 821, 824 (1986).

4
5 Plaintiffs do not dispute that they may not pursue class actions on behalf of union
6 employees because they are not union representatives, who have the exclusive right to
7 represent members of the union with respect wage. However, Plaintiffs dispute that an
8 enforceable collective bargaining agreement was in place. Specifically, Plaintiffs argue that:
9 (1) the CBA is not valid and has expired by its own terms on or about May 1, 2011 (over
10 seven years ago); (2) because it has expired and no subsequent CBA has been ratified or
11 signed, Plaintiffs may sue in this Court for unpaid wages, overtime wages, and penalties
12 due; and, (3) even if the CBA was valid it does not provide otherwise for overtime wages
13 and Plaintiffs may bring their claims in this Court. See Opposition, generally. The Court
14 declines to consider evidence, such as the collective bargaining agreement, outside the
15 pleadings at this time.¹ Considering the claims in Plaintiffs' *Complaint* as true, and drawing
16
17 all conclusions in favor of the Plaintiffs, dismissal is not appropriate on these grounds.
18

19 4. Failure to State a Claim

20 As stated dismissal is appropriate pursuant to NRCP 12(b)(5) "where the allegations
21 are insufficient to establish the elements of a claim for relief." Stockmeier v. Nevada Dept.
22 of Corr. Psychological Review Panel, 124 Nev. 313, 316, 183 P.3d 133, 135 (2008); see
23 also Torres v. Nev. Direct Ins. Co., 131 Nev. Adv. Op. 54, 353 P.3d 1203, 1210 (2015)
24 (same). Nevada is a notice-pleading jurisdiction, therefore, "[t]he test for determining
25 whether the allegations of a cause of action are sufficient to assert a claim for relief is
26 whether the allegations give fair notice of the nature and basis of the claim and the relief
27
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¹ The Court notes this issue may be more appropriate for a motion for summary judgment.

1 requested." Ravera v. City of Reno, 100 Nev. 68, 70, 675 P.2d 407, 408 (1984); W. States
2 Const., Inc. v. Michoff, 108 Nev. 931, 936, 840 P.2d 1220, 1223 (1992); NRCP 8.

3 Plaintiffs filed their *FAC* on January 29, 2019. This Court finds Plaintiffs have
4 provided sufficient factual allegations regarding hours worked and exacting estimates of
5 shifts and unpaid hours and for the applicable time period to put Defendants on notice of the
6 nature and basis of the claims and relief requested. See FAC, generally.

8 **III. ORDER.**

9 The Court finds a two-year statute of limitation applies to this case. As such, the
10 Court dismisses all of Ms. Capilla and Ms. Vaughan's claims, all but one (1) month of Mr.
11 Martel's claims, and all but eighteen (18) months of Ms. Jackson-Williams' claims.
12 However, the Court declines to dismiss the remaining claims at this time.

14 Based on the foregoing, and good cause appearing thereto,
15 **IT IS HEREBY ORDERED** Defendants' *Motion to Dismiss* is GRANTED, in part, and
16 DENIED, in part.

17 Dated this 7th day of June, 2019.

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21 DISTRICT JUDGE
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MARK THIERMAN, ESQ.
SUSAN HILDEN, ESQ.
H. JOHNSON, ESQ.

Hubbre

CV16-01264

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Attorneys for Plaintiffs-Petitioners

**IN THE SECOND JUDICIAL DISTRICT COURT OF
THE STATE OF NEVADA IN AND FOR THE
COUNTY OF WASHOE**

EDDY MARTEL (also known as MARTEL-
RODRIGUEZ), MARY ANNE CAPILLA,
JANICE JACKSON-WILLIAMS, and
WHITNEY VAUGHAN on behalf of
themselves and all others similarly
situated,

Plaintiffs-Appellants,

vs.

HG STAFFING, LLC, MEI-GSR
HOLDINGS LLC d/b/a GRAND SIERRA
RESORT

Defendants-Respondents

Case No.: 16-cv-01264

**PLAINTIFFS'-APPELLANTS' CASE
APPEAL STATEMENT**

CASE APPEAL STATEMENT PURSUANT TO NRAP 3(f)(3)

1. This Case Appeal Statement is filed by Plaintiffs-Petitioners-Appellants
EDDY MARTEL (also known as MARTEL-RODRIGUEZ), MARY ANNE CAPILLA,
JANICE JACKSON-WILLIAMS, and WHITNEY VAUGHAN on behalf of themselves and
all others similarly situated.

2. This appeal is from two Orders by the Honorable Lynne K. Simons, Judge
of the District Court, Department 6, County of Washoe, State of Nevada. See e.g.

Exhibit 1, November 2, 2020 Order Granting Summary Judgment and Exhibit 2, June 7, 2020 Order Granting in Part and Denying in Part Defendants' Motion to Dismiss.

3. Plaintiffs-Appellants are represented by retained counsel:

Mark R. Thierman, Nev. Bar No. 8285
Joshua D. Buck, Nev. Bar No. 12187
Leah L. Jones, Nev. Bar No. 13161
Joshua R. Hendrickson, Nev. Bar. No. 12225
Thierman Buck Law Firm
7287 Lakeside Dr.
Reno, NV 89511
internal@thiermanbuck.com

4. Defendants-Respondents HG STAFFING, LLC and MEI-GSR HOLDINGS LLC d/b/a GRAND SIERRA RESORT are represented by counsel:

Susan Heaney Hilden, Esq., Nev. Bar No. 5358
shilden@meruelogroup.com
Chris Davis, Esq., Nev. Bar No. 6616
chris.davis@sllslasvegas.com
2500 East Second Street
Reno, Nevada 89595
Tel: (775) 789-5362

5. All attorneys representing Plaintiffs-Appellants and Defendants-Respondents are licensed to practice law in the State of Nevada.

6. The attorneys on this appeal for Plaintiffs-Appellants are the same attorneys who represented them in the District Court below.

7. The Plaintiffs-Appellants did not request, and the district court did not grant leave to proceed in forma pauperis.

8. This suit was originally filed on June 14, 2016 as a wage and hour class action. This is an appeal from the District Court's two Orders, (1) the 11/2/20 Order granting summary judgment on all Plaintiffs claims, and (2) the 6/7/19 Order granting in part and denying in part Defendants' Motion to Dismiss.

9. This case has been previously subject to an appeal by Defendants-Respondents, HG Staffing, LLC and MEI-GSR Holdings, LLC d/b/a Grand Sierra Resort vs. Second Judicial District Court for the State of Nevada in and for the County of Clark,

1 the Honorable Lynne K. Simons, District Court Judge, Case No. 79118 in the Supreme
2 Court State of Nevada.

3 10. This case does not involve child custody or visitation.

4 11. The Plaintiffs-Appellants are not opposed to Settlement and time is not of
5 the essence.

6 **AFFIRMATION**

7 *The undersigned does hereby affirm that the proceeding document to be filed in*
8 *the Second Judicial District Court in the State of Nevada, County of Washoe, does not*
9 *contain the social security number of any person.*

10 DATED: November 25, 2020

11 Respectfully Submitted,
12 THIERMAN BUCK LLP

13 /s/ Leah L. Jones

14 Mark R. Thierman

15 Joshua D. Buck

16 Leah L. Jones

17 Joshua R. Hendrickson

18 *Attorneys for Plaintiffs-Petitioners*
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that on this date I electronically filed the foregoing **PLAINTIFFS'-APPELLANTS' CASE APPEAL STATEMENT** with the Clerk of the Court by using the e-Flex filing system which will send a notice of electronic filing to the following:

H. JOHNSON, ESQ. for HG STAFFING, LLC, et al
SUSAN HILDEN, ESQ. for HG STAFFING, LLC, et al

Pursuant to NRCP 5(b), I hereby further certify that service of the foregoing was also made by depositing a true and correct copy of the same for mailing, first class mail, postage prepaid thereon, at Reno, Nevada to the following:

Chris Davis, Esq.
2500 East Second Street
Reno, NV 89595

Attorney for Defendants

DATED this 25th day of November, 2020

/s/ Brittany Manning
An Employee of Thierman Buck LLP

SECOND JUDICIAL DISTRICT COURT**STATE OF NEVADA
COUNTY OF WASHOE****Case History - CV16-01264****Case Description: EDDY MARTEL, ET AL VS HG STAFFING, LLC ET AL (D6)****Case Number: CV16-01264 Case Type: OTHER CIVIL MATTERS - Initially Filed On: 6/14/2016****Parties**

<u>Party Type & Name</u>	<u>Party Status</u>
JUDG - LYNNE K. SIMONS - D6	Active
PLTF - WHITNEY VAUGHAN - @1294630	Active
PLTF - JANICE JACKSON-WILLIAMS - @1294629	Active
PLTF - EDDY MARTEL - @1294627	Active
PLTF - MARY ANNE CAPILLA - @1294628	Active
DEFT - MEI-GSR HOLDINGS LLC dba GRAND SIERRA RESORT AND CASINO - @1212239	Active
DEFT - HG STAFFING, LLC, - @1243167	Active
ATTY - Chris Davis, Esq. - 6616	Active
ATTY - Joshua D. Buck, Esq. - 12187	Active
ATTY - Mark R. Thierman, Esq. - 8285	Active
ATTY - Leah L. Jones, Esq. - 13161	Active
ATTY - Susan Heaney Hilden, Esq. - 5358	Active
ATTY - H. Stan Johnson, Esq. - 265	Active

Disposed Hearings

- 1 Department: D6 -- Event: Request for Submission -- Scheduled Date & Time: 2/22/2018 at 14:51:00
Extra Event Text: MOTION TO DISMISS FILED 1/22/18
Event Disposition: S200 - 5/9/2018
- 2 Department: D6 -- Event: ORAL ARGUMENTS -- Scheduled Date & Time: 7/19/2018 at 13:30:00
Extra Event Text: COURT ORDERED - MOTION TO DISMISS
Event Disposition: D840 - 7/19/2018
- 3 Department: D6 -- Event: Request for Submission -- Scheduled Date & Time: 7/19/2018 at 13:30:00
Extra Event Text: (MOTION TO DISMISS TAKEN UNDER ADVISEMENT AFTER ORAL ARGUMENTS) - PROPOSED ORDERS EMAILED TO D6 ON 8/9
Event Disposition: S200 - 10/9/2018
- 4 Department: D6 -- Event: Request for Submission -- Scheduled Date & Time: 8/9/2018 at 13:59:00
Extra Event Text: PLAINTIFFS' PROPOSED ORDER REGARDING MOTION TO DISMISS
Event Disposition: S200 - 10/9/2018
- 5 Department: D6 -- Event: Request for Submission -- Scheduled Date & Time: 8/9/2018 at 15:52:00
Extra Event Text: ORDER GRANTING MOTION TO DISMISS (ORDER ATTACHED)
Event Disposition: S200 - 10/9/2018
- 6 Department: D6 -- Event: Request for Submission -- Scheduled Date & Time: 11/7/2018 at 11:45:00
Extra Event Text: MOTION FOR RECONSIDERATION OF THE COURT'S ORDER GRANTING MOTION TO DISMISS OR IN THE ALTERNATIVE LEAVE TO FILE A
Event Disposition: S200 - 1/9/2019
- 7 Department: D6 -- Event: Request for Submission -- Scheduled Date & Time: 3/18/2019 at 16:02:00
Extra Event Text: REQUEST FOR SUBMISSION OF MOTION TO DISMISS FIRST AMENDED COMPLAINT
Event Disposition: S200 - 6/7/2019

Report Does Not Contain Sealed Cases or Confidential Information

- 8 Department: D6 -- Event: Request for Submission -- Scheduled Date & Time: 6/13/2019 at 16:01:00
Extra Event Text: REQUEST FOR SUBMISSION OF MOTION FOR SUMMARY JUDGMENT
Event Disposition: S200 - 7/11/2019
- 9 Department: D6 -- Event: Request for Submission -- Scheduled Date & Time: 6/18/2020 at 17:49:00
Extra Event Text: ORDER GRANTING STIPULATION FOR ENLARGEMENT OF TIME TO RESPOND TO DEFENDANTS' MOTION FOR SUMMARY JUDGEMENT/
Event Disposition: S200 - 6/23/2020
- 10 Department: D6 -- Event: Request for Submission -- Scheduled Date & Time: 7/16/2020 at 13:50:00
Extra Event Text: MOTION FOR SUMMARY JUDGMENT OR IN THE ALTERNATIVE SUMMARY ADJUDICATION ON 6-9-2020 - BINDER BUILT
Event Disposition: S200 - 10/12/2020

Actions

- | | <u>Filing Date</u> | <u>-</u> | <u>Docket Code & Description</u> |
|----|--------------------|----------|--|
| 1 | 6/14/2016 | - | \$PLTF - \$Addl Plaintiff/Complaint
Additional Text: WHITNEY VAUGHAN - Transaction 5561681 - Approved By: CSULEZIC : 06-15-2016:08:13:47 |
| 2 | 6/14/2016 | - | \$PLTF - \$Addl Plaintiff/Complaint
Additional Text: JANICE JACKSON-WILLIAMS - Transaction 5561681 - Approved By: CSULEZIC : 06-15-2016:08:13:47 |
| 3 | 6/14/2016 | - | \$PLTF - \$Addl Plaintiff/Complaint
Additional Text: MARY ANNE CAPILLA - Transaction 5561681 - Approved By: CSULEZIC : 06-15-2016:08:13:47 |
| 4 | 6/14/2016 | - | \$1425 - \$Complaint - Civil
Additional Text: CLASS ACTION COMPLAINT - Transaction 5561681 - Approved By: CSULEZIC : 06-15-2016:08:13:47
EXHIBIT 2 MARKED CONFIDENTIAL DUE TO THE NATURE CS |
| 5 | 6/15/2016 | - | PAYRC - **Payment Receipted
Additional Text: A Payment of \$350.00 was made on receipt DCDC543331. |
| 6 | 6/15/2016 | - | JF - **First Day Jury Fees Deposit
Additional Text: Transaction 5562911 - Approved By: TBRITTON : 06-15-2016:13:44:23 |
| 7 | 6/15/2016 | - | 1580 - Demand for Jury
Additional Text: DEMAND FOR JURY TRIAL - Transaction 5562911 - Approved By: TBRITTON : 06-15-2016:13:44:23 |
| 8 | 6/15/2016 | - | PAYRC - **Payment Receipted
Additional Text: A Payment of \$320.00 was made on receipt DCDC543406. |
| 9 | 6/15/2016 | - | NEF - Proof of Electronic Service
Additional Text: Transaction 5563481 - Approved By: NOREVIEW : 06-15-2016:13:45:16 |
| 10 | 6/22/2016 | - | 4090 - ** Summons Issued
<i>No additional text exists for this entry.</i> |
| 11 | 7/18/2016 | - | 1520 - Declaration
Additional Text: DECLARATION OF SERVICE - SUSAN HILDEN OBO MEI-GSR Holdings, LLC dba Grand Sierra Resort 7/05/16 - Transaction 5612200 - Approved By: CSULEZIC : 07-18-2016:11:23:31 |
| 12 | 7/18/2016 | - | 1067 - Affidavit of Service
Additional Text: AFFIDAVIT OF SERVICE ON HG STAFFING, LLC ON REGISTERED AGENT - Transaction 5612207 - Approved By: RKWATKIN : 07-18-2016:11:30:10 |
| 13 | 7/18/2016 | - | 1067 - Affidavit of Service
Additional Text: AFFIDAVIT OF SERVICE ON MEI-GSR HOLDINGS, LLC DBA GRAND SIERRA RESORT ON COUNSEL OF RECORD - Transaction 5612212 - Approved By: RKWATKIN : 07-18-2016:09:50:18 |

- 14 7/18/2016 - 1067 - Affidavit of Service
Additional Text: AFFIDAVIT OF SERVICE ON HG STAFFING, LLC ON COUNSEL OF RECORD - Transaction 5612214 - Approved By: RKWATKIN : 07-18-2016:09:50:39
- 15 7/18/2016 - NEF - Proof of Electronic Service
Additional Text: Transaction 5612475 - Approved By: NOREVIEW : 07-18-2016:09:51:18
- 16 7/18/2016 - NEF - Proof of Electronic Service
Additional Text: Transaction 5612477 - Approved By: NOREVIEW : 07-18-2016:09:51:39
- 17 7/18/2016 - NEF - Proof of Electronic Service
Additional Text: Transaction 5612864 - Approved By: NOREVIEW : 07-18-2016:11:24:37
- 18 7/18/2016 - NEF - Proof of Electronic Service
Additional Text: Transaction 5612899 - Approved By: NOREVIEW : 07-18-2016:11:31:05
- 19 7/25/2016 - 2580 - Notice Removal Federal Court
Additional Text: NOTICE OF STATE COURT OF REMOVAL OF CIVIL ACTION TO FEDERAL COURT - Transaction 5625622 - Approved By: TBRIITON : 07-26-2016:08:49:21
- 20 7/25/2016 - \$1560 - \$Def 1st Appearance - CV
Additional Text: DEFT HG STAFFING, LLC - Transaction 5625622 - Approved By: TBRIITON : 07-26-2016:08:49:21
- 21 7/25/2016 - \$DEFT - \$Addl Def/Answer - Prty/Appear
Additional Text: DEFT MEI-GSR HOLDINGS, LLC D/B/A GRAND SIERRA RESORT - Transaction 5625622 - Approved By: TBRIITON : 07-26-2016:08:49:21
- 22 7/26/2016 - PAYRC - **Payment Receipted
Additional Text: A Payment of \$243.00 was made on receipt DCDC547317.
- 23 7/26/2016 - NEF - Proof of Electronic Service
Additional Text: Transaction 5626017 - Approved By: NOREVIEW : 07-26-2016:08:50:33
- 24 7/27/2016 - F105 - Transferred
Additional Text: TO FEDERAL COURT
- 25 12/7/2016 - 3373 - Other ...
Additional Text: Transaction 5841467 - Approved By: JAPARICI : 12-07-2016:15:25:18
- 26 12/7/2016 - NEF - Proof of Electronic Service
Additional Text: Transaction 5841484 - Approved By: NOREVIEW : 12-07-2016:15:26:19
- 27 1/12/2017 - 2315 - Mtn to Dismiss ...
Additional Text: Transaction 5896233 - Approved By: CSULEZIC : 01-13-2017:08:27:22
- 28 1/13/2017 - NEF - Proof of Electronic Service
Additional Text: Transaction 5896452 - Approved By: NOREVIEW : 01-13-2017:08:28:16
- 29 2/2/2017 - 2645 - Opposition to Mtn ...
Additional Text: Plaintiffs' Opposition to Motion to Dismiss - Transaction 5931827 - Approved By: PMSEWELL : 02-02-2017:16:08:37
- 30 2/2/2017 - NEF - Proof of Electronic Service
Additional Text: Transaction 5931948 - Approved By: NOREVIEW : 02-02-2017:16:09:36
- 31 3/7/2017 - 3980 - Stip and Order...
Additional Text: TO STAY PROCEEDINGS PENDING DECISION OF THE SUPREME COURT - Transaction 5984734 - Approved By: NOREVIEW : 03-07-2017:15:46:49

- 32 3/7/2017 - NEF - Proof of Electronic Service
Additional Text: Transaction 5984739 - Approved By: NOREVIEW : 03-07-2017:15:47:48
- 33 7/27/2017 - 4050 - Stipulation ...
Additional Text: STIPULATION TO STAY ALL PROCEEDINGS PENDING DECISION OF THE SUPREME COURT OF THE STATE OF NEVADA ON NEVILLE, JR. V. EIGHTH JUDICIAL DISTRICT COURT. (Terrible Herbst, Inc.) - Transaction 6218931 - Approved By: CSULEZIC : 07-27-2017:16:29:54
- 34 7/27/2017 - NEF - Proof of Electronic Service
Additional Text: Transaction 6219162 - Approved By: NOREVIEW : 07-27-2017:16:30:47
- 35 8/1/2017 - 2703 - Order Re: Project ONE Assignme
Additional Text: RE: STIPULATION TO STAY ALL PROCEEDINGS - Transaction 6224637 - Approved By: NOREVIEW : 08-01-2017:08:56:37
- 36 8/1/2017 - NEF - Proof of Electronic Service
Additional Text: Transaction 6224646 - Approved By: NOREVIEW : 08-01-2017:08:57:48
- 37 12/20/2017 - 4050 - Stipulation ...
Additional Text: Status Report In Light Of The Nevada Supreme Court's Decision In Neville V. Terrible Herbst, Inc., Nevada Supreme Court No. 70696 (Stipulation to Lift Stay) - Transaction 6448868 - Approved By: CSULEZIC : 12-20-2017:16:48:16
- 38 12/20/2017 - NEF - Proof of Electronic Service
Additional Text: Transaction 6448960 - Approved By: NOREVIEW : 12-20-2017:16:49:12
- 39 12/27/2017 - 3370 - Order ...
Additional Text: RE STATUS REPORT IN LIGHT OF NEVADA SUPREME COURT DECISION - Transaction 6455215 - Approved By: NOREVIEW : 12-27-2017:13:24:05
- 40 12/27/2017 - NEF - Proof of Electronic Service
Additional Text: Transaction 6455218 - Approved By: NOREVIEW : 12-27-2017:13:26:48
- 41 1/12/2018 - 4047 - Stip Extension of Time ...
Additional Text: Stipulation to Extend Time to Respond to Plaintiffs' Complaint - Transaction 6478950 - Approved By: CSULEZIC : 01-12-2018:10:35:42
- 42 1/12/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 6479244 - Approved By: NOREVIEW : 01-12-2018:10:36:42
- 43 1/22/2018 - 2315 - Mtn to Dismiss ...
Additional Text: Transaction 6492495 - Approved By: YVILORIA : 01-22-2018:16:07:04
- 44 1/22/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 6492521 - Approved By: NOREVIEW : 01-22-2018:16:11:56
- 45 2/5/2018 - 2645 - Opposition to Mtn ...
Additional Text: Plaintiffs' Opposition to Defendants' Motion to Dismiss - Transaction 6515568 - Approved By: PMSEWELL : 02-06-2018:08:21:05
- 46 2/6/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 6516615 - Approved By: NOREVIEW : 02-06-2018:08:22:08
- 47 2/13/2018 - 4047 - Stip Extension of Time ...
Additional Text: Stipulation to Enlarge Time to File Reply in Support of Motion to Dismiss - Transaction 6529838 - Approved By: CSULEZIC : 02-13-2018:13:52:02
- 48 2/13/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 6530094 - Approved By: NOREVIEW : 02-13-2018:13:52:51
- 49 2/22/2018 - 3795 - Reply...
Additional Text: Reply in Support of Motion to Dismiss - Transaction 6544768 - Approved By: PMSEWELL : 02-22-2018:14:29:16

- 50 2/22/2018 - 3860 - Request for Submission
Additional Text: MOTION TO DISMISS FILED 1/22/18 - Transaction 6544801 - Approved By: CSULEZIC : 02-22-2018:14:46:42
PARTY SUBMITTING: STAN JOHNSON ESQ
DATE SUBMITTED: 2/22/18
SUBMITTED BY: CS
DATE RECEIVED JUDGE OFFICE:
- 51 2/22/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 6544920 - Approved By: NOREVIEW : 02-22-2018:14:30:16
- 52 2/22/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 6545025 - Approved By: NOREVIEW : 02-22-2018:14:47:41
- 53 3/6/2018 - 2520 - Notice of Appearance
Additional Text: SUSAN HEANEY HILDEN ESQ / DEFTS HG STAFFING, LLC AND MEI-GSR HOLDINGS,LLC DBA GRAND SIERRA RESORT - Transaction 6564034 - Approved By: YVILORIA : 03-06-2018:16:06:46
- 54 3/6/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 6564212 - Approved By: NOREVIEW : 03-06-2018:16:07:44
- 55 5/9/2018 - S200 - Request for Submission Complet
Additional Text: ORDER
- 56 5/9/2018 - 3242 - Ord Setting Hearing
Additional Text: ON MOTION TO DISMISS - Transaction 6671614 - Approved By: NOREVIEW : 05-09-2018:15:26:31
- 57 5/9/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 6671623 - Approved By: NOREVIEW : 05-09-2018:15:27:42
- 58 5/30/2018 - 1250E - Application for Setting eFile
Additional Text: Transaction 6703407 - Approved By: NOREVIEW : 05-30-2018:12:03:15
- 59 5/30/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 6703423 - Approved By: NOREVIEW : 05-30-2018:12:04:47
- 60 6/29/2018 - 4105 - Supplemental ...
Additional Text: DEFENDANTS' SUPPLEMENT IN SUPPORT OF MOTION TO DISMISS - Transaction 6755669 - Approved By: BBLOUGH : 06-29-2018:16:51:28
- 61 6/29/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 6755755 - Approved By: NOREVIEW : 06-29-2018:16:54:17
- 62 6/29/2018 - 4105 - Supplemental ...
Additional Text: PLAINTIFFS' SUPPLEMENT TO PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS - Transaction 6755823 - Approved By: YVILORIA : 07-02-2018:09:20:17
- 63 7/2/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 6756220 - Approved By: NOREVIEW : 07-02-2018:09:21:07
- 64 7/20/2018 - 3370 - Order ...
Additional Text: RE MOTION TO DISMISS - Transaction 6788380 - Approved By: NOREVIEW : 07-20-2018:14:11:30
- 65 7/20/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 6788396 - Approved By: NOREVIEW : 07-20-2018:14:13:30
- 66 8/9/2018 - 3860 - Request for Submission

Additional Text: - Transaction 6821672 - Approved By: JAPARICI : 08-09-2018:14:49:29
DOCUMENT TITLE: PLAINTIFFS' PROPOSED ORDER REGARDING MOTION TO DISMISS
PARTY SUBMITTING: MARK R. THIERMAN ESQ
DATE SUBMITTED: 09/09/2018
SUBMITTED BY: JAPARICIO
DATE RECEIVED JUDGE OFFICE:

67 8/9/2018 - 3860 - Request for Submission

Additional Text: - Transaction 6821848 - Approved By: PMSEWELL : 08-09-2018:14:38:13
DOCUMENT TITLE: ORDER GRANTING MOTION TO DISMISS (ORDER ATTACHED)
PARTY SUBMITTING: STAN JOHNSON, ESQ.
DATE SUBMITTED: AUGUST 9, 2018
SUBMITTED BY: PMSEWELL
DATE RECEIVED JUDGE OFFICE:

68 8/9/2018 - NEF - Proof of Electronic Service

Additional Text: Transaction 6821985 - Approved By: NOREVIEW : 08-09-2018:14:39:16

69 8/9/2018 - NEF - Proof of Electronic Service

Additional Text: Transaction 6822072 - Approved By: NOREVIEW : 08-09-2018:14:51:16

70 8/17/2018 - 4185 - Transcript

Additional Text: oral argument - Transaction 6835891 - Approved By: NOREVIEW : 08-17-2018:14:56:32

71 8/17/2018 - NEF - Proof of Electronic Service

Additional Text: Transaction 6835896 - Approved By: NOREVIEW : 08-17-2018:14:57:23

72 10/9/2018 - S200 - Request for Submission Complet

Additional Text: ORDER

73 10/9/2018 - S200 - Request for Submission Complet

Additional Text: ORDER

74 10/9/2018 - S200 - Request for Submission Complet

Additional Text: ORDER

75 10/9/2018 - 2700 - Ord After Hearing...

Additional Text: ON DEFENDANTS' MOTION TO DISMISS - Transaction 6919526 - Approved By: NOREVIEW : 10-09-2018:16:34:10

76 10/9/2018 - NEF - Proof of Electronic Service

Additional Text: Transaction 6919529 - Approved By: NOREVIEW : 10-09-2018:16:35:12

77 10/9/2018 - F135 - Adj Motion to Dismiss by DEFT

No additional text exists for this entry.

78 10/10/2018 - 2175 - Mtn for Reconsideration

Additional Text: PLAINTIFFS' MOTION FOR RECONSIDERATION OF THE COURT'S ORDER GRANTING DEFENDANT'S MOTION TO DISMISS OR IN THE ALTERNATIVE LEAVE TO FILE AN AMENDED COMPLAINT - Transaction 6920777 - Approved By: PMSEWELL : 10-10-2018:13:42:57

79 10/10/2018 - NEF - Proof of Electronic Service

Additional Text: Transaction 6920862 - Approved By: NOREVIEW : 10-10-2018:13:44:02

80 10/24/2018 - 2645 - Opposition to Mtn ...

Additional Text: OPPOSITION TO PLAINTIFFS' MOTION FOR RECONSIDERATION OF THE COURT'S ORDER GRANTING DEFENDANTS' MOTION TO DISMISS OR IN THE ALTERNATIVE FOR LEAVE TO FILE AN AMENDED COMPLAINT - Transaction 6945142 - Approved By: CSULEZIC : 10-24-2018:12:33:23

81 10/24/2018 - NEF - Proof of Electronic Service

Additional Text: Transaction 6945192 - Approved By: NOREVIEW : 10-24-2018:12:35:07

- 82 11/5/2018 - 3795 - Reply...
Additional Text: PLAINTIFFS' REPLY IN SUPPORT OF PLAINTIFFS' MOTION FOR RECONSIDERATION OF THE COURT'S ORDER GRANTING DEFENDANT'S MOTION TO DISMISS OR IN THE ALTERNATIVE LEAVE TO FILE AN AMENDED COMPLAINT - Transaction 6963365 - Approved By: CSULEZIC : 11-06-2018:09:34:23
- 83 11/6/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 6963760 - Approved By: NOREVIEW : 11-06-2018:09:35:25
- 84 11/7/2018 - 3860 - Request for Submission
Additional Text: MOTION FOR RECONSIDERATION OF THE COURT'S ORDER GRANTING MOTION TO DISMISS OR IN THE ALTERNATIVE LEAVE TO FILE AN AMENDED COMPLAINT FILED 10/10/18 - Transaction 6965889 - Approved By: CSULEZIC : 11-07-2018:11:29:02
PARTY SUBMITTING: MARK THIEMAN ESQ
DATE SUBMITTED: 11/07/18
SUBMITTED BY: CS
DATE RECEIVED JUDGE OFFICE:
- 85 11/7/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 6966023 - Approved By: NOREVIEW : 11-07-2018:11:29:56
- 86 1/9/2019 - 3025 - Ord Granting/Denying in Part
Additional Text: ORDER RE: MOTION FOR RECONSIDERATION - Transaction 7060015 - Approved By: NOREVIEW : 01-09-2019:16:31:52
- 87 1/9/2019 - S200 - Request for Submission Complet
No additional text exists for this entry.
- 88 1/9/2019 - NEF - Proof of Electronic Service
Additional Text: Transaction 7060024 - Approved By: NOREVIEW : 01-09-2019:16:33:16
- 89 1/29/2019 - 1090 - Amended Complaint
Additional Text: First Amended Class Action Complaint - Transaction 7092116 - Approved By: CSULEZIC : 01-30-2019:09:03:16
- 90 1/30/2019 - NEF - Proof of Electronic Service
Additional Text: Transaction 7092370 - Approved By: NOREVIEW : 01-30-2019:09:04:12
- 91 2/15/2019 - 2305 - Mtn Dismiss with Prejudice
Additional Text: MOTION TO DISMISS FIRST AMENDED COMPLAINT - Transaction 7121292 - Approved By: YVILORIA : 02-15-2019:13:46:07
- 92 2/15/2019 - NEF - Proof of Electronic Service
Additional Text: Transaction 7121649 - Approved By: NOREVIEW : 02-15-2019:13:47:38
- 93 2/28/2019 - 2645 - Opposition to Mtn ...
Additional Text: PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT - Transaction 7141379 - Approved By: CSULEZIC : 02-28-2019:14:06:31
- 94 2/28/2019 - NEF - Proof of Electronic Service
Additional Text: Transaction 7141394 - Approved By: NOREVIEW : 02-28-2019:14:07:41
- 95 3/11/2019 - 3795 - Reply...
Additional Text: REPLY IN SUPPORT OF MOTION TO DISMISS AMENDED COMPLAINT - Transaction 7159154 - Approved By: CSULEZIC : 03-11-2019:14:35:09
- 96 3/11/2019 - NEF - Proof of Electronic Service
Additional Text: Transaction 7159506 - Approved By: NOREVIEW : 03-11-2019:14:36:32
- 97 3/18/2019 - 3860 - Request for Submission

Additional Text: REQUEST FOR SUBMISSION OF MOTION TO DISMISS FIRST AMENDED COMPLAINT - Transaction 7171958 -
Approved By: CSULEZIC : 03-18-2019:15:30:40
PARTY SUBMITTING: H. STAN JOHNSON ESQ
DATE SUBMITTED: 3/18/19
SUBMITTED BY: CS
DATE RECEIVED JUDGE OFFICE:

98 3/18/2019 - NEF - Proof of Electronic Service

Additional Text: Transaction 7172177 - Approved By: NOREVIEW : 03-18-2019:15:32:05

99 4/3/2019 - 4105 - Supplemental ...

Additional Text: PLAINTIFFS' SUPPLEMENTAL AUTHORITY IN SUPPORT OF PLAINTIFFS' OPPOSITION TO DEFENDANT'S
MOTION TO DISMISS - Transaction 7199080 - Approved By: YVILORIA : 04-03-2019:11:11:37

100 4/3/2019 - NEF - Proof of Electronic Service

Additional Text: Transaction 7199390 - Approved By: NOREVIEW : 04-03-2019:11:12:49

101 4/30/2019 - MIN - ***Minutes

Additional Text: 7/19/18 ORAL ARGUMENTS - Transaction 7244424 - Approved By: NOREVIEW : 04-30-2019:10:51:13

102 4/30/2019 - NEF - Proof of Electronic Service

Additional Text: Transaction 7244427 - Approved By: NOREVIEW : 04-30-2019:10:52:16

103 5/23/2019 - \$2200 - \$Mtn for Summary Judgment

Additional Text: MOTION FOR SUMMARY JUDGMENT ON ALL CLAIMS ASSERTED BY PLAINTIFFS MARTEL, CAPILLA AND
VAUGHN - Transaction 7285144 - Approved By: CSULEZIC : 05-23-2019:11:09:10

104 5/23/2019 - PAYRC - **Payment Receipted

Additional Text: A Payment of \$200.00 was made on receipt DCDC638308.

105 5/23/2019 - NEF - Proof of Electronic Service

Additional Text: Transaction 7285370 - Approved By: NOREVIEW : 05-23-2019:11:11:13

106 6/3/2019 - 2645 - Opposition to Mtn ...

Additional Text: PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON ALL CLAIMS ASSERTED
BY PLAINTIFFS MARTEL, CAPILLA AND VAUGHAN - Transaction 7300549 - Approved By: YVILORIA : 06-03-2019:15:46:17

107 6/3/2019 - NEF - Proof of Electronic Service

Additional Text: Transaction 7301114 - Approved By: NOREVIEW : 06-03-2019:15:47:15

108 6/7/2019 - 3025 - Ord Granting/Denying in Part

Additional Text: MOTION TO DISMISS - Transaction 7310764 - Approved By: NOREVIEW : 06-07-2019:15:36:57

109 6/7/2019 - S200 - Request for Submission Complet

Additional Text: ORDER

110 6/7/2019 - NEF - Proof of Electronic Service

Additional Text: Transaction 7310769 - Approved By: NOREVIEW : 06-07-2019:15:38:01

111 6/10/2019 - 3795 - Reply...

Additional Text: REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT ON ALL CLAIMS ASSERTED BY PLAINTIFF
MARTEL - Transaction 7313374 - Approved By: CSULEZIC : 06-11-2019:09:12:45

112 6/11/2019 - NEF - Proof of Electronic Service

Additional Text: Transaction 7313848 - Approved By: NOREVIEW : 06-11-2019:09:14:03

113 6/13/2019 - 3860 - Request for Submission

Additional Text: - Transaction 7319816 - Approved By: CSULEZIC : 06-13-2019:15:23:05
DOCUMENT TITLE: REQUEST FOR SUBMISSION OF MOTION FOR SUMMARY JUDGMENT
PARTY SUBMITTING: STAN JOHNSON ESQ
DATE SUBMITTED: 6/13/19
SUBMITTED BY: CS
DATE RECEIVED JUDGE OFFICE:

114 6/13/2019 - NEF - Proof of Electronic Service

Additional Text: Transaction 7320403 - Approved By: NOREVIEW : 06-13-2019:15:24:18

115 6/28/2019 - 2540 - Notice of Entry of Ord

Additional Text: NOTICE OF ENTRY OF ORDER GRANTING, IN PART, AND DENYING, IN PART, MOTION TO DISMISS - Transaction 7347963 - Approved By: NOREVIEW : 06-28-2019:15:59:26

116 6/28/2019 - NEF - Proof of Electronic Service

Additional Text: Transaction 7347971 - Approved By: NOREVIEW : 06-28-2019:16:00:38

117 6/28/2019 - 1140 - Answer to Amended Complaint

Additional Text: ANSWER TO FIRST AMENDED CLASS ACTION COMPLAINT - Transaction 7347979 - Approved By: SWOLFE : 06-28-2019:16:32:32

118 6/28/2019 - NEF - Proof of Electronic Service

Additional Text: Transaction 7348136 - Approved By: NOREVIEW : 06-28-2019:16:35:14

119 7/8/2019 - \$2200 - \$Mtn for Summary Judgment

Additional Text: DEFENDANTS' SECOND MOTION FOR SUMMARY JUDGMENT AS TO PLAINTIFF MARTEL; MOTION FOR SUMMARY ADJUDICATION ON PLAINTIFFS' LACK OF STANDING TO REPRESENT UNION EMPLOYEES; AND MOTION FOR SUMMARY JUDGMENT AS TO PLAINTIFF JACKSON-WILLIAMS - Transaction 7360531 - Approved By: CSULEZIC : 07-08-2019:15:47:58

120 7/8/2019 - PAYRC - **Payment Receipted

Additional Text: A Payment of \$200.00 was made on receipt DCDC641171.

121 7/8/2019 - NEF - Proof of Electronic Service

Additional Text: Transaction 7360705 - Approved By: NOREVIEW : 07-08-2019:15:50:46

122 7/9/2019 - 1187 - **Supreme Court Case No. ...

Additional Text: SUPREME COURT NO. 79118 - PETITION FOR WRIT OF MANDAMUS OR PROHIBITION

123 7/9/2019 - 2586 - Notice of Writ

Additional Text: NOTICE OF FILING PETITION FOR WRIT OF MANDAMUS AND/OR PROHIBITION - Transaction 7362232 - Approved By: YVILORIA : 07-09-2019:11:21:25

124 7/9/2019 - NEF - Proof of Electronic Service

Additional Text: Transaction 7362321 - Approved By: NOREVIEW : 07-09-2019:11:25:17

125 7/9/2019 - 1188 - Supreme Court Receipt for Doc

Additional Text: SUPREME COURT NO. 79118 / RECEIPT FOR DOCUMENTS - Transaction 7362424 - Approved By: NOREVIEW : 07-09-2019:11:34:06

126 7/9/2019 - NEF - Proof of Electronic Service

Additional Text: Transaction 7362457 - Approved By: NOREVIEW : 07-09-2019:11:37:37

127 7/10/2019 - 4050 - Stipulation ...

Additional Text: to Stay All Proceedings And To Toll The Five-Year Rule Pending Supreme Court of Nevada's Decision On Defendants' Writ Request - Transaction 7366717 - Approved By: NOREVIEW : 07-10-2019:17:03:28

128 7/10/2019 - NEF - Proof of Electronic Service

Additional Text: Transaction 7366718 - Approved By: NOREVIEW : 07-10-2019:17:04:30

129 7/11/2019 - S200 - Request for Submission Complet

Additional Text: WITHDRAWN PER STIPULATION TO STAY ALL PROCEEDINGS AND TOLL OF THE FIVE YEAR RULE

- 130 7/16/2019 - 4047 - Stip Extension of Time ...
Additional Text: Notice of Stricken Document Stipulation and [Proposed] Order to Enlarge Time to file Opposition to Defendant's Second Motion for Summary Judgement - Notice Attached - Document is an unsigned Order that is not identified as a proposed order WDCR10(c)(1) - Unsigned Orders must be attached as exhibits to primary documents
Transaction 7375809 - Approved By: NOREVIEW : 07-16-2019:13:42:36
- 131 7/16/2019 - NEF - Proof of Electronic Service
Additional Text: Transaction 7375818 - Approved By: NOREVIEW : 07-16-2019:13:43:43
- 132 7/17/2019 - 2683 - Ord Addressing Stipulation
Additional Text: TO STAY ALL PROCEEDINGS AND TOLL OF THE FIVE YEAR RULE - Transaction 7377675 - Approved By: NOREVIEW : 07-17-2019:11:00:03
- 133 7/17/2019 - NEF - Proof of Electronic Service
Additional Text: Transaction 7377682 - Approved By: NOREVIEW : 07-17-2019:11:01:06
- 134 7/24/2019 - A190 - Exempt from Arb (over \$50,000)
Additional Text: Transaction 7392420 - Approved By: NOREVIEW : 07-24-2019:15:51:18
- 135 7/24/2019 - NEF - Proof of Electronic Service
Additional Text: Transaction 7392439 - Approved By: NOREVIEW : 07-24-2019:15:53:07
- 136 8/2/2019 - 4126 - Supreme Ct Order Directing...
Additional Text: SUPREME COURT NO. 79118 / ORDER DIRECTING ANSWER - Transaction 7409565 - Approved By: NOREVIEW : 08-02-2019:14:18:31
- 137 8/2/2019 - NEF - Proof of Electronic Service
Additional Text: Transaction 7409572 - Approved By: NOREVIEW : 08-02-2019:14:19:36
- 138 5/12/2020 - 4128 - Supreme Court Order Denying
Additional Text: SUPREME COURT NO. 79118 / ORDER DENYING PETITION - Transaction 7871858 - Approved By: NOREVIEW : 05-12-2020:08:34:22
- 139 5/12/2020 - NEF - Proof of Electronic Service
Additional Text: Transaction 7871861 - Approved By: NOREVIEW : 05-12-2020:08:35:21
- 140 6/2/2020 - 4131 - Supreme Ct Not/Lieu/Remittitur
Additional Text: SUPREME COURT NO. 79118 / NOTICE IN LIEU OF REMITTITUR - Transaction 7905488 - Approved By: NOREVIEW : 06-02-2020:16:11:08
- 141 6/2/2020 - NEF - Proof of Electronic Service
Additional Text: Transaction 7905493 - Approved By: NOREVIEW : 06-02-2020:16:12:08
- 142 6/9/2020 - \$2200 - \$Mtn for Summary Judgment
Additional Text: DEFENDANTS MOTION FOR SUMMARY JUDGMENT OR IN THE ALTERNATIVE SUMMARY ADJUDICATION - Transaction 7917091 - Approved By: YVILORIA : 06-10-2020:08:05:25
- 143 6/10/2020 - PAYRC - **Payment Receipted
Additional Text: A Payment of \$200.00 was made on receipt DCDC659663.
- 144 6/10/2020 - NEF - Proof of Electronic Service
Additional Text: Transaction 7917406 - Approved By: NOREVIEW : 06-10-2020:08:06:35
- 145 6/17/2020 - 1320 - Case Conference Report
Additional Text: Transaction 7930797 - Approved By: NOREVIEW : 06-17-2020:16:55:06
- 146 6/17/2020 - NEF - Proof of Electronic Service
Additional Text: Transaction 7930800 - Approved By: NOREVIEW : 06-17-2020:16:56:08

- 147 6/17/2020 - 4047 - Stip Extension of Time ...
Additional Text: The Clerk of the Court hereby strikes the STIPULATION AND [PROPOSED] ORDER TO ENLARGE TIME TO FILE OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT filed by LEAH L. JONES, ESQ. on JUNE 17, 2020 from the case for the following reason(s): Document is an unsigned Order that is not identified as a proposed Order

to File Opposition to Defendants Motion for Summary Judgement - Transaction 7930831 - Approved By: NOREVIEW : 06-17-2020:17:09:46
- 148 6/17/2020 - NEF - Proof of Electronic Service
Additional Text: Transaction 7930834 - Approved By: NOREVIEW : 06-17-2020:17:10:46
- 149 6/18/2020 - 2610 - Notice ...
Additional Text: NOTICE OF STRICKEN DOCUMENT - Transaction 7931973 - Approved By: SWOLFE : 06-18-2020:11:57:10
- 150 6/18/2020 - NEF - Proof of Electronic Service
Additional Text: Transaction 7931988 - Approved By: NOREVIEW : 06-18-2020:11:58:13
- 151 6/18/2020 - 4047 - Stip Extension of Time ...
Additional Text: to File Opposition to Defendants' Motion for Summary Judgement - Transaction 7933417 - Approved By: NOREVIEW : 06-18-2020:17:45:28
- 152 6/18/2020 - NEF - Proof of Electronic Service
Additional Text: Transaction 7933418 - Approved By: NOREVIEW : 06-18-2020:17:46:27
- 153 6/18/2020 - 3860 - Request for Submission
Additional Text: Transaction 7933421 - Approved By: NOREVIEW : 06-18-2020:17:50:28
DOCUMENT TITLE: ORDER GRANTING STIPULATION FOR ENLARGEMENT OF TIME TO RESPOND TO DEFENDANTS' MOTION FOR SUMMARY JUDGEMENT/SUMMARY ADJUDICATION
PARTY SUBMITTING: LEAH JONES, ESQ.
DATE SUBMITTED: 6/18/20
SUBMITTED BY: NM
DATE RECEIVED JUDGE OFFICE:
- 154 6/18/2020 - NEF - Proof of Electronic Service
Additional Text: Transaction 7933423 - Approved By: NOREVIEW : 06-18-2020:17:53:18
- 155 6/22/2020 - 2683 - Ord Addressing Stipulation
Additional Text: APPROVING STIPULATION - Transaction 7937138 - Approved By: NOREVIEW : 06-22-2020:15:21:46
- 156 6/22/2020 - NEF - Proof of Electronic Service
Additional Text: Transaction 7937140 - Approved By: NOREVIEW : 06-22-2020:15:22:44
- 157 6/23/2020 - S200 - Request for Submission Complet
Additional Text: ORDER
- 158 7/1/2020 - 3880 - Response...
Additional Text: PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT/SUMMARY ADJUDICATION - Transaction 7952475 - Approved By: CSULEZIC : 07-01-2020:16:39:16
- 159 7/1/2020 - 1520 - Declaration
Additional Text: DECLARATION OF EDDY MARTELRODRIGUEZ IN SUPPORT OF PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT/SUMMARY ADJUDICATION - Transaction 7952475 - Approved By: CSULEZIC : 07-01-2020:16:39:16
- 160 7/1/2020 - 1520 - Declaration
Additional Text: DECLARATION OF LEAH L. JONES IN SUPPORT OF PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT/SUMMARY ADJUDICATION - Transaction 7952475 - Approved By: CSULEZIC : 07-01-2020:16:39:16
- 161 7/1/2020 - NEF - Proof of Electronic Service
Additional Text: Transaction 7952511 - Approved By: NOREVIEW : 07-01-2020:16:40:43

- 162 7/16/2020 - 3795 - Reply...
Additional Text: REPLY IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, SUMMARY ADJUDICATION - Transaction 7974420 - Approved By: YVILORIA : 07-16-2020:13:12:52
- 163 7/16/2020 - NEF - Proof of Electronic Service
Additional Text: Transaction 7974461 - Approved By: NOREVIEW : 07-16-2020:13:13:52
- 164 7/16/2020 - 3860 - Request for Submission
Additional Text: REQUEST FOR SUBMISSION OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, SUMMARY ADJUDICATION - Transaction 7974615 - Approved By: NOREVIEW : 07-16-2020:13:51:52
DOCUMENT TITLE: MOTION FOR SUMMARY JUDGMENT OR IN THE ALTERNATIVE SUMMARY ADJUDICATION ON 6-9-2020
PARTY SUBMITTING: SUSAN HILDEN ESQ
DATE SUBMITTED: 7-16-2020
SUBMITTED BY: V
DATE RECEIVED JUDGE OFFICE:
- 165 7/16/2020 - NEF - Proof of Electronic Service
Additional Text: Transaction 7974616 - Approved By: NOREVIEW : 07-16-2020:13:52:42
- 166 10/12/2020 - S200 - Request for Submission Complet
No additional text exists for this entry.
- 167 11/3/2020 - 3060 - Ord Granting Mtn ...
Additional Text: FOR SUMMARY JUDGMENT - Transaction 8144546 - Approved By: NOREVIEW : 11-03-2020:11:55:41
- 168 11/3/2020 - NEF - Proof of Electronic Service
Additional Text: Transaction 8144551 - Approved By: NOREVIEW : 11-03-2020:11:56:43
- 169 11/6/2020 - 2540 - Notice of Entry of Ord
Additional Text: Transaction 8151261 - Approved By: NOREVIEW : 11-06-2020:12:54:07
- 170 11/6/2020 - NEF - Proof of Electronic Service
Additional Text: Transaction 8151263 - Approved By: NOREVIEW : 11-06-2020:12:55:05
- 171 11/25/2020 - \$2515 - \$Notice/Appeal Supreme Court
Additional Text: Plaintiffs'-Petitioners' Notice of Appeal Pursuant to NRAP 3(c) - Transaction 8179470 - Approved By: YVILORIA : 11-30-2020:08:11:56
- 172 11/25/2020 - 1310 - Case Appeal Statement
Additional Text: Plaintiffs'-Appellants' Case Appeal Statement - Transaction 8179472 - Approved By: NOREVIEW : 11-25-2020:16:32:44
- 173 11/25/2020 - NEF - Proof of Electronic Service
Additional Text: Transaction 8179477 - Approved By: NOREVIEW : 11-25-2020:16:33:44
- 174 11/25/2020 - SAB - **Supreme Court Appeal Bond
Additional Text: Transaction 8179500 - Approved By: YVILORIA : 11-30-2020:08:17:19
- 175 11/30/2020 - PAYRC - **Payment Receipted
Additional Text: A Payment of \$24.00 was made on receipt DCDC666440.
- 176 11/30/2020 - NEF - Proof of Electronic Service
Additional Text: Transaction 8180042 - Approved By: NOREVIEW : 11-30-2020:08:12:50
- 177 11/30/2020 - PAYRC - **Payment Receipted
Additional Text: A Payment of \$500.00 was made on receipt DCDC666442.
- 178 11/30/2020 - NEF - Proof of Electronic Service
Additional Text: Transaction 8180071 - Approved By: NOREVIEW : 11-30-2020:08:18:32

179 11/30/2020 - 1350 - Certificate of Clerk

Additional Text: CERTIFICATE OF CLERK AND TRANSMITTAL - NOTICE OF APPEAL - Transaction 8180398 - Approved By:
NOREVIEW : 11-30-2020:09:22:17

180 11/30/2020 - 4113 - District Ct Deficiency Notice

Additional Text: NOTICE OF APPEAL DEFICIENCY - SUPREME COURT FILING FEES (DUE TO PUBLIC CLOSURE OF
COURTHOUSE AND APPEALS CLERK UNABLE TO RECEIVE FEE) SUPREME COURT WILL SEND A NOTICE TO PAY ONCE
APPEAL IS RECEIVED - Transaction 8180398 - Approved By: NOREVIEW : 11-30-2020:09:22:17

1 CODE NO. 3370
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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE
8

9 EDDY MARTEL (also known as MARTEL-
10 RODRIGUEZ), MARY ANNE CAPILLA,
11 JANICE JACKSON-WILLIAMS and WHITNEY
12 VAUGHAN on behalf of themselves and all
13 others similarly situated,

Case No. CV16-01264

Dept. No. 6

14 Plaintiffs,

15 vs.

16 HG STAFFING, LLC, MEI-GSR HOLDINGS,
17 LLC d/b/a GRAND SIERRA RESORT, and
18 DOES 1 through 50, inclusive,

19 Defendants.
20 _____ /

21 **ORDER GRANTING, IN PART, AND DENYING, IN PART, MOTION TO DISMISS**

22 Before this Court is a *Motion to Dismiss First Amended Complaint* ("Motion") filed by
23 Defendants HG STAFFING, LLC and MEI-GSR HOLDINGS, LLC d/b/a GRAND SIERRA
24 RESORT (collectively, "GSR" unless individually referenced), by and through their counsel,
25 Cohen|Johnson|Parker|Edwards.

26 Plaintiffs EDDY MARTEL (also known as MARTEL-RODRIGUEZ) ("Mr. Martel"),
27 MARY ANNE CAPILLA ("Ms. Capilla"), JANICE JACKSON-WILLIAMS ("Ms. Jackson-
28 Williams"), and WHITNEY VAUGHAN ("Ms. Vaughan") (collectively, "Plaintiffs"), on behalf of

1 themselves and all others similarly situated, filed *Plaintiffs' Opposition to Defendants' Motion*
2 *to Dismiss Plaintiffs' First Amended Complaint* ("Opposition"), by and through their counsel,
3 Thierman Buck, LLP. GSR filed its *Reply in Support of Motion to Dismiss Amended*
4 *Complaint* ("Reply") and submitted the matter for decision thereafter.

6 **I. FACTUAL AND PROCEDURAL HISTORY**

7 This action arises out of an employment dispute between Plaintiffs and GSR
8 regarding wages paid by GSR to Plaintiffs and similarly situated employees. On June 14,
9 2016, Plaintiffs filed a *Class Action Complaint* ("Complaint") alleging GSR maintained the
10 following policies, practices, and procedures which required various employees to perform
11 work activities without compensation: (1) GSR's Cash Bank Policy, (2) Dance Class Policy,
12 (3) Room Attendant Pre-Shift Policy, (4) Pre-Shift Meeting Policy, (5) Uniform Policy, and (6)
13 Shift Jamming Policy. *Complaint*, pp. 4-8. As a result of said policies, Plaintiffs allege four
14 causes of action against GSR: (1) Failure to Pay Wages for All Hours Worked in Violation of
15 NRS 608.140 and 608.016, (2) Failure to Pay Minimum Wages in Violation of the Nevada
16 Constitution, (3) Failure to Pay Overtime Wages in Violation of NRS 608.140 and 608.018,
17 and (4) Failure to Timely Pay All Wages Due and Owing Upon Termination Pursuant to NRS
18 608.140 and 608.020-.050. *Id.*, pp. 11-15.

19 On October 9, 2018, this Court entered its *Order After Hearing Granting Defendants'*
20 *Motion to Dismiss* ("Order"). The Court found Plaintiffs failed to provide sufficient
21 information to support its claims, and therefore granted GSR's *Motion to Dismiss*.
22 Thereafter, Plaintiffs filed *Plaintiffs' Motion for Reconsideration of the Court's Order Granting*
23 *Defendant's Motion to Dismiss or in the Alternative Leave to File an Amended Complaint*
24 ("Motion for Reconsideration") requesting the Court reconsider its Order pursuant to NRCP
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1 Rule 60(b). *Motion for Reconsideration*, p. 2. This Court entered its *Order Re Motion for*
2 *Reconsideration* denying Plaintiffs request on the grounds they failed to state a claim but
3 granting Plaintiffs leave to amend their *Complaint*.
4

5 On January 29, 2019, Plaintiffs filed their *First Amended Complaint* ("FAC") asserting
6 the same four (4) claims. Thereafter, GSR filed the instant *Motion* requesting this Court
7 dismiss the FAC pursuant to NRCP 12(b)(5). *Motion*, p. 2. GSR contends the claims
8 asserted in the FAC "have no more merit than Plaintiffs' original claims." *Motion*, p. 2.
9

10 First, GSR contends all of Plaintiffs' claims asserted after June 14, 2014 are barred
11 by the two-year statute of limitations pursuant to NRS 608.260. *Motion*, p. 5. GSR asserts
12 the Nevada Supreme Court held claims made under the Minimum Wage Amendment
13 ("MWA") are governed by a two-year statute of limitations. *Motion*, p. 5; citing Perry v.
14 Terrible Herbst, Inc., 132 Nev. Adv. Op. 75, 383 P.3d 257, 260-62 (2016). GSR further
15 asserts, all individual and class claims brought prior to June 14, 2014 are not tolled pursuant
16 to Archon Corp. v. Eighth Judicial Dist. Court in & for Cty. of Clark, 407 P.3d 702 (Nev.
17 2017) and China Agritech, Inc. v. Resh, 138 S. Ct. 1800, 1804 (2018). *Motion*, p. 9.
18

19 Second, GSR maintains Plaintiffs' First, Third, and Fourth claims should be
20 dismissed for failure to exhaust administrative remedies with the labor commissioner as
21 required by NRS Chapter 607. *Motion*, p. 11. GSR argues Plaintiffs were required to first
22 file and pursue their state law wage claims with the Nevada Labor Commissioner before
23 seeking relief from this Court. *Motion*, p. 11; citing NRS 608.016; Allstate Ins. Co. v.
24 Thrope, 123 Nev. 565, 571-72, 170 P.3d 989, 993-94 (2007).
25

26 Third, GSR argues Plaintiffs First, Third, and Fourth Claims for Relief should be
27 dismissed for failing to make good faith attempt to collect their wages before filing their claim
28

1 for wages with the Court. *Motion*, p. 13; citing NAC 608.155(1).

2 Fourth, GSR asserts Plaintiffs lack standing to represent union employees because
3 they are exclusively represented by their respective unions pursuant to 29 U.S.C.A Section
4 159(a). *Motion*, p. 14.

5
6 Fifth, GSR contends Plaintiffs have again failed to state a claim for wages, including
7 minimum wages. *Motion*, p. 15. GSR argues Plaintiff do no allege any facts which would
8 show that any plaintiff was paid less than the minimum wage and do not allege how much
9 they were paid in any week. *Motion*, p. 16. GSR asserts Plaintiffs failure to claim how much
10 they worked in a week results in mere speculation as to whether Plaintiffs were underpaid.
11 *Motion*, p. 16.

12
13 Sixth, GSR maintains Ms. Jackson-Williams' claims for wages and overtime are
14 barred for failing to exhaust grievance procedures of the collective bargaining agreement.
15 *Motion*, p. 17. GSR argues Ms. Jackson-Williams is subject to a collective bargaining
16 agreement and, therefore, her statutory claims for wages or overtime are dependent upon
17 finding a breach of that agreement to maintain those claims. *Motion*, p. 18. Moreover, GSR
18 asserts Ms. Jackson-Williams is not entitled to overtime pursuant to NRS 608.018 because
19 the collective bargaining agreement provides otherwise. *Motion*, p. 19.

20
21 Seventh, GSR contends Plaintiffs' claims are barred by claim and issue preclusion.
22 *Motion*, p. 20. GSR maintains United States District Judge Hicks already determined
23 Plaintiffs' wage claims cannot proceed in a class action; and, they are therefore barred from
24 re-litigating the federal district court's judgment denying class certification. *Motion*, p. 2;
25 citing Five Star Capital Corp. v. Ruby, 124 Nev. 1048, 1054, 194 P.3d 709, 713 (2008).
26
27 Lastly, GSR argues Plaintiffs should not be able to re-litigate the federal action on principles
28

1 of comity and the first-to-file rule. *Motion*, p. 23.

2 In their *Opposition*, Plaintiffs first maintain they are not required to exhaust
3 administrative remedies with the Office of the Labor Commissioner prior to filing suit.
4 *Opposition*, p. 7; citing Neville v. Terrible Herbst, Inc., 133 Nev. Adv. Op. 95, 406 P.3d 499,
5 504 (Dec. 7 2017).
6

7 Second, Plaintiffs assert they meet the pleading standard because they alleged
8 specific work activities for which they are not paid their minimum wage, provided estimated
9 damages owed to Plaintiffs and the putative classes, and provided documentary evidence in
10 their possession and control specifying hours, dates, and times worked without pay.
11 *Opposition*, p. 9.
12

13 Third, Plaintiffs maintain their claims are not barred by issue or claim preclusion
14 because their Nevada wage claims were not certified in the Sargant action. *Opposition*, p.
15 13. Specifically, the federal court never reached determination of the state law claims
16 because it dismissed them on the “incorrect premise” that Nevada employees do not have a
17 private right of action for wage claims, at summary judgment, and prior to the court’s
18 decertification order. *Opposition*, p. 13.
19

20 Fourth, Plaintiffs contend its claims are not barred by any statutes of limitation.
21 *Opposition*, p. 22. Plaintiffs contend NRS 11.190(3)(a)’s three-year statute of limitation for
22 “an action upon liability created by statute, other than a penalty or forfeiture” applies to this
23 action because NRS Chapter 608 lacks an express limitation period and NRS 11.190
24 provides the three-year statute of limitation applies “unless further limited by specific statute.
25 . . .” *Opposition*, p. 22; citing NRS 11.190.
26

27 //

1 Plaintiffs further contend Defendants reliance on Perry is impermissibly broad
2 because the Court did not hold a two-year statute of limitation period applicable to the
3 Minimum Wage Amendment, extended to NRS 608 private causes of action claims.
4 *Opposition*, p. 23.

5
6 Fifth, Plaintiffs maintain their claims are not preempted by any alleged collective
7 bargaining agreement because they are only trying to enforce the statutory obligation to pay
8 overtime. *Opposition*, p. 29.

9
10 In their *Reply*, Defendants reiterate that a two-year statute of limitations applies to the
11 claims. *Reply*, p. 2. Defendants assert Plaintiffs concede they did not exhaust
12 administrative remedies or grievance procedures. *Reply*, p. 3. Lastly, Defendants assert
13 Plaintiff do not address or dispute that they are not entitled to seek class certification on
14 behalf of GSR employees represented by a union. *Reply*, p. 3.

15 II. STANDARD OF REVIEW; LAW AND ANALYSIS

16
17 A complaint should be dismissed under NRCP 12(b)(5) “only if it appears beyond a
18 doubt” that the plaintiff is entitled to no relief under any set of facts that could be proved in
19 support of the claim. Buzz Stew, LLC v. City of North Las Vegas, 124 Nev. 224, 228, 181
20 P.3d 670, 672 (2008); Blackjack Bonding v. City of Las Vegas Mun. Court, 116 Nev. 1213,
21 1217, 14 P.3d 1275, 1278 (2000). When analyzing the merits of a 12(b)(5) motion to
22 dismiss, the court recognizes all of the factual allegations in the plaintiff’s complaint as true,
23 and draws all inferences in favor of the non-moving party. *Id.* Dismissal is appropriate
24 “where the allegations are insufficient to establish the elements of a claim for relief.”
25
26 Stockmeier v. Nevada Dept. of Corr. Psychological Review Panel, 124 Nev. 313, 316, 183
27 P.3d 133, 135 (2008); see also Torres v. Nev. Direct Ins. Co., 131 Nev. Adv. Op. 54, 353
28

1 P.3d 1203, 1210 (2015) (same). Nevada is a notice-pleading jurisdiction, therefore, "[t]he
2 test for determining whether the allegations of a cause of action are sufficient to assert a
3 claim for relief is whether the allegations give fair notice of the nature and basis of the claim
4 and the relief requested." Ravera v. City of Reno, 100 Nev. 68, 70, 675 P.2d 407, 408
5 (1984); W. States Const., Inc. v. Michoff, 108 Nev. 931, 936, 840 P.2d 1220, 1223 (1992);
6 NRCP 8.
7

8 **A. All Claims Accruing Prior to June 14, 2014 are Barred by the Statute of**
9 **Limitations**

10 **1. A Two-Year Statute of Limitations Applies to all Claims**

11 The Minimum Wage Act (MWA) guarantees employees payment of a specified
12 minimum wage and gives an employee whose employer violates the MWA the right to bring
13 an action against his or her employer in Nevada. Perry v. Terrible Herbst, Inc., 383 P.3d
14 257, 258 (Nev. 2016). A two-year statute of limitation applies to actions for failure to pay the
15 minimum wage in violation of the Nevada constitution. Id. at 262. This two-year statute of
16 limitation period applies to NRS 608 statutory wage claims that are analogous to a cause of
17 action for failure to pay an employee the lawful minimum wage. Id. Accordingly, a two-year
18 statute of limitation applies to: Plaintiffs' First Cause of Action for Failure to Pay Wages for
19 All Hours Worked in Violation of NRS 608.140 and 608.016; Second Cause of Action for
20 Failure to Pay Minimum Wages in Violation of the Nevada Constitution; Third Cause of
21 Action for Failure to Pay Overtime Wages in Violation of NRS 608.140 and 608.018; and,
22 Fourth Cause of Action for Failure to Timely Pay All Wages Due and Owing Upon
23 Termination Pursuant to NRS 608.140 and 608.020-.050.
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2. Cross Jurisdictional Tolling Does Not Apply

Class-action tolling suspends the statutes of limitation for all purported members of the class until a formal decision on class certification has been made, or until the individual plaintiff opts out of the class. Archon Corp. v. Eighth Judicial Dist. Court in & for Cty. of Clark, 407 P.3d 702 (Nev. 2017). Cross-jurisdictional class-action tolling suspends the statutes of limitation for all purported class members even if the class action was pending in a different jurisdiction than where the later suit is brought. Id.

The United States Supreme Court in American Pipe held the timely filing of a class action tolls the applicable statutes of limitation for all persons encompassed by the class complaint. The Court further ruled that, where class action status has been denied, members of the failed class could timely intervene as individual plaintiffs in the still-pending action, shorn of its class character.

Recently, however, the United State Supreme Court declined to apply American Pipe tolling to successive class action claims, holding the maintenance of a follow-on class action past the expiration of the statute of limitations is not permitted. China Agritech, Inc. v. Resh, 138 S. Ct. 1800, 1803, 201 L. Ed. 2d 123 (2018). The Court explained that allowing tolling for successive class actions would allow the statute of limitation to be extended time and again; as each class is denied certification, a new named plaintiff could file a class complaint that resuscitates the litigation. Id.

Whether cross-jurisdictional tolling applies to a case like the present case is an issue that has not yet been decided by the Nevada Supreme Court. See Archon Corp. v. Eighth Judicial Dist. Court in & for Cty. of Clark, 407 P.3d 702 (Nev. 2017). In Achron Corp., the Court declined to consider the issue, finding an advisory mandamus was not warranted because the issue was not raised in the district court. Id. Nevertheless, the case presented

1 compelling grounds to refrain from recognizing cross-jurisdictional tolling. Specifically,
2 cross-jurisdictional class-action tolling would allow the federal judiciary's actions to
3 indefinitely extend the statutes of limitation beyond a five-year period of repose under NRS
4 11.500. *Id.* Moreover, Achron Corp was considered before the United States Supreme
5 Court's decision in China Agritech, Inc.

6 This issue has been similarly addressed in regards to individual actions. In Clemens
7 v. Daimler Chrysler Corp., 534 F.3d 1017, 1025 (9th Cir. 2008), the Ninth Circuit held
8 American Pipe does not "mandate cross-jurisdictional tolling as a matter of state procedure."
9 The Illinois Supreme Court addressed this issue in Portwood v. Ford Motor Co., 701 N.E.2d
10 1102, 1103-05 (Ill. 1998), holding a state "statute of limitations is not tolled during the
11 pendency of a class action in federal court," even though the court had previously "adopted
12 the American Pipe rule for class actions filed in Illinois state court." The Court reasoned
13 such cross-jurisdictional tolling of a state statute of limitation would "increase the burden on
14 that state's court system" because it would expose the state court system to the evils of
15 "forum shopping." *Id.* at 1104. The court further found that because "state courts have no
16 control over the work of the federal judiciary, . . . [s]tate courts should not be required to
17 entertain stale claims simply because the controlling statute of limitations expired while a
18 federal court considered whether to certify a class action." *Id.* at 1104.

19 Moreover, pursuant to NRS 11.500, the Nevada Legislature has determined that a
20 statute of limitation should only be tolled based on an action filed in another jurisdiction
21 when "the court lacked jurisdiction over the subject matter of the action," (which it did not
22 here), and then limited tolling to "[n]inety days after the action is dismissed."

23 Here, Plaintiffs filed their *Complaint* on June 14, 2016. As such, all claims accruing
24 before June 14, 2014 are barred unless cross-jurisdictional tolling applies. Under the
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1 unique facts of this case, the Court finds cross-jurisdictional tolling does not apply. The
2 Court looks to the history of this litigation. Specifically, Plaintiffs in this case previously
3 brought a substantially similar action in the Second Judicial District Court for the State of
4 Nevada. The case was removed to federal court where class certification was denied and
5 the case dismissed. Plaintiffs again seek recourse in the Second Judicial District Court and
6 assert their claims were tolled by the federal action.

7 To permit tolling claims under these specific circumstances provides for never-ending
8 successive class actions because the statute of limitation would never expire. Newly named
9 plaintiffs could always file a class complaint that would resurrect the litigation. Accordingly,
10 class action claims shouldn't be tolled. Therefore, all of Plaintiffs' class action claims that
11 accrued prior to June 14, 2014, two (2) years before Plaintiffs filed their *Complaint*, are
12 barred and shall be dismissed.

13 Plaintiffs' *Complaint* alleges that Plaintiff Capilla was employed by GSR from "March
14 2011" to "September 2013;" Plaintiff Vaughan was employed by GSR from "August 2012"
15 through "June 2013;" Plaintiff Martel was employed by GSR from "January 2012" to "July
16 2014;" and Plaintiff Williams was employed by GSR from "April 2014" to "December 2015."
17 See Complaint at 3, ¶¶ 5 - 8. Accordingly, all of Ms. Capilla and Ms. Vaughan's claims, all
18 but one (1) month of Mr. Martel's claims, and all but eighteen (18) months of Ms. Jackson-
19 Williams' claims are dismissed.

22 B. Remaining Claims

23 Two Plaintiffs remain pursuant to this Court's dismissal of all claims accrued prior to
24 June 14, 2016. First, Mr. Martel's claims regarding a one-month period remains; and,
25 second, Ms. Jackson-Williams' claims remains regarding an eighteen months period. GSR
26 assert the remaining claims should be dismissed for (1) failure to exhaust administrative
27 remedies of the collective bargaining agreement; (2) issue preclusion; (3) claim preclusion;
28 (4) lack of standing to represent union employees; and, (5) failure to state a claim.

1 The Court addresses each argument in turn.

2 **1. Mr. Martel and Ms. Jackson-Williams are not Required to Exhaust**
3 **Administrative Remedies**

4 Where an administrative agency has exclusive jurisdiction over statutory claims, the
5 failure to exhaust administrative remedies before proceeding in district court renders the
6 matter unripe for district court review. Allstate Ins. Co. v. Thorpe, 123 Nev. 565, 571, 170
7 P.3d 989, 993 (2007). A private cause of action generally cannot be implied when an
8 administrative official is expressly charged with enforcing a section of laws. Baldonado v.
9 Wynn Las Vegas, LLC, 124 Nev. 951, 194 P.3d 96 (2008). However, the Nevada Supreme
10 Court has determined an employee has a private right to pursue claims for unpaid wages
11 pursuant to NRS 608.140. Neville v. Eighth Judicial Dist. Court in & for Cty. of Clark, 406
12 P.3d 499, 504 (Nev. 2017). As such, the Labor Commissioner does not have exclusive
13 jurisdiction over statutory claims. Therefore, Plaintiffs were not required to exhaust
14 administrative remedies before proceeding to district court.

17 **2. Issue and Claim Preclusion Does not Apply**

18 In Five Star Capital Corp. v. Ruby, the Nevada Supreme Court set forth a three-part
19 test for determining whether claim preclusion applies to a later action: (1) [T]he parties or
20 their privies are the same, (2) the final judgment is valid, and (3) the subsequent action is
21 based on the same claims or any part of them that were or could have been brought in the
22 first case. 124 Nev. at 1054. In Five Star Capital Corp., the Court reasoned, claim
23 preclusion applies to preclude an entire second suit that is based on the same set of facts
24 and circumstances as the first suit. Id.

27 The Court also set forth a four-part test for determining whether issue preclusion
28 applies to a later action:

1 (1) the issue decided in the prior litigation must be identical to the issue
2 presented in the current action; (2) **the initial ruling must have been on the**
3 **merits and have become final**; ... (3) the party against whom the judgment is
4 asserted must have been a party or in privity with a party to the prior litigation";
5 and (4) the issue was actually and necessarily litigated.

6 124 Nev. 1048, 1055, 194 P.3d 709, 713 (2008) (citations omitted) (emphasis added).

7 Here, class certification was never addressed in Sargent for the Nevada wage claims
8 and the Court in Sargent has since reversed the grant of summary judgment in light of
9 Neville. There is no issue or claim preclusion because class certification was never
10 independently decided; there has been no ruling on the merits of any of the employees'
11 FLSA or Nevada wage claims; and, the Plaintiffs' NRS 608 and Nevada Constitution
12 minimum wage claims have not actually and necessarily been litigated.

13 3. Standing to Represent Union Employees

14 Pursuant to 29 U.S.C. § 159(a),

15
16 Representatives designated or selected for the purposes of collective
17 bargaining by the majority of the employees in a unit appropriate for such
18 purposes, shall be the exclusive representatives of all the employees in such
19 unit for the purposes of collective bargaining in respect to rates of pay, wages,
20 hours of employment, or other conditions of employment.

21 29 U.S.C. § 159(a). In Baker v. IBP, Inc., 357 F.3d 685, 690 (7th Cir. 2004), the Seventh
22 Circuit held that where a "suit is at its core about the adequacy of the wages [the employer]
23 pays," individual employees may not represent union workers in a class action when the
24 Union has not breached its duty of fair representation.

25 The court reasoned that union workers "have a representative—one that under the
26 NLRA is supposed to be 'exclusive' with respect to wages" and therefore "Plaintiffs' request
27 to proceed on behalf of a class of all workers shows that they seek to usurp the union's
28 role." Id. at 686, 690. Moreover, state law rights and obligations that do not exist

1 independently of private agreements, and that can be waived or altered by agreement as a
2 result, are pre-empted by those agreements. MGM Grand Hotel-Reno, Inc. v. Insley, 102
3 Nev. 513, 517, 728 P.2d 821, 824 (1986).

4
5 Plaintiffs do not dispute that they may not pursue class actions on behalf of union
6 employees because they are not union representatives, who have the exclusive right to
7 represent members of the union with respect wage. However, Plaintiffs dispute that an
8 enforceable collective bargaining agreement was in place. Specifically, Plaintiffs argue that:
9 (1) the CBA is not valid and has expired by its own terms on or about May 1, 2011 (over
10 seven years ago); (2) because it has expired and no subsequent CBA has been ratified or
11 signed, Plaintiffs may sue in this Court for unpaid wages, overtime wages, and penalties
12 due; and, (3) even if the CBA was valid it does not provide otherwise for overtime wages
13 and Plaintiffs may bring their claims in this Court. See Opposition, generally. The Court
14 declines to consider evidence, such as the collective bargaining agreement, outside the
15 pleadings at this time.¹ Considering the claims in Plaintiffs' *Complaint* as true, and drawing
16
17 all conclusions in favor of the Plaintiffs, dismissal is not appropriate on these grounds.
18

19 4. Failure to State a Claim

20 As stated dismissal is appropriate pursuant to NRCP 12(b)(5) "where the allegations
21 are insufficient to establish the elements of a claim for relief." Stockmeier v. Nevada Dept.
22 of Corr. Psychological Review Panel, 124 Nev. 313, 316, 183 P.3d 133, 135 (2008); see
23 also Torres v. Nev. Direct Ins. Co., 131 Nev. Adv. Op. 54, 353 P.3d 1203, 1210 (2015)
24 (same). Nevada is a notice-pleading jurisdiction, therefore, "[t]he test for determining
25 whether the allegations of a cause of action are sufficient to assert a claim for relief is
26 whether the allegations give fair notice of the nature and basis of the claim and the relief
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¹ The Court notes this issue may be more appropriate for a motion for summary judgment.

1 requested." Ravera v. City of Reno, 100 Nev. 68, 70, 675 P.2d 407, 408 (1984); W. States
2 Const., Inc. v. Michoff, 108 Nev. 931, 936, 840 P.2d 1220, 1223 (1992); NRCP 8.

3 Plaintiffs filed their *FAC* on January 29, 2019. This Court finds Plaintiffs have
4 provided sufficient factual allegations regarding hours worked and exacting estimates of
5 shifts and unpaid hours and for the applicable time period to put Defendants on notice of the
6 nature and basis of the claims and relief requested. See FAC, generally.

8 **III. ORDER.**

9 The Court finds a two-year statute of limitation applies to this case. As such, the
10 Court dismisses all of Ms. Capilla and Ms. Vaughan's claims, all but one (1) month of Mr.
11 Martel's claims, and all but eighteen (18) months of Ms. Jackson-Williams' claims.
12 However, the Court declines to dismiss the remaining claims at this time.

14 Based on the foregoing, and good cause appearing thereto,
15 **IT IS HEREBY ORDERED** Defendants' *Motion to Dismiss* is GRANTED, in part, and
16 DENIED, in part.

17 Dated this 7th day of June, 2019.

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21 DISTRICT JUDGE
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IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

EDDY MARTEL (also known as MARTEL-
RORIGUEZ), MARY ANNE CAPILLA,
JANICE JACKSON-WILLIAMS and
WHITNEY VAUGHN on behalf of themselves
and all others similarly situated,

Plaintiffs,

v.

HG STAFFING, LLC, MEI-GSR HOLDINGS,
LLC d/b/a GRAND SIERRA RESORT, and
DOES 1 through 50, inclusive,

Defendants.

Case No.: CV16-01264

**NOTICE OF ENTRY OF ORDER
GRANTING, IN PART, AND DENYING,
IN PART, MOTION TO DISMISS**

1 NOTICE IS HEREBY GIVEN that Order partially granting Defendants HG STAFFING,
2 LLC, MEI-GSR HOLDINGS, LLC d/b/a GRAND SIERRA RESORT's motion to dismiss filed
3 on February 2, 2019, was entered on June 7, 2019, a copy of which is attached hereto.

4 **AFFIRMATION**

5 The undersigned does hereby affirm that the preceding document and the exhibits
6 attached hereto do not contain the personal information of any person

7 Dated this 28th day of June 2019

8 COHEN|JOHNSON|PARKER|EDWARDS

9 By: /s/ H. Stan Johnson

10 H. Stan Johnson, Esq.

11 Nevada Bar No. 00265

12 Chris Davis, Esq.

13 Nevada Bar No. 06616

14 375 E. Warm Spring Road, Suite 104

15 Las Vegas, Nevada 89119

16 Attorneys for Defendants

PROOF OF SERVICE

CASE NAME: Martel et. al vs. HG Staffing, LLC. at el.
Court: District Court of the State of Nevada
Case No.: CV16-01264

On the date last written below, following document(s) was served as follows:

**NOTICE OF ENTRY OF ORDER GRANTING, IN PART, AND DENYING, IN PART,
MOTION TO DISMISS**

_____ by placing an original or true copy thereof in a sealed envelope, with sufficient
postage affixed thereto, in the United States Mail, Las Vegas, Nevada and
addressed to:
_____ X by using the Court's CM/ECF Electronic Notification System addressed to:
_____ by electronic email addressed to :
_____ by personal or hand/delivery addressed to:
_____ By facsimile (fax) addresses to:
_____ by Federal Express/UPS or other overnight delivery addressed to:

Mark R. Thierman, Esq.
Leah L. Jones, Esq.
THIERMAN|BUCK LAW FIRM
7287 Lakeside Drive
Reno, Nevada 89511
Attorney for Plaintiffs

DATED the 28th day of June 2019.

/s/ Ryan Johnson
An employee of
COHEN|JOHNSON|PARKER|EDWARDS

1 CODE NO. 3370
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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE
8

9 EDDY MARTEL (also known as MARTEL-
10 RODRIGUEZ), MARY ANNE CAPILLA,
11 JANICE JACKSON-WILLIAMS and WHITNEY
12 VAUGHAN on behalf of themselves and all
13 others similarly situated,

Case No. CV16-01264

Dept. No. 6

14 Plaintiffs,

15 vs.

16 HG STAFFING, LLC, MEI-GSR HOLDINGS,
17 LLC d/b/a GRAND SIERRA RESORT, and
18 DOES 1 through 50, inclusive,

19 Defendants.
20 _____ /

21 **ORDER GRANTING, IN PART, AND DENYING, IN PART, MOTION TO DISMISS**

22 Before this Court is a *Motion to Dismiss First Amended Complaint* ("Motion") filed by
23 Defendants HG STAFFING, LLC and MEI-GSR HOLDINGS, LLC d/b/a GRAND SIERRA
24 RESORT (collectively, "GSR" unless individually referenced), by and through their counsel,
25 Cohen|Johnson|Parker|Edwards.

26 Plaintiffs EDDY MARTEL (also known as MARTEL-RODRIGUEZ) ("Mr. Martel"),
27 MARY ANNE CAPILLA ("Ms. Capilla"), JANICE JACKSON-WILLIAMS ("Ms. Jackson-
28 Williams"), and WHITNEY VAUGHAN ("Ms. Vaughan") (collectively, "Plaintiffs"), on behalf of

1 themselves and all others similarly situated, filed *Plaintiffs' Opposition to Defendants' Motion*
2 *to Dismiss Plaintiffs' First Amended Complaint* ("Opposition"), by and through their counsel,
3 Thierman Buck, LLP. GSR filed its *Reply in Support of Motion to Dismiss Amended*
4 *Complaint* ("Reply") and submitted the matter for decision thereafter.

6 **I. FACTUAL AND PROCEDURAL HISTORY**

7 This action arises out of an employment dispute between Plaintiffs and GSR
8 regarding wages paid by GSR to Plaintiffs and similarly situated employees. On June 14,
9 2016, Plaintiffs filed a *Class Action Complaint* ("Complaint") alleging GSR maintained the
10 following policies, practices, and procedures which required various employees to perform
11 work activities without compensation: (1) GSR's Cash Bank Policy, (2) Dance Class Policy,
12 (3) Room Attendant Pre-Shift Policy, (4) Pre-Shift Meeting Policy, (5) Uniform Policy, and (6)
13 Shift Jamming Policy. *Complaint*, pp. 4-8. As a result of said policies, Plaintiffs allege four
14 causes of action against GSR: (1) Failure to Pay Wages for All Hours Worked in Violation of
15 NRS 608.140 and 608.016, (2) Failure to Pay Minimum Wages in Violation of the Nevada
16 Constitution, (3) Failure to Pay Overtime Wages in Violation of NRS 608.140 and 608.018,
17 and (4) Failure to Timely Pay All Wages Due and Owing Upon Termination Pursuant to NRS
18 608.140 and 608.020-.050. *Id.*, pp. 11-15.

19 On October 9, 2018, this Court entered its *Order After Hearing Granting Defendants'*
20 *Motion to Dismiss* ("Order"). The Court found Plaintiffs failed to provide sufficient
21 information to support its claims, and therefore granted GSR's *Motion to Dismiss*.
22 Thereafter, Plaintiffs filed *Plaintiffs' Motion for Reconsideration of the Court's Order Granting*
23 *Defendant's Motion to Dismiss or in the Alternative Leave to File an Amended Complaint*
24 ("Motion for Reconsideration") requesting the Court reconsider its Order pursuant to NRCP
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27
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1 Rule 60(b). *Motion for Reconsideration*, p. 2. This Court entered its *Order Re Motion for*
2 *Reconsideration* denying Plaintiffs request on the grounds they failed to state a claim but
3 granting Plaintiffs leave to amend their *Complaint*.
4

5 On January 29, 2019, Plaintiffs filed their *First Amended Complaint* ("FAC") asserting
6 the same four (4) claims. Thereafter, GSR filed the instant *Motion* requesting this Court
7 dismiss the FAC pursuant to NRCP 12(b)(5). *Motion*, p. 2. GSR contends the claims
8 asserted in the FAC "have no more merit than Plaintiffs' original claims." *Motion*, p. 2.
9

10 First, GSR contends all of Plaintiffs' claims asserted after June 14, 2014 are barred
11 by the two-year statute of limitations pursuant to NRS 608.260. *Motion*, p. 5. GSR asserts
12 the Nevada Supreme Court held claims made under the Minimum Wage Amendment
13 ("MWA") are governed by a two-year statute of limitations. *Motion*, p. 5; citing Perry v.
14 Terrible Herbst, Inc., 132 Nev. Adv. Op. 75, 383 P.3d 257, 260-62 (2016). GSR further
15 asserts, all individual and class claims brought prior to June 14, 2014 are not tolled pursuant
16 to Archon Corp. v. Eighth Judicial Dist. Court in & for Cty. of Clark, 407 P.3d 702 (Nev.
17 2017) and China Agritech, Inc. v. Resh, 138 S. Ct. 1800, 1804 (2018). *Motion*, p. 9.
18

19 Second, GSR maintains Plaintiffs' First, Third, and Fourth claims should be
20 dismissed for failure to exhaust administrative remedies with the labor commissioner as
21 required by NRS Chapter 607. *Motion*, p. 11. GSR argues Plaintiffs were required to first
22 file and pursue their state law wage claims with the Nevada Labor Commissioner before
23 seeking relief from this Court. *Motion*, p. 11; citing NRS 608.016; Allstate Ins. Co. v.
24 Thrope, 123 Nev. 565, 571-72, 170 P.3d 989, 993-94 (2007).
25

26 Third, GSR argues Plaintiffs First, Third, and Fourth Claims for Relief should be
27 dismissed for failing to make good faith attempt to collect their wages before filing their claim
28

1 for wages with the Court. *Motion*, p. 13; citing NAC 608.155(1).

2 Fourth, GSR asserts Plaintiffs lack standing to represent union employees because
3 they are exclusively represented by their respective unions pursuant to 29 U.S.C.A Section
4 159(a). *Motion*, p. 14.

5
6 Fifth, GSR contends Plaintiffs have again failed to state a claim for wages, including
7 minimum wages. *Motion*, p. 15. GSR argues Plaintiff do no allege any facts which would
8 show that any plaintiff was paid less than the minimum wage and do not allege how much
9 they were paid in any week. *Motion*, p. 16. GSR asserts Plaintiffs failure to claim how much
10 they worked in a week results in mere speculation as to whether Plaintiffs were underpaid.
11 *Motion*, p. 16.

12
13 Sixth, GSR maintains Ms. Jackson-Williams' claims for wages and overtime are
14 barred for failing to exhaust grievance procedures of the collective bargaining agreement.
15 *Motion*, p. 17. GSR argues Ms. Jackson-Williams is subject to a collective bargaining
16 agreement and, therefore, her statutory claims for wages or overtime are dependent upon
17 finding a breach of that agreement to maintain those claims. *Motion*, p. 18. Moreover, GSR
18 asserts Ms. Jackson-Williams is not entitled to overtime pursuant to NRS 608.018 because
19 the collective bargaining agreement provides otherwise. *Motion*, p. 19.

20
21 Seventh, GSR contends Plaintiffs' claims are barred by claim and issue preclusion.
22 *Motion*, p. 20. GSR maintains United States District Judge Hicks already determined
23 Plaintiffs' wage claims cannot proceed in a class action; and, they are therefore barred from
24 re-litigating the federal district court's judgment denying class certification. *Motion*, p. 2;
25 citing Five Star Capital Corp. v. Ruby, 124 Nev. 1048, 1054, 194 P.3d 709, 713 (2008).
26
27 Lastly, GSR argues Plaintiffs should not be able to re-litigate the federal action on principles
28

1 of comity and the first-to-file rule. *Motion*, p. 23.

2 In their *Opposition*, Plaintiffs first maintain they are not required to exhaust
3 administrative remedies with the Office of the Labor Commissioner prior to filing suit.
4 *Opposition*, p. 7; citing Neville v. Terrible Herbst, Inc., 133 Nev. Adv. Op. 95, 406 P.3d 499,
5 504 (Dec. 7 2017).
6

7 Second, Plaintiffs assert they meet the pleading standard because they alleged
8 specific work activities for which they are not paid their minimum wage, provided estimated
9 damages owed to Plaintiffs and the putative classes, and provided documentary evidence in
10 their possession and control specifying hours, dates, and times worked without pay.
11 *Opposition*, p. 9.
12

13 Third, Plaintiffs maintain their claims are not barred by issue or claim preclusion
14 because their Nevada wage claims were not certified in the Sargant action. *Opposition*, p.
15 13. Specifically, the federal court never reached determination of the state law claims
16 because it dismissed them on the “incorrect premise” that Nevada employees do not have a
17 private right of action for wage claims, at summary judgment, and prior to the court’s
18 decertification order. *Opposition*, p. 13.
19

20 Fourth, Plaintiffs contend its claims are not barred by any statutes of limitation.
21 *Opposition*, p. 22. Plaintiffs contend NRS 11.190(3)(a)’s three-year statute of limitation for
22 “an action upon liability created by statute, other than a penalty or forfeiture” applies to this
23 action because NRS Chapter 608 lacks an express limitation period and NRS 11.190
24 provides the three-year statute of limitation applies “unless further limited by specific statute.
25 . . .” *Opposition*, p. 22; citing NRS 11.190.
26

27 //

1 Plaintiffs further contend Defendants reliance on Perry is impermissibly broad
2 because the Court did not hold a two-year statute of limitation period applicable to the
3 Minimum Wage Amendment, extended to NRS 608 private causes of action claims.
4 *Opposition*, p. 23.

5
6 Fifth, Plaintiffs maintain their claims are not preempted by any alleged collective
7 bargaining agreement because they are only trying to enforce the statutory obligation to pay
8 overtime. *Opposition*, p. 29.

9
10 In their *Reply*, Defendants reiterate that a two-year statute of limitations applies to the
11 claims. *Reply*, p. 2. Defendants assert Plaintiffs concede they did not exhaust
12 administrative remedies or grievance procedures. *Reply*, p. 3. Lastly, Defendants assert
13 Plaintiff do not address or dispute that they are not entitled to seek class certification on
14 behalf of GSR employees represented by a union. *Reply*, p. 3.

15
16 **II. STANDARD OF REVIEW; LAW AND ANALYSIS**

17 A complaint should be dismissed under NRCP 12(b)(5) “only if it appears beyond a
18 doubt” that the plaintiff is entitled to no relief under any set of facts that could be proved in
19 support of the claim. Buzz Stew, LLC v. City of North Las Vegas, 124 Nev. 224, 228, 181
20 P.3d 670, 672 (2008); Blackjack Bonding v. City of Las Vegas Mun. Court, 116 Nev. 1213,
21 1217, 14 P.3d 1275, 1278 (2000). When analyzing the merits of a 12(b)(5) motion to
22 dismiss, the court recognizes all of the factual allegations in the plaintiff’s complaint as true,
23 and draws all inferences in favor of the non-moving party. *Id.* Dismissal is appropriate
24 “where the allegations are insufficient to establish the elements of a claim for relief.”
25
26 Stockmeier v. Nevada Dept. of Corr. Psychological Review Panel, 124 Nev. 313, 316, 183
27 P.3d 133, 135 (2008); see also Torres v. Nev. Direct Ins. Co., 131 Nev. Adv. Op. 54, 353
28

1 P.3d 1203, 1210 (2015) (same). Nevada is a notice-pleading jurisdiction, therefore, "[t]he
2 test for determining whether the allegations of a cause of action are sufficient to assert a
3 claim for relief is whether the allegations give fair notice of the nature and basis of the claim
4 and the relief requested." Ravera v. City of Reno, 100 Nev. 68, 70, 675 P.2d 407, 408
5 (1984); W. States Const., Inc. v. Michoff, 108 Nev. 931, 936, 840 P.2d 1220, 1223 (1992);
6 NRCP 8.
7

8 **A. All Claims Accruing Prior to June 14, 2014 are Barred by the Statute of**
9 **Limitations**

10 **1. A Two-Year Statute of Limitations Applies to all Claims**

11 The Minimum Wage Act (MWA) guarantees employees payment of a specified
12 minimum wage and gives an employee whose employer violates the MWA the right to bring
13 an action against his or her employer in Nevada. Perry v. Terrible Herbst, Inc., 383 P.3d
14 257, 258 (Nev. 2016). A two-year statute of limitation applies to actions for failure to pay the
15 minimum wage in violation of the Nevada constitution. Id. at 262. This two-year statute of
16 limitation period applies to NRS 608 statutory wage claims that are analogous to a cause of
17 action for failure to pay an employee the lawful minimum wage. Id. Accordingly, a two-year
18 statute of limitation applies to: Plaintiffs' First Cause of Action for Failure to Pay Wages for
19 All Hours Worked in Violation of NRS 608.140 and 608.016; Second Cause of Action for
20 Failure to Pay Minimum Wages in Violation of the Nevada Constitution; Third Cause of
21 Action for Failure to Pay Overtime Wages in Violation of NRS 608.140 and 608.018; and,
22 Fourth Cause of Action for Failure to Timely Pay All Wages Due and Owing Upon
23 Termination Pursuant to NRS 608.140 and 608.020-.050.
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2. Cross Jurisdictional Tolling Does Not Apply

Class-action tolling suspends the statutes of limitation for all purported members of the class until a formal decision on class certification has been made, or until the individual plaintiff opts out of the class. Archon Corp. v. Eighth Judicial Dist. Court in & for Cty. of Clark, 407 P.3d 702 (Nev. 2017). Cross-jurisdictional class-action tolling suspends the statutes of limitation for all purported class members even if the class action was pending in a different jurisdiction than where the later suit is brought. Id.

The United States Supreme Court in American Pipe held the timely filing of a class action tolls the applicable statutes of limitation for all persons encompassed by the class complaint. The Court further ruled that, where class action status has been denied, members of the failed class could timely intervene as individual plaintiffs in the still-pending action, shorn of its class character.

Recently, however, the United State Supreme Court declined to apply American Pipe tolling to successive class action claims, holding the maintenance of a follow-on class action past the expiration of the statute of limitations is not permitted. China Agritech, Inc. v. Resh, 138 S. Ct. 1800, 1803, 201 L. Ed. 2d 123 (2018). The Court explained that allowing tolling for successive class actions would allow the statute of limitation to be extended time and again; as each class is denied certification, a new named plaintiff could file a class complaint that resuscitates the litigation. Id.

Whether cross-jurisdictional tolling applies to a case like the present case is an issue that has not yet been decided by the Nevada Supreme Court. See Archon Corp. v. Eighth Judicial Dist. Court in & for Cty. of Clark, 407 P.3d 702 (Nev. 2017). In Achron Corp., the Court declined to consider the issue, finding an advisory mandamus was not warranted because the issue was not raised in the district court. Id. Nevertheless, the case presented

1 compelling grounds to refrain from recognizing cross-jurisdictional tolling. Specifically,
2 cross-jurisdictional class-action tolling would allow the federal judiciary's actions to
3 indefinitely extend the statutes of limitation beyond a five-year period of repose under NRS
4 11.500. *Id.* Moreover, Achron Corp was considered before the United States Supreme
5 Court's decision in China Agritech, Inc.

6 This issue has been similarly addressed in regards to individual actions. In Clemens
7 v. Daimler Chrysler Corp., 534 F.3d 1017, 1025 (9th Cir. 2008), the Ninth Circuit held
8 American Pipe does not "mandate cross-jurisdictional tolling as a matter of state procedure."
9 The Illinois Supreme Court addressed this issue in Portwood v. Ford Motor Co., 701 N.E.2d
10 1102, 1103-05 (Ill. 1998), holding a state "statute of limitations is not tolled during the
11 pendency of a class action in federal court," even though the court had previously "adopted
12 the American Pipe rule for class actions filed in Illinois state court." The Court reasoned
13 such cross-jurisdictional tolling of a state statute of limitation would "increase the burden on
14 that state's court system" because it would expose the state court system to the evils of
15 "forum shopping." *Id.* at 1104. The court further found that because "state courts have no
16 control over the work of the federal judiciary, . . . [s]tate courts should not be required to
17 entertain stale claims simply because the controlling statute of limitations expired while a
18 federal court considered whether to certify a class action." *Id.* at 1104.

19 Moreover, pursuant to NRS 11.500, the Nevada Legislature has determined that a
20 statute of limitation should only be tolled based on an action filed in another jurisdiction
21 when "the court lacked jurisdiction over the subject matter of the action," (which it did not
22 here), and then limited tolling to "[n]inety days after the action is dismissed."

23 Here, Plaintiffs filed their *Complaint* on June 14, 2016. As such, all claims accruing
24 before June 14, 2014 are barred unless cross-jurisdictional tolling applies. Under the
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1 unique facts of this case, the Court finds cross-jurisdictional tolling does not apply. The
2 Court looks to the history of this litigation. Specifically, Plaintiffs in this case previously
3 brought a substantially similar action in the Second Judicial District Court for the State of
4 Nevada. The case was removed to federal court where class certification was denied and
5 the case dismissed. Plaintiffs again seek recourse in the Second Judicial District Court and
6 assert their claims were tolled by the federal action.

7 To permit tolling claims under these specific circumstances provides for never-ending
8 successive class actions because the statute of limitation would never expire. Newly named
9 plaintiffs could always file a class complaint that would resurrect the litigation. Accordingly,
10 class action claims shouldn't be tolled. Therefore, all of Plaintiffs' class action claims that
11 accrued prior to June 14, 2014, two (2) years before Plaintiffs filed their *Complaint*, are
12 barred and shall be dismissed.

13 Plaintiffs' *Complaint* alleges that Plaintiff Capilla was employed by GSR from "March
14 2011" to "September 2013;" Plaintiff Vaughan was employed by GSR from "August 2012"
15 through "June 2013;" Plaintiff Martel was employed by GSR from "January 2012" to "July
16 2014;" and Plaintiff Williams was employed by GSR from "April 2014" to "December 2015."
17 See Complaint at 3, ¶¶ 5 - 8. Accordingly, all of Ms. Capilla and Ms. Vaughan's claims, all
18 but one (1) month of Mr. Martel's claims, and all but eighteen (18) months of Ms. Jackson-
19 Williams' claims are dismissed.

22 B. Remaining Claims

23 Two Plaintiffs remain pursuant to this Court's dismissal of all claims accrued prior to
24 June 14, 2016. First, Mr. Martel's claims regarding a one-month period remains; and,
25 second, Ms. Jackson-Williams' claims remains regarding an eighteen months period. GSR
26 assert the remaining claims should be dismissed for (1) failure to exhaust administrative
27 remedies of the collective bargaining agreement; (2) issue preclusion; (3) claim preclusion;
28 (4) lack of standing to represent union employees; and, (5) failure to state a claim.

1 The Court addresses each argument in turn.

2 **1. Mr. Martel and Ms. Jackson-Williams are not Required to Exhaust**
3 **Administrative Remedies**

4 Where an administrative agency has exclusive jurisdiction over statutory claims, the
5 failure to exhaust administrative remedies before proceeding in district court renders the
6 matter unripe for district court review. Allstate Ins. Co. v. Thorpe, 123 Nev. 565, 571, 170
7 P.3d 989, 993 (2007). A private cause of action generally cannot be implied when an
8 administrative official is expressly charged with enforcing a section of laws. Baldonado v.
9 Wynn Las Vegas, LLC, 124 Nev. 951, 194 P.3d 96 (2008). However, the Nevada Supreme
10 Court has determined an employee has a private right to pursue claims for unpaid wages
11 pursuant to NRS 608.140. Neville v. Eighth Judicial Dist. Court in & for Cty. of Clark, 406
12 P.3d 499, 504 (Nev. 2017). As such, the Labor Commissioner does not have exclusive
13 jurisdiction over statutory claims. Therefore, Plaintiffs were not required to exhaust
14 administrative remedies before proceeding to district court.
15

16
17 **2. Issue and Claim Preclusion Does not Apply**

18 In Five Star Capital Corp. v. Ruby, the Nevada Supreme Court set forth a three-part
19 test for determining whether claim preclusion applies to a later action: (1) [T]he parties or
20 their privies are the same, (2) the final judgment is valid, and (3) the subsequent action is
21 based on the same claims or any part of them that were or could have been brought in the
22 first case. 124 Nev. at 1054. In Five Star Capital Corp., the Court reasoned, claim
23 preclusion applies to preclude an entire second suit that is based on the same set of facts
24 and circumstances as the first suit. Id.
25

26 The Court also set forth a four-part test for determining whether issue preclusion
27 applies to a later action:
28

1 (1) the issue decided in the prior litigation must be identical to the issue
2 presented in the current action; (2) **the initial ruling must have been on the**
3 **merits and have become final**; ... (3) the party against whom the judgment is
4 asserted must have been a party or in privity with a party to the prior litigation";
5 and (4) the issue was actually and necessarily litigated.

6 124 Nev. 1048, 1055, 194 P.3d 709, 713 (2008) (citations omitted) (emphasis added).

7 Here, class certification was never addressed in Sargent for the Nevada wage claims
8 and the Court in Sargent has since reversed the grant of summary judgment in light of
9 Neville. There is no issue or claim preclusion because class certification was never
10 independently decided; there has been no ruling on the merits of any of the employees'
11 FLSA or Nevada wage claims; and, the Plaintiffs' NRS 608 and Nevada Constitution
12 minimum wage claims have not actually and necessarily been litigated.

13 3. Standing to Represent Union Employees

14 Pursuant to 29 U.S.C. § 159(a),

15
16 Representatives designated or selected for the purposes of collective
17 bargaining by the majority of the employees in a unit appropriate for such
18 purposes, shall be the exclusive representatives of all the employees in such
19 unit for the purposes of collective bargaining in respect to rates of pay, wages,
20 hours of employment, or other conditions of employment.

21 29 U.S.C. § 159(a). In Baker v. IBP, Inc., 357 F.3d 685, 690 (7th Cir. 2004), the Seventh
22 Circuit held that where a "suit is at its core about the adequacy of the wages [the employer]
23 pays," individual employees may not represent union workers in a class action when the
24 Union has not breached its duty of fair representation.

25 The court reasoned that union workers "have a representative—one that under the
26 NLRA is supposed to be 'exclusive' with respect to wages" and therefore "Plaintiffs' request
27 to proceed on behalf of a class of all workers shows that they seek to usurp the union's
28 role." Id. at 686, 690. Moreover, state law rights and obligations that do not exist

1 independently of private agreements, and that can be waived or altered by agreement as a
2 result, are pre-empted by those agreements. MGM Grand Hotel-Reno, Inc. v. Insley, 102
3 Nev. 513, 517, 728 P.2d 821, 824 (1986).

4
5 Plaintiffs do not dispute that they may not pursue class actions on behalf of union
6 employees because they are not union representatives, who have the exclusive right to
7 represent members of the union with respect wage. However, Plaintiffs dispute that an
8 enforceable collective bargaining agreement was in place. Specifically, Plaintiffs argue that:
9 (1) the CBA is not valid and has expired by its own terms on or about May 1, 2011 (over
10 seven years ago); (2) because it has expired and no subsequent CBA has been ratified or
11 signed, Plaintiffs may sue in this Court for unpaid wages, overtime wages, and penalties
12 due; and, (3) even if the CBA was valid it does not provide otherwise for overtime wages
13 and Plaintiffs may bring their claims in this Court. See Opposition, generally. The Court
14 declines to consider evidence, such as the collective bargaining agreement, outside the
15 pleadings at this time.¹ Considering the claims in Plaintiffs' *Complaint* as true, and drawing
16
17 all conclusions in favor of the Plaintiffs, dismissal is not appropriate on these grounds.
18

19 4. Failure to State a Claim

20 As stated dismissal is appropriate pursuant to NRCP 12(b)(5) "where the allegations
21 are insufficient to establish the elements of a claim for relief." Stockmeier v. Nevada Dept.
22 of Corr. Psychological Review Panel, 124 Nev. 313, 316, 183 P.3d 133, 135 (2008); see
23 also Torres v. Nev. Direct Ins. Co., 131 Nev. Adv. Op. 54, 353 P.3d 1203, 1210 (2015)
24 (same). Nevada is a notice-pleading jurisdiction, therefore, "[t]he test for determining
25 whether the allegations of a cause of action are sufficient to assert a claim for relief is
26 whether the allegations give fair notice of the nature and basis of the claim and the relief
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28

¹ The Court notes this issue may be more appropriate for a motion for summary judgment.

1 requested." Ravera v. City of Reno, 100 Nev. 68, 70, 675 P.2d 407, 408 (1984); W. States
2 Const., Inc. v. Michoff, 108 Nev. 931, 936, 840 P.2d 1220, 1223 (1992); NRCP 8.

3 Plaintiffs filed their *FAC* on January 29, 2019. This Court finds Plaintiffs have
4 provided sufficient factual allegations regarding hours worked and exacting estimates of
5 shifts and unpaid hours and for the applicable time period to put Defendants on notice of the
6 nature and basis of the claims and relief requested. See FAC, generally.

8 **III. ORDER.**

9 The Court finds a two-year statute of limitation applies to this case. As such, the
10 Court dismisses all of Ms. Capilla and Ms. Vaughan's claims, all but one (1) month of Mr.
11 Martel's claims, and all but eighteen (18) months of Ms. Jackson-Williams' claims.
12 However, the Court declines to dismiss the remaining claims at this time.

14 Based on the foregoing, and good cause appearing thereto,
15 **IT IS HEREBY ORDERED** Defendants' *Motion to Dismiss* is GRANTED, in part, and
16 DENIED, in part.

17 Dated this 7th day of June, 2019.

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21 DISTRICT JUDGE
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MARK THIERMAN, ESQ.
SUSAN HILDEN, ESQ.
H. JOHNSON, ESQ.

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1 CODE NO. 3370
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7 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
8 IN AND FOR THE COUNTY OF WASHOE
9

10 EDDY MARTEL (also known as MARTEL-
11 RODRIGUEZ), MARY ANNE CAPILLA,
12 JANICE JACKSON-WILLIAMS and WHITNEY
13 VAUGHAN on behalf of themselves and all
14 others similarly situated,

Case No. CV16-01264

Dept. No. 6

15 Plaintiffs,

16 vs.

17 HG STAFFING, LLC, MEI-GSR HOLDINGS,
18 LLC d/b/a GRAND SIERRA RESORT, and
19 DOES 1 through 50, inclusive,

20 Defendants.
21 _____/

22 **ORDER GRANTING MOTION FOR SUMMARY JUDGMENT**
23

24 Before this Court is the *Defendants' Motion for Summary Judgment, or in the*
25 *Alternative, Summary Adjudication ("Motion")* filed by Defendants HG STAFFING, LLC and
26 MEI-GSR HOLDINGS, LLC d/b/a GRAND SIERRA RESORT (collectively, "GSR" unless
27 individually referenced), by and through their counsel, Cohen|Johnson|Parker|Edwards.
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//

1 Plaintiffs EDDY MARTEL (also known as MARTEL-RODRIGUEZ) ("Mr. Martel"),
2 MARY ANNE CAPILLA ("Ms. Capilla"), JANICE JACKSON-WILLIAMS ("Ms. Jackson-
3 Williams"), and WHITNEY VAUGHAN ("Ms. Vaughan") (collectively, "Plaintiffs"), on behalf of
4 themselves and all others similarly situated, filed *Plaintiffs' Response to Defendants' Motion*
5 *for Summary Judgment/Summary Adjudication* ("Response") by and through their counsel,
6 Thierman Buck, LLP. GSR filed its *Reply in Support of Defendants' Motion for Summary*
7 *Judgment, or in the Alternative, Summary Adjudication* ("Reply") and submitted the matter
8 for decision thereafter.
9

10
11 **I. FACTUAL AND PROCEDURAL HISTORY.**

12 This action arises out of an employment dispute between Plaintiffs, employees, and
13 GSR, employer, regarding wages paid by GSR to Plaintiffs and similarly situated
14 employees. Mr. Martel was employed as an attendant in the Bowling Center. Ms. Capilla
15 was employed as a dealer. Ms. Jackson-Williams was employed as a room attendant. And,
16 Ms. Vaughan was employed as a dancing dealer (part cards dealer, part go-go dancer).
17 See *Class Action Complaint* ("Complaint") and *First Amended Class Action Complaint*
18 *("FAC")*, generally. On June 14, 2016, Plaintiffs filed their *Complaint* alleging GSR
19 maintained the following policies, practices, and procedures which required various
20 employees to perform work activities without compensation:
21
22

- 23 (1) GSR's Cash Bank Policy;
- 24 (2) Dance Class Policy;
- 25 (3) Room Attendant Pre-Shift Policy;
- 26 (4) Pre-Shift Meeting Policy;
- 27

28 //

1 (5) Uniform Policy; and,

2 (6) Shift Jamming Policy.

3 *Complaint*, pp. 4-8. As a result of said policies, Plaintiffs assert four (4) claims for relief
4 against GSR:
5

6 (1) Failure to Pay Wages for All Hours Worked in Violation of NRS 608.140 and
7 608.016;

8 (2) Failure to Pay Minimum Wages in Violation of the Nevada Constitution;

9 (3) Failure to Pay Overtime Wages in Violation of NRS 608.140 and 608.018; and,
10

11 (4) Failure to Timely Pay All Wages Due and Owing Upon Termination Pursuant
12 to NRS 608.140 and 608.020-.050.

13 Id., pp. 11-15.

14 On October 9, 2018, this Court entered its *Order After Hearing Granting Defendants'*
15 *Motion to Dismiss* ("Order"). The Court found Plaintiffs failed to provide sufficient
16 information to support their claims and granted GSR's *Motion to Dismiss*. *Order*, pp. 9-10.
17 Thereafter, Plaintiffs filed *Plaintiffs' Motion for Reconsideration of the Court's Order Granting*
18 *Defendant's Motion to Dismiss or in the Alternative Leave to File an Amended Complaint*
19 *("Motion for Reconsideration")* requesting the Court reconsider its *Order* pursuant to NRCP
20 Rule 60(b). *Motion for Reconsideration*, p. 2. This Court entered its *Order Re Motion for*
21 *Reconsideration* on January 9, 2019 and denied Plaintiffs' request on the grounds they
22 failed to state a claim but granted Plaintiffs leave to amend their *Complaint*. *Order Re*
23 *Motion for Reconsideration*, pp. 8-9.
24
25

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1 On January 29, 2019, Plaintiffs filed their *FAC* asserting the same four (4) claims.
2 Thereafter, GSR filed its *Motion to Dismiss First Amended Complaint* (“*Motion to Dismiss*”),
3 requesting this Court dismiss the *FAC* pursuant to NRCP 12(b)(5). *Motion to Dismiss*, p. 2.
4 GSR argued the claims asserted in the *FAC* “have no more merit than Plaintiffs’ original
5 claims.” *Motion to Dismiss*, p. 2. On June 7, 2019, the Court entered its *Order Granting, in*
6 *Part, and Denying, in Part, Motion to Dismiss* (“*MTD Order*”) concluding a two-year statute
7 of limitation applies to the Plaintiffs’ claims. *MTD Order*, p. 7. As such, the Court dismissed
8 all of Ms. Capilla and Ms. Vaughan’s claims, all but one (1) month of Mr. Martel’s claims,
9 and all but eighteen (18) months of Ms. Jackson-Williams’ claims. *MTD Order*, p. 14.

12 On May 23, 2019, GSR filed its *Motion for Summary Judgment on all Claims*
13 *Asserted by Plaintiffs Martel, Capilla and Vaugh (sic)* (“*First MSJ*”) and argued Plaintiffs
14 claims are barred by claim preclusion. *First MSJ*, p. 4.

16 On June 28, 2019, GSR filed its *Answer to First Amended Class Action Complaint*
17 (“*Answer*”). In addition to admissions and denials to Plaintiffs’ allegations in the *FAC*, GSR
18 asserted, among other affirmative defenses: failure to state a claim; claims are barred, in
19 whole or in part, by the applicable statute of limitations; and, claims are barred due to GSR’s
20 full performance of underlying obligations. *Answer*, generally.

22 On July 8, 2019, GSR filed *Defendants’ Second Motion for Summary Judgment as to*
23 *Plaintiff Martel; Motion for Summary Adjudication on Plaintiffs’ Lack of Standing to*
24 *Represent Union Employees; and Motion for Summary Judgment as to Plaintiff Jackson-*
25 *Williams* (“*Second MSJ*”). GSR made the following arguments: (1) Mr. Martel’s claims are
26 time-barred; (2) Plaintiffs lack standing to represent union employees who are exclusively
27 represented by their unions; (3) Ms. Jackson-Williams’ claims are barred for failing to
28

1 exhaust grievance procedures of the Culinary Collective Bargaining Agreement (“CBA”)
2 and/or based on federal preemption; and, (4) Ms. Jackson-Williams’ claim for overtime is
3 barred pursuant to NRS 608.018 because the CBA provides otherwise for overtime. See
4 *Second MSJ*, generally.

5
6 On July 9, 2019, before this Court rendered its decision on the *First MSJ* and *Second*
7 *MSJ*, GSR filed its *Notice of Filing Petition for Writ of Mandamus and/or Prohibition*
8 (*“Petition”*) with the Supreme Court of Nevada. In the *Petition*, GSR argued the dismissal of
9 Plaintiffs’ first, third, and fourth claims for relief is mandatory on the grounds: Plaintiffs failed
10 to exhaust administrative remedies as required by NRS Chapter 607; legislative mandated
11 remedies must be exhausted despite an implied private right of action; and, NRS 607.215
12 requires Plaintiffs exhaust administrative remedies before pursuing wage claims under NRS
13 608.005 to 608.195. See *Petition*, generally.

14
15 This Court entered its *Order Re Stipulation to Stay All Proceedings and Toll of the*
16 *Five Year Rule* (*“Stipulation”*) on July 17, 2019 and withdrew GSR’s pending motions for
17 summary judgment from submission, without prejudice, allowing renewal upon the Supreme
18 Court of Nevada’s decision. *Stipulation*, p. 9.

19
20 On May 7, 2020, the Supreme Court of Nevada entered its *Order Denying Petition*.
21 The Supreme Court of Nevada reasoned Neville v. Eighth Judicial Dist. Court held, by
22 necessary implication, exhaustion of administrative remedies is not required before filing an
23 unpaid-wage claim in district court. 133 Nev. 77, 406 P.3d 499 (2017).

24
25 On June 9, 2020, GSR filed the instant *Motion* and renewed the claims presented in
26 the *Second MSJ* filed on May 23, 2019. GSR asserts Mr. Martel’s claims are time-barred
27 because the Court’s June 7, 2019, *Order Granting, in Part, and Denying, in Part, Motion to*
28

1 *Dismiss* found a two-year statute of limitations applies, barring claims accruing prior to June
2 14, 2014. Mr. Martel worked his last shift on June 12, 2014. *Motion*, p. 3. GSR argues Ms.
3 Jackson-Williams' claims are barred for failing to exhaust grievance procedures of the
4 Culinary CBA and/or based on federal preemption because state law rights that can be
5 altered by CBAs are preempted by CBAs and employees must make use of the grievance
6 procedures in the CBAs or the claims will be dismissed as preempted by federal law.
7 *Motion*, p. 4; citing Allis-Chalmers Corp. v. Lueck, 471 U.S. 202, 210-20 (1985); MGM
8 Grand Hotel-Reno, Inc. v. Insley, 102 Nev. 513, 517, 728 P.2d 821, 824 (1986). GSR
9 contends Ms. Jackson-Williams' claim for overtime is barred because Article 9.01 of the
10 CBA entitled, "WORK, SHIFTS, WORKWEEK, AND OVERTIME," "provides otherwise" for
11 overtime, therefore exempting Ms. Jackson-Williams from the overtime provisions in
12 Sections 1 and 2 of NRS 608.018. *Motion*, pp. 5-6. GSR argues the Plaintiffs lack standing
13 to represent union employees who are exclusively represented by their respective unions.
14 This is so, GSR maintains, because they are not in the same unions and the bargaining
15 representatives of each union have not been given the opportunity to be present. *Motion*, p.
16 7; citing 29 U.S.C. § 159(a); Vaca v. Sipes, 386 U.S. 171, 186 (1967).

17
18 In the *Response*, Plaintiffs argue Mr. Martel's claim is not time-barred because an
19 employee's claim for unpaid wages accrues thirty (30) days after the employment
20 relationship ends. *Response*, p. 2; citing NRS 608.040-.050. Additionally, Plaintiffs argue
21 GSR admitted it violated overtime requirements when it sent Mr. Martel and hundreds of
22 other current and former employees checks for the unpaid overtime but did not pay
23 continuation wages as mandated by NRS 608.040 and 608.050. *Id.* Plaintiffs assert, based
24 on what they contend is black letter law, purported union employees are not required to

1 exhaust internal union grievance procedures before filing suit. *Response*, p. 12; citing NRS
2 608.140 and 608.050. Plaintiffs next argue courts consistently find union and non-union
3 employees can sue for and on behalf of each other when all allege they are victims of
4 unlawful pay practices. *Response*, p. 13. Plaintiffs state Ms. Jackson-Williams is entitled to
5 statutory overtime protections because the Culinary CBA is not a valid and operable CBA
6 since it is an unsigned draft, and even if operable, the CBA does not provide overtime
7 benefits beyond those conferred by NRS 608.018. *Response*, pp. 17-18. Plaintiffs request
8 the opportunity to conduct further discovery on whether the Culinary Union and the CBA are
9 operational if the Court is inclined to hold the CBA is valid. *Response*, p. 17.

12 In its *Reply*, GSR argues Mr. Martel conceded his underlying wage claims are barred
13 by the applicable statute of limitation, and his derivative waiting time penalty claims under
14 NRS 608.040 and 608.050 fail because they are contrary to accrual of claims case law and
15 statutory language. *Reply*, p. 1. GSR argues Courts have repeatedly rejected assertions
16 similar to Plaintiffs' assertion the Culinary CBA is invalid due to lack of execution. *Reply*, p.
17 2. GSR further maintains the Culinary CBA has affirmed the validity of the CBA. *Id.* GSR
18 contends during the entire term of her GSR employment Ms. Jackson-Williams was subject
19 to the CBA, and the CBA "provides otherwise" for overtime, disqualifying Ms. Jackson-
20 Williams from receiving overtime compensation. *Reply*, p. 9-10. GSR argues Ms. Jackson-
21 Williams' claims for overtime are barred both because she did not exhaust the valid and
22 binding CBA grievance procedures. *Reply*, pp. 12-13. GSR states, pursuant to 29 U.S.C. §
23 159(a), the Culinary Union is the exclusive representative of the employees and Plaintiffs
24 have not alleged a breach of the duty of fair representation, thereby conceding Plaintiffs
25 cannot represent the employees. *Reply*, p. 16. Finally, GSR argues Plaintiffs are not

1 entitled to further discovery under NRCP 56(d) because Plaintiffs failed to provide the
2 requisite affidavit. *Reply*, p. 17; citing Choy v. Ameristar Casinos, Inc., 127 Nev. 870, 872,
3 265 P.3d 698, 700 (2011) and Bakerink v. Orthopaedic Assocs., Ltd., 94 Nev. 428, 431, 581
4 P.2d 9, 11 (1978).

6 **II. STANDARD OF REVIEW; APPLICABLE LAW AND ANALYSIS**

7 Summary judgment is appropriate under Rule 56 of the Nevada Rules of Civil
8 Procedure "when the pleadings, depositions, answers to interrogatories, admissions, and
9 affidavits, if any, that are properly before the court demonstrate that no genuine issue of
10 material fact exists, and the moving party is entitled to judgment as a matter of law." Cuzze v.
11 Univ. & Cmty. Coll. Sys. of Nevada, 123 Nev. 598, 602, 172 P.3d 131, 134 (2007). A factual
12 dispute is genuine when the evidence is such that a rational trier of fact could return a verdict
13 for the nonmoving party. Wood v. Safeway, Inc., 121 Nev. 724, 731, 121 P.3d 1026, 1031
14 (2005). Further, a fact is material if the fact "might affect the outcome of the suit under the
15 governing law." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S.Ct. 2505, 2510
16 (1986). The pleadings and other proof "must be construed in a light most favorable to the
17 nonmoving party," who bears the burden to "do more than simply show that there is some
18 metaphysical doubt as to the operative facts in order to avoid summary judgment" in favor of
19 the moving party. Id., 121 Nev. at 732, 121 P.3d at 1031. The substantive law controls which
20 factual disputes are material and will preclude summary judgment; other factual disputes are
21 irrelevant. Id., 121 Nev. at 731, 121 P.3d at 1031.

22 The manner in which each party may satisfy its burden of production depends on
23 which party will bear the burden of persuasion on the challenged claim at trial. Cuzze, 123
24 Nev. at 602, 172 P.3d at 134. If the moving party will bear the burden of persuasion, that

1 party must present evidence that would entitle it to a judgment as a matter of law in the
2 absence of contrary evidence. Id. If the nonmoving party will bear the burden of persuasion
3 at trial, the party moving for summary judgment may satisfy the burden of production in two
4 ways: (1) the moving party may submit evidence which negates an essential element of the
5 nonmoving party's claim, or (2) the moving party may merely point out the absence of
6 evidence to support the nonmoving party's case. Id. Therefore, in such instances, in order to
7 defeat summary judgment, the nonmoving party must transcend the pleadings and, by
8 affidavit or other admissible evidence, **introduce specific facts** that show a genuine issue of
9 material fact. Id. "The non-moving party must not simply rely on the pleadings and must do
10 more than make 'conclusory allegations [in] an affidavit.'" Choi v. 8th Bridge Capital, 2020
11 WL1446700, Slip Copy, March 25, 2020 (C.D. Cal.), citing, Lujan v. Nat'l Wildlife Fed'n, 497
12 U.S. 871, 888, 110 S.Ct. 3177, 3188 (1990); see also, Celotex Corp. v. Catrett, 477 U.S. 317,
13 324, 106 S.Ct. 2548, 2553 (1986). "Summary judgment must be granted for the moving
14 party if the nonmoving party 'fails to make showing sufficient to establish an element essential
15 to that party's case, and on which that party bears the burden of proof at trial.'" Choi v. 8th
16 Bridge Capital, 2020 WL1446700, Slip Copy, March 25, 2020 (citing same).

20 In this case, GSR is the moving party that may submit evidence negating an essential
21 element of Plaintiffs' claims, point out the absence of evidence, or establish the elements of
22 a defense. Plaintiffs are the nonmoving party who must introduce specific facts that show a
23 genuine issue of material fact exists.

25 //

26 //

1 Pursuant to NRCP 56, even if the undisputed factual matters are established, a party
2 must still establish the party is entitled to judgment as a matter of law. Kuptz-Blinkinsop v.
3 Blinkinsop, 136 Nev. ___, ___, 466 P.3d 1271, 1273 (2020) (citing Wood v. Safeway, Inc.,
4 121 Nev. at 729, 121 P.3d at 1029 (2005)).

6 **III. FINDINGS OF UNDISPUTED MATERIAL FACT.**

7 The Court finds the following material facts are undisputed:

- 8 1. The *Complaint* was filed in this matter on June 14, 2016.
- 9 2. GSR is an employer. *FAC*, ¶ 10; *Answer*, ¶ 8.
- 10 3. Mr. Martel was employed from on or about January 25, 2012 through June
11 13, 2014. *FAC*, ¶ 20, 34, 49; *Motion*, p. 2; *Response*, p. 6.
- 12 4. Mr. Martel was employed as an arcade attendant and was not covered by a
13 union or a collective bargaining agreement. *Response*, p. 7.
- 14 5. Mr. Martel voluntarily resigned from his employment with GSR on June 14,
15 2014. Decl. of Eddy Martel-Rodriguez, ¶ 4; *Reply*, p. 3, n.1.
- 16 6. Mr. Martel's timeclock indicates he clocked into his final shift at GSR at 6:10
17 p.m. on June 12, 2014. Mr. Martel clocked out on June 13, 2014 at 12:26 a.m. *Motion*, p.
18 2, Ex. 1, Decl. of Eric Candela; *Response*, p. 6.
- 19 7. Mr. Martel was paid every two weeks and last paycheck was paid on June 16,
20 2014. *Reply*, Ex. 1, Decl. of Cynthia Williams, ¶ 3.
- 21 8. Ms. Jackson-Williams was employed as a guest attendant from April 2014,
22 through December, 2015. *FAC*, ¶ 6; *Motion*, p. 2; *Response*, p. 7.
- 23 9. The Culinary CBA is unsigned. *Motion*, p. 7, n.1; *Response*, p. 16; Decl. of
24 Susan Heaney Hilden, ¶ 2.

1 10. Article 9.01 of the Culinary CBA provides:

2 The workweek pay period shall be from Friday through Thursday. For
3 purposes of computing overtime, for an employee scheduled to work five (5)
4 days in one (1) workweek, any hours in excess of eight (8) hours in a day or
5 forty (40) hours in a week shall constitute overtime. For an employee
6 scheduled to work four (4) days in one (1) workweek, any hours worked in
7 excess of ten (10) hours in a day or forty (40) hours in a week shall constitute
8 overtime. . . . Employees absent for personal reasons on one (1) or more of
9 their first five (5) scheduled days of work in their workweek shall work at the
10 Employee's request on a scheduled day off in the same workweek at straight
11 time.

12 *Motion*, p. 6; *Motion*, Ex. 2, Decl. of Susan Hilden, Ex. 1; *Response*, pp. 18-19.

13 11. Pursuant to the Operating Engineers CBA, GSR recognizes the International
14 Union of Operating Engineers Stationary Local No. 39 AFL-CIO as "the exclusive bargaining
15 representative for . . . all draftsmen, carpenters, engineers, locksmiths, painters, upholsters,
16 certified pool operators and engineering department laborers." *Motion*, Ex. 2, Decl. of
17 Susan Hilden, ¶ 11; *Response*, p. 6.

18 12. Pursuant to the IATSE CBA, GSR recognizes the International Alliance of
19 Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the
20 United States, its Territories and Canada, AFL-CIO, CLC LOCAL Union No. 362 ("IATSE")
21 as "the Exclusive collective bargaining representative for . . . all entertainment department
22 employees performing carpentry, electrical, electronic, sound and property work, including
23 stage hands, stage technicians, stage laborers, lounge technicians, convention technicians,
24 spotlight operators and technicians, stage electricians, sound personnel, projectionists,
25 operators of all audio-visual equipment used in connection with the Employer's
26 entertainment and convention operations and all wardrobe personnel . . ." *Motion*, Ex. 2,
27 Decl. of Susan Hilden, ¶ 12; *Response*, p. 6.

28 //

1 13. The Culinary Union has filed grievances under the Culinary CBA, and
2 arbitrations have taken place. *Motion*, Ex. 2, Decl. of Susan Heaney Hilden, ¶¶ 3-7; Ex. 3,
3 Decl. of Larry Montrose, ¶ 5.

4
5 14. To the extent any of the following conclusions of law include, or may be
6 construed to include, findings of fact, they are incorporated here.

7 **IV. CONCLUSIONS OF LAW.**

8 To the extent any of the foregoing findings of fact constitute, or may be construed
9 to constitute, conclusions of law they are incorporated here:

10
11 **A. STATUTE OF LIMITATION.**

12 1. The Minimum Wage Act (MWA) guarantees employees payment of a specified
13 minimum wage and gives an employee whose employer violates the MWA the right to bring
14 an action against his or her employer in Nevada. Perry v. Terrible Herbst, Inc., 383 P.3d
15 257, 258 (2016).

16
17 2. A two-year statute of limitation applies to actions for failure to pay the
18 minimum wage in violation of the Nevada constitution. Id. at 262.

19 3. The two-year statute of limitation period applies to NRS 608 statutory wage
20 claims that are analogous to a cause of action for failure to pay an employee the lawful
21 minimum wage. Id.

22
23 4. NRS 608.040 provides:

24 1. If an employer fails to pay:

25 (a) Within 3 days after the wages or compensation of a discharged
employee becomes due; or

26 (b) On the day the wages or compensation is due to an employee who
27 resigns or quits, the wages or compensation of the employee continues at the
same rate from the day the employee resigned, quit or was discharged until
paid or for 30 days, whichever is less.

28 2. Any employee who secretes or absents himself or herself to avoid
payment of his or her wages or compensation, or refuses to accept them when

1 fully tendered to him or her, is not entitled to receive the payment thereof for
2 the time he or she secretes or absents himself or herself to avoid payment.

3 NRS 608.040.

4 5. NRS 608.050 provides:

5 1. Whenever an employer of labor shall discharge or lay off employees
6 without first paying them the amount of any wages or salary then due them, in
7 cash and lawful money of the United States, or its equivalent, or shall fail, or
8 refuse on demand, to pay them in like money, or its equivalent, the amount of
9 any wages or salary at the time the same becomes due and owing to them
10 under their contract of employment, whether employed by the hour, day, week
11 or month, each of the employees may charge and collect wages in the sum
12 agreed upon in the contract of employment for each day the employer is in
13 default, until the employee is paid in full, without rendering any service
14 therefor; but the employee shall cease to draw such wages or salary 30 days
15 after such default.

16 2. Every employee shall have a lien as provided in NRS 108.221 to
17 108.246, inclusive, and all other rights and remedies for the protection and
18 enforcement of such salary or wages as the employee would have been
19 entitled to had the employee rendered services therefor in the manner as last
20 employed.

21 NRS 608.050.

22 6. When a derivative claim is dependent on the success of an underlying claim
23 and the underlying "claim having not been established," then the derivative claim "must fail
24 as well." Turner v. Mandalay Sports Entm't, LLC, 124 Nev. 213, 222 n.31, 180 P.3d 1172,
25 1178 n.31 (2008).

26 7. A two-year statute of limitation applies to the claims in this action. Claims
27 which accrued prior to June 14, 2014 are therefore barred by the statute of limitation. See
28 *Order Granting, in Part, and Denying, in Part, Motion to Dismiss* pp. 7-11.

8. Mr. Martel maintains his fourth cause of action for waiting time penalties under
NRS 608.040 and 608.050 is timely because his cause of action did not accrue until thirty
(30) days after his last day of work.

1 9. Based on its plain language, NRS 608.050 is inapplicable to Mr. Martel.
2 Section 608.050 applies to employees who are discharged or laid off by their employer.
3 See NRS 608.050(1). Mr. Martel resigned from his job.

4 10. Section 608.040 of the Nevada Revised Statutes does not apply to wages that
5 are not accrued during the final pay period of the employee.

6 11. No shift jamming, no off-the-clock banking, and no pre-shift meetings occurred
7 during Mr. Martel's final pay period. Mr. Martel's last shift ended on June 13, 2014.

8 12. Therefore, the two-year statute of limitation applies to Mr. Martel's claims.
9 The *Complaint* was filed on June 14, 2016.

10 13. NRS 608.040 does not save Mr. Martel's claims. "[W]hen a statute 'is clear on
11 its face, a court cannot go beyond the statute in determining legislative intent.'" State v.
12 Lucero, 249 P.3d 1226, 1228 (2011) (citing Robert E. v. Justice Court, 99 Nev. 443, 445
13 (1983)). The Court finds NRS 608.040 is clear on its face that it does not apply to all wages,
14 but rather wages due for the pay period before the employee is discharged or quits.
15 Nothing in the statute indicates the rule applies to previously unpaid wages or exists to
16 create a cause of action for those wages.

17 14. The two-year statute of limitation applies to: Plaintiffs' First Cause of Action for
18 Failure to Pay Wages for All Hours Worked in Violation of NRS 608.140 and 608.016;
19 Second Cause of Action for Failure to Pay Minimum Wages in Violation of the Nevada
20 Constitution; Third Cause of Action for Failure to Pay Overtime Wages in Violation of NRS
21 608.140 and 608.018; and, Fourth Cause of Action for Failure to Timely Pay All Wages Due
22 and Owing Upon Termination Pursuant to NRS 608.140 and 608.020-.050.

1 15. Defendants met their burden and established their statute of limitation defense
2 to Plaintiffs' claims as a matter of law.

3 16. Summary judgment should be entered on each of Mr. Martel's claims as they
4 are time-barred.

5 17. After application of the two-year statute of limitation, Ms. Jackson-Williams'
6 claims remain for an eighteen-month period only.

7
8 **B. CBA VALIDITY AND ABILITY TO PROVIDE OTHERWISE FOR OVERTIME**

9 **1. Validity of the CBA**

10 18. The CBA purportedly expired by its own terms on or about May 1, 2011. The
11 CBA has not been extended by signature, however, GSR contends the CBA has been
12 extended by ratification.

13 19. Unsigned CBAs have been found valid and operative when an employer has
14 continued to treat the CBA as binding and effective and employee could not point to
15 evidence to the contrary. Bloom v. Universal City Studios, 933 F.2d 1013, 1991 WL 80602
16 at *1 (9th Cir. 1991) (unpublished); See Retail Clerks Int'l Ass'n v. Lion Dry Goods, Inc., 369
17 U.S. 17, 24 n. 6 (1962) (finding CBA valid even when parties did not negotiate directly and
18 did not consolidate signatures on one document).

19 20. A union will generally be held defunct if it has ceased to exist as an effective
20 labor organization and is no long fulfilling responsibilities in administering the contract.
21 Hershey Chocolate Corp., 121 NLRB 901, 911, 42 LRRM 1460 (1958); see also Pioneer Inn
22 Associates v. N.L.R.B., 578 F.2d 835, 839-40 (1978) (explaining inactivity, failure to monitor
23 contract provisions, and failure to pursue grievances may indicate a failure to administer the
24 contract).

1 21. Signatures on collective bargaining agreements are “not a prerequisite to
2 finding an employer bound to that agreement.” Line Const. Ben. Fund v. Allied Elec.
3 Contractors, Inc., 591 F.3d 576, 580 (7th Cir. 2010); N.L.R.B. v. Electra-Food Mach. Inc.,
4 621 F.2d 956, 958 (9th Cir. 1980) (holding oral agreements are sufficient to create binding
5 collective bargaining agreements even when written agreement is unsigned); N.L.R.B. v.
6 Haberman Const. Co., 641 F.2d 351, 356 (5th Cir. 1981) (en banc) (“[A] union and
7 employer’s adoption of a labor contract is not dependent on the reduction to writing of their
8 intention to be bound”).
9
10

11 22. If the union and the employer continue to operate as if the CBA is operative,
12 the CBA is binding. Here, the union and GSR engaged in arbitration and negotiation when
13 mandated by the CBA. GSR continued to negotiate and arbitrate with the union on multiple
14 occasions. For example, Mr. Montrose confirmed he interacts with the Culinary Union
15 Representative Nicolaza De La Puente weekly and he was notified of at least two different
16 grievances in 2015. *Motion*, Decl. of Larry Montrose, Ex B., Ex. C. The CBA was “ratified
17 by the Union on November 17, 2011, and it was in effect through March 10, 2018, when a
18 subsequent Culinary CBA was ratified.” *Motion*, Decl. of Susan Heaney Hilden, ¶ 2. An
19 arbitration was held on August 25, 2016, in which the parties introduced the CBA as Joint
20 Exhibit 1. *Motion*, Decl. of Susan Heaney Hilden, ¶ 2. Following the August 25, 2016,
21 arbitration, the Culinary Union submitted a Post-Hearing Brief dated October 24, 2016 in
22 which the Union states, “Local 226 has been party to three successive collective-bargaining
23 agreements at the hotel casino that is now known as the Grand Sierra Resort.” *Id.* Plaintiffs
24 contend the CBA expired in May of 2011 but provide the Court with no evidence to dispute
25
26
27
28

1 that the union and the GSR continued to treat the CBA as binding. Undisputed evidence
2 confirms the CBA was valid and operative.

3 **2. The CBA “provides otherwise” for overtime**

4
5 23. NRS 608.018(1)-(2) governs compensation for overtime and reads:

6 1. An employer shall pay 1 1/2 times an employee's regular wage rate
7 whenever an employee who receives compensation for employment at a rate
8 less than 1 1/2 times the minimum rate set forth in NRS 608.250 works:

9 (a) More than 40 hours in any scheduled week of work; or

10 (b) More than 8 hours in any workday unless by mutual agreement the
11 employee works a scheduled 10 hours per day for 4 calendar days within any
12 scheduled week of work.

13 2. An employer shall pay 1 1/2 times an employee's regular wage rate
14 whenever an employee who receives compensation for employment at a rate
15 not less than 1 1/2 times the minimum rate set forth in NRS 608.250 works
16 more than 40 hours in any scheduled week of work.

17 NRS 608.018(1)-(2).

18 24. Section 608.018(3) of the Nevada Revised Statutes provides, “[t]he provisions
19 of subsections 1 and 2 do not apply to . . . (e) Employees covered by collective bargaining
20 agreements which provide otherwise for overtime . . .” NRS 608.018(3) (emphasis added).

21 25. The CBA provides:

22 The workweek pay period shall be from Friday through Thursday. For the
23 purposes of computing overtime, for an employee scheduled to work five (5)
24 days in one (1) workweek, any hours in excess of eight (8) hours in a day or
25 forty (40) hours in a week shall constitute overtime. For an employee
26 scheduled to work four (4) days in one (1) workweek, any hours worked in
27 excess of ten (10) hours in a day or forty (40) hours in a week shall constitute
28 overtime. Overtime shall be effective and paid only after the total number of
hours not worked due to early ours is first subtracted from the total number of
hours actually worked per shift, per workweek. Overtime shall not be paid
under this Section for more than one (1) reason for the same hours worked.
Employees absent for personal reasons on one (1) or more of their first five (5)
scheduled days of work in their workweek shall work at the Employer’s request
on a scheduled day off in the same workweek at straight time. If the employer
anticipates such scheduling, the Employer provide five (5) days’ advance
notice.

1 This provision will remain in effect for the duration of this Agreement.
2 However, at the expiration of the Agreement, the Employer shall have the
3 right to compute and pay overtime in accordance with the provisions of
4 existing federal and state law, and Union employees shall not have the right
to overtime pay above and beyond the applicable federal and state law
requirements.

5 See Motion, Ex. 2A, p. 15.

6 26. CBAs “provide otherwise” for overtime payments when the CBA “contains a
7 negotiated provision on the same subject but different from the statutory provision.”
8 Firestone v. Southern California Gas Co., 219 F.3d 1063, 1067, 164 L.R.R.M. 2897, 2897
9 (9th Cir. 2000); Jacobs v. Mandalay Corp., 378 F. App’x 685, 687 (9th Cir. 2010) (“[S]ection
10 608.018 exempts from coverage those employees ‘covered by collective bargaining
11 agreements which provide otherwise for overtime.’”).
12

13 27. The instant CBA “provides otherwise” for overtime. The CBA provides
14 otherwise for overtime because there are differences in both the practical effects of the
15 overtime provisions in NRS 608.018 and in the CBA’s overtime provisions, as well as the
16 textual provisions. For example, NRS 608.018(1) provides that an employer shall pay 1 1/2
17 times the employee’s regular wage when the employee works more than 40 hours in a week
18 or more than 8 hours in a day. The CBA does not specify what the pay rate shall be.
19 Additionally, the CBA provides for overtime regardless of the employee’s wage, while NRS
20 608.018 only mandates overtime for employees making more than 1 1/2 the minimum wage.
21 NRS 608.018 provides overtime regardless of how many days are worked in a week, while
22 the CBA allows overtime only when employees work five days in one workweek. NRS
23 608.018 does not limit overtime if an employee misses a scheduled day and works an
24 alternate day, however, the CBA does. Accordingly, the CBA “provides otherwise” for
25 overtime.
26
27
28

1 28. The CBA “provides otherwise” for Ms. Jackson-Williams’ claim for overtime
2 and NRS 608.018 does not provide a legal basis for her claim.

3 **3. Grievance Procedures of the Culinary CBA**

4 29. Section 301 of the Labor Management Relations Act states:

5 Suits for violation of contracts between an employer and a labor organization
6 representing employees in an industry affecting commerce ... may be brought
7 in any district court of the United States having jurisdiction of the parties....

8 Labor Management Relations Act of 1947 § 301(a), 29 U.S.C. § 185(a) (1982).

9 30. Employees may pursue claims for unpaid wages through a private cause of
10 action and without enforcing the claim through the Labor Commissioner. Neville v. Eighth
11 Judicial Dist. Court in & for Cty. of Clark, 133 Nev. 777, 782, 406 P.3d 499, 504 (2017).

12 31. State law rights and obligations that do not exist independently of private
13 agreements can be waived or altered by agreement as a result and are pre-empted by
14 those agreements. MGM Grand Hotel-Reno, Inc. v. Insley, 102 Nev. 513, 517, 728 P.2d
15 821, 824 (1986) (citing Allis Chalmers v. Lueck, 471 U.S. 202, 105 S.Ct. 1904 (1985)).

16 32. Workers do not have to submit to arbitration procedures when redressing
17 grievances because a CBA provides contractual rights, but workers may have an
18 independent statutory right to enforce individual rights. Albertson’s, Inc. v. United Food &
19 Commercial Workers Union, ALF-CIO & CLC, 157 F.3d 758, 762 (9th Cir.).

20 33. Whether Ms. Jackson-Williams must follow the grievance procedures
21 contained in the CBA depends on whether she has an independent statutory right to enforce
22 her claims for wages and overtime outside of the CBA. Ms. Jackson-Williams brought
23 claims for Failure to Pay Wages for All Hours Worked in Violation of NRS 608.140 and
24 608.016, Failure to Pay Overtime Wages in Violation of the Nevada Constitution, Failure to
25 Pay Minimum Wages in Violation of NRS 608.140 and 608.018, and Failure to Pay All

1 Wages Due and Owing Upon Termination Pursuant to NRS 608.140 and 608-040-050. The
2 State of Nevada provides independent statutory rights to each of Ms. Jackson-Williams'
3 claims through the Nevada Revised Statutes and the Nevada Constitution. Albertson's Inc.
4 explains, "in filing a lawsuit under [a statute], an employee asserts independent statutory
5 rights . . . The distinctly separate nature of these contractual and statutory rights is not
6 vitiated merely because both were violated as a result of the same factual occurrence." 157
7 F.3d at 761. Since there are state-law rights at issue, Ms. Jackson-Williams' claims are not
8 preempted, and the claims are not mandated to proceed through the grievance procedure of
9 the CBA.
10
11

12 **4. Lack of Standing to Represent Union Employees**

13 34. Section 159(a) of the United States Code states:

14 Representatives designated or selected for the purposes of collective
15 bargaining by the majority of the employees in a unit appropriate for such
16 purposes, shall be the exclusive representatives of all the employees in
17 such unit for the purposes of collective bargaining in respect to rates of pay,
wages, hours of employment, or other conditions of employment.

18 29 U.S.C. § 159(a).

19 35. Baristas, bartenders, and cocktail servers are represented by the Culinary
20 CBA; construction workers are covered by the Operating Engineers CBA; and, technicians
21 are represented by the AFL-CIO Local Union. Plaintiffs, as members of the "shift jamming
22 class" attempt to represent union members from other sub-classes.
23

24 36. Employees may bring an action against an employer without exhausting
25 contractual remedies, but the employees must "prove that the union as bargaining agent
26 breached its duty of fair representation in its handling of the employee's grievance." Vaca v.
27 Sipes, 386 U.S. 171, 186, 87 S.Ct. 903, 914 (1967).
28

1 37. When employees sue to vindicate “uniquely personal rights” as opposed to
2 rights reserved to unions like picketing, renegotiating a contract, or protesting relocation, the
3 employees have standing to sue on their own behalf and on behalf of other union members.
4
5 Lucas v. Bechtel Corp., 633 F.2d 757, 759 (9th Cir. 1980) (citing Hines v. Anchor Motor
6 Freight, Inc., 424 U.S. 554, 562, 96 S.Ct. 1048, 1055 (1976)).

7 38. In Baker v. IBP, Inc., 357 F.3d 685, 690 (7th Cir. 2004), the Seventh Circuit
8 held that where a “suit is at its core about the adequacy of the wages [the employer] pays,”
9 individual employees may not represent union workers in a class action when the union has
10 not breached its duty of fair representation.” The court reasoned union workers “have a
11 representative—one that under the NLRA is supposed to be ‘exclusive’ with respect to
12 wages” and therefore “Plaintiffs’ request to proceed on behalf of a class of all workers
13 shows that they seek to usurp the union’s role.” Id. at 686, 690.

14
15 39. Plaintiffs do not assert the Union has breached its duty of fair representation.
16 The CBA is valid and operative. Plaintiffs cannot represent those other union members who
17 are represented by separate unions without asserting those union representatives breached
18 their duty of fair representation.
19

20 **C. PLAINTIFFS’ REQUEST FOR ADDITIONAL DISCOVERY**
21 **PURSUANT TO NRCP 56.**

22 40. Nevada Rules of Civil Procedure Rule 56 provides:

- 23 (d) When Facts Are Unavailable to the Nonmovant. If a nonmovant
24 shows by affidavit or declaration that, for specified reasons, it cannot
25 present facts essential to justify its opposition, the court may:
26 (1) defer considering the motion or deny it;
27 (2) allow time to obtain affidavits or declarations or to take discovery; or
28 (3) issue any other appropriate order.

NRCP 56(d).

1 41. A party opposing summary judgment pursuant to NRCP 56(d) has the burden
2 of affirmatively demonstrating by a good-faith affidavit (1) the identification of the specific
3 facts that further discovery would reveal; (2) the specific reasons why such evidence is
4 presently unavailable; and (3) how those facts would preclude summary judgment. Family
5 Home & Fin. Ctr., Inc. v. Fed. Home Loan Mortgage Corp., 525 F.3d 822, 827 (9th Cir.
6 2008); Collins v. Union Fed. Sav. & Loan Ass'n, 99 Nev. 657, 669-70, 262 P.3d 705, 714
7 (2011).

8
9 42. Plaintiffs request additional discovery to ascertain whether the CBA is valid or
10 not. Plaintiffs have not provided an affidavit, have not articulated the specific reasons why
11 the evidence they need is unavailable to them, and have not stated how those facts would
12 preclude summary judgment.

13
14 **V. CONCLUSION AND ORDER.**

15 Based on the foregoing findings of fact and conclusions of law and good cause
16 appearing therefore,

17
18 IT IS HEREBY ORDERED summary judgment is entered in favor of GSR and against
19 the Plaintiffs.

20 DATED this 2nd day of November, 2020.

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24 DISTRICT JUDGE
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Attorneys for Defendants

IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

EDDY MARTEL (also known as MARTEL-
RORIGUEZ), MARY ANNE CAPILLA,
JANICE JACKSON-WILLIAMS and
WHITNEY VAUGHAN on behalf of
themselves and all others similarly situated,

Case No.: CV16-01264

Plaintiffs,

v.

HG STAFFING, LLC, MEI-GSR HOLDINGS,
LLC d/b/a GRAND SIERRA RESORT, and
DOES 1 through 50, inclusive,

Defendants.

**NOTICE OF ENTRY OF ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT**

NOTICE IS HEREBY GIVEN that an Order Granting Defendants' Motion for Summary
Judgment filed on June 9, 2020, was entered on November 3, 2020. A copy of the Order is
attached hereto.

AFFIRMATION

Pursuant to NRS 239B.030 and 603A.040

The undersigned does hereby affirm that the preceding document in Case Number

1 CV16-01264, and exhibit hereto, does not contain the personal information of any person.

2 Dated this 6th day of November, 2020.

3 **SUSAN HEANEY HILDEN, ESQ.**

4 By: /s/ Susan Heaney Hilden
5 Susan Heaney Hilden Esq., Nevada Bar No. 5358
6 Attorney for Defendants
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PROOF OF SERVICE

CASE NAME: Martel et. al vs. HG Staffing, LLC. at el.
Court: District Court of the State of Nevada
Case No.: CV16-01264

On the date last written below, following document(s) was served as follows:

NOTICE OF ENTRY OF ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

_____ by placing an original or true copy thereof in a sealed envelope, with sufficient postage affixed thereto, in the United States Mail, Las Vegas, Nevada and addressed to:
 X by using the Court's CM/ECF Electronic Notification System addressed to:
_____ by electronic email addressed to :
_____ by personal or hand/delivery addressed to:
_____ By facsimile (fax) addresses to:
_____ by Federal Express/UPS or other overnight delivery addressed to:

Mark R. Thierman, Esq.
Joshua Buck, Esq.
Leah L. Jones, Esq.
THIERMAN|BUCK LAW FIRM
7287 Lakeside Drive
Reno, Nevada 89511
Attorney for Plaintiffs

DATED the 6th day of November 2020.

/s/ Susan Heaney Hilden

1 CODE NO. 3370
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7 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
8 IN AND FOR THE COUNTY OF WASHOE
9

10 EDDY MARTEL (also known as MARTEL-
11 RODRIGUEZ), MARY ANNE CAPILLA,
12 JANICE JACKSON-WILLIAMS and WHITNEY
13 VAUGHAN on behalf of themselves and all
14 others similarly situated,

Case No. CV16-01264

Dept. No. 6

15 Plaintiffs,

16 vs.

17 HG STAFFING, LLC, MEI-GSR HOLDINGS,
18 LLC d/b/a GRAND SIERRA RESORT, and
19 DOES 1 through 50, inclusive,

20 Defendants.
21 _____/

22 **ORDER GRANTING MOTION FOR SUMMARY JUDGMENT**
23

24 Before this Court is the *Defendants' Motion for Summary Judgment, or in the*
25 *Alternative, Summary Adjudication ("Motion")* filed by Defendants HG STAFFING, LLC and
26 MEI-GSR HOLDINGS, LLC d/b/a GRAND SIERRA RESORT (collectively, "GSR" unless
27 individually referenced), by and through their counsel, Cohen|Johnson|Parker|Edwards.
28

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1 Plaintiffs EDDY MARTEL (also known as MARTEL-RODRIGUEZ) ("Mr. Martel"),
2 MARY ANNE CAPILLA ("Ms. Capilla"), JANICE JACKSON-WILLIAMS ("Ms. Jackson-
3 Williams"), and WHITNEY VAUGHAN ("Ms. Vaughan") (collectively, "Plaintiffs"), on behalf of
4 themselves and all others similarly situated, filed *Plaintiffs' Response to Defendants' Motion*
5 *for Summary Judgment/Summary Adjudication* ("Response") by and through their counsel,
6 Thierman Buck, LLP. GSR filed its *Reply in Support of Defendants' Motion for Summary*
7 *Judgment, or in the Alternative, Summary Adjudication* ("Reply") and submitted the matter
8 for decision thereafter.
9

10
11 **I. FACTUAL AND PROCEDURAL HISTORY.**

12 This action arises out of an employment dispute between Plaintiffs, employees, and
13 GSR, employer, regarding wages paid by GSR to Plaintiffs and similarly situated
14 employees. Mr. Martel was employed as an attendant in the Bowling Center. Ms. Capilla
15 was employed as a dealer. Ms. Jackson-Williams was employed as a room attendant. And,
16 Ms. Vaughan was employed as a dancing dealer (part cards dealer, part go-go dancer).
17 See *Class Action Complaint* ("Complaint") and *First Amended Class Action Complaint*
18 *("FAC")*, generally. On June 14, 2016, Plaintiffs filed their *Complaint* alleging GSR
19 maintained the following policies, practices, and procedures which required various
20 employees to perform work activities without compensation:
21
22

- 23 (1) GSR's Cash Bank Policy;
- 24 (2) Dance Class Policy;
- 25 (3) Room Attendant Pre-Shift Policy;
- 26 (4) Pre-Shift Meeting Policy;
- 27

28 //

1 (5) Uniform Policy; and,

2 (6) Shift Jamming Policy.

3 *Complaint*, pp. 4-8. As a result of said policies, Plaintiffs assert four (4) claims for relief
4 against GSR:
5

6 (1) Failure to Pay Wages for All Hours Worked in Violation of NRS 608.140 and
7 608.016;

8 (2) Failure to Pay Minimum Wages in Violation of the Nevada Constitution;

9 (3) Failure to Pay Overtime Wages in Violation of NRS 608.140 and 608.018; and,
10

11 (4) Failure to Timely Pay All Wages Due and Owing Upon Termination Pursuant
12 to NRS 608.140 and 608.020-.050.

13 Id., pp. 11-15.

14 On October 9, 2018, this Court entered its *Order After Hearing Granting Defendants'*
15 *Motion to Dismiss* ("Order"). The Court found Plaintiffs failed to provide sufficient
16 information to support their claims and granted GSR's *Motion to Dismiss*. *Order*, pp. 9-10.
17 Thereafter, Plaintiffs filed *Plaintiffs' Motion for Reconsideration of the Court's Order Granting*
18 *Defendant's Motion to Dismiss or in the Alternative Leave to File an Amended Complaint*
19 *("Motion for Reconsideration")* requesting the Court reconsider its *Order* pursuant to NRCP
20 Rule 60(b). *Motion for Reconsideration*, p. 2. This Court entered its *Order Re Motion for*
21 *Reconsideration* on January 9, 2019 and denied Plaintiffs' request on the grounds they
22 failed to state a claim but granted Plaintiffs leave to amend their *Complaint*. *Order Re*
23 *Motion for Reconsideration*, pp. 8-9.
24
25
26

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1 On January 29, 2019, Plaintiffs filed their *FAC* asserting the same four (4) claims.
2 Thereafter, GSR filed its *Motion to Dismiss First Amended Complaint* (“*Motion to Dismiss*”),
3 requesting this Court dismiss the *FAC* pursuant to NRCP 12(b)(5). *Motion to Dismiss*, p. 2.
4 GSR argued the claims asserted in the *FAC* “have no more merit than Plaintiffs’ original
5 claims.” *Motion to Dismiss*, p. 2. On June 7, 2019, the Court entered its *Order Granting, in*
6 *Part, and Denying, in Part, Motion to Dismiss* (“*MTD Order*”) concluding a two-year statute
7 of limitation applies to the Plaintiffs’ claims. *MTD Order*, p. 7. As such, the Court dismissed
8 all of Ms. Capilla and Ms. Vaughan’s claims, all but one (1) month of Mr. Martel’s claims,
9 and all but eighteen (18) months of Ms. Jackson-Williams’ claims. *MTD Order*, p. 14.

12 On May 23, 2019, GSR filed its *Motion for Summary Judgment on all Claims*
13 *Asserted by Plaintiffs Martel, Capilla and Vaugh (sic)* (“*First MSJ*”) and argued Plaintiffs
14 claims are barred by claim preclusion. *First MSJ*, p. 4.

16 On June 28, 2019, GSR filed its *Answer to First Amended Class Action Complaint*
17 (“*Answer*”). In addition to admissions and denials to Plaintiffs’ allegations in the *FAC*, GSR
18 asserted, among other affirmative defenses: failure to state a claim; claims are barred, in
19 whole or in part, by the applicable statute of limitations; and, claims are barred due to GSR’s
20 full performance of underlying obligations. *Answer*, generally.

22 On July 8, 2019, GSR filed *Defendants’ Second Motion for Summary Judgment as to*
23 *Plaintiff Martel; Motion for Summary Adjudication on Plaintiffs’ Lack of Standing to*
24 *Represent Union Employees; and Motion for Summary Judgment as to Plaintiff Jackson-*
25 *Williams* (“*Second MSJ*”). GSR made the following arguments: (1) Mr. Martel’s claims are
26 time-barred; (2) Plaintiffs lack standing to represent union employees who are exclusively
27 represented by their unions; (3) Ms. Jackson-Williams’ claims are barred for failing to
28

1 exhaust grievance procedures of the Culinary Collective Bargaining Agreement (“CBA”)
2 and/or based on federal preemption; and, (4) Ms. Jackson-Williams’ claim for overtime is
3 barred pursuant to NRS 608.018 because the CBA provides otherwise for overtime. See
4 *Second MSJ*, generally.

5
6 On July 9, 2019, before this Court rendered its decision on the *First MSJ* and *Second*
7 *MSJ*, GSR filed its *Notice of Filing Petition for Writ of Mandamus and/or Prohibition*
8 (*“Petition”*) with the Supreme Court of Nevada. In the *Petition*, GSR argued the dismissal of
9 Plaintiffs’ first, third, and fourth claims for relief is mandatory on the grounds: Plaintiffs failed
10 to exhaust administrative remedies as required by NRS Chapter 607; legislative mandated
11 remedies must be exhausted despite an implied private right of action; and, NRS 607.215
12 requires Plaintiffs exhaust administrative remedies before pursuing wage claims under NRS
13 608.005 to 608.195. See *Petition*, generally.

14
15 This Court entered its *Order Re Stipulation to Stay All Proceedings and Toll of the*
16 *Five Year Rule* (*“Stipulation”*) on July 17, 2019 and withdrew GSR’s pending motions for
17 summary judgment from submission, without prejudice, allowing renewal upon the Supreme
18 Court of Nevada’s decision. *Stipulation*, p. 9.

19
20 On May 7, 2020, the Supreme Court of Nevada entered its *Order Denying Petition*.
21 The Supreme Court of Nevada reasoned Neville v. Eighth Judicial Dist. Court held, by
22 necessary implication, exhaustion of administrative remedies is not required before filing an
23 unpaid-wage claim in district court. 133 Nev. 77, 406 P.3d 499 (2017).

24
25 On June 9, 2020, GSR filed the instant *Motion* and renewed the claims presented in
26 the *Second MSJ* filed on May 23, 2019. GSR asserts Mr. Martel’s claims are time-barred
27 because the Court’s June 7, 2019, *Order Granting, in Part, and Denying, in Part, Motion to*
28

1 *Dismiss* found a two-year statute of limitations applies, barring claims accruing prior to June
2 14, 2014. Mr. Martel worked his last shift on June 12, 2014. *Motion*, p. 3. GSR argues Ms.
3 Jackson-Williams' claims are barred for failing to exhaust grievance procedures of the
4 Culinary CBA and/or based on federal preemption because state law rights that can be
5 altered by CBAs are preempted by CBAs and employees must make use of the grievance
6 procedures in the CBAs or the claims will be dismissed as preempted by federal law.
7 *Motion*, p. 4; citing Allis-Chalmers Corp. v. Lueck, 471 U.S. 202, 210-20 (1985); MGM
8 Grand Hotel-Reno, Inc. v. Insley, 102 Nev. 513, 517, 728 P.2d 821, 824 (1986). GSR
9 contends Ms. Jackson-Williams' claim for overtime is barred because Article 9.01 of the
10 CBA entitled, "WORK, SHIFTS, WORKWEEK, AND OVERTIME," "provides otherwise" for
11 overtime, therefore exempting Ms. Jackson-Williams from the overtime provisions in
12 Sections 1 and 2 of NRS 608.018. *Motion*, pp. 5-6. GSR argues the Plaintiffs lack standing
13 to represent union employees who are exclusively represented by their respective unions.
14 This is so, GSR maintains, because they are not in the same unions and the bargaining
15 representatives of each union have not been given the opportunity to be present. *Motion*, p.
16 7; citing 29 U.S.C. § 159(a); Vaca v. Sipes, 386 U.S. 171, 186 (1967).

17
18 In the *Response*, Plaintiffs argue Mr. Martel's claim is not time-barred because an
19 employee's claim for unpaid wages accrues thirty (30) days after the employment
20 relationship ends. *Response*, p. 2; citing NRS 608.040-.050. Additionally, Plaintiffs argue
21 GSR admitted it violated overtime requirements when it sent Mr. Martel and hundreds of
22 other current and former employees checks for the unpaid overtime but did not pay
23 continuation wages as mandated by NRS 608.040 and 608.050. *Id.* Plaintiffs assert, based
24 on what they contend is black letter law, purported union employees are not required to

1 exhaust internal union grievance procedures before filing suit. *Response*, p. 12; citing NRS
2 608.140 and 608.050. Plaintiffs next argue courts consistently find union and non-union
3 employees can sue for and on behalf of each other when all allege they are victims of
4 unlawful pay practices. *Response*, p. 13. Plaintiffs state Ms. Jackson-Williams is entitled to
5 statutory overtime protections because the Culinary CBA is not a valid and operable CBA
6 since it is an unsigned draft, and even if operable, the CBA does not provide overtime
7 benefits beyond those conferred by NRS 608.018. *Response*, pp. 17-18. Plaintiffs request
8 the opportunity to conduct further discovery on whether the Culinary Union and the CBA are
9 operational if the Court is inclined to hold the CBA is valid. *Response*, p. 17.

12 In its *Reply*, GSR argues Mr. Martel conceded his underlying wage claims are barred
13 by the applicable statute of limitation, and his derivative waiting time penalty claims under
14 NRS 608.040 and 608.050 fail because they are contrary to accrual of claims case law and
15 statutory language. *Reply*, p. 1. GSR argues Courts have repeatedly rejected assertions
16 similar to Plaintiffs' assertion the Culinary CBA is invalid due to lack of execution. *Reply*, p.
17 2. GSR further maintains the Culinary CBA has affirmed the validity of the CBA. *Id.* GSR
18 contends during the entire term of her GSR employment Ms. Jackson-Williams was subject
19 to the CBA, and the CBA "provides otherwise" for overtime, disqualifying Ms. Jackson-
20 Williams from receiving overtime compensation. *Reply*, p. 9-10. GSR argues Ms. Jackson-
21 Williams' claims for overtime are barred both because she did not exhaust the valid and
22 binding CBA grievance procedures. *Reply*, pp. 12-13. GSR states, pursuant to 29 U.S.C. §
23 159(a), the Culinary Union is the exclusive representative of the employees and Plaintiffs
24 have not alleged a breach of the duty of fair representation, thereby conceding Plaintiffs
25 cannot represent the employees. *Reply*, p. 16. Finally, GSR argues Plaintiffs are not

1 entitled to further discovery under NRCP 56(d) because Plaintiffs failed to provide the
2 requisite affidavit. *Reply*, p. 17; citing Choy v. Ameristar Casinos, Inc., 127 Nev. 870, 872,
3 265 P.3d 698, 700 (2011) and Bakerink v. Orthopaedic Assocs., Ltd., 94 Nev. 428, 431, 581
4 P.2d 9, 11 (1978).

6 **II. STANDARD OF REVIEW; APPLICABLE LAW AND ANALYSIS**

7 Summary judgment is appropriate under Rule 56 of the Nevada Rules of Civil
8 Procedure "when the pleadings, depositions, answers to interrogatories, admissions, and
9 affidavits, if any, that are properly before the court demonstrate that no genuine issue of
10 material fact exists, and the moving party is entitled to judgment as a matter of law." Cuzze v.
11 Univ. & Cmty. Coll. Sys. of Nevada, 123 Nev. 598, 602, 172 P.3d 131, 134 (2007). A factual
12 dispute is genuine when the evidence is such that a rational trier of fact could return a verdict
13 for the nonmoving party. Wood v. Safeway, Inc., 121 Nev. 724, 731, 121 P.3d 1026, 1031
14 (2005). Further, a fact is material if the fact "might affect the outcome of the suit under the
15 governing law." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S.Ct. 2505, 2510
16 (1986). The pleadings and other proof "must be construed in a light most favorable to the
17 nonmoving party," who bears the burden to "do more than simply show that there is some
18 metaphysical doubt as to the operative facts in order to avoid summary judgment" in favor of
19 the moving party. Id., 121 Nev. at 732, 121 P.3d at 1031. The substantive law controls which
20 factual disputes are material and will preclude summary judgment; other factual disputes are
21 irrelevant. Id., 121 Nev. at 731, 121 P.3d at 1031.

22 The manner in which each party may satisfy its burden of production depends on
23 which party will bear the burden of persuasion on the challenged claim at trial. Cuzze, 123
24 Nev. at 602, 172 P.3d at 134. If the moving party will bear the burden of persuasion, that

1 party must present evidence that would entitle it to a judgment as a matter of law in the
2 absence of contrary evidence. Id. If the nonmoving party will bear the burden of persuasion
3 at trial, the party moving for summary judgment may satisfy the burden of production in two
4 ways: (1) the moving party may submit evidence which negates an essential element of the
5 nonmoving party's claim, or (2) the moving party may merely point out the absence of
6 evidence to support the nonmoving party's case. Id. Therefore, in such instances, in order to
7 defeat summary judgment, the nonmoving party must transcend the pleadings and, by
8 affidavit or other admissible evidence, **introduce specific facts** that show a genuine issue of
9 material fact. Id. "The non-moving party must not simply rely on the pleadings and must do
10 more than make 'conclusory allegations [in] an affidavit.'" Choi v. 8th Bridge Capital, 2020
11 WL1446700, Slip Copy, March 25, 2020 (C.D. Cal.), citing, Lujan v. Nat'l Wildlife Fed'n, 497
12 U.S. 871, 888, 110 S.Ct. 3177, 3188 (1990); see also, Celotex Corp. v. Catrett, 477 U.S. 317,
13 324, 106 S.Ct. 2548, 2553 (1986). "Summary judgment must be granted for the moving
14 party if the nonmoving party 'fails to make showing sufficient to establish an element essential
15 to that party's case, and on which that party bears the burden of proof at trial.'" Choi v. 8th
16 Bridge Capital, 2020 WL1446700, Slip Copy, March 25, 2020 (citing same).

20 In this case, GSR is the moving party that may submit evidence negating an essential
21 element of Plaintiffs' claims, point out the absence of evidence, or establish the elements of
22 a defense. Plaintiffs are the nonmoving party who must introduce specific facts that show a
23 genuine issue of material fact exists.

25 //

26 //

1 Pursuant to NRCP 56, even if the undisputed factual matters are established, a party
2 must still establish the party is entitled to judgment as a matter of law. Kuptz-Blinkinsop v.
3 Blinkinsop, 136 Nev. ___, ___, 466 P.3d 1271, 1273 (2020) (citing Wood v. Safeway, Inc.,
4 121 Nev. at 729, 121 P.3d at 1029 (2005)).

6 **III. FINDINGS OF UNDISPUTED MATERIAL FACT.**

7 The Court finds the following material facts are undisputed:

- 8 1. The *Complaint* was filed in this matter on June 14, 2016.
- 9 2. GSR is an employer. *FAC*, ¶ 10; *Answer*, ¶ 8.
- 10 3. Mr. Martel was employed from on or about January 25, 2012 through June
11 13, 2014. *FAC*, ¶ 20, 34, 49; *Motion*, p. 2; *Response*, p. 6.
- 12 4. Mr. Martel was employed as an arcade attendant and was not covered by a
13 union or a collective bargaining agreement. *Response*, p. 7.
- 14 5. Mr. Martel voluntarily resigned from his employment with GSR on June 14,
15 2014. Decl. of Eddy Martel-Rodriguez, ¶ 4; *Reply*, p. 3, n.1.
- 16 6. Mr. Martel's timeclock indicates he clocked into his final shift at GSR at 6:10
17 p.m. on June 12, 2014. Mr. Martel clocked out on June 13, 2014 at 12:26 a.m. *Motion*, p.
18 2, Ex. 1, Decl. of Eric Candela; *Response*, p. 6.
- 19 7. Mr. Martel was paid every two weeks and last paycheck was paid on June 16,
20 2014. *Reply*, Ex. 1, Decl. of Cynthia Williams, ¶ 3.
- 21 8. Ms. Jackson-Williams was employed as a guest attendant from April 2014,
22 through December, 2015. *FAC*, ¶ 6; *Motion*, p. 2; *Response*, p. 7.
- 23 9. The Culinary CBA is unsigned. *Motion*, p. 7, n.1; *Response*, p. 16; Decl. of
24 Susan Heaney Hilden, ¶ 2.

1 10. Article 9.01 of the Culinary CBA provides:

2 The workweek pay period shall be from Friday through Thursday. For
3 purposes of computing overtime, for an employee scheduled to work five (5)
4 days in one (1) workweek, any hours in excess of eight (8) hours in a day or
5 forty (40) hours in a week shall constitute overtime. For an employee
6 scheduled to work four (4) days in one (1) workweek, any hours worked in
7 excess of ten (10) hours in a day or forty (40) hours in a week shall constitute
8 overtime. . . . Employees absent for personal reasons on one (1) or more of
9 their first five (5) scheduled days of work in their workweek shall work at the
10 Employee's request on a scheduled day off in the same workweek at straight
11 time.

12 *Motion*, p. 6; *Motion*, Ex. 2, Decl. of Susan Hilden, Ex. 1; *Response*, pp. 18-19.

13 11. Pursuant to the Operating Engineers CBA, GSR recognizes the International
14 Union of Operating Engineers Stationary Local No. 39 AFL-CIO as "the exclusive bargaining
15 representative for . . . all draftsmen, carpenters, engineers, locksmiths, painters, upholsters,
16 certified pool operators and engineering department laborers." *Motion*, Ex. 2, Decl. of
17 Susan Hilden, ¶ 11; *Response*, p. 6.

18 12. Pursuant to the IATSE CBA, GSR recognizes the International Alliance of
19 Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the
20 United States, its Territories and Canada, AFL-CIO, CLC LOCAL Union No. 362 ("IATSE")
21 as "the Exclusive collective bargaining representative for . . . all entertainment department
22 employees performing carpentry, electrical, electronic, sound and property work, including
23 stage hands, stage technicians, stage laborers, lounge technicians, convention technicians,
24 spotlight operators and technicians, stage electricians, sound personnel, projectionists,
25 operators of all audio-visual equipment used in connection with the Employer's
26 entertainment and convention operations and all wardrobe personnel . . ." *Motion*, Ex. 2,
27 Decl. of Susan Hilden, ¶ 12; *Response*, p. 6.

28 //

1 13. The Culinary Union has filed grievances under the Culinary CBA, and
2 arbitrations have taken place. *Motion*, Ex. 2, Decl. of Susan Heaney Hilden, ¶¶ 3-7; Ex. 3,
3 Decl. of Larry Montrose, ¶ 5.

4
5 14. To the extent any of the following conclusions of law include, or may be
6 construed to include, findings of fact, they are incorporated here.

7 **IV. CONCLUSIONS OF LAW.**

8 To the extent any of the foregoing findings of fact constitute, or may be construed
9 to constitute, conclusions of law they are incorporated here:

10
11 **A. STATUTE OF LIMITATION.**

12 1. The Minimum Wage Act (MWA) guarantees employees payment of a specified
13 minimum wage and gives an employee whose employer violates the MWA the right to bring
14 an action against his or her employer in Nevada. Perry v. Terrible Herbst, Inc., 383 P.3d
15 257, 258 (2016).

16
17 2. A two-year statute of limitation applies to actions for failure to pay the
18 minimum wage in violation of the Nevada constitution. Id. at 262.

19 3. The two-year statute of limitation period applies to NRS 608 statutory wage
20 claims that are analogous to a cause of action for failure to pay an employee the lawful
21 minimum wage. Id.

22
23 4. NRS 608.040 provides:

24 1. If an employer fails to pay:

25 (a) Within 3 days after the wages or compensation of a discharged
employee becomes due; or

26 (b) On the day the wages or compensation is due to an employee who
27 resigns or quits, the wages or compensation of the employee continues at the
same rate from the day the employee resigned, quit or was discharged until
paid or for 30 days, whichever is less.

28 2. Any employee who secretes or absents himself or herself to avoid
payment of his or her wages or compensation, or refuses to accept them when

1 fully tendered to him or her, is not entitled to receive the payment thereof for
2 the time he or she secretes or absents himself or herself to avoid payment.

3 NRS 608.040.

4 5. NRS 608.050 provides:

5 1. Whenever an employer of labor shall discharge or lay off employees
6 without first paying them the amount of any wages or salary then due them, in
7 cash and lawful money of the United States, or its equivalent, or shall fail, or
8 refuse on demand, to pay them in like money, or its equivalent, the amount of
9 any wages or salary at the time the same becomes due and owing to them
10 under their contract of employment, whether employed by the hour, day, week
11 or month, each of the employees may charge and collect wages in the sum
12 agreed upon in the contract of employment for each day the employer is in
13 default, until the employee is paid in full, without rendering any service
14 therefor; but the employee shall cease to draw such wages or salary 30 days
15 after such default.

16 2. Every employee shall have a lien as provided in NRS 108.221 to
17 108.246, inclusive, and all other rights and remedies for the protection and
18 enforcement of such salary or wages as the employee would have been
19 entitled to had the employee rendered services therefor in the manner as last
20 employed.

21 NRS 608.050.

22 6. When a derivative claim is dependent on the success of an underlying claim
23 and the underlying "claim having not been established," then the derivative claim "must fail
24 as well." Turner v. Mandalay Sports Entm't, LLC, 124 Nev. 213, 222 n.31, 180 P.3d 1172,
25 1178 n.31 (2008).

26 7. A two-year statute of limitation applies to the claims in this action. Claims
27 which accrued prior to June 14, 2014 are therefore barred by the statute of limitation. See
28 *Order Granting, in Part, and Denying, in Part, Motion to Dismiss* pp. 7-11.

8. Mr. Martel maintains his fourth cause of action for waiting time penalties under
NRS 608.040 and 608.050 is timely because his cause of action did not accrue until thirty
(30) days after his last day of work.

1 9. Based on its plain language, NRS 608.050 is inapplicable to Mr. Martel.
2 Section 608.050 applies to employees who are discharged or laid off by their employer.
3 See NRS 608.050(1). Mr. Martel resigned from his job.

4 10. Section 608.040 of the Nevada Revised Statutes does not apply to wages that
5 are not accrued during the final pay period of the employee.

6 11. No shift jamming, no off-the-clock banking, and no pre-shift meetings occurred
7 during Mr. Martel's final pay period. Mr. Martel's last shift ended on June 13, 2014.

8 12. Therefore, the two-year statute of limitation applies to Mr. Martel's claims.
9 The *Complaint* was filed on June 14, 2016.

10 13. NRS 608.040 does not save Mr. Martel's claims. "[W]hen a statute 'is clear on
11 its face, a court cannot go beyond the statute in determining legislative intent.'" State v.
12 Lucero, 249 P.3d 1226, 1228 (2011) (citing Robert E. v. Justice Court, 99 Nev. 443, 445
13 (1983)). The Court finds NRS 608.040 is clear on its face that it does not apply to all wages,
14 but rather wages due for the pay period before the employee is discharged or quits.
15 Nothing in the statute indicates the rule applies to previously unpaid wages or exists to
16 create a cause of action for those wages.

17 14. The two-year statute of limitation applies to: Plaintiffs' First Cause of Action for
18 Failure to Pay Wages for All Hours Worked in Violation of NRS 608.140 and 608.016;
19 Second Cause of Action for Failure to Pay Minimum Wages in Violation of the Nevada
20 Constitution; Third Cause of Action for Failure to Pay Overtime Wages in Violation of NRS
21 608.140 and 608.018; and, Fourth Cause of Action for Failure to Timely Pay All Wages Due
22 and Owing Upon Termination Pursuant to NRS 608.140 and 608.020-.050.

1 15. Defendants met their burden and established their statute of limitation defense
2 to Plaintiffs' claims as a matter of law.

3 16. Summary judgment should be entered on each of Mr. Martel's claims as they
4 are time-barred.

5 17. After application of the two-year statute of limitation, Ms. Jackson-Williams'
6 claims remain for an eighteen-month period only.

7
8 **B. CBA VALIDITY AND ABILITY TO PROVIDE OTHERWISE FOR OVERTIME**

9 **1. Validity of the CBA**

10 18. The CBA purportedly expired by its own terms on or about May 1, 2011. The
11 CBA has not been extended by signature, however, GSR contends the CBA has been
12 extended by ratification.

13 19. Unsigned CBAs have been found valid and operative when an employer has
14 continued to treat the CBA as binding and effective and employee could not point to
15 evidence to the contrary. Bloom v. Universal City Studios, 933 F.2d 1013, 1991 WL 80602
16 at *1 (9th Cir. 1991) (unpublished); See Retail Clerks Int'l Ass'n v. Lion Dry Goods, Inc., 369
17 U.S. 17, 24 n. 6 (1962) (finding CBA valid even when parties did not negotiate directly and
18 did not consolidate signatures on one document).

19 20. A union will generally be held defunct if it has ceased to exist as an effective
20 labor organization and is no long fulfilling responsibilities in administering the contract.
21 Hershey Chocolate Corp., 121 NLRB 901, 911, 42 LRRM 1460 (1958); see also Pioneer Inn
22 Associates v. N.L.R.B., 578 F.2d 835, 839-40 (1978) (explaining inactivity, failure to monitor
23 contract provisions, and failure to pursue grievances may indicate a failure to administer the
24 contract).

1 21. Signatures on collective bargaining agreements are “not a prerequisite to
2 finding an employer bound to that agreement.” Line Const. Ben. Fund v. Allied Elec.
3 Contractors, Inc., 591 F.3d 576, 580 (7th Cir. 2010); N.L.R.B. v. Electra-Food Mach. Inc.,
4 621 F.2d 956, 958 (9th Cir. 1980) (holding oral agreements are sufficient to create binding
5 collective bargaining agreements even when written agreement is unsigned); N.L.R.B. v.
6 Haberman Const. Co., 641 F.2d 351, 356 (5th Cir. 1981) (en banc) (“[A] union and
7 employer’s adoption of a labor contract is not dependent on the reduction to writing of their
8 intention to be bound”).
9
10

11 22. If the union and the employer continue to operate as if the CBA is operative,
12 the CBA is binding. Here, the union and GSR engaged in arbitration and negotiation when
13 mandated by the CBA. GSR continued to negotiate and arbitrate with the union on multiple
14 occasions. For example, Mr. Montrose confirmed he interacts with the Culinary Union
15 Representative Nicolaza De La Puente weekly and he was notified of at least two different
16 grievances in 2015. *Motion*, Decl. of Larry Montrose, Ex B., Ex. C. The CBA was “ratified
17 by the Union on November 17, 2011, and it was in effect through March 10, 2018, when a
18 subsequent Culinary CBA was ratified.” *Motion*, Decl. of Susan Heaney Hilden, ¶ 2. An
19 arbitration was held on August 25, 2016, in which the parties introduced the CBA as Joint
20 Exhibit 1. *Motion*, Decl. of Susan Heaney Hilden, ¶ 2. Following the August 25, 2016,
21 arbitration, the Culinary Union submitted a Post-Hearing Brief dated October 24, 2016 in
22 which the Union states, “Local 226 has been party to three successive collective-bargaining
23 agreements at the hotel casino that is now known as the Grand Sierra Resort.” *Id.* Plaintiffs
24 contend the CBA expired in May of 2011 but provide the Court with no evidence to dispute
25
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1 that the union and the GSR continued to treat the CBA as binding. Undisputed evidence
2 confirms the CBA was valid and operative.

3 **2. The CBA “provides otherwise” for overtime**

4
5 23. NRS 608.018(1)-(2) governs compensation for overtime and reads:

6 1. An employer shall pay 1 1/2 times an employee's regular wage rate
7 whenever an employee who receives compensation for employment at a rate
8 less than 1 1/2 times the minimum rate set forth in NRS 608.250 works:

9 (a) More than 40 hours in any scheduled week of work; or

10 (b) More than 8 hours in any workday unless by mutual agreement the
11 employee works a scheduled 10 hours per day for 4 calendar days within any
12 scheduled week of work.

13 2. An employer shall pay 1 1/2 times an employee's regular wage rate
14 whenever an employee who receives compensation for employment at a rate
15 not less than 1 1/2 times the minimum rate set forth in NRS 608.250 works
16 more than 40 hours in any scheduled week of work.

17 NRS 608.018(1)-(2).

18 24. Section 608.018(3) of the Nevada Revised Statutes provides, “[t]he provisions
19 of subsections 1 and 2 do not apply to . . . (e) Employees covered by collective bargaining
20 agreements which provide otherwise for overtime . . .” NRS 608.018(3) (emphasis added).

21 25. The CBA provides:

22 The workweek pay period shall be from Friday through Thursday. For the
23 purposes of computing overtime, for an employee scheduled to work five (5)
24 days in one (1) workweek, any hours in excess of eight (8) hours in a day or
25 forty (40) hours in a week shall constitute overtime. For an employee
26 scheduled to work four (4) days in one (1) workweek, any hours worked in
27 excess of ten (10) hours in a day or forty (40) hours in a week shall constitute
28 overtime. Overtime shall be effective and paid only after the total number of
hours not worked due to early ours is first subtracted from the total number of
hours actually worked per shift, per workweek. Overtime shall not be paid
under this Section for more than one (1) reason for the same hours worked.
Employees absent for personal reasons on one (1) or more of their first five (5)
scheduled days of work in their workweek shall work at the Employer’s request
on a scheduled day off in the same workweek at straight time. If the employer
anticipates such scheduling, the Employer provide five (5) days’ advance
notice.

1 This provision will remain in effect for the duration of this Agreement.
2 However, at the expiration of the Agreement, the Employer shall have the
3 right to compute and pay overtime in accordance with the provisions of
4 existing federal and state law, and Union employees shall not have the right
to overtime pay above and beyond the applicable federal and state law
requirements.

5 See Motion, Ex. 2A, p. 15.

6 26. CBAs “provide otherwise” for overtime payments when the CBA “contains a
7 negotiated provision on the same subject but different from the statutory provision.”
8 Firestone v. Southern California Gas Co., 219 F.3d 1063, 1067, 164 L.R.R.M. 2897, 2897
9 (9th Cir. 2000); Jacobs v. Mandalay Corp., 378 F. App’x 685, 687 (9th Cir. 2010) (“[S]ection
10 608.018 exempts from coverage those employees ‘covered by collective bargaining
11 agreements which provide otherwise for overtime.’”).
12

13 27. The instant CBA “provides otherwise” for overtime. The CBA provides
14 otherwise for overtime because there are differences in both the practical effects of the
15 overtime provisions in NRS 608.018 and in the CBA’s overtime provisions, as well as the
16 textual provisions. For example, NRS 608.018(1) provides that an employer shall pay 1 1/2
17 times the employee’s regular wage when the employee works more than 40 hours in a week
18 or more than 8 hours in a day. The CBA does not specify what the pay rate shall be.
19 Additionally, the CBA provides for overtime regardless of the employee’s wage, while NRS
20 608.018 only mandates overtime for employees making more than 1 1/2 the minimum wage.
21 NRS 608.018 provides overtime regardless of how many days are worked in a week, while
22 the CBA allows overtime only when employees work five days in one workweek. NRS
23 608.018 does not limit overtime if an employee misses a scheduled day and works an
24 alternate day, however, the CBA does. Accordingly, the CBA “provides otherwise” for
25 overtime.
26
27
28

1 28. The CBA “provides otherwise” for Ms. Jackson-Williams’ claim for overtime
2 and NRS 608.018 does not provide a legal basis for her claim.

3 **3. Grievance Procedures of the Culinary CBA**

4 29. Section 301 of the Labor Management Relations Act states:

5 Suits for violation of contracts between an employer and a labor organization
6 representing employees in an industry affecting commerce ... may be brought
7 in any district court of the United States having jurisdiction of the parties....

8 Labor Management Relations Act of 1947 § 301(a), 29 U.S.C. § 185(a) (1982).

9 30. Employees may pursue claims for unpaid wages through a private cause of
10 action and without enforcing the claim through the Labor Commissioner. Neville v. Eighth
11 Judicial Dist. Court in & for Cty. of Clark, 133 Nev. 777, 782, 406 P.3d 499, 504 (2017).

12 31. State law rights and obligations that do not exist independently of private
13 agreements can be waived or altered by agreement as a result and are pre-empted by
14 those agreements. MGM Grand Hotel-Reno, Inc. v. Insley, 102 Nev. 513, 517, 728 P.2d
15 821, 824 (1986) (citing Allis Chalmers v. Lueck, 471 U.S. 202, 105 S.Ct. 1904 (1985)).

16 32. Workers do not have to submit to arbitration procedures when redressing
17 grievances because a CBA provides contractual rights, but workers may have an
18 independent statutory right to enforce individual rights. Albertson’s, Inc. v. United Food &
19 Commercial Workers Union, ALF-CIO & CLC, 157 F.3d 758, 762 (9th Cir.).

20 33. Whether Ms. Jackson-Williams must follow the grievance procedures
21 contained in the CBA depends on whether she has an independent statutory right to enforce
22 her claims for wages and overtime outside of the CBA. Ms. Jackson-Williams brought
23 claims for Failure to Pay Wages for All Hours Worked in Violation of NRS 608.140 and
24 608.016, Failure to Pay Overtime Wages in Violation of the Nevada Constitution, Failure to
25 Pay Minimum Wages in Violation of NRS 608.140 and 608.018, and Failure to Pay All

1 Wages Due and Owing Upon Termination Pursuant to NRS 608.140 and 608-040-050. The
2 State of Nevada provides independent statutory rights to each of Ms. Jackson-Williams'
3 claims through the Nevada Revised Statutes and the Nevada Constitution. Albertson's Inc.
4 explains, "in filing a lawsuit under [a statute], an employee asserts independent statutory
5 rights . . . The distinctly separate nature of these contractual and statutory rights is not
6 vitiated merely because both were violated as a result of the same factual occurrence." 157
7 F.3d at 761. Since there are state-law rights at issue, Ms. Jackson-Williams' claims are not
8 preempted, and the claims are not mandated to proceed through the grievance procedure of
9 the CBA.
10
11

12 **4. Lack of Standing to Represent Union Employees**

13 34. Section 159(a) of the United States Code states:

14 Representatives designated or selected for the purposes of collective
15 bargaining by the majority of the employees in a unit appropriate for such
16 purposes, shall be the exclusive representatives of all the employees in
17 such unit for the purposes of collective bargaining in respect to rates of pay,
wages, hours of employment, or other conditions of employment.

18 29 U.S.C. § 159(a).

19 35. Baristas, bartenders, and cocktail servers are represented by the Culinary
20 CBA; construction workers are covered by the Operating Engineers CBA; and, technicians
21 are represented by the AFL-CIO Local Union. Plaintiffs, as members of the "shift jamming
22 class" attempt to represent union members from other sub-classes.
23

24 36. Employees may bring an action against an employer without exhausting
25 contractual remedies, but the employees must "prove that the union as bargaining agent
26 breached its duty of fair representation in its handling of the employee's grievance." Vaca v.
27 Sipes, 386 U.S. 171, 186, 87 S.Ct. 903, 914 (1967).
28

1 37. When employees sue to vindicate “uniquely personal rights” as opposed to
2 rights reserved to unions like picketing, renegotiating a contract, or protesting relocation, the
3 employees have standing to sue on their own behalf and on behalf of other union members.
4
5 Lucas v. Bechtel Corp., 633 F.2d 757, 759 (9th Cir. 1980) (citing Hines v. Anchor Motor
6 Freight, Inc., 424 U.S. 554, 562, 96 S.Ct. 1048, 1055 (1976)).

7 38. In Baker v. IBP, Inc., 357 F.3d 685, 690 (7th Cir. 2004), the Seventh Circuit
8 held that where a “suit is at its core about the adequacy of the wages [the employer] pays,”
9 individual employees may not represent union workers in a class action when the union has
10 not breached its duty of fair representation.” The court reasoned union workers “have a
11 representative—one that under the NLRA is supposed to be ‘exclusive’ with respect to
12 wages” and therefore “Plaintiffs’ request to proceed on behalf of a class of all workers
13 shows that they seek to usurp the union’s role.” Id. at 686, 690.

14
15 39. Plaintiffs do not assert the Union has breached its duty of fair representation.
16 The CBA is valid and operative. Plaintiffs cannot represent those other union members who
17 are represented by separate unions without asserting those union representatives breached
18 their duty of fair representation.
19

20 **C. PLAINTIFFS’ REQUEST FOR ADDITIONAL DISCOVERY**
21 **PURSUANT TO NRCP 56.**

22 40. Nevada Rules of Civil Procedure Rule 56 provides:

- 23 (d) When Facts Are Unavailable to the Nonmovant. If a nonmovant
24 shows by affidavit or declaration that, for specified reasons, it cannot
25 present facts essential to justify its opposition, the court may:
26 (1) defer considering the motion or deny it;
27 (2) allow time to obtain affidavits or declarations or to take discovery; or
28 (3) issue any other appropriate order.

NRCP 56(d).

1 41. A party opposing summary judgment pursuant to NRCP 56(d) has the burden
2 of affirmatively demonstrating by a good-faith affidavit (1) the identification of the specific
3 facts that further discovery would reveal; (2) the specific reasons why such evidence is
4 presently unavailable; and (3) how those facts would preclude summary judgment. Family
5 Home & Fin. Ctr., Inc. v. Fed. Home Loan Mortgage Corp., 525 F.3d 822, 827 (9th Cir.
6 2008); Collins v. Union Fed. Sav. & Loan Ass'n, 99 Nev. 657, 669-70, 262 P.3d 705, 714
7 (2011).

8
9 42. Plaintiffs request additional discovery to ascertain whether the CBA is valid or
10 not. Plaintiffs have not provided an affidavit, have not articulated the specific reasons why
11 the evidence they need is unavailable to them, and have not stated how those facts would
12 preclude summary judgment.

13
14 **V. CONCLUSION AND ORDER.**

15 Based on the foregoing findings of fact and conclusions of law and good cause
16 appearing therefore,

17
18 IT IS HEREBY ORDERED summary judgment is entered in favor of GSR and against
19 the Plaintiffs.

20 DATED this 2nd day of November, 2020.

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24 DISTRICT JUDGE
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DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES-HEARING	CONT'D TO
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ORAL ARGUMENTS RE: MOTION TO DISMISS

7/19/18 HONORABLE LYNNE K. SIMONS DEPT. NO. 6 J. Martin (Clerk) C. Hummel (Reporter)	Leah Jones, Esq. was present on behalf of the Plaintiffs. Chris Davis, Esq. was present on behalf of the Defendants. COURT reviewed the procedural history of the matter and the Motion to Dismiss filed January 22, 2018. Counsel Davis argued in support of the Motion to Dismiss filed January 22, 2018. Counsel Jones argued in opposition to the Motion to Dismiss filed January 22, 2018. Counsel Davis responded and further argued in support of the Motion to Dismiss filed January 22, 2018. COURT took the Motion to Dismiss filed January 22, 2019, under advisement; Respective counsel directed to submit proposed orders no later than July 20, 2018.
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Code 1350

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

EDDY MARTEL (also known as MARTEL-RODRIGUEZ), MARY ANNE CAPILLA, JANICE JACKSON-WILLIAMS and WHITNEY VAUGHAN on behalf of themselves and all others similarly situated,

Case No. CV16-01264

Dept. No. 6

Plaintiffs,

vs.

HG STAFFING, LLC, MEI-GSR HOLDINGS, LLC d/b/a GRAND SIERRA RESORT, and DOES 1 through 50, inclusive,

Defendants.

CERTIFICATE OF CLERK AND TRANSMITTAL – NOTICE OF APPEAL

I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on the 30th day of November, 2020, I electronically filed the Notice of Appeal in the above entitled matter to the Nevada Supreme Court.

I further certify that the transmitted record is a true and correct copy of the original pleadings on file with the Second Judicial District Court.

Dated this 30th day of November, 2020.

Jacqueline Bryant
Clerk of the Court
By /s/YViloria
YViloria
Deputy Clerk

Code 4132

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

Case No. CV16-01264

Dept. No. 6

EDDY MARTEL (also known as MARTEL-RODRIGUEZ), MARY ANNE CAPILLA, JANICE JACKSON-WILLIAMS and WHITNEY VAUGHAN on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

HG STAFFING, LLC, MEI-GSR HOLDINGS, LLC d/b/a GRAND SIERRA RESORT, and DOES 1 through 50, inclusive,

Defendants.

NOTICE OF APPEAL DEFICIENCY

TO: Clerk of the Court, Nevada Supreme Court,
and All Parties or their Respective Counsel Of Record:

On November 25th, 2020, Attorney Leah L. Jones, Esq. for Plaintiffs, filed a Notice of Appeal with the Court. Attorney Leah L. Jones, Esq. was unable to include the Two Hundred Fifty Dollar (\$250.00) Supreme Court filing fee due to the public closure of the Second Judicial District Court Administrative Order 2020-02, 2020-05, 2020-09 and 2020-05(B).

Pursuant to NRAP 3(a)(3), on November 30th, 2020, the Notice of Appeal will be electronically filed to the Nevada Supreme Court. By copy of this notice. Attorney Leah L. Jones, Esq. was advised of the deficiency. (A notice to pay will be issued once the Notice of Appeal is filed in by the Nevada Supreme Court.)

Dated this 30th day of November, 2020.

Jacqueline Bryant
Clerk of the Court
By: /s/YViloria
YViloria
Deputy Clerk

CERTIFICATE OF SERVICE

CASE NO. CV16-01264

I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County Of Washoe; that on the 30th day of November, 2020, I electronically filed the Notice of Appeal Deficiency with the Clerk of the Court by using the ECF system.

I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

Electronically filed with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

H. JOHNSON, ESQ. for HG STAFFING, LLC, et al

JOSHUA BUCK, ESQ. for MARY ANNE CAPILLA et al

SUSAN HILDEN, ESQ. for HG STAFFING, LLC, et al

LEAH JONES, ESQ. for MARY ANNE CAPILLA et al

MARK THIERMAN, ESQ. for MARY ANNE CAPILLA et al

/s/YViloria
YViloria
Deputy Clerk