

IN THE SUPREME COURT OF THE STATE OF NEVADA

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,

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

Defendants-Respondents.

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District Court Case No.: CV16-01264

APPELLANTS' RESPONSE TO ORDER TO SHOW CAUSE

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COME NOW, 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 (“Plaintiffs-Appellants” or “Appellants”) respond to the Supreme Court of Nevada’s April 29, 2021 Order to Show Cause as follows:

STATEMENT OF PROCEDURAL HISTORY

On April 29, 2021, this Court issued an Order to Show Cause regarding the Appellants’ notice of appeal as to the District Courts’ grant of summary judgment. The District Court entered its order granting summary judgment on November 3, 2020, stating “IT IS HEREBY ORDERED summary judgment is entered in favor of GSR and against Plaintiffs.” *See* Exhibit A, “Nov. 3, 2020 MSJ Order” attached to the Declaration of Leah L. Jones, hereinafter “Jones Dec.” at ¶3. Plaintiffs-Appellants filed their original Notice of Appeal on November 25, 2020. Plaintiffs-Appellants’ Notice of Appeal was filed by the Clerk of this Court on December 4, 2020.

Plaintiffs-Appellants’ opening brief was originally due on April 21, 2021. Plaintiffs-Appellants sought from the Clerk of the Court and were granted a 14-day extension with Plaintiffs-Appellants’ Opening Brief due May 5, 2021. During final review of Plaintiffs-Appellants’ opening brief, it became clear to Appellants that the District Court’s summary judgment order was ambiguous as to whether the District

Court dismissed all of Appellants' claims. Appellants requested to Amend the docketing statement to inform this Court about the ambiguity. This Court granted Appellants' request to amend the docketing statement and issued its Order to Show Cause on April 29, 2021. Plaintiffs-Appellants filed their amended docketing statement on April 30, 2021.

Plaintiffs-Appellants sought clarification from the District Court on its Order from which Appellants' appeal originates, on May 5, 2021, and on an expedited briefing schedule. *See* Exhibit B, "Request for Clarification and for Expedited Decision" attached to the Jones Dec. at ¶4. On May 10, 2021, the District Court entered its Order Shortening Time. *See* Exhibit C, "Order Shortening Time" attached to the Jones Dec. at ¶5. Defendants-Respondents, HG-Staffing, LLC, MEI-GSR Holdings, LLC d/b/a Grand Sierra Resort's ("Defendants-Respondents") response deadline was on May 13, 2021. *Id.* Defendants-Respondents did not file a response. Accordingly, on May 25, 2021, Plaintiffs-Appellants filed a Request for Submission. *See* Exhibit D, "Request for Submission" attached to the Jones Dec. at ¶6. The District Court has not, as of this date, provided a clarification.

ANALYSIS

In Appellants' Request for Clarification, Appellants seek a clarification from the District Court on the following questions: (1) whether the November 3, 2020 fully and finally adjudicated all of Plaintiffs'-Appellants' claims, and/or (2) in the

alternative, if the November 3, 2020 Order did not fully and finally adjudicate all of Plaintiffs'-Appellants' claims, Appellants request that the District Court enter final judgment pursuant to NRCP 54(b) on three of the Court's holdings. Specifically: (1) Plaintiffs' NRS 608.016, 608.018, and 608.020-.050 claims carry a the two-year statute of limitation as opposed to the general 3-year limitation period pursuant to NRS 11.190(3)(a); (2) Plaintiffs NRS 608.020-.050 continuation claims begin to run on the last day an employee works as opposed to 30-days after the employment relations ends; and (3) Plaintiffs' claims for overtime pursuant to NRS 608.140 and 608.018 are barred because a collective bargaining agreement ("CBA") "provides otherwise for overtime." The District Court has, as of this date, not provided clarification.

This Court should retain jurisdiction until the District Court clarifies its November 3, 2020 Order. Should the District Court clarify that it did intend to fully and finally adjudicate all of Plaintiffs'-Appellants claims, this Court will have jurisdiction pursuant to NRAP 3A(b)(1). If the District Court clarifies that it did not intend to fully and finally adjudicate all of Plaintiff-Appellant Jackson-Williams' claims and that her individual claims are still pending before the District Court, this Court will not have jurisdiction pursuant to NRAP 3A(b)(1) and Plaintiffs'-Appellants' appeal should be dismissed without prejudice pending the full and final adjudication of all Plaintiffs'-Appellants claims.

CONCLUSION

This Court should retain jurisdiction of Appellants appeal pending the District Court's clarification. Appellants will provide this Court with the District Court's clarification immediately upon receipt, which will determine whether this Court has jurisdiction over Appellants' claims or, in the alternative, whether Plaintiffs-Appellants' appeal should be dismissed without prejudice pending final judgement by the District Court.

June 1, 2021

Respectfully Submitted,

THIERMAN BUCK LLP

/s/ Leah L. Jones

Mark R. Thierman, Bar No. 8285

Joshua D. Buck, Bar No. 12187

Leah L. Jones, Bar No. 13161

Joshua R. Hendrickson, Bar No. 12225

Attorneys for Plaintiffs-Appellants

CERTIFICATE OF SERVICE

I am a resident of the State of Nevada, over the age of eighteen years, and not a party to the within action. My business address is 7287 Lakeside Drive, Reno, Nevada 89511. On June 1, 2021, the **APPELLANTS' RESPONSE TO ORDER TO SHOW CAUSE** was served on the following by using the Supreme Court's eFlex System:

Susan Heaney Hilden, Esq.
shilden@meruelogroup.com
2500 East Second Street
Reno, Nevada 89595
Tel: (775) 789-5362
Attorney for Respondents-Defendants

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

Executed on June 1, 2021 at Reno, Nevada.

/s/ Jennifer Edison-Strekal
An Employee of Thierman Buck LLP

IN THE SUPREME COURT OF THE STATE OF NEVADA

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,

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

Defendants-Respondents.

Case No. 82161

District Court Case No.: CV16-01264

DECLARATION OF LEAH L. JONES IN SUPPORT OF APPELLANTS' RESPONSE TO ORDER TO SHOW CAUSE

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Attorneys Plaintiffs-Appellants

I, Leah L. Jones, hereby declare and state:

1) I am an Associate attorney with Thierman Buck, LLP, and I am admitted to practice law in the states of Nevada and California. I am also admitted to the United States District Court District of Nevada, Central District of California, Northern District of California, Eastern District of California, Southern District of California, the United States Court of Appeals for the Ninth Circuit, and the Supreme Court of the United States.

2) I am one of the attorneys' of record for Plaintiffs-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 (hereinafter "Plaintiffs-Appellants"), and submit this declaration in support of Plaintiffs-Appellants' response to this Court's April 29, 2021 Order to Show Cause.

3) Attached as Exhibit A is a true and correct copy of the District Court's November 3, 2020 order, granting Respondents' motion for summary judgment, hereinafter, "Nov. 3, 2020 MSJ Order."

4) Attached as Exhibit B is a true and correct copy of Plaintiffs-Appellants' request for clarification and expedited briefing, hereinafter, "Request for Clarification and Expediated Decision."

5) Attached as Exhibit C is a true and correct copy of the District Court's Order shortening time, hereinafter "Order Shortening Time."

6) Attached as Exhibit D is a true and correct copy of Plaintiffs-Appellants "Request for Submission."

7) I understand that I may be subject to sanctions in the event that the accompanying Motion is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

June 1, 2021

Respectfully Submitted,

THIERMAN BUCK LLP

/s/ Leah L. Jones

Mark R. Thierman, Bar No. 8285

Joshua D. Buck, Bar No. 12187

Leah L. Jones, Bar No. 13161

Joshua R. Hendrickson, Bar No. 12225

Attorneys for Plaintiffs-Appellants

EXHIBIT A

November 3, 2020 MSJ Order

EXHIBIT A

1 CODE NO. 3370

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5
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.
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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 //

27 //

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).

17
18 In this case, GSR is the moving party that may submit evidence negating an essential
19 element of Plaintiffs' claims, point out the absence of evidence, or establish the elements of
20 a defense. Plaintiffs are the nonmoving party who must introduce specific facts that show a
21 genuine issue of material fact exists.

22 //

23 //

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
26 employee becomes due; or

27 (b) On the day the wages or compensation is due to an employee who
28 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.

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).

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

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

V. CONCLUSION AND ORDER.

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

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

DATED this 2nd day of November, 2020.

DISTRICT JUDGE

1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of THE SECOND JUDICIAL DISTRICT
3 COURT; that on the 3rd day of November, 2020, I electronically
4 filed the foregoing with the Clerk of the Court system which will send a notice of
5 electronic filing to the following:

6
7 H. JOHNSON, ESQ.
8 JOSHUA BUCK, ESQ.
9 SUSAN HILDEN, ESQ.
10 LEAH JONES, ESQ.
MARK THIERMAN, ESQ.

11
12
13
14
15
16
17
18 And, I deposited in the County mailing system for postage and mailing with the
19 United States Postal Service in Reno, Nevada, a true and correct copy of the attached
20 document addressed as follows:
21
22

23 *Heidi Boe*
24
25 _____
26
27
28

EXHIBIT B

Request for Clarification and Expediated Decision

EXHIBIT B

2035
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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-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.

Case No.: 16-cv-01264

Dept. No.: XIV

**PLAINTIFFS' MOTION FOR
CLARIFICATION OF NOVEMBER 3,
2020 ORDER GRANTING SUMMARY
JUDGMENT IN FAVOR OF
DEFENDANTS**

Plaintiffs 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 hereby request clarification of the November
23, 2020 Order granting Summary Judgment in favor of Defendants HG STAFFING LLC,
and MEI-GSR HOLDINGS, LLC d/b/a GRAND SIERRA RESORT ("GSR" or

“Defendants”).

MEMORANDUM OF POINTS AND AUTHORITIES

A. INTRODUCTION

In this Court’s November 3, 2020 Order granting Defendants’ Motion for Summary Judgment at Section V Conclusion and Order, the Court held:

“Based on the foregoing findings of fact and conclusions of law and good cause appearing, therefore,
IT IS HEREBY ORDERED summary judgment is entered in favor of GSR and against Plaintiffs.”

See November 3, 2020 Order at Section IV, p. 22:15-19, hereinafter “11/3/20 Order” attached as Exhibit 1 to the Declaration of Leah L. Jones, hereinafter “Jones Dec. at ¶4.

This Motion seeks two forms of relief. First, this Motion seeks clarification from the Court on whether the Court’s 11/3/20 Order intended to fully and finally adjudicate all of Plaintiffs’ claims. Specifically, because the language states, “summary judgement is entered ... against Plaintiffs,” and the word plaintiffs being plural, in comparison to the conclusions contained within the analysis of the Order specific to Plaintiff Jackson-Williams, there is ambiguity as to whether Ms. Jackson-Williams claims are still pending before this Court. Specifically, the Court recognized in its analysis that Jackson-Williams has 18 months remaining on her claim, and therefore, as a result the 11/3/20 Order only entered summary judgment against Plaintiff Jackson-Williams on her overtime claim and did not enter judgment against her remaining wage claims for failure to compensate for all hours worked in violation of NRS 608.140 and 608.016 (first cause of action), failure to pay minimum wages in violation of the Nevada Constitutional (second cause of action),

and the derivative failure to pay all wages due and owing in violation of NRS 608.020-050 (fourth cause of action).

Second, should this Court clarify that the 11/3/20 Order did not fully and finally adjudicate all of Plaintiffs' claims, Plaintiffs request that this Court enter final judgment pursuant to NRCP 54(b) on three of the Court's holdings. Specifically: (1) Plaintiffs' NRS 608.016, 608.018, and 608.020-.050 claims carry a two-year statute of limitation as opposed to the general 3-year limitation period pursuant to NRS 11.190(3)(a); (2) Plaintiffs NRS 608.020-.050 continuation claims begin to run on the last day an employee works as opposed to 30-days after the employment relations ends; and (3) Plaintiffs' claims for overtime pursuant to NRS 608.140 and 608.018 are barred because a collective bargaining agreement ("CBA") "provides otherwise for overtime."

II. PROCEDURAL HISTORY

On June 14, 2016, four named Plaintiffs—Mr. Martel, Ms. Capilla, Ms. Jackson-Williams, and Ms. Vaughan—originally filed a class action complaint against Defendants in the Second Judicial District for the State of Nevada for alleged unpaid wages on behalf of themselves and all similarly situated individuals, asserting four Nevada state law wage and hour violations: (1) Failure to Pay Wages for All Hours Worked in Violation of NRS 608.140 and 608.016; (2) Failure to Pay Minimum Wages in Violation of the Nevada Constitution; (3) Failure to Pay Overtime Wages in Violation of NRS 608.140 and 608.018; and, (4) Failure to Timely Pay All Wages Due and Owing Upon Termination Pursuant to NRS 608.140 and 608.020-.050.

On October 9, 2018, this Court entered its Order Granting Defendants' Motion to Dismiss. This Court held Plaintiffs failed to provide sufficient information to support their

1 claims, thereby granting Defendants' Motion. Thereafter, Plaintiffs filed a Motion for
2 Reconsideration of the Court's Order Granting Defendants' Motion to Dismiss or in the
3 Alternative Leave to File an Amended Complaint pursuant to NRCP Rule 60(b). After
4 full briefing, this Court granted Plaintiffs' leave to file an amended complaint on January
5 9, 2019.

6
7 On January 29, 2019, Plaintiffs filed their First Amended Complaint ("FAC" and
8 operative complaint) asserting the same four (4) causes of action. Defendants filed a
9 Motion to Dismiss First Amended Complaint, pursuant to NRCP 12(b)(5), which was fully
10 briefed as of March 11, 2010. Plaintiffs then filed supplemental authority on April 3, 2019.

11
12 On June 7, 2019, this Court entered its Order Granting, in Part, and Denying, in
13 Part, Motion to Dismiss. See June 7, 2019 Order, Exhibit 2, hereinafter "6/7/19 Order,"
14 a true and correct copy is attached to the Jones Dec. at ¶5. In that Order, this Court held
15 that a two-year statute of limitation applies to Appellants' statutory NRS 608.016,
16 608.018, and 608.020-.050 wage claims. As such, this Court dismissed all of Ms.
17 Capilla's and Ms. Vaughan's claims, all but one (1) month of Mr. Martel's claims, and all
18 but eighteen (18) months of Ms. Jackson-Williams' claims.

19
20 During the period while Defendants' Motion to Dismiss the FAC was being briefed,
21 and on May 23, 2019, Defendants filed a Motion for Summary Judgment on all Claims
22 Asserted by Plaintiffs Martel, Capilla, and Vaughan, arguing Appellants' claims were
23 barred by claim preclusion, hereinafter "First MSJ". Plaintiffs opposed on June 3, 2019,
24 and Respondents replied in support on June 10, 2019.¹

25
26
27 ¹ The 6/7/19 dated Order was dated 6/7/19, three days prior Defendants' reply in
28 support of the First MSJ. However, the Notice of Entry of Order was not filed until
6/28/19.

Next, Defendants filed their Answer to Appellants FAC on June 28, 2019. Shortly thereafter, on July 8, 2019, Defendants filed a 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, hereinafter "Second MSJ".

However, on July 9, 2019, before Plaintiffs opposed and before this Court rendered its decision on the First MSJ, Defendants filed a Notice of Filing Petition for Writ of Mandamus and/or Prohibition ("Petition") with the Supreme Court of Nevada. In the Petition, Defendants argued the dismissal of Plaintiffs' first, third, and fourth claims for relief was mandatory on the grounds that Plaintiffs failed to exhaust administrative remedies as required by NRS Chapter 607; legislatively mandated remedies must be exhausted despite an implied private right of action; and NRS 607.215 requires employee-plaintiffs to exhaust administrative remedies before pursuing wage claims under NRS 608.005 to 608.195 in court. This Court granted the Parties' request to stay all proceedings pending the Supreme Court of Nevada's decision and withdrew both of Defendants' pending motions for summary judgment from submission, without prejudice, allowing renewal upon the Supreme Court of Nevada's decision.

On May 7, 2020, the Supreme Court of Nevada issued its decision affirming the District Court, stating, "[i]n *Neville v. Eighth Judicial Dist. Court in & for Cty. of Clark*, 406 P.3d 499. 504 (Nev. 2017), we held, by necessary implication, that exhaustion of administrative remedies is not required before filing an unpaid-wage claim in district court." *HG Staffing, LLC; and MEI-GSR Holdings, LLC, D/B/A Grand Sierra Resort v.*

Second Judicial Dist. Court in & for Cty. of Washoe, No. 79118 (Nev. May 7, 2020). (JA at Vol. 12, pp. 2375-2376).

On June 9, 2020, Defendants renewed their Second MSJ on the following grounds:

Defendants HG STAFFING LLC, and MEI-GSR HOLDINGS, LLC d/b/a GRAND SIERRA RESORT (collectively “GSR”), by and through their counsel of record, hereby move, pursuant to Nev. R. Civ. P. 56, for: (1) summary judgment as to Plaintiff Martel, on grounds that all of his claims are barred by the two-year statute of limitations; and (2) summary judgment as to Plaintiff Jackson-Williams on grounds that she failed to exhaust grievance procedures of the collective bargaining agreement to which she was subject, and also is not entitled to overtime under that collective bargaining agreement. If the Court declines to grant summary judgment as to either Plaintiff on these grounds, Defendants request summary adjudication on: (1) Plaintiffs’ lack of standing to represent union employees in a class action, and (2) Plaintiff Jackson-Williams’ Third Cause of Action on grounds that she is not entitled to overtime under NRS 608.018.

Plaintiffs timely opposed on July 1, 2020, and Defendants replied in support on July 16, 2019. On November 3, 2020, this Court granted Defendants’ Second MSJ, “in favor of GSR and against the Plaintiffs.” See 11/3/20 Order.

A. The District Court’s 11/3/20 Order Granting Respondents’ Second MSJ

Defendants raised four arguments in support of their Second MSJ. This Court granted Defendants’ Second MSJ, on the grounds that: (1) all of Plaintiff Martel’s claims were time barred, (2) Plaintiff Jackson-Williams could not assert a statutory overtime claim under NRS 608.018, and (3) Plaintiff Jackson could not represent a class of union employees. This Court denied Defendants’ Second MSJ on the grounds that Plaintiff

Martel and Plaintiff Jackson did not exhaust a union grievance procedure prior to filing suit.

Thus, Plaintiffs believe that the Court's 11/3/20 Order actually granted Defendants' Second MSJ, in part, and denied the Second MSJ, in part. While this Court stated in its "Conclusion and Order" that "summary judgment is entered in favor of GSR and against the Plaintiffs", the 11/3/20 Order only entered summary judgment against Plaintiff Jackson on her overtime claim and did not enter judgment against her remaining wage claims under NRS 608.140 and 608.016, the Nevada Constitutional Minimum Wage Amendment, and NRS 608.020-050.

B. Clarification Of Jurisdiction Of The District Court And The Timeliness Of Plaintiffs' Appeal

Plaintiffs filed a Notice of Appeal on November 25, 2020. See Jones Dec. at ¶¶6. A briefing schedule was set with Plaintiffs/Appellants opening brief due on April 21, 2021. Id. at ¶7. Upon review of this Court's Order and in preparing Plaintiffs'/Appellants' opening brief, Plaintiffs believe that this Court's 11/3/20 Order did not fully and finally adjudicate all of the Parties claims. Id. at ¶8. If Plaintiffs are correct, pursuant to NRAP 3A(b)(1)² the Supreme Court of Nevada does not have jurisdiction on Plaintiff Jackson-Williams' first, second, and fourth causes of action because they remain pending before this Court; specifically: (1) Jackson-Williams', individual claim for failure to compensate for all hours worked in violation of NRS 608.140 and 608.016, (2) Jackson-Williams' individual claims for failure to pay minimum wages in violation of the Nevada

² NRAP 3A(b)(1) states that an appeal may be taken from a judgment and order of a district court in a civil cause of action if final judgment is an action or proceeding commenced in the court in which judgment is entered.

Constitution, and (3) Defendants' failure to timely pay Jackson-Williams all wages due and owing in violation of NRS 608.140 and 608.020.050.

Plaintiffs' Counsel, Ms. Leah L. Jones met and conferred with Defendants' Counsel, Ms. Susan Heaney Hilden on April 22, 2021 to discuss Plaintiffs' position. Id. at ¶¶9-11. Defendants' Counsel, Ms. Hilden stated that it was Defendants' position that all of Plaintiffs' claims had been fully and finally adjudicated as indicated by this Court's language that, "...summary judgment is entered in favor of GSR and against the Plaintiffs." Id. at ¶10. Plaintiffs' Counsel Jones asked if Defendants would be willing to file a joint motion for clarification, but Counsel Hilden said, "It is not in the best interest of my client" and that Plaintiff should "do what you have to do." Id. at 11.

Accordingly, because there is ambiguity between the Parties as to whether or not this Court still has jurisdiction over Plaintiff Jackson-Williams' claims, Plaintiffs seek clarification from the Court.

III. ARGUMENT

A. Authority Of Jurisdiction Of The Courts And Finality Of Judgement

This Court has original jurisdiction over the state law claims alleged herein because Plaintiffs' complaint was filed as a putative class action, alleged the amount in controversy exceeded \$15,000, and a party seeking to recover unpaid wages has a private right of action pursuant to the Nevada Constitution, Article 15 Section 16, and Nevada Revised Statute ("NRS") Chapter 608. See First Amended Complaint, at ¶1, citing Neville v. Eighth Judicial Dist. Court, Terrible Herbst, Inc., 133 Nev. Adv. Op. 95, 406 P.3d 499 (Dec. 7, 2017).

Nevada Rules of Civil Procedure (“NRCP”) 54(a) defines “Judgment” as “a decree and any order from which an appeal lies.” Nevada Rules of Appellate Procedure (“NRAP”) 3A(b) provides for standing to appeal and appealable determinations in civil actions. “Pursuant to NRAP 3A(b)(1), an appeal may be taken from a final judgment in an action or proceeding.” See Lee v. GNLV Corp., 116 Nev. 424, 426–27, 996 P.2d 416, 417 (2000) (internal quotations marks omitted). “Judgment, as the term is used in the Nevada Rules of Civil Procedure, includes any *order* from which an appeal lies.” Id. at 427, citing NRCP 54(a) (emphasis in original). “Accordingly, this court has customarily adopted the view that the finality of a district court’s order depends not so much on its label as an ‘order’ or a ‘judgment,’ but on what the ‘order’ or ‘judgment’ substantively accomplishes.” Id.

Additionally, NRCP 54(b) - Judgment on Multiple Claims or Involving Multiple Parties states:

When an action presents more than one claim for relief — whether as a claim, counterclaim, crossclaim, or third-party claim — or when multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay. Otherwise, any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties’ rights and liabilities.

See NRCP 54(b).

B. The November 3, 2020 Order Granting Summary Judgment

In this Court’s November 3, 2020 Order granting Defendants’ Motion for Summary Judgment at Section V Conclusion and Order, the Court held:

“Based on the foregoing findings of fact and conclusions of law and good cause appearing therefore,
IT IS HEREBY ORDERED summary judgment is entered in favor of GSR and against Plaintiffs.”

See 11/3/20 Order at Section IV, p. 22:15-19.

There were four original named Plaintiffs in this action: Plaintiff Martel, Plaintiff Capilla, Plaintiff Jackson-Williams, and Plaintiff Vaughan. In this Court Order granting in part and denying in part Defendants’ motion to dismiss, the Court held that a two-year statute of limitations applies to NRS 608 wage claims, and “[a]s such, the Court dismisses all Ms. Capilla and Ms. Vaughan’s claims, all but one (1) month of Mr. Martel’s claims, and all but eighteen months of Ms. Jackson-Williams’ claims. However, the Court declines to dismiss the remaining claims at this time.” See 6/6/19 Order at Section III, p. 14:9-13. Accordingly, the only two Plaintiffs before this Court as of June 7, 2019, were Mr. Martel and Ms. Jackson-Williams.

Here, Plaintiffs seek clarification based on the analysis in the Court’s 11/3/20 Order that seems to indicate Ms. Jackson-Williams’ first, second, and fourth causes of action remain pending before this Court; specifically: (1) Jackson-Williams’, individual claim for failure to compensate for all hours worked in violation of NRS 608.140 and 608.016, (2) Jackson-Williams’ individual claims for failure to pay minimum wages in violation of the Nevada Constitution, and (3) Defendants’ failure to timely pay Jackson-Williams all wages due and owing in violation of NRS 608.140 and 608.020.050.

In the 11/3/20 Order this Court at Sec. III, p. 10, ¶¶8 found that “Ms. Jackson-Williams was employed as a guest room attendant from April 24, 2014, through December 2015.

In Sec. IV, “Conclusion of Law” pp. 12-13, ¶2, this Court held, “[a] two-year statute of limitations applies to actions for failure to pay minimum wages in violation of the Nevada constitution.” Furthermore, at ¶3, this Court reasoned that “[t]he two-year statute of limitation period applies to NRS 608 statutory wage claims that are analogous to a cause of action for failure to pay an employee the lawful minimum wage.” At ¶¶ 4-5 this Court concluded NRS 608.040 and NRS 608.050 provide for continuation wages after termination of employment. And, at ¶6, that these claims are derivative of the underlying action. Accordingly, at ¶7, this Court concluded that “[a] two-year statute of limitation applies to the claims in this action. Claims which accrued prior to June 14, 2014, are therefore barred by the statute of limitations.”

In the 11/3/20 Order, Sec. IV.A, “Conclusion of Law” p. 15, ¶ 17 this Court concluded, “[a]fter application of the two-year statute of limitation, Ms. Jackson-Williams’ claims remain for an eighteen-month period only.”

This Court then analyzed whether a purported collective bargaining agreement (“CBA”) was operational. The Court concluded it was. See 11/3/20 Order, Sec. IV.B, pp. 16-17 at ¶22. The next question the 11/3/20 Order tackled was whether the CBA barred Ms. Jackson-Williams, an alleged member of the culinary union, must follow the CBA’s grievance procedure for her claims pursuant to NRS 608.140 and 608.016, Nevada Constitution minimum wage, and continuation wages pursuant to NRS 608.020-.050. In holding that Ms. Jackson-Williams’ claims “are not preempted, and the claims are not mandated to proceed through the grievance procedure of the CBA” the 11/3/20 Order cited the fact that “[t]he State of Nevada provides independent statutory rights to each of Ms. Jackson-Williams’ claims through the Nevada Revised Statute and the

Nevada Constitution.” See 11/3/20 Order at pp. 19-20, ¶33. This Court cited to Albertsons’ Inc. v. United Food & Safety Commercial Workers Union for the proposition that “in filing a lawsuit under [a statute], an employee asserts independent statutory rights ... The distinctly separate nature of these contractual and statutory rights is not vitiated merely because both were violated as a result of the same factual occurrence.” Id. at p. 20:4-8 citing Albertsons’ Inc. v. United Food & Safety Commercial Workers Union, ALF-CIO & CLC, 157 F.3d 758, 761-62 (9th Cir. 1998).

Thus, Ms. Jackson-Williams’ individual claims for: (1) failure to compensate for all hours worked in violation of NRS 608.140 and 608.016, (2) failure to pay minimum wages in violation of the Nevada Constitution, and (3) failure to receive all wages due and owing in violation of NRS 608.140 and 608.020.050 remain pending before this Court and are not ripe for appeal. Accordingly, Plaintiffs seeks clarification.

C. Plaintiffs’ Request For An Order Of Final Judgment Pursuant To NRCP 54(b)

Pursuant to NRCP 54(b), a court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay. Should this Court hold that the 11/3/20 Order did not fully and finally adjudicate all of Plaintiffs’ claims, Plaintiffs request that the Court enter final judgment pursuant to NRCP 54(b) on three of this Court’s holdings. Specifically: (1) Plaintiffs’ NRS 608.016, 608.018, and 608.020-.050 carry a two-year statute of limitation as opposed to the general 3-year limitation period pursuant to NRS 11.190(3)(a); (2) Plaintiffs NRS 608.020-.050 continuation claims begin to run on the last day an employee works as opposed to 30-days after the employment relations ends; and

(3) Plaintiffs' claims for overtime pursuant to NRS 608.140 and 608.018 are barred because a CBA "provides otherwise for overtime."

1. The Court's decision that NRS 608.016, 608.018, and 608.020-.050 carry a two-year statute of limitation.

In the 11/3/20 Order at Sec. IV.A, "Conclusion of Law" p. 12, ¶12, this Court held "[a] two-year statute of limitations applies to actions for failure to pay minimum wages in violation of the Nevada constitution." This holding is a final determination of all of the Parties claims pursuant to Nevada Constitution Minimum Wage Amendment, regardless of the outcome of Ms. Jackson-Williams individual claims for relief. Because Plaintiffs' action presented more than one claim for relief and was brought as an NRCP 23 class action, NRCP 54(b) provides this Court with the authority to direct entry of a final judgment as to one or more, but fewer than all, claims or parties.

Here, Plaintiffs' appeal is pending in the Supreme Court of Nevada, subject to an Order to Show Cause why the appeal should not be dismissed. See Jones Dec, at ¶ 12. The Parties have already participated in NRAP 16(d) settlement discussions through the Supreme Courts' settlement program, but efforts were unsuccessful. Id. at ¶7. Plaintiffs' filed their amended docketing statement on April 30, 2021, and the Opening Brief and Joint Appendix are ready to be filed pending the Order to Show Cause. Id. at ¶ 12. Thus, there is no just reason for delay on decision of this particular legal question.

Accordingly, should this Court clarify that the 11/3/20 Order was not a final judgment on all parties and claims, Plaintiffs respectfully request that this Court enter final judgment as to the limitations' period of Plaintiffs' Nevada Constitution minimum wage claims.

2. The Court's decision that NRS 608.020-.050 continuation claims begin to run on the last day an employee works as opposed to 30-days after the employment relations ends.

In the 11/3/20 Order at Sec. IV, "Conclusion of Law" p. 12, ¶4 this Court held NRS 608.040 and NRS 608.050 provide for continuation wages after termination of employment. And, at p. 13, ¶6, that these claims are derivative of the underlying action. At ¶7, this Court concluded that "[a] two-year statute of limitation applies to the claims in this action. Claims which accrued prior to June 14, 2014, are therefore barred by the statute of limitations."

Additionally, in the 11/3/20 Order at Sec. IV, "Conclusion of Law" p. 14, ¶¶9-12, this Court concluded that NRS 608.050 was not applicable to Mr. Martel because he resigned his employment, NRS 508. 040 does not apply to wages that are not accrued during the final pay period of the employee, and because no underlying claims took place during the last week of Mr. Martel's employment, "[t]he two-year statute of limitation period applies."

Because Plaintiffs' action presented more than one claim for relief and was brought as an NRCP 23 class action, NRCP 54(b) provides this Court with the authority to direct entry of a final judgment as to one or more, but fewer than all, claims or parties. Plaintiffs appeal is pending in the Supreme Court of Nevada, subject to an Order to Show Cause why the appeal should not be dismissed. The Parties have already participated in mediation through the Supreme Courts' mediation program, which was unsuccessful, Plaintiffs' filed their amended docketing statement on April 30, 2020, and the Opening Brief and Joint Appendix are ready to be filed pending the Order to Show Cause. Thus, there is no just reason for delay on decision of this particular legal question.

Accordingly, should this Court clarify that the 11/3/20 Order was not a final judgment on all parties and claims, Plaintiffs respectfully request that this Court enter final judgment as to Plaintiffs' NRS 608.020-.050 continuation wage claims.

3. The Court's decision that a CBA "provides otherwise of overtime" such that Plaintiffs NRS 608.104 and 608.018 overtime claims are barred.

In the 11/3/20 Order at Sec. IV.B, "Conclusions of Law – CBA Validity and Ability to Provide Otherwise for Overtime" pp. 16-17, ¶¶22, this Court held the CBA was valid and operative. At p. 19, ¶¶28, this Court concluded that the CBA "provides otherwise for Ms. Jackson-Williams' claims for overtime and NRS 608.018 does not provide a legal basis for her claims." This holding is a final determination of all of the Parties' claims pursuant to NRS 608.140 and 608.018, regardless of the outcome of Ms. Jackson-Williams individual claims for relief. Because Plaintiffs' action presented more than one claim for relief and was brought as an NRCP 23 class action, NRCP 54(b) provides this Court with the authority to direct entry of a final judgment as to one or more, but fewer than all, claims or parties.

Here, Plaintiffs' appeal is pending in the Supreme Court of Nevada, subject to an Order to Show Cause why the appeal should not be dismissed. See Jones Dec, at ¶ 12. The Parties have already participated in NRAP 16(d) settlement discussions through the Supreme Courts' settlement program, but efforts were unsuccessful. Id. at ¶¶7. Plaintiffs' filed their amended docketing statement on April 30, 2021, and the Opening Brief and Joint Appendix are ready to be filed pending the Order to Show Cause. Id. at ¶ 12. Thus, there is no just reason for delay on decision of this particular legal question.

Accordingly, should this Court clarify that the 11/3/20 Order was not a final judgment on all parties and claims, Plaintiffs respectfully request that this Court enter final judgment as to the CBA providing otherwise for overtime such that Plaintiffs' NRS 608.140 and 608.018 claims are barred.

IV. CONCLUSION

Because there is disagreement between the parties as to whether this Court's 11/3/20 Order fully and finally adjudicated all of the Parties claims and for the reasons set forth above, Plaintiffs seek clarification of this Court's 11/3/20 Order. In addition, should the Court clarify that there are claims still pending before this Court on behalf of Plaintiff Jackson-Williams, Plaintiffs seek an Order from the Court pursuant to NRCP 54(b) on three questions of law that are ripe for appeal.

DATED: May 5, 2021

Respectfully Submitted,

THIERMAN BUCK LLP

/s/ Leah L. Jones

Mark R. Thierman

Joshua D. Buck

Leah L. Jones

Joshua R. Hendrickson

Attorneys for Plaintiffs

AFFIRMATION

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

DATED: May 5, 2021

Respectfully Submitted,

THIERMAN BUCK LLP

/s/ Leah L. Jones

Leah L. Jones

Attorney for Plaintiffs

INDEX OF EXHIBITS

Exhibit 1: November 3, 2020 Order

Exhibit 2: June 7, 2019 Order

Exhibit 3: Plaintiffs' Supreme Court of Nevada Notice of Appeal

Exhibit 4: April 29, 2021, Supreme Court of Nevada Order Granting Motion to Amend Docketing Statement and Order to Show Cause

CERTIFICATE OF SERVICE BY E-FILING

I certify that I am an employee of Thierman Buck LLP and that, on this date, I electronically filed the foregoing with the Clerk of the Court by using the ECF system, which will send a notice of electronic filing to the following:

MERUELO GROUP, LLC

Susan Heaney Hilden
shilden@meruelogroup.com
2500 East Second Street
Reno, Nevada 89595
Tel: (775) 789-5362

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct. Executed on May 5, 2021, at Reno, Nevada.

/s/ Jennifer Edison-Strekal

EXHIBIT C

Order Shortening Time

EXHIBIT C

3370

IN THE SECOND JUDICIAL DISTRICT FOR 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,

vs.

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

Defendants.

Case No.: CV16-01264

Dept. No.: 6

ORDER TO SHORTEN TIME

This matter concerns Plaintiffs 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 Motion for Clarification of the November 3, 2020 Order granting Defendants' Motion to Dismiss Department XI of the Second Judicial District Court of the Washoe County, Nevada, Honorable Lynne K. Simons presiding.

After considering Plaintiffs' Motion and supporting Exhibits, and for the reasons set forth herein, Plaintiffs' Motion for Order Shortening Time is GRANTED.

I.

II. PERTINENT PROCEDURAL HISTORY

This action arises out of an employment dispute between Plaintiffs and their employer, Defendants HG STAFFING, LLC, MEI-GSR HOLDINGS LLC d/b/a GRAND SIERRA RESORT (“GSR”) regarding alleged unpaid wages to Plaintiffs and all other similarly situated employees. Plaintiffs filed their original class action complaint (“*Complaint*”) on June 14, 2016 in the Second Judicial District Court of the State of Nevada in and for the County of Washoe. Plaintiffs filed their jury demand the next day. Plaintiffs allege various causes of action for unpaid wages on behalf of themselves and all similarly situated individuals for failure to: (1) compensate for all hours worked in violation of NRS 608.140 and 608.016; (2) pay minimum wages in violation of the Nevada Constitution; (3) pay overtime in violation of NRS 608.140 and 608.018; and (4) failure to timely pay all wages due and owing in violation of NRS 608.140 and 608.020-050.

On October 9, 2018, the Court entered its Order Granting Defendants’ Motion to Dismiss, holding Plaintiffs failed to provide sufficient information to support their claims, thereby granting Defendants’ Motion. Thereafter, Plaintiffs filed a Motion for Reconsideration of the Court’s Order Granting Defendants’ Motion to Dismiss or in the Alternative Leave to File an Amended Complaint pursuant to NRCP Rule 60(b). After full briefing, the Court granted Plaintiffs’ leave to file an amended complaint, on January 9, 2019.

On January 29, 2019, Plaintiffs filed their First Amended Complaint (“FAC” and operative complaint) asserting the same four (4) causes of action. Defendants filed a Motion to Dismiss First Amended Complaint, pursuant to NRCP 12(b)(5) which was fully briefed as of March 11, 2010.

On June 7, 2019, the Court entered its Order Granting, in Part, and Denying, in Part, Motion to Dismiss. See June 7, 2019 Order. The Court held that a two-year statute of limitation applies to Appellants’ statutory NRS 608.016, 608.018, and 608.020-.050 wage claims. As such, the Court dismissed all of Ms. Capilla’s and Ms.

Vaughan's claims, all but one (1) month of Mr. Martel's claims, and all but eighteen (18) months of Ms. Jackson-Williams' claims.

Defendants filed their Answer to Appellants FAC on June 28, 2019.

On June 9, 2020 Defendants filed a renewed motion for summary judgment which was fully briefed on July 16, 2020. On November 3, 2020, Court granted Defendants' Second MSJ, "in favor of GSR and against the Plaintiffs."

The November 3, 2020 Order granting Defendants' Motion for Summary Judgment at Section V Conclusion and Order held:

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

IT IS HEREBY ORDERED summary judgment is entered in favor of GSR and against Plaintiffs."

III. LEGAL STANDARD

Rule 11(2) of the Washoe District Court Rules ("WDCR"), Extension or shortening of time states that "[u]pon presentation of a motion for [extension or shortening of time], if a satisfactory showing is made to the judge that a good faith effort has been made to notify opposing counsel of the motion, and the judge finds good cause therefor, the judge may order ex parte" shortening of time. Id.

IV. Plaintiffs' Have Made A Satisfactory Showing to Shorten Time

Plaintiffs argue that because the language of this Court's 11/3/2020 Order states, "summary judgement is entered ... against Plaintiffs," and the word plaintiffs being plural, in comparison to the conclusions contained within the analysis of the Order specific to Plaintiff Jackson-Williams, there is ambiguity as to whether Ms. Jackson-Williams claims are still pending before this Court.

1 Through declaration, Plaintiffs' Counsel, Ms. Leah L. Jones asserts she met and
2 conferred with Defendants' Counsel, Ms. Susan Heaney Hilden on April 22, 2021 to
3 discuss Plaintiffs' position on needed clarification of the 11/3/20 Order. Defendants'
4 Counsel, Ms. Hilden stated that it was Defendants' position that all of Plaintiffs' claims
5 had been fully and finally adjudicated as indicated by this Court's language that,
6 "...summary judgment is entered in favor of GSR and against the Plaintiffs." Plaintiffs'
7 Counsel Jones asked if Defendants would be willing to file a joint motion for
8 clarification, but Counsel Hilden stated, "It is not in the best interest of my client" and
9 that Plaintiff should "do what you have to do."

11 Based on Plaintiffs' arguments, the Nevada Supreme Court entered an *Order*
12 *Granting Motion and to Show Cause* on April 29, 2021. Plaintiffs have until May 29,
13 2021 to gain clarification on the 11/3/2020 Order and apprise the Nevada Supreme
14 Court of the results. Time is therefore of the essence.

16 Accordingly, Plaintiffs have made a satisfactory showing that a good faith effort
17 has been made to notify opposing counsel of the motion.

19 VII. Conclusion And Order

20 The Court notes that Plaintiffs have made a satisfactory showing that a good
21 faith effort has been made to notify opposing counsel of the motion.

22 Accordingly, and based on the foregoing,

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THIERMAN BUCK, LLP
7287 Lakeside Drive
Reno, NV 89511
(775) 284-1500 Fax (775) 703-5027
Email: info@thiermanbuck.com; www.thiermanbuck.com

1 IT IS ORDERED: Plaintiffs' Motion to Shorten Time is GRANTED.

2 IT IS SO ORDERED briefing on Plaintiffs' Motion for Clarification of November
3 3, 2020 Order Granting Summary Judgment in Favor of Defendants must be
4 completed at submitted to the Court by the end of business on May 13, 2021.

5 Dated this 10th day of May, 2021

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8 LYNNE K. SIMONS
9 DISTRICT JUDGE
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EXHIBIT D

Plaintiffs Request for Submission

EXHIBIT D

3860

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Attorneys for Plaintiffs

IN THE SECOND JUDICIAL DISTRICT COURT OF

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,

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

Dept. 6

PLAINTIFFS' REQUEST FOR SUBMISSION

On May 5, 2021, Plaintiffs filed a Motion for Clarification of the Court's November 3, 2020 Order Granting Summary Judgment in Favor of Defendants ("Motion for Clarification"). An Order to Shorten Time was entered on May 10, 2021 directing briefing on Plaintiffs' Motion for Clarification to be completed by the end of business on May 13, 2021. Plaintiffs immediately provided notice to Defendants through the filing of a Notice

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of Entry of Order to Shorten Time on May 10, 2021. As of the date of this Request for Submission, Defendants have not filed a response to Plaintiffs' Motion for Clarification. Therefore, Plaintiffs request that their Motion for Clarification be submitted to the Court for decision as soon as practicable.

AFFIRMATION

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

Dated: May 25, 2021.

Respectfully submitted,

/s/ Leah L. Jones

Mark R. Thierman
Joshua D. Buck
Leah L. Jones
Joshua R. Hendrickson

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I certify that I am an employee of Thierman Buck, LLP and that, on this date, I electronically filed the foregoing with the Clerk of the Court by using the electronic 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

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct. Executed on May 25, 2021, at Reno, Nevada.

/s/ Brittany Manning

Brittany Manning