

**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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Case No. 82161 Jun 22 2021 05:31 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

District Court Case No.: CV16-01264

**APPELLANTS' SUPPLEMENTAL RESPONSE TO  
ORDER TO SHOW CAUSE AND REQUEST TO REINSTATE/SET  
BRIEFING SCHEDULE**

Mark R. Thierman, Nev. Bar No. 8285  
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*Attorneys Plaintiffs-Appellants*

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 June 18, 2021 Order to Show Cause as follows:

### **STATEMENT OF PROCEDURAL HISTORY**

On April 29, 2021, this Court originally issued an order to show cause regarding the Appellants’ notice of appeal as to the District Courts’ grant of summary judgment. Appellants’ filed a response to this Court’s order to show Cause why this appeal should not be dismissed for lack of jurisdiction on June 1, 2021. Respondents (or “GSR”) did not file a response.

On June 18, 2021, this Court construed Appellants’ Response to Order to Show Cause as a “motion for an extension of time to respond to this court’s order to show cause” pending clarification from the District Court.

On June 21, 2021, the District Court entered its Order clarifying that “summary judgment is entered in favor of GSR and on each of Plaintiff Jackson-Williams’ remaining claims.” A true and correct copy of the District Court’s June 21, 2021 Order is attached as Exhibit A, hereto, hereinafter “District Court’s Clarification.”

## ANALYSIS

The District Court's Clarification provides this Court with jurisdiction because the District Court fully and finally adjudicated all of Plaintiffs-Appellants claims pursuant to NRAP 3A(b)(1).

Accordingly, Appellants request that this Court reinstate/set a briefing schedule.

## CONCLUSION

The District Court's Clarification fully and finally adjudicated all of Appellants' claims, providing jurisdiction in this Court such that this Court should reinstate/set a briefing schedule.

June 22, 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' SUPPLEMENTAL RESPONSE TO ORDER TO SHOW CAUSE AND REQUEST TO REINSTATE/SET BRIEFING SCHEDULE** was served on the following by using the Supreme Court's eFlex System:

Susan Heaney Hilden, Esq.  
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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 22, 2021, at Reno, Nevada.

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

# **EXHIBIT A**

District Court's Clarification

# **EXHIBIT A**

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 MOTION FOR CLARIFICATION OF**  
22 **NOVEMBER 3, 2020 ORDER; ORDER CLARIFYING PRIOR ORDER**

23 Before this Court is the *Plaintiffs' Motion for Clarification of November 3, 2020 Order*  
24 *Granting Summary Judgment in Favor of Defendants ("Motion")* filed by Plaintiffs EDDY  
25 MARTEL (also known as MARTEL-RODRIGUEZ) ("Mr. Martel"), MARY ANNE CAPILLA  
26 ("Ms. Capilla"), JANICE JACKSON-WILLIAMS ("Ms. Jackson-Williams"), and WHITNEY  
27 VAUGHAN ("Ms. Vaughan") (collectively, "Plaintiffs"), by and through their counsel of  
28 record, Thierman Buck, LLP.

1 Defendants HG STAFFING, LLC and MEI-GSR HOLDINGS, LLC d/b/a GRAND  
2 SIERRA RESORT (collectively, "GSR" unless individually referenced) did not file an  
3 opposition and the Court now deems the matter submitted pursuant to the *Order Shortening*  
4 *Time* entered May 10, 2021.

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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.

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

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

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18 On May 23, 2019, GSR filed the *Motion for Summary Judgment on all Claims*  
19 *Asserted by Plaintiffs Martel, Capilla and Vaugh (sic)* ("*First MSJ*") and argued Plaintiffs  
20 claims are barred by claim preclusion. *First MSJ*, p. 4. On July 8, 2019, GSR filed  
21 *Defendants' Second Motion for Summary Judgment as to Plaintiff Martel; Motion for*  
22 *Summary Adjudication on Plaintiffs' Lack of Standing to Represent Union Employees; and*  
23 *Motion for Summary Judgment as to Plaintiff Jackson-Williams* ("*Second MSJ*"). GSR made  
24 the following arguments: (1) Plaintiff Martel's claims are time-barred; (2) Plaintiffs lack  
25 standing to represent Union employees who are exclusively represented by their unions; (3)  
26 Plaintiff Jackson-Williams' claims are barred for failing to exhaust grievance procedures of  
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1 the Culinary Collective Bargaining Agreement (“CBA”) and/or based on federal preemption;  
2 and (4) Plaintiff Jackson-Williams’ claim for overtime is barred pursuant to NRS 608.018  
3 because the CBA provides otherwise for overtime. See *Second MSJ*, generally.  
4

5 Before this Court could render a decision on the *First MSJ* and *Second MSJ*, GSR  
6 filed the *Notice of Filing Petition for Writ of Mandamus and/or Prohibition* (“*Petition*”) with the  
7 Supreme Court of Nevada on July 9, 2019. In the *Petition*, GSR argued the dismissal of  
8 Plaintiff’s first, third, and fourth claims for relief are mandatory because Plaintiff failed to  
9 exhaust administrative remedies as required by NRS Chapter 607, legislative mandated  
10 remedies must be exhausted despite an implied private right of action, and NRS 607.215  
11 requires plaintiffs to exhaust administrative remedies before plaintiffs pursue wage claims  
12 under NRS 608.005 to 608.195. See *Petition*, generally. The Court subsequently entered  
13 the *Order Re Stipulation to Stay All Proceedings and Toll of the Five Year Rule*  
14 (“*Stipulation*”) on July 17, 2019, and withdrew GSR’s pending motions for summary  
15 judgment without prejudice, allowing renewal upon the Supreme Court of Nevada’s  
16 decision. *Stipulation*, p. 9.  
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19 On May 7, 2020, the Supreme Court of Nevada entered the *Order Denying Petition*.  
20 The Supreme Court of Nevada reasoned that Neville v. Eighth Judicial Dist. Court held, by  
21 necessary implication, that exhaustion of administrative remedies is not required before  
22 filing an unpaid-wage claim in district court. 133 Nev. 77, 406 P.3d 499 (2017).  
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24 On June 9, 2020, GSR filed the *Defendants Motion for Summary Judgment, or in the*  
25 *Alternative, Summary Adjudication* (“*Third MSJ*”) and renewed the claims presented in the  
26 *Second MSJ* filed on May 23, 2019. On November 3, 2020, the Court entered the *Order*  
27 *Granting Motion for Summary Judgment* (“*November Order*”). Plaintiffs filed the *Plaintiffs’-*  
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1 *Petitioners' Notice of Appeal Pursuant to NRAP 3(c)* on November 25, 2020.

2 On May 5, 2021, Plaintiffs filed the instant *Motion* and a *Motion for Order Shortening*  
3 *Time* (“*OST Motion*”). In the *OST Motion*, Plaintiffs explained they believe the Court’s  
4 *November Order* was ambiguous concerning Plaintiff Jackson-Williams’ claims and  
5 clarification of the *November Order* is necessary for Plaintiffs’ appeal to proceed. *OST*  
6 *Motion*, p. 2. Plaintiffs state the Supreme Court of Nevada has given Plaintiffs until May 28,  
7 2021, to show cause why the appeal should not be dismissed, thus creating good cause for  
8 an order shortening time to brief the *Motion*. *OST Motion*, p. 4.

9 On May 10, 2021, the Court entered the *Order to Shorten Time* and ordered briefing  
10 on the *Motion* to be complete and submitted to the Court by the end of business on May 13,  
11 2021. The Court received no further briefing.

12 In the *Motion*, Plaintiffs state the Court’s *November Order* granted, in part, and  
13 denied, in part, Defendants’ *Third MSJ* because the *November Order* only entered summary  
14 judgment against Plaintiff Jackson-Williams on her overtime claim and did not enter  
15 judgment against her remaining wage claims under NRS 608.140 and 608.016, the Nevada  
16 Constitutional Minimum Wage Amendment, and NRS 608.020-050. *Motion*, p. 7. Plaintiffs  
17 request an order of final judgment pursuant to NRCP 54(b) if this Court finds the *November*  
18 *Order* did not fully and finally adjudicate all of Plaintiffs’ claims. *Motion*, p. 12.

19 The Court grants Plaintiffs’ request and clarifies its intent to enter summary judgment  
20 in favor of Defendants regarding each of Ms. Jackson-Williams’ claims. The Court  
21 acknowledges eighteen (18) months of Ms. Jackson-Williams’ claims were not time-barred.  
22 *November Order*, p. 15, ¶ 17. However, Ms. Jackson-Williams claims for Failure to Pay  
23 Overtime Wages in Violation of NRS 608.140 and 608.018 are barred because the Court  
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1 found the CBA provided otherwise for overtime and wages. *November Order*, p. 19, ¶ 28.  
2 While the Court did find Ms. Jackson-Williams' could proceed without undertaking the  
3 grievance procedure of the CBA, the Court nevertheless found Ms. Jackson-Williams did not  
4 have standing to bring her claims because Plaintiffs did not prove the union as a bargaining  
5 agent breached its duty of fair representation in its representation of the employees, barring  
6 her claims. *November Order*, p. 21, ¶ 39. Accordingly, the Court found summary judgment  
7 appropriate in favor of Defendants and against each of Ms. Jackson-Williams' claims.  
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9 **II. ORDER.**

10 Based on the foregoing, and good cause appearing thereto,  
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12 **IT IS HEREBY ORDERED** *Plaintiffs' Motion for Clarification of November 3, 2020*  
13 *Order Granting Summary Judgment in Favor of Defendants* is GRANTED.

14 **IT IS FURTHER ORDERED** the *November Order* is clarified as set forth herein and  
15 summary judgment is entered in favor of GSR and on each of Plaintiff Jackson-Williams'  
16 remaining claims.  
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18 Dated this 21st day of June, 2021.

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21 DISTRICT JUDGE  
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1 CERTIFICATE OF SERVICE

2 I certify that I am an employee of THE SECOND JUDICIAL DISTRICT  
3 COURT; that on the 21st day of  
4 June, 2021, I electronically filed the foregoing with the Clerk of  
5 the Court system which will send a notice of electronic filing to the following:

6  
7  
8 SUSAN HILDEN, ESQ.  
9 JOSHUA BUCK, ESQ.  
10 MARK THIERMAN, ESQ.  
11 H. JOHNSON, ESQ.  
12  
13  
14

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

21 *Heidi Boe*  
22 \_\_\_\_\_  
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