IN THE SUPREME COURT OF THE STATE OF NEVADA

EDDIE MARTEL (also known as MARTEL-RODRIGUEZ), MARY ANNE CAPILLA, JANICE JACKSON-WILLIAMS and WHITNEY VAUGHAN, on behalf of themselves and all others similarly situated, Appellants, vs. HG STAFFING LLC; AND MEI-GSR HOLDINGS LLC, Respondents.	Docket Number: 82161 District Court Case No.: A-16-01264

JOINT APPENDIX VOLUME 3 OF 16

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ORDERS ON APPEAL

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11/3/2020	Order Granting Respondents' Motion for Summary Judgment	15	2942 - 2964
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MEMORANDUM OF AGREEMENT
Banquet Food Servers — Work Rules

THIS AGREEMENT is made and entered into this _____ day of _____, 20____, by and between WORKLIFE FINANCIAL, INC. dba GRAND SIERRA RESORT(hereinafter referred to as "Employer") and the CULINARY WORKERS UNION LOCAL 226 (hereinafter referred to as "Union"), and attached to and made a part of the Collective Bargaining Agreement.

1. The Banquet Food Servers Core List will be comprised of up to fifteen (15) employees.

2. Scheduling will be done in order of seniority, first from the Core List, then from the "A" list.

3. Scheduled events for the upcoming week will be posted in the Banquet Office.

4. Core List Banquet Servers must sign up for work on the Server Sign-Up Sheet at sign-ups on Wednesday at 11 a.m.

5. Core List Servers and Captains must be available for a minimum of forty (40) hours per week when business needs warrant.

6. Work will be assigned to those Core List Servers who have not signed up for work five (5) days prior to the function and who do not have at least forty (40) hours per week.

7. All event service charge distributions will be posted in the Banquet Office and at the Red Table within seventy-two (72) hours of the event.

8. Employees must sign in and out, and must notify management immediately of any discrepancies in the posted gratuity sheets.

9. The Company will disclose menu items in the BEO (example: steak, chicken, fish or pretzels).

10. The Company will have a designated stationary sign-up area for each function, which will be located in the Convention Gray Area.

11. Core List Servers and "A" List Servers will be scheduled by seniority "B" List Servers will be scheduled by rotation.

12. Servers who leave the Core List but wish to continue working will move to the top of the "A" List.

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13. Any function that is scheduled within seventy-two (72) hours preceding the function shall be considered a pop-up event. Pop-up events will be scheduled by expedient seniority.

IN WITNESS WHEREOF, the parties hereby by their duly designated representatives have hereunto set their hands this _____ day of _____, _____, in Clark County, State of Nevada.

FOR THE EMPLOYER:

WORKLIFE FINANCIAL, INC. dba GRAND SIERRA RESORT

By:_____

Its:_____

FOR THE UNION:

LOCAL JOINT EXECUTIVE BOARD OF LAS VEGAS

By:_____

Its: President

By:_____

Its: Secretary-Treasurer

MEMORANDUM OF AGREEMENT
Scheduling of Banquet Food Servers

Banquet Food Servers may be required to call a designated number reserved exclusively for banquet scheduling each week to advise the Scheduling Coordinator (or leave a message) of his/her availability for the upcoming workweek.

The Scheduling Coordinator will notify Banquet Food Servers of their upcoming weekly schedule by phone. It is understood that if the Coordinator is unable to reach the Banquet employee personally, and cannot leave a message, the Coordinator may proceed to the next Banquet employee on the list for distributing banquet food function assignments.

The Scheduling Coordinator shall allow a reasonable amount of time for Banquet Food Servers to respond to messages that are left with an individual or on a telephone-answering device.

IN WITNESS WHEREOF, the parties hereby by their duly designated representatives have hereunto set their hands this _____ day of _____, _____, in Clark County, State of Nevada.

FOR THE EMPLOYER:

WORKLIFE FINANCIAL, INC. dba GRAND SIERRA RESORT

By:_____

Its:_____

FOR THE UNION:

LOCAL JOINT EXECUTIVE BOARD OF LAS VEGAS

By:_____

Its: President

By:_____

Its: Secretary-Treasurer

MEMORANDUM OF AGREEMENT
Coffee Service

THIS AGREEMENT is made and entered into this _____ day of _____, 20___, by and between WORKLIFE FINANCIAL, INC. dba GRAND SIERRA RESORT (hereinafter referred to as "Employer") and the CULINARY WORKERS UNION LOCAL 226 (hereinafter referred to *as* "Union"), and attached to and made a part of the Collective Bargaining Agreement.

The parties hereby agree to the following terms:

Coffee Service shall be responsible for the following:

1. All bag lunches for under five hundred (500) people;

2. All working lunches;

3. All roll-in Continental Breakfasts;

4. All roll-in Theme Breaks;

5. All Deli lunches for fewer than sixty (60) people;

6. All roll-in breaks that are not full sit-down service, other than receptions and/or pop-ups, which shall continue to be at management's discretion;

7. Coffee Service Department shall have a Coffee Core List of not more than three (3) people. The Core List must be available for the Coffee Department functions before the Banquet Department, and shall be accessed prior to any other crew for scheduling extras.

8. The Coffee Captains (days) and Assistant (afternoons) shall receive the same tip as the rest of the crew.

9. Opportunities for promotion to the supervisory position shall be offered within the Department whenever possible.

10. The Company will make available all equipment necessary for personnel to complete assigned duties and tasks.

11. The Coffee Department is responsible for set-up and break-down of Coffee Department functions.

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12. The Coffee Department is responsible for ordering and/or stocking of supplies for all Department functions.

IN WITNESS WHEREOF, the parties hereby by their duly designated representatives have hereunto set their hands this _____ day of _____, _____, in Clark County, State of Nevada.

FOR THE EMPLOYER:

WORKLIFE FINANCIAL, INC. dba GRAND SIERRA RESORT

By:_____

Its:_____

FOR THE UNION:

LOCAL JOINT EXECUTIVE BOARD OF LAS VEGAS

By:_____

Its: President

By:_____

Its: Secretary-Treasurer

SIDE LETTER #1
Slot Techs

After passing a probationary period of three (3) months, all new hires who have past experience of two (2) years or more in the industry (or a similar industry) as a Slot Tech will have the opportunity to take a test for the purpose of determining their skill level. If the employee passes the test, he will become a Slot Tech I when a position becomes available. All new hires with less than two (2) years of experience in the industry (or similar industry) who fail to pass the test must complete a two (2)-year training period as an Apprentice Slot Tech.

After completing two (2) years as a Slot Tech I, the employee will have the opportunity to take a test to determine ~~their~~his/her skill level. If the employee passes the test, he/she will be promoted to a Slot Tech II when a position becomes available.

After passing the probationary period, all new hires that have four (4) years of experience or more in the industry as a Slot Tech will have the opportunity to take a test to determine their skill level. If they pass the Slot Tech II test, they will be promoted to a Slot Tech II when a position becomes available. If they fail the Slot Tech II test, they will have the opportunity to take the Slot Tech I test. If they pass the Slot Tech I test, they will be promoted to a Slot Tech I when a position becomes available.

Testing: It is understood that within the Slot Tech craft there are many areas of specialization. With the exception of general knowledge, the test should be consistent within the realm of the employee's work experience.

The test shall consist of two (2) parts:

1. Written Test. The Company will keep a database of standard questions from relevant manufacturing manuals. A study guide will be provided to the employee no less than sixty (60) days before the test is given. A committee from the Union will work with management for the purpose of instituting changes in the testing based on industry changes and standards. All testing will be standardized.

2. Practical Test. Basic knowledge, validators and progressive units, slot machines, slot system components and ticket printers.

An employee must achieve a combined score of seventy-five percent (75%) in order to have ~~passes~~passed the test.

Testing will be offered to qualified persons when there is a need for additional Slot Techs. Classification seniority dates will be assigned when a bid is awarded. Seniority ranking will be assigned according to classification seniority within the group that has received a passing score on the test. If there is a ten (10)-point difference on a passing score within the test group, the person who has the better score will receive a classification seniority date before the person who has the lesser score, regardless of classification seniority. No additional testing will be given as long as there is a person who has passed the test and has not been awarded a bid within the classification.

Training. The Company will make every effort to provide on-the-job training. Whenever practical, Slot Tech II level employees will assist and help in the training of Slot Tech I employees. Whenever practical, Slot Tech I employees will assist and help in the training of Apprentice Slot Tech employees.

The Company will provide the opportunity for formal training. The Company will pay for classes that are relevant for the enhancement of job duties and advancement in skills as a Slot Tech.

Employees who have superior skills in an area of knowledge will agree to assist in the training of co-workers for up to a two (2)-week period each year. The Company may request an extension of the training period for an additional three (3) weeks if it is shown to be necessary. The forum of training will be determined in discussions between the employee and the Company.

Number of Slot Techs.

Traditional staffing levels of Slot tech H and Slot Tech I positions will be maintained by the Company, unless the Company request a meeting with the Union and can demonstrate a significant change in the business needs to justify the change.

Wages.

New Hire	70%	$10.49
Apprentice	75%	$11.24
One (1) year	85%	$12.74
Slot Tech I	90%	$13.49
One (1) year	95%	$14.24
Slot Tech II	100% of	$14.99

SIDE LETTER #2
INCENTIVE PLAN FOR "BUYING" ROOMS

1. Overtime will be obtained in the order of the following schedule: ~~(1)~~ a) in advance; ~~(2)~~ b) same day; ~~(3)~~ c) buy back (incentive rooms); and, lastly ~~(4)~~ d) outside of classification.

2. The incentive plan enables Guest Room Attendants to clean additional rooms during their regular eight (8)-hour shift and to receive incentive pay for each additional room cleaned.

3. This plan would be implemented only when Housekeeping is unable to obtain overtime according to the schedule listed in 1 above.

4. A Guest Room Attendant will receive incentive pay in the amount of Six Dollars and Thirty Cents ($6.30) per room. The room rate will increase annually by the same formula used to reach the original rate of $6.30.

5. The utilization and/or experience of the incentive plan for "buying" rooms will not result in raising the room cleaning expectations.

6. This plan may be reviewed with the Business Agent three (3) months after implementation.

Purpose

To obtain enough staff to cover any extra room because of (1) inability to obtain overtime in advance or same day overtime, (2) call-ins, and/or (3) unexpected increase in overnight occupancy.

Benefits to the Employee

1. The incentive plan allows the employee to make extra money without having to (a) stay late; (b) incur additional childcare expenses; or (c)worry about finding alternative transportation home.

2. A GRA may elect to "buy" an extra room to clean during her/his regular eight (8)-hour shift and receive incentive pay for it. Or, the GRA may elect to work same-day overtime and complete a room(s) after her/his eight (8)-hour shift and receive regular overtime pay for it. There shall be no pyramiding of "incentive" pay or "buy" rooms and overtime.

Considerations

1. Guest Room Attendants must consistently meet standards in order to "buy" rooms(s). If, at any time, a GRA's performance falls below standards as defined by established room standards and based on room inspections, guest complaints and other evaluative

measurements, and progressive discipline with regard to quality of work is being administered, the GRA will not qualify to "buy" rooms until standards are consistently met for one (1) month.

**This would not necessarily prevent an employee from signing up for regular overtime, but only from doing additional room(s) within an eight (8)-hour period.*

2. No more than three (3) rooms may be "purchased within an eight (8)-hour shift.

Implementation

1. If it is determined that additional same-day help is needed, GRAs will be asked if they wish to "buy" a room(s). This will be done as early as possible after A.M. Room Check (9:30 a.m.).

2. Rooms will be awarded to GRAs on a rotational basis to ensure equitable distribution of same day overtime/incentive pay rooms.

3. If a GRA "buys" a room and cannot complete it during the eight (8)-hour shift and chooses to do it as regular overtime (after the eight (8)-hour shift), she/he may have that option, but must notify her/his supervisor or management.

4. Once the GRA has signed the "Extra Room" form, he/she has agreed to modify his/her work schedule to include the additional rooms. A refusal will count as a turn on the rotational list.

5. If, at DND time, it is determined that we do not need as much additional help as previously thought, the additional room time will be taken away from some GRAs based on rotational lists established.

6. Only after completing sixteen (16) values within his/her (8)-hour shift will a GRA qualify for incentive pay for any additional room cleaned within the same time period.

Internal Procedures

1. Scheduler advises management that additional same day help may be needed.

2. A notice is posted in Housekeeping and/or linen rooms asking if anyone wishes to "buy" a room today if it becomes necessary.

3. A GRA who wishes to "buy" rooms for incentive pay or work overtime for regular overtime pay will complete an "Extra Room" form and return it to his/her supervisor or Housekeeping office prior to 11:00 a.m. A consolidated list of all GRAs who submitted forms will be printed (Extra Room List for Incentive Pay/Overtime Pay).

4. After A.M. Room Check, management will determine how many rooms to "sell."

5. Assistant Housekeepers will report the extra room numbers to the scheduler or the Assistant Housekeeping Administrator. See Form—Extra Room List for Incentive Pay/Overtime Pay. These should be reported after any rooms have been assigned based on the A.M. Room Check.

6. A list of all those who signed up to "buy" a room will be posted in Housekeeping and/or each linen room indicated who has agreed to "buy" rooms that day.

7. Extra rooms will be given after 2:00 p.m. DND check so that GRAs who have less than fifteen (15) rooms will get their replacement rooms first and whatever is left will be distributed to those who opted to buy a room. Initially, if there are not enough rooms to distribute to everyone who opted to buy a room, the lowest seniority will not be awarded rooms. Henceforth, a list will be established allowing rooms to be awarded on a rotational basis.

8. Assistant Housekeepers will notify those who will be buying rooms by returning the "Extra Room" form with room number(s) to the qualified GRAs.

9. To ensure accurate accounting, the GRA activity sheet must indicate the equivalent of sixteen (16) or more values for whoever purchased additional room(s). (Dialing in and out room status.) The Assistant Housekeeper will collect the forms at the end of the shift and verify that the equivalent of sixteen (16) or more values has been cleaned. These papers will be reconciled with the Incentive Pay/Overtime Pay Extra Room List.

10. A list of GRAs qualified to receive incentive pay for that day will be approved by the Director of Housekeeping and submitted to Payroll.

IN WITNESS WHEREOF, the parties hereby by their duly designated representatives have hereunto set their hands this _____ day of _____, _____, in Clark County, State of Nevada.

FOR THE EMPLOYER:

WORKLIFE FINANCIAL, INC. dba GRAND SIERRA RESORT

By:_____

Its:_____

FOR THE UNION:

LOCAL JOINT EXECUTIVE BOARD OF LAS VEGAS

By:_____

Its: President

By:_____

Its: Secretary-Treasurer

SIDE LETTER #3
LAUNDRY DEPARTMENT

It is hereby agreed that Employees of the Laundry who are assigned to the flatwork section shall be rotated daily on an equitable basis.

After lateral transfers, all open grade II or grade III positions should be considered for promotional opportunities. Promotional opportunities should be offered to current employees of the laundry before transfers from other departments or new hires. Promotions will be awarded on qualifications, seniority and work record. The posting shall be for three (3) days.

IN WITNESS WHEREOF, the parties hereby by their duly designated representatives have hereunto set their hands this _____ day of _____, _____, in Clark County, State of Nevada.

FOR THE EMPLOYER:

WORKLIFE FINANCIAL, INC. dba GRAND SIERRA RESORT

By:_____

Its:_____

FOR THE UNION:

LOCAL JOINT EXECUTIVE BOARD OF LAS VEGAS

By:_____

Its: President

By:_____

Its: Secretary-Treasurer

SIDE LETTER #4
OVERTIME

Kitchen and Steward

The Employer shall post known overtime dates every ten (10) days. Sign-up sheets will be provided; and only interested qualified employees may sign the sheet.

The sign-up sheet will be available for sign-up until five (5) days prior to the date the overtime is needed.

There will be an equitable distribution of overtime.

The Company will post classification seniority for the affected employees.

Laundry

The Employer shall post known overtime dates every two (2) weeks. Sign-up sheets will be provided; and only interested, qualified employees may sign the sheet. The sign-up sheet will be available for sign-up until five (5) days prior to the date the over tie is needed.

There will be an equitable distribution of overtime.

The Company will post classification seniority for the affected employees.

Porter

The Employer shall post known overtime dates every ten (10) days. Sign-up sheets will be provided; and only interested, qualified employees may sign the sheet. The sign-up sheet will be available for sign-up until two (2) days prior to the date the overtime is needed.

There will be an equitable distribution of overtime.

The Company will post classification seniority for the affected employees.

IN WITNESS WHEREOF, the parties hereby by their duly designated representatives have hereunto set their hands this _____ day of _____, _____, in Clark County, State of Nevada.

FOR THE EMPLOYER:

WORKLIFE FINANCIAL, INC. dba GRAND SIERRA RESORT

By:_____

Its:_____

FOR THE UNION:

LOCAL JOINT EXECUTIVE BOARD OF LAS VEGAS

By:_____

Its: President

By:_____

Its: Secretary-Treasurer

SIDE LETTER #5
BELL DEPARTMENT

This is to confirm that the schedule of payments and distribution of gratuities as set forth below will be maintained for the duration of the labor agreement:

1. Service Charge for deliveries to guests' room (exclusive of luggage): Bell Persons receive Fifty Cents ($.50) to deliver an item outside the room (i.e., door knob "goodie" bag) and One Dollars ($1.00) to deliver an item inside the room. This is a per room delivery, not a per item delivery.

2. Flower Deliveries: Bell Persons are paid Three Dollars ($3.00) for delivery of flowers from the gift shop. If a guest and/or outside flower company wants flowers delivered to a room, this is treated as a routine front, with no guarantee of gratuity.

3. Newspaper Deliveries: Bell Persons and/or Dispatcher are paid Twenty Cents ($.20) per paper delivered to the doorstep of the guestroom.

4. Bus Group Service Charge Distributions: Bus groups are usually charged an average of Three Dollars ($3.00) per person for the deliver/pick-up of luggage. Bell Captains receive fifteen percent (15%) from the total service charge, after which Bell Persons doing the check-in receive sixty percent (60%) of the balance of the service charge, and Bell Persons doing the checkout receive the remaining forty percent (40%). If a service charge is collected for luggage delivery and the Bell Person does not provide the service, the balance of the service charge (after Captain's fifteen percent ~~([15%)%])~~ is retained by the Employer to offset salaries and wages. If the Bell Person carries less than fifty-one percent (51%) of the group, the employee receives One Dollar and Fifty Cents ($1.50) per person, with fifteen percent (15%) going to the Captain and the balance going to the Employer.

5. Bus Group Assignments: Assignments are made to the low Bell Person based on the "PAX" count, which is a cumulative total of the number of people for which bags were moved. New Bell Persons are averaged in upon their position date. Low Bell Person is low for the shift; however, Captains have the discretions to reassign or change based on last-minute limo runs or other business-related issues.

6. Promotional Events and Complimented. Guests: There is no guaranteed gratuity or service charge for these activities. They are treated as regular Front.

7. Limo Runs: One (1) point is assigned for departures and one (1) point for arrivals, which are accumulated for the duration of employment and tracked on the "limo" board. The lowest point Bell Person on the shift is assigned as many runs as possible during the shift. The second lowest is assigned the next run; however, Captains have discretion to reassign or change based upon last-minute runs and/or Bell Persons not available. New Bell Persons are averaged in upon their position date. Bell Persons are paid an additional Four Dollars (4.00) per hour (above base wage) for limo and other authorized runs. Runs over one (1) hour and five (5) minutes are billed two (2) hours (exclusive of time for gas and maintenance runs). Tips are at

the discretion of the guest; however, for Sales Department VIP transports, "entertainment runs," Employer pays a gratuity to the driver.

IN WITNESS WHEREOF, the parties hereby by their duly designated representatives have hereunto set their hands this _____ day of _____, _____, in Clark County, State of Nevada.

FOR THE EMPLOYER:

WORKLIFE FINANCIAL, INC. dba GRAND SIERRA RESORT

By:_____

Its:_____

FOR THE UNION:

LOCAL JOINT EXECUTIVE BOARD OF LAS VEGAS

By:_____

Its: President

By:_____

Its: Secretary-Treasurer

SIDE LETTER #6
INVOLUNTARY RELEASE

Already implemented in Article 7.02.

SIDE LETTER #7
HOLIDAY PAY

In the event a pattern of early out request based on illness occurs on holidays, the Union agrees it will meet with the Employer for the purpose of correcting such abuse.

IN WITNESS WHEREOF, the parties hereby by their duly designated representatives have hereunto set their hands this _____ day of _____, _____, in Clark County, State of Nevada.

FOR THE EMPLOYER:

WORKLIFE FINANCIAL, INC. dba GRAND SIERRA RESORT

By:_____

Its:_____

FOR THE UNION:

LOCAL JOINT EXECUTIVE BOARD OF LAS VEGAS

By:_____

Its: President

By:_____

Its: Secretary-Treasurer

EXHIBIT 1

Classification	Pay Rate*
Baker	$11.45
	$11.95
	$12.50
	$13.00
	$14.40
	$15.10
	$15.70
	$15.95
Baker's Helper	$8.70
	$8.95
	$9.45
	$10.45
	$10.95
Banquet Bar Runner	$9.20
Banquet Bartender	$6.65
	$11.30
Banquet Captain	$7.25
	$7.40
	$7.70
Bar Helper	$8.25
	$8.30
Bar Porter	$8.25
	$8.45
Graveyard Pay Rate	$9.25

* Where these standard rates fall below the applicable minimum wage, the rates have been adjusted accordingly to satisfy Nevada's minimum wage requirements.

Classification	Pay Rate*
Bartender	$8.00
	$8.15
	$8.45
	$8.60
	$8.75
	$8.90
	$10.25
	$10.40
	$10.85
	$11.00
	$11.45
	$11.60
	$12.05

Bell Dispatch	$8.70
	$8.95

Bell Person	$5.90
	$6.05
	$6.20
	$6.50
	$6.65
	$6.80
	$7.10

Booth Cashier	$8.45
	$8.70
	$8.95
	$9.20
	$9.70
	$10.45
	$10.95
	$11.95
	$12.55
	$13.00

Classification	Pay Rate*

* Where these standard rates fall below the applicable minimum wage, the rates have been adjusted accordingly to satisfy Nevada's minimum wage requirements.

Bread Server	$9.45
	$9.95

Bus Person	$6.70
	$6.95
	$7.45
	$7.70
	$8.20
	$8.45

Butcher	$12.55
Cafeteria Aide	$8.70

Charlie Palmers	
Lead Bartender	$12.05
Back Server-Fin Fish	$6.50
Reservationist/Host	$12.00
Garde Manager (Cook I)	$11;45
Prep Cook	$9.45
Line Cook (Cook II)	$13.00

Cocktail Server	$5.90
	$6.05
	$6.20
	$6.35
	$6.50
	$6.65
	$6.80
	$6.95
	$7.10
Cocktail Server Trainer	$10.00

* Where these standard rates fall below the applicable minimum wage, the rates have been adjusted accordingly to satisfy Nevada's minimum wage requirements.

Classification	Pay Rate*
Cook I	$10.75
	$10.45
	$10.95
	$11.45
	$11.95
Cook II	$11.45
	$11.45
	$12.55
	$13.00
	$13.55
Cook's Helper	$7.95
	$8.20
	$8.70
	$9.45
	$9.70
	$10.45
Dishwasher	$7.70
	$7.95
	$8.20
	$8.95
	$9.20
	$9.45
	$9.95
Event Porter	$8.70
	$8.95
	$9.45
	$9.70
	$10.45
	$10.95

* Where these standard rates fall below the applicable minimum wage, the rates have been adjusted accordingly to satisfy Nevada's minimum wage requirements.

Classification	Pay Rate*
Food & Beverage Cashier	$8.45
	$8.95
	$8.95
	$10.45
	$10.45
	$11.45

Food Runner	$7.00
	$7.20
	$7.45
	$9.20

Food Server	$5.90
	$6.05
	$6.20
	$6.35
	$6.50
	$6.65
	$6.80
	$7.10
	$7.25
	$7.40
Garveyard-Café Sierra	$10.00
Sidewalk Café	$10.00
Guest Room Attendant	$8.20
	$8.45
	$8.70
	$8.95
	$9.20
	$9.45
	$9.70
	$10.45

* Where these standard rates fall below the applicable minimum wage, the rates have been adjusted accordingly to satisfy Nevada's minimum wage requirements.

Classification	Pay Rate*
Host	$7.95
	$8.20
	$8.45
	$8.70
	$9.20
	$9.45
	$9.95
	$10.95
Laundry I	$7.45
	$7.70
	$8.20
	$8.45
	$8.95
	$9.70

Laundry II	$8.20
	$8.45
	$8.70
	$8.95
	$9.45
	$9.70
	$10.45

Laundry III	$9.95
	$10.95

Lead Event Porter	$10.45
	$11.95
Lead Host	$10.95
	$11.45
	$12.55

* Where these standard rates fall below the applicable minimum wage, the rates have been adjusted accordingly to satisfy Nevada's minimum wage requirements.

Classification	Pay Rate*
Liquor Room Attendant	$8.95
	$9.20
	$9.70

Porter	$7.70
	$7.95
	$8.95
	$9.20
	$9.45
	$9.70
	$9.95

Rescue Wine Bar Host/Server	$14.00

Saucier	$13.55
	$14.20

Scrub Captain	$6.70

Seamstress	$10.45

Service Bartender	$8.60
	$8.75

Slot Associate	$6.95
	$7.20
	$7.45
	$7.70
	$8.20
	$8.45
	$9.20
	$9.45
	$9.70
	$9.95

* Where these standard rates fall below the applicable minimum wage, the rates have been adjusted accordingly to satisfy Nevada's minimum wage requirements.

Classification	Pay Rate*
Snack Bar Attendant	$7.70
	$7.95
	$8.20
	$9.70
Graveyard Attendant	$8.70
Lead Barista	$10.00
Lead Attendant	$10.00
Steward Supervisor	$10.95
	$12.55
	$13.00

Utility Cleaner	$8.20
	$8.95
	$9.45
	$9.70
	$10.95

Utility Porter	$7.95
	$8.70
	$9.45
	$10.45
Graveyard Pah Utility	$8.95

Slot Tech Wage Chart		
Classification		**Pay Rate***
New Hire	70%	$10.98
Apprentice	75%	$11.77
After One Year	85%	$13.34
Slot Tech	90%	$14.12
After One Year	95%	$14.91
Slot Tech II	100%	$15.69

* Where these standard rates fall below the applicable minimum wage, the rates have been adjusted accordingly to satisfy Nevada's minimum wage requirements.

Exhibit B

Exhibit B

CULINARY WORKERS UNION, LOCAL 226

Affiliated with UNITE HERE INTERNATIONAL UNION

May 28, 2015 BY FAX

Mr. Larry Montrose
Director of Human Resources
Grand Sierra Resorts
2500 East Second Street
Reno, NV 89595-0002

Dear Mr. Montrose:

Pursuant to the provisions of Article 18 of our Collective Bargaining Agreement, you are hereby notified that a grievance exists concerning a warning notice issued on May 24, 2015 to Gary Schraeder, a Bell Person.

It is the Union's position that this grievance pertains to a violation of Article 6, Section 6.02 and all other pertinent provisions of the Collective Bargaining Agreement. The Grievant denies any wrongdoing that would warrant the warning notice. It is the Union's position that the warning notice was unjustified and should be removed from the Grievant's file.

We are hereby requesting a meeting of a Board of Adjustment with Nico de la Puente as a Board Representative. Please contact Nico de la Puente to schedule this meeting within the time limits set forth in Article 18.

Sincerely yours,

Jim Bonaventure

Jim Bonaventure
Administrative Director
Legal Affairs

JB/mg

Copies to: J.T. Thomas
Nico de la Puente
Files

CULINARY WORKERS UNION, LOCAL 226

Affiliated with UNITE HERE INTERNATIONAL UNION

June 3, 2015 BY FAX

Mr. Larry Montrose
Director of Human Resources
Grand Sierra Resorts
2500 East Second Street
Reno, NV 89595-0002

Dear Mr. Montrose:

Pursuant to the provisions of Article 18 of our Collective Bargaining Agreement, you are hereby notified that a grievance exists on behalf of the Bell Persons concerning rules and posting and side letter #5.

It is the Union's position that this grievance pertains to violation of Article 21, Section 21.02 and all other pertinent provisions of the Collective Bargaining Agreement. It has come to the Union's attention that the Customer Expectation policy was given to the employees; the Union was given a copy on May 13 which was forwarded and being reviewed but the employees are getting issued discipline on it without the Union approving the policy. It is the Union's position that the above action is in conflict with the Agreement.

We are hereby requesting a meeting of a Board of Adjustment with Nico De La Puente as a Board Representative. Please contact Nico De La Puente to schedule this meeting within the time limits set forth in Article 18.

Sincerely yours,

Jim Bonaventure

Jim Bonaventure
Administrative Director
Legal Affairs

JB/mg

Copies to: J.T. Thomas
Nico De La Puente
Files

CULINARY WORKERS UNION, LOCAL 226

Affiliated with UNITE HERE INTERNATIONAL UNION

June 23, 2015

BY FAX

Mr. Larry Montrose
Director of Human Resources
Grand Sierra Resorts
2500 East Second Street
Reno, Nevada 89595-0002

Dear Mr. Montrose:

Pursuant to the provisions of Article 18 of our Collective Bargaining Agreement, you are hereby notified that a grievance exists on behalf of the Slot Technicians I and II concerning wage scales.

It is the Union's position that this grievance pertains to violation of Exhibit 1 and all other pertinent provisions of the Collective Bargaining Agreement. It has come to the Union's attention that several meetings have taken place to address the issue of bringing wages consistent to $15.16 for all Slot Tech I and review for back pay differential, it was understood it would take a while to review wages for all the Technicians involved. Several meetings have been set up and cancelled by HR and no definitive answer has been given to resolve the issue. It is the Union's position that the above action is in conflict with the Agreement.

We are hereby requesting a meeting of a Board of Adjustment with Nico De La Puente as a Board Representative. Please contact Nico De La Puente to schedule this meeting within the time limits set forth in Article 18.

Sincerely yours,

Jim Bonaventure JB

Jim Bonaventure
Administrative Director
Legal Affairs

JB/mg

Copies to: J.T. Thomas
Nico De La Puente
Files

1630 SOUTH COMMERCE STREET • LAS VEGAS, NEVADA 89102-2705 • (702) 385-2131

Exhibit C

Exhibit C

CULINARY WORKERS UNION, LOCAL 226

Affiliated with UNITE HERE INTERNATIONAL UNION

October 1, 2015 BY FAX

Mr. Larry Montrose
Director of Human Resources
Grand Sierra Resorts
2500 E. Second St.
Reno, NV 89595-0002

Re: Grand Sierra Resorts, Slot Mechanic I
Wage Scales

Dear Mr. Montrose:

Inasmuch as the grievance concerning the above has not been resolved, you are hereby notified that the Union desires to submit the issue to regular arbitration in accordance with the provisions of Article 18, Section 18.03 of our Collective Bargaining Agreement.

Please get with our attorney, Richard McCracken, 595 Market Street, Suite 1400, San Francisco, CA 94105 to select an arbitrator.

Sincerely yours,

Jim Bonaventure

Jim Bonaventure
Administrative Director
Legal Affairs

JB/mg

Copies to: J.T. Thomas
Nico De La Puente
Richard McCracken, Esq.
Files

Exhibit D

Exhibit D

FEDERAL MEDIATION AND CONCILIATION SERVICE
UNITED STATES GOVERNMENT
WASHINGTON, D.C. 20427

10/14/15

LARRY MONTROSE
MEI-GSR HOLDINGS
DBA GRAND SIERRA RESORT
2500 E SECOND STREET
RENO NV 89595

SARAH VARELA
DAVIS COWELL & BOWE LLP
CULINARY WORKERS UNION LOCAL 226
595 MARKET STREET SUITE 1400
SAN FRANCISCO CA 94105

CASE NUMBER: 161014-00135-1
ISSUE: GENERAL-SLOT MECHANIC 1; WAGE SCALES

In response to a request we received from one or both of the above parties, the following panel is submitted for your consideration without regard to questions of contract compliance or arbitrability:

SARA ADLER ; EDNA E FRANCIS ; JOSEPH F GENTILE ; RONALD HOH ;
JOHN B LAROCCO ; JONATHAN S MONAT ; ROBERT D STEINBERG

Please use the enclosed form, "Instructions to FMCS," to advise us of the arbitrator you have jointly selected or any additional action required for this case. Once a joint selection has been made, you must notify FMCS of your selection. FMCS is responsible only for the arbitrators it formally appoints. Upon receipt of the enclosed form, FMCS will formally appoint the arbitrator and ask him/her to communicate with you within 14 calendar days to arrange a hearing. If the dispute is settled prior to a hearing, you must notify us, as well as the arbitrator.

You must refer to your collective bargaining agreement for your specific selection process. If your collective bargaining agreement is silent on the manner of selecting arbitrators, the parties may wish to consider any jointly determined method or FMCS will accept: (1) priority ranking; (2) striking; or (3) direct appointment.

If the priority method is used and we receive a priority selection from only one party, the second party will be notified that it has fourteen (14) calendar days to respond, or the first party's selection will be honored, as provided in FMCS Policies and Procedures under Section 1404.12(c)(3).

Requests for a second or subsequent panels will not be honored unless (1) the request is signed by both parties, or (2) the parties' collective bargaining agreement SPECIFICALLY authorizes a unilateral request for a second panel. You must send a copy of the pertinent clause of the agreement that authorizes a unilateral request.

YOU MUST USE THE FMCS CASE NUMBER IN ANY COMMUNICATION TO THE ARBITRATOR OR TO FMCS REGARDING THIS CASE. If you have any questions, please contact me.

Makalah Atkinson, Case Administrator
Phone: (202) 606-5446
FAX: (202) 606-3749

Enclosures
1. Biographical Sketches
2. "Instructions to FMCS" Form

INSTRUCTIONS TO FMCS

Please check one of the 5 instructions below. If these are joint instructions, please certify by signing number 6.

Case Number: 161014-00135-1
Issue: GENERAL-SLOT MECHANIC 1; WAGE SCALES

1. ( ) The parties have mutually selected Arbitrator _____ and request FMCS to appoint this arbitrator to hear this case.
2. ( ) The undersigned designates its priority selections as follows: (Please rank ALL ARBITRATORS submitted to you with NO OMISSIONS, unless permitted by the CBA or applicable law.) If you are using this method, you must provide the CBA language with your submission.

   1. _____ 5. _____
   2. _____ 6. _____
   3. _____ 7. _____
   4. _____

3. ( ) We mutually request FMCS to appoint an arbitrator of its choice who is not listed on this or prior panels submitted for this case.
4. ( ) This case has been settled. No further action on the part of FMCS is needed.
5. ( ) This panel is unacceptable. BOTH parties request a new panel. Provide joint signatures below or check box #6 and sign the certification.
   ( ) Payment of $50.00 is enclosed.
   ( ) Charge $50.00 to the following credit card (Visa or Master Card only):
   ( ) Visa ( ) Master Card

_____ _____ _____
Name (As it appears on card) Account Number Exp Date

Mutually agreed upon special requirements for the new panel: _____

_____

Number of Arbitrators _____ Site of Dispute _____

_____ _____ _____ _____
Employer Representative Date Union Representative Date

LARRY MONTROSE
MEI-GSR HOLDINGS
DBA GRAND SIERRA RESORT
2500 E SECOND STREET
RENO NV 89595

(775)789-2077

SARAH VARELA
DAVIS COWELL & BOWE LLP
CULINARY WORKERS UNION LOCAL 226
595 MARKET STREET SUITE 1400
SAN FRANCISCO CA 94105

(415)597-7200

6. I certify that both parties have agreed to the above instructions and Appointment Statement and that I am authorized to respond for both parties.

(Signature) _____

Please mail or fax this form to: FMCS, Office of Arbitration Services
2100 K Street, NW
Washington, DC 20427
Fax: (202) 606-3749

APPOINTMENT STATEMENT

The arbitrator you select is an independent contractor whose relationship is solely with the parties to the dispute. Arbitrators on the FMCS roster are subject to certain reporting requirements and to the ethical standards and procedures set forth in the Code of Professional Responsibility for Arbitrators of Labor Management Disputes and FMCS Arbitration Policies and Procedures.

However, under Federal Regulations, FMCS 'has no power to:

(1) Compel parties to appear before an arbitrator;
(2) Enforce an agreement to arbitrate;
(3) Compel parties to arbitrate any issue;
(4) Influence, alter, or set aside decisions of arbitrators on the Roster; or
(5) Compel, deny, or modify payment of compensation to an arbitrator.'

A party who is displeased with an arbitrator or his/her decision may or may not have further avenues of redress, but FMCS is in no position to advise or assist parties who would have preferred a different result or who were not happy with the arbitrator. FMCS may note or act upon allegations of violations of the Code or its arbitration policies by arbitrators. While repeated complaints or findings of specific misconduct may result in suspension or removal of an arbitrator from the FMCS roster, FMCS is unable to take any action or provide any guidance that would alter or affect the outcome of an arbitration decision.

Your signature on the Instructions to FMCS form indicates that you understand this appointment statement.

Exhibit E

Exhibit E

DAVIS, COWELL & BOWE, LLP

Counselors and Attorneys at Law

San Francisco

595 Market Street, Suite 800
San Francisco, California 94105
415.597.7200
Fax 415.597.7201

Steven L. Stemerman (CA, NV)
Richard G. McCracken (CA, NV)
W. David Holsberry (CA, NV)
Elizabeth Ann Lawrence (CA, NV, AZ)
John J. Davis, Jr. (CA)
Florence E. Culp (CA, NV)
Kristie L. Martin (CA, NV, HI)
Eric B. Myers (CA, NV)
Paul L. More (CA, NV, MA)
Sarah Varela (CA, AZ, NV)
Sarah Grossman-Swenson (CA, NV)
Yuval Miller (CA, NV)
Kyrsten Skogstad (CA, AZ)
David L. Barber (CA)
Kimberley C. Weber (CA)

Robert P. Cowell (1931-1980)

Philip Paul Bowe (CA) (Ret.)
Barry S. Jellison (CA) (Ret.)

McCracken, Stemerman & Holsberry

6030 S. Commerce Street, Suite A-1
Las Vegas, Nevada 89102
702.386.5107
Fax 702.386.9848

HMO G70002
20152334

February 23, 2016

Via E-mail Only

John B. LaRocco
2001 H Street
Sacramento, CA 95811

Re: Culinary Workers Union Local 226 and Grand Sierra Resorts Involving General - Slot Technicians I

Dear Mr. LaRocco:

The parties have mutually agreed to hold the hearing in this matter on **June 22, 2016** at **9:00 a.m.**

The hearing will be held at Grand Sierra Resorts in Reno, NV. Ms. Hilden's office will notify you of the exact location as the hearing date approaches. The Union will arrange for a court reporter.

Thank you for your assistance with this matter.

Very truly yours,

Marcie Boyle

Marcie Boyle, Legal Assistant

cc: Susan Hilden
Jim Bonaventure
J.T. Thomas
Deborah Trujillo

Exhibit 5

Exhibit 5

Mark R. Thierman, Nev. Bar No. 8285
mark@thiermanlaw.com
Joshua D. Buck, Nev. Bar No. 12187
josh@thiermanlaw.com
Leah L. Jones, Nev. Bar No. 13161
leah@thiermanlaw.com
THIERMAN LAW FIRM, P.C.
7287 Lakeside Drive
Reno, Nevada 89511
Tel. (775) 284-1500
Fax. (775) 703-5027

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

TIFFANY SARGENT, BAILEY CRYDERMAN, SAMANTHA L. IGNACIO, VINCENT M. IGNACIO, HUONG ("ROSIE") BOGGS, and JACQULYN WIEDERHOLT, 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,

Defendant(s).

Case No.: 3:13-CV-453-LRH-WGC

SECOND AMENDED COLLECTIVE AND CLASS ACTION COMPLAINT

1) Failure to Pay Wages for All Hours Worked in Violation of 29 U.S.C. § 201, et. seq;

2) Failure to Pay Overtime in Violation of 29 U.S.C. § 207;

3) Failure to Pay Overtime at the Correct Rate, 29 U.S.C. § 207

4) Failure to Compensate for All Hours Worked in Violation of NRS 608.140 and 608.016;

5) Failure to Pay Minimum Wages in Violation of the Nevada Constitution and NRS 608.250;

6) Failure to Pay Overtime in Violation of NRS 608.140 and 608.018;

7) Failure to Timely Pay All Wages Due and Owing in Violation of NRS 608.140 and 608.020-050; and

8) Unlawful Chargebacks in Violation of NRS 608.140 and 608.100.

THIERMAN LAW FIRM, PC
7287 Lakeside Drive
Reno, NV 89511
(775) 284-1500 Fax (775) 703-5027
Email laborlawyer@pacbell.net www.laborlawyer.net

INDIVIDUAL COMPLAINT FOR:

9) Age Discrimination Violation of 29 U.S.C. § 621 and NRS 613.330.

JURY TRIAL DEMANDED

COME NOW Plaintiffs TIFFANY SARGENT, BAILEY CRYDERMAN, SAMANTHA L. IGNACIO (formerly SCHNEIDER), VINCENT M. IGNACIO, HUONG ("ROSIE") BOGGS, and JACQULYN WIEDERHOLT ("Plaintiffs"), on behalf of themselves and all others similarly situated, and allege the following:

All allegations in this Complaint are based upon information and belief except for those allegations that pertain to the Plaintiffs named herein and their counsel. Each allegation in this Complaint either has evidentiary support or is likely to have evidentiary support after a reasonable opportunity for further investigation and discovery.

JURISDICTION AND VENUE

1. This Court has original jurisdiction over the federal claims alleged herein pursuant to the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 216(b), the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. § 631(a), federal question jurisdiction over this action pursuant to 28 U.S.C. § 1331, and supplemental jurisdiction over the state law claims alleged herein pursuant to 28 U.S.C. § 1367. This Court has jurisdiction over the state law claims alleged herein because a party seeking to recover unpaid wages has a private right of action pursuant to Nevada Revised Statute ("NRS") sections 608.050, 608.250, 608.140, and the Nevada Constitution.

2. Venue is proper in this Court because one or more of the Defendants named herein maintains a principal place of business or otherwise is found in this judicial district and many of the acts complained of herein occurred in Washoe County, Nevada.

3. Pursuant to NRS 608.050(2), this Court has jurisdiction to foreclose the lien for the wages alleged due herein on the place of employment, as provided in NRS 108.221 to

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108.246, inclusive. A file stamped copy of this Complaint will be filed in the Offices of the Records for the County of Washoe for the property upon which these employees worked, 200 East Second Street, Reno, NV.

PARTIES

4. Plaintiff TIFFANY SARGANT ("Plaintiff" or "SARGANT") is a natural person who is and was a resident of the State of Nevada and who, within the last three years, has been employed by Defendants as a non-exempt hourly employee at 200 East Second Street, Reno, NV.

5. Plaintiff BAILEY CRYDERMAN ("Plaintiff" or "CRYDERMAN") is a natural person who is and was a resident of the State of Nevada and who, within the last three years, has been employed by Defendants as a non-exempt hourly employee at 200 East Second Street, Reno, NV.

6. Plaintiff SAMANTHA L. IGNACIO (formerly SCHNEIDER) ("Plaintiff" or "SCHNEIDER") is a natural person who is and was a resident of the State of Nevada and who, within the last three years, has been employed by Defendants as a non-exempt hourly employee at 200 East Second Street, Reno, NV.

7. Plaintiff VINCENT M. IGNACIO ("Plaintiff" or "IGNACIO") is a natural person who is and was a resident of the State of Nevada and who, within the last three years, has been employed by Defendants as a non-exempt hourly employee at 200 East Second Street, Reno, NV.

8. Plaintiff HUONG ("ROSIE") BOGGS ("Plaintiff" or "BOGGS") is a natural person who is and was a resident of the State of Nevada and who, within the last three years, has been employed by Defendants as a non-exempt hourly employee at 200 East Second Street, Reno, NV. Defendant terminated Plaintiff BOGGS' employment on or about July 2013 because of her age (over 40). Plaintiff BOGGS has filed an administrative complaint with the Nevada Equal Rights Commission ("NERC") for age discrimination against Defendants.

9. Plaintiff JACQULYN WIEDERHOLT ("Plaintiff" or "WIEDERHOLT") is a natural person who is and was a resident of the State of Nevada and who, within the last three

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years, has been employed by Defendants as a non-exempt hourly employee at 200 East Second Street, Reno, NV. Defendants terminated Plaintiff WIEDERHOLT's employment on or about February 2013 because of her age (over 40). Plaintiff WIEDERHOLT has filed an administrative complaint with NERC for age discrimination against Defendants.

10. Defendant HG STAFFING, LLC, is a Nevada Limited Liability Company whose managing member is MER-GSR HOLDINGS, LLC, located at 2500 East Second Street, Reno, NV 89585.

11. Defendant MER-GSR HOLDINGS, LLC is a Nevada Limited Liability Company located at 2500 East Second Street, Reno, NV 89585 and whose managing members are ALEX MERUELO and LUIS A. ARMONA of 9550 Firestone Blvd., Suite 105, Downey, CA 90241. Defendant MER-GSR HOLDINGS, LLC is doing business under the fictitious business name of Grand Sierra Resorts, or "GSR", which is located at 200 East Second Street, Reno, NV 89585.

12. Defendants, and each of them, are an employer under the provisions of Nevada Revised Statutes Chapter 608 and are engaged in commerce for the purposes of the Fair Labor Standards Act, 29 U.S.C.§ 201 *et. seq.* For labor relations purposes, Defendants are each and together constitute the employer and/or joint employer of Plaintiffs and all Plaintiff class members (hereinafter referred to as "Class Members").

13. The identity of DOES 1-50 is unknown at this time and this Complaint will be amended at such time when the identities are known to Plaintiffs. Plaintiffs are informed and believe that each of Defendants sued herein as DOE is responsible in some manner for the acts, omissions, or representations alleged herein and any reference to "Defendant," "Defendants," or "GSR" herein shall mean "Defendants and each of them."

FACTUAL ALLEGATIONS

DEFENDANTS' OFF THE CLOCK—NO OVERTIME POLICY

14. At all times relevant herein, Defendants maintained a no overtime rule for all employees of the GSR. The no overtime rule, as enforced, provided that whenever an hourly paid employee was required to work more than 8 hours a day or more than 40 hours a week, the employee was required, suffered or permitted, with the knowledge of the employer, to work

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without compensation—i.e., "off the clock." This was achieved by either rounding hours so that employees who were technically "on the clock" did not receive pay for all their recorded hours worked or by having employees perform work without being logged in to the timekeeping system.

15. If an employee had to perform work before and/or after his or her normal 8 hour shift and/or 40 hour workweek, and refused to perform the work at all, the employee was "written up" with a disciplinary note. If the employee worked in excess of his or her normal 8 hour shift and/or 40 hour workweek and then recorded his or her overtime hours as hours worked, the employee was written up for working overtime. All employees were on a point system, and if they had too many write ups, they would be terminated. The employees were told to simply clock out and then return to work to continue working off the clock. This rule applied to all hourly employees.

16. Employees were required to perform various tasks "off the clock": Employees were required to retrieve, return, and reconcile a cash bank of money used in carrying out their employment tasks; they were required to attend pre-shift meetings; they were required to complete paper work for the employer; they were required to perform cleaning activities; they were to attend mandatory trainings and classes.

17. There is only one employee entrance and exit from the GSR. Every time an employee enters or leaves the building for work purposes, the employee was supposed to swipe his or her employee identification card. Upon information and belief, Defendants maintain computer records of all times the employees swiped their badges when entering or leaving the premises for work.

18. Defendants also maintained a time clock for payroll purposes. An employee was assigned to a particular time clock.

19. The company also has surveillance footage showing what the employees were doing.

20. Upon information and belief, a comparison of these records will confirm that Defendants did not compensate the employees for all the time they worked because they were

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required, suffered or permitted to work "off the clock". A further comparison of the time records between the actual time employees clocked-in/out with the time for which employees were paid, will reveal the amount Defendant rounded off employee time and wages.

21. The total amount of time spent "off-the-clock"—measured from the point in time when Plaintiffs and Class Members completed their first principal activity until they actually clocked-in and/or until they started receiving compensation—was approximately 15-30 minutes each and every workday. Similarly, the total amount of time spent "off-the-clock"—measured from the point in time when Plaintiffs and Class Members completed their last principal activity from the point in time when they actually clocked-out and/or stopped receiving compensation—was between 15-60 minutes each and every workday.

22. The comparison of the swipe times from when an employee enters and exits the GSR to the time clock-in and out time will provide a "just and reasonable" inference that Plaintiffs and Class Members on average worked approximately 30 minutes to 90 minutes "off-the-clock" and without compensation each and every day they worked at GSR.

DEFENDANTS' SHIFT JAMMING POLICY

23. In addition to working employees off the clock, Defendants engaged in the unlawful practice known as "shift-jamming."

24. Pursuant to NRS 608.018(1), employees who are paid less than one and one half times the minimum wage must be paid daily overtime if they work more than 8 hours a day (or 10 hours in a day if they are on a recognized and agreed upon 4-10 workweek—four days a week at ten hours a day).l

25. NRS 608.0126 defines a "Workday" as a period of 24 consecutive hours which begins when the employee begins work.

26. Upon information and belief, Defendants did not offer health insurance to qualify for the lower minimum wage for insured employees.

27. Thus, hourly employees paid less than $12.375 who the Defendants required, suffered or permitted to return to work before the expiration of 16 hours between when they last worked for the employer, must be paid at overtime rates until the end of their workday.

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28. Defendants routinely required employees who were entitled to daily overtime to return to work sooner than 16 hours from when they last worked, whether it to be their normal job duties or a special event, or mandatory trainings or classes, without paying the proper overtime rate.

DEFENDANTS' POLICY OF PAYING OVERTIME AT THE INCORRECT RATE

29. Defendants paid Plaintiffs SARGANT and CRYDERMAN and certain other Class Members what it called commissions, piece rates, and/or other non-discretionary payments without including the amount paid for these commissions, piece rates, and/or other non-discretionary payments in the regular rate for purposes of calculation of overtime payment due.

DEFENDANTS' POLICY OF CHARGE BACKS

30. Defendants required employees to rebate their paycheck to cover the cost of cash shortages and credit card reversals by the Defendants' customers.

COLLECTIVE AND CLASS ACTION ALLEGATIONS

31. Plaintiffs reallege and incorporate by this reference all the paragraphs above in this Complaint as though fully set forth herein.

32. Plaintiffs bring this action on behalf of themselves and all other similarly situated and typical employees as both a collective action under the FLSA and a true class action under Nevada law. The Class is defined as follows: **All current and former non-exempt employees who were employed by Defendants within three years from the date of filing this complaint.**

33. With regard to the conditional certification mechanism under the FLSA, Plaintiffs are similarly situated to those that they seek to represent for the following reasons, among others:

A. Defendants employed Plaintiffs as an hourly employees who did not receive pay for all hours that Defendants suffered or permitted them to work, and did not receive overtime premium pay of one and one half times their regular rate of pay for all

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hours worked over forty (40) hours in a workweek and, to the extent they did receive overtime pay, they received the pay in an incorrect amount.

B. Plaintiffs' situation is similar to those they seek to represent because Defendants failed to pay Plaintiffs and all other Class Members for all time they were required to work "off the clock" and without compensation but with the knowledge acquiescence and/or approval (tacit as well as expressed) of Defendants' managers and agents.

C. Common questions exists whether the time spent by Plaintiffs and all other Class Members engaging in pre-shift and post-shift activities "off the clock" is compensable under federal law; whether Defendants failed to pay Plaintiffs and Class Members for all hours worked; and whether Defendants failed to pay Plaintiffs and Class Members overtime at one and one half times their correct regular rate of pay for all hours worked in excess of 40 hours a week

D. Upon information and belief, Defendants employ, and has employed, in excess of 500 Class Members within the applicable statute of limitations.

E. Plaintiffs have already filed or will file their consents to sue with the Court. Consent to sue are not required for state law claims under FRCP 23.

34. Class treatment is appropriate in this case for the following reasons:

A. The Class is Sufficiently Numerous: Upon information and belief, Defendants employ, and have employed, in excess of 500 Class Members within the applicable statute of limitations.

B. Plaintiffs' Claims are Typical to Those of Fellow Class Members: Each Class Member is and was subject to the same practices, plans, or policies as Plaintiffs—Defendants required Plaintiffs to work "off the clock" and without compensation; Defendants' engaged in improper shift jamming; Defendants failed to compensate Plaintiffs at the legally correct overtime rate; and Defendants engaged in improper charge backs.

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C. Common Questions of Law and Fact Exist: Common questions of law and fact exist and predominate as to Plaintiffs and the Class, including, without limitation: Whether the time spent by Plaintiff and Class Members engaging in the alleged "off-the-clock" work is compensable under Nevada law; whether Defendants' engaged in improper shift jamming; whether Defendants included non-discretionary bonuses, commissions or other types of remuneration into the regular rate for overtime pay calculations; and whether Defendants engaged in improper charge backs.

D. Plaintiffs are Adequate Representatives of the Class: Plaintiffs will fairly and adequately represent the interests of the Class because Plaintiffs are members of the Class, they have issues of law and fact in common with all members of the Class, and they do not have interests that are antagonistic to Class Members.

E. A Class Action is Superior: A class action is superior to other available means for the fair and efficient adjudication of this controversy, since individual joinder of all members of the Class is impractical. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without unnecessary duplication of effort and expense. Furthermore, the expenses and burden of individualized litigation would make it difficult or impossible for individual members of the Class to redress the wrongs done to them, while an important public interest will be served by addressing the matter as a class action. Individualized litigation would also present the potential for inconsistent or contradictory judgments.

FIRST CAUSE OF ACTION

Failure to Pay Wages in Violation of the FLSA, 29 U.S.C. § 201, *et seq.*

(On Behalf of All Plaintiffs and Class Members Against All Defendants)

35. Plaintiffs reallege and incorporate by this reference all the paragraphs above in this Complaint as though fully set forth herein.

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36. Pursuant to the FLSA, 29 U.S.C. § 201, *et seq.*, Plaintiffs and Class Members are entitled to compensation at their regular rate of pay or minimum wage rate, whichever is higher, for all hours actually worked.

37. 29 U.S.C. § 206(a)(l) states that "Every employer shall pay to each of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, wages at the following rates: (1) except as otherwise provided in this section, not less than (A) $5.85 an hour beginning on the 60th day after the enactment of the Fair Minimum Wage Act of 2007; (B) $6.55 an hour, beginning 12 months after that 60th day; and C) $7.25 an hour, beginning 24 months after that 60th day."

38. Once the work day has begun, all time suffered or permitted by the employer to be worked by the employee is compensable at the employee's regular rate of pay, whether scheduled or not.

39. By failing to compensate Plaintiffs and Class Members for the time spent engaging in off-the-clock activities identified above, Defendants failed to pay Plaintiffs and the Class Members for all hours worked.

40. Defendants' unlawful conduct has been widespread, repeated, and willful. Defendants knew or should have known that its policies and practices have been unlawful and unfair.

41. Wherefore, Plaintiffs demand for themselves and for all others similarly situated, that Defendants pay Plaintiffs and all other members of the Class their minimum hourly wage rate or their regular rate of pay, whichever is greater, for all hours worked during the relevant time period alleged herein together with liquidated damages, attorneys' fees, costs, and interest as provided by law.

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SECOND CAUSE OF ACTION

(Failure to Pay Overtime Wages in Violation of the FLSA, 29 U.S.C. § 207)

(On Behalf of All Plaintiffs and Class Members Against All Defendants)

42. Plaintiffs reallege and incorporate by this reference all the paragraphs above in this Complaint as though fully set forth herein.

43. 29 U.S.C. Section 207(a)(1) provides as follows: "Except as otherwise provided in this section, no employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed."

44. Once the work day has begun, all time suffered or permitted by the employer to be worked by the employee is compensable at the employee's regular rate of pay or overtime rate of pay, whether scheduled or not.

45. By failing to compensate Plaintiffs and Class Members for the time spent engaging in off-the-clock activities identified above, Defendants failed to pay Plaintiffs and Class Members overtime for all hours worked in excess of forty (40) hours in a week in violation of 29 U.S.C. Section 207(a)(1).

46. Defendants' unlawful conduct has been widespread, repeated, and willful. Defendants knew or should have known that its policies and practices have been unlawful and unfair.

47. Wherefore, Plaintiffs demand for themselves and for all others similarly situated, that Defendants pay Plaintiffs and all members of the Class one and one half times their regular hourly rate of pay for all hours worked in excess of forty (40) hours a week during the relevant time period alleged herein together with liquidated damages, attorneys' fees, costs, and interest as provided by law.

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THIRD CAUSE OF ACTION

Failure to Pay Overtime Wages at the Correct Rate in Violation of the FLSA, 29 U.S.C. § 207

(On Behalf of Plaintiffs SARGANT and CRYDERMAN and Class Members Against All Defendants)

48. Plaintiffs reallege and incorporate by this reference all the paragraphs above in this Complaint as though fully set forth herein.

49. 29 U.S.C. Section 207(e) defines the regular rate "at which an employee is employed shall be deemed to include all remuneration for employment paid to, or on behalf of, the employee" (with certain exceptions not relevant here) divided by the hours worked.

50. By failing to include "commissions" and other non-discretionary payments in the total sum earned before dividing by hours worked, Defendants failed to pay the correct hourly rate for overtime hours worked.

51. Defendants' unlawful conduct has been widespread, repeated, and willful. Defendants knew or should have known that its policies and practices have been unlawful and unfair.

52. Wherefore, Plaintiffs demand for themselves and for all others similarly situated, that Defendants pay and reimburse Plaintiffs and all members of the Class at the correct overtime rate one and one half times their regular hourly rate of pay for all hours worked in excess of forty (40) hours a week during the relevant time period alleged herein together with liquidated damages, attorneys' fees, costs, and interest as provided by law.

FOURTH CAUSE OF ACTION

Failure to Pay Wages for All Hours Worked in Violation of NRS 608.140 and 608.016

(On Behalf of All Plaintiffs and Class Members Against All Defendants)

53. Plaintiffs reallege and incorporate by this reference all the paragraphs above in this Complaint as though fully set forth herein.

54. NRS 608.140 provides that an employee has a private right of action for unpaid wages.

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55. NRS 608.016 states that "An employer shall pay to the employee wages for each hour the employee works." Hours worked means anytime the employer exercises "control or custody" over an employee. See NRS 608.011 (defining an "employer" as "every person having control or custody . . . of any employee."). Pursuant to the Nevada Administrative Code, hours worked includes "all time worked by the employee at the direction of the employer, including time worked by the employee that is outside the scheduled hours of work of the employee." NAC 608.115(1).

56. By failing to compensate Plaintiffs and Class Members for the time spent engaging in off-the-clock activities identified above, Defendants failed to pay Plaintiffs and Class Members for all hours worked in violation of NRS 608.140 and 608.016.

57. Although the statute of limitations for minimum wage violations is two years, there is no express statute of limitations for violations of NRS 608.140 and 608.016 and, therefore, the three-year statute contained in NRS 11.190(3) for statutory violations applies.

58. Wherefore, Plaintiffs demand for themselves and for all Class Members payment by Defendants at the regular hourly rate of pay for all hours worked during the during the relevant time period alleged herein together with attorneys' fees, costs, and interest as provided by law.

FIFTH CAUSE OF ACTION

Failure to Pay Minimum Wages in Violation of the Nevada Constitution and NRS 608.250

(On Behalf of All Plaintiffs and Class Members Against All Defendants)

59. Plaintiffs reallege and incorporate by this reference all the paragraphs above in this Complaint as though fully set forth herein.

60. Article 15 Section 16 of the Nevada Constitution sets forth the requirements the minimum wage requirements in the State of Nevada and further provides that "[t]he provisions of this section may not be waived by agreement between an individual employee and an employer. . . . An employee claiming violation of this section may bring an action against his or her employer in the courts of this State to enforce the provisions of this section and shall be entitled to all remedies available under the law or in equity appropriate to remedy any violation

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of this section, including but not limited to back pay, damages, reinstatement or injunctive relief. An employee who prevails in any action to enforce this section shall be awarded his or her reasonable attorney's fees and costs."

61. NRS 608.250 (1) provides that "Except as otherwise provided in this section, the Labor Commissioner shall, in accordance with federal law, establish by regulation the minimum wage which may be paid to employees in private employment within the State. The Labor Commissioner shall prescribe increases in the minimum wage in accordance with those prescribed by federal law, unless the Labor Commissioner determines that those increases are contrary to the public interest."

62. NRS 608.260 states "If any employer pays any employee a lesser amount than the minimum wage prescribed by regulation of the Labor Commissioner pursuant to the provisions of NRS 608.250, the employee may, at any time within 2 years, bring a civil action to recover the difference between the amount paid to the employee and the amount of the minimum wage. A contract between the employer and the employee or any acceptance of a lesser wage by the employee is not a bar to the action."

63. By failing to compensate Plaintiffs and Class Members for the time spent engaging in off-the-clock activities identified above, Defendants failed to pay Plaintiffs and Class Members for all hours worked in violation of the Nevada Constitution and NRS 608.250.

64. Wherefore, Plaintiffs demand for themselves and for all Class Members payment by Defendants at their regular hourly rate of pay or the minimum wage rate, whichever is higher, for all hours worked during the relevant time period alleged herein together with attorneys' fees, costs, and interest as provided by law.

SIXTH CAUSE OF ACTION

Failure to Pay Overtime Wages in Violation of NRS 608.140 and 608.018

(On Behalf of All Plaintiffs and Class Members Against All Defendants)

65. Plaintiffs reallege and incorporate by this reference all the paragraphs above in this Complaint as though fully set forth herein.

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66. NRS 608.140 provides that an employee has a private right of action for unpaid wages.

67. NRS 608.018(1) provides as follows:

> An employer shall pay 1 1/2 times an employee's regular wage rate whenever an employee who receives compensation for employment at a rate less than 1 1/2 times the minimum rate prescribed pursuant to NRS 608.250 works: (a) More than 40 hours in any scheduled week of work; or (b) More than 8 hours in any workday unless by mutual agreement the employee works a scheduled 10 hours per day for 4 calendar days within any scheduled week of work.

68. NRS 608.018(2) provides as follows:

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

69. By failing to compensate Plaintiffs and Class Members for the time spent engaging in off-the-clock activities identified above, Defendants failed to pay Plaintiffs and Class Members daily overtime premium pay for all hours worked over eight (8) hours in a workday to those Class Members who were paid a regular rate of less than one and one half times the minimum wage premium pay and, failed to pay a weekly premium overtime rate of time and one half their regular rate for all members of the Class who worked in excess of forty (40) hours in a week in violation of NRS 608.140 and 608.018.

70. Although the statute of limitations for minimum wage violations is two years, there is no express statute of limitations for violations for failure to pay overtime rates of pay pursuant to NRS 608.140 and 608.018 and, therefore, the three-year statute contained in NRS 11.190(3) for statutory violations applies.

71. Wherefore, Plaintiffs demand for themselves and for Class Members that Defendants pay Plaintiffs and Class Members one and one half times their "regular rate" of pay for all hours worked in excess of eight (8) hours in a workday and in excess of forty (40) hours a workweek during the relevant time period alleged herein together with attorneys' fees, costs, and interest as provided by law.

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SEVENTH CAUSE OF ACTION

Failure to Timely Pay All Wages Due and Owing Upon Termination Pursuant to NRS 608.140 and 608.020-.050

(On Behalf of All Plaintiffs and Class Members Against All Defendants)

72. Plaintiffs reallege and incorporate by this reference all the paragraphs above in this Complaint as though fully set forth herein.

73. NRS 608.140 provides that an employee has a private right of action for unpaid wages.

74. NRS 608.020 provides that "[w]henever an employer discharges an employee, the wages and compensation earned and unpaid at the time of such discharge shall become due and payable immediately."

75. NRS 608.040(1)(a-b), in relevant part, imposes a penalty on an employer who fails to pay a discharged or quitting employee: "Within 3 days after the wages or compensation of a discharged employee becomes due; or on the day the wages or compensation is due to an employee who 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 for 30-days, whichever is less."

76. NRS 608.050 grants an "employee lien" to each discharged or laid-off employee for the purpose of collecting the wages or compensation owed to them "in the sum agreed upon in the contract of employment for each day the employer is in default, until the employee is paid in full, without rendering any service therefor; but the employee shall cease to draw such wages or salary 30 days after such default."

77. By failing to pay Plaintiffs and Class Members who are former employees of Defendants for all hours worked in violation of the federal and state laws identified herein, Defendants have failed to timely remit all wages due and owing to Plaintiffs and Class Members who are former employees.

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78. Despite demand, Defendants willfully refuse and continue to refuse to pay Plaintiffs and Class Members who are former employees all the wages that were due and owing upon the termination of their employment.

79. Wherefore, Plaintiffs demand thirty (30) days wages under NRS 608.140 and 608.040, and an additional thirty (30) days wages under NRS 608.140 and 608.050, for all Class Members who have terminated employment from Defendants during the relevant time period alleged herein together with attorneys' fees, costs, and interest as provided by law.

EIGHTH CAUSE OF ACTION

Unlawful Chargebacks in Violation of NRS 608.100

(On Behalf of Plaintiffs SARGANT and CRYDERMAN and Class Members Against All Defendants)

80. Plaintiffs reallege and incorporate by this reference all the paragraphs above in this Complaint as though fully set forth herein.

81. NRS 608.140 provides that an employee has a private right of action for unpaid wages.

82. NRS 608.100 provides that "It is unlawful for any employer to require an employee to rebate, refund or return any part of the wage, salary or compensation earned by and paid to the employee."

83. By engaging in the conduct described above, Defendants unlawfully rebated Plaintiffs and Class Members' paychecks to cover the costs of cash shortages and credit card reversals. By doing so, Defendants unlawfully retained Plaintiffs' and Class Members' wages that, to this day, remain unpaid and owing.

84. Wherefore, Plaintiffs demand restitution for all rebated wages during the relevant time period alleged herein together with attorneys' fees, costs, and interest as provided by law.

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NINTH CAUSE OF ACTION

Age Discrimination in Violation of NRS 613.330 and 29 USC Sections 621-634

(On Behalf of Plaintiffs BOGGS and WIEDERHOLT and Class Members

Against All Defendants)

85. Plaintiffs reallage and incorporate by this reference all the paragraphs above in this Complaint as though fully set forth herein.

86. Nevada state law and the Age Discrimination in Employment Act of 1967 (ADEA) protect individuals who are 40 years of age or older from employment discrimination based on age.

87. It is unlawful under Nevada's equal employment opportunity laws, NRS 613.310-613.345 ("EEO Laws"), for an employer to discriminate against an employee based on an employee's age. Specifically, "it is an unlawful employment practice for an employer: (a) To fail or refuse to hire or to discharge any person, or otherwise to discriminate against any person with respect to the person's compensation, terms, conditions or privileges of employment, because of his or her . . . age . . .; or (b) To limit, segregate or classify an employee in a way which would deprive or tend to deprive the employee of employment opportunities or otherwise adversely affect his or her status as an employee, because of his or her . . . age . . . ." NRS 613.330.

88. It is similarly unlawful for an employer to discriminate against an employee based on the employee's age under federal law. 29 USC Sections 621 provides that it is "unlawful for an employer--(1) to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age; (2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's age; or (3) to reduce the wage rate of any employee in order to comply with this chapter."

89. Defendants terminated Plaintiff BOGGS' employment on or about July 2013 because of her age (over 40).

90. Defendants terminated Plaintiff WIEDERHOLT's employment on or about February 2013 because of her age (over 40).

91. Defendants' conduct was willful.

92. Defendants violated Nevada's EEO Laws and the ADEA in committing the above acts in that Defendants discriminated against Plaintiffs because of Plaintiffs' age.

93. Plaintiffs timely filed administrative complaints with the Nevada Equal Rights Commission ("NERC") for age discrimination against Defendants.

94. Plaintiffs timely filed charges with the Equal Employment Opportunity Commission ("EEOC") for age discrimination against Defendants.

95. Plaintiffs have exhausted or will exhaust their administrative remedies with NERC and EEOC.

96. The Defendants' conduct as alleged above constitutes age discrimination in violation of the EEO LAWS and the ADEA. The stated reasons for Defendants' conduct were not the true reasons, but instead were pretext to hide Defendants' discriminatory animus.

97. Plaintiffs are further informed and believe that Defendants have engaged in systematic age discrimination by maintaining and enforcing a policy of terminating employees over 40 on the basis of age.

98. Defendants intentionally, and with malice and oppression, discriminated against Plaintiffs and Class Members because of their age. As a direct and proximate result of this Defendants' policy, practice and procedure, Plaintiffs and Class Members have sustained significant general and special damages to be proven at trial. Plaintiffs, on behalf of themselves and Class Members, seek all damages and remedies available under law, including, but not necessarily limited to, back pay, compensatory, consequential, and punitive damages, attorneys' fees, costs, and interest.

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JURY TRIAL DEMANDED

Plaintiffs hereby demand a jury trial pursuant to FRCP 38.

PRAYER FOR RELIEF

Wherefore Plaintiffs, by themselves and on behalf of all Class Members, pray for relief as follows relating to their collective and class action allegations:

1. For an order conditionally certifying this action under the FLSA and providing notice to all members of the Class so they may participate in this lawsuit;
2. For an order certifying this action as a traditional class action under Nevada Rule of Civil Procedure Rule 23 on behalf of each of the Class;
3. For an order appointing Plaintiffs as the Representatives of the Class and their counsel as Class Counsel;
4. For damages according to proof for regular rate pay under federal laws for all hours worked;
5. For damages according to proof for minimum rate pay under federal law for all hours worked;
6. For damages according to proof for overtime compensation at the applicable rate under federal law for all hours worked over 40 per week;
7. For liquidated damages pursuant to 29 U.S. C. § 216(b);
8. For damages according to proof for regular rate pay under NRS 608.140 and 608.016 for all hours worked;
9. For damages according to proof for minimum wage rate pay under the Nevada Constitution and NRS 608.250 for all hours worked;
10. For damages according to proof for overtime compensation at the applicable rate under NRS 608.140 and 608.018 for all hours worked for those employees who earned a regular rate of less than one and one half times the minimum wage for hours worked in excess of 8 hours per day and/or for all subclass members for overtime premium pay of one and one half their regular rate for all hours worked in excess of 40 hours per week;

11. For sixty days of waiting time penalties pursuant to NRS 608.140 and 608.040-.050;

12. For restitution of unpaid wages pursuant to NRS 608.140 and 608.100;

13. For damages according to proof pursuant to Nevada State EEO laws and the ADEA.

14. For interest as provided by law at the maximum legal rate;

15. For reasonable attorneys' fees authorized by statute;

16. For costs of suit incurred herein;

17. For pre-judgment and post-judgment interest, as provided by law, and

18. For such other and further relief as the Court may deem just and proper.

DATED: June 12, 2014

THIERMAN LAW FIRM, P.C.

/s/ *Leah L. Jones*
Mark R. Thierman
Joshua D. Buck
Leah L. Jones

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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' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS**

Plaintiffs EDDY MARTEL (also known as MARTEL-RODRIGUEZ), MARY ANNE CAPILLA, JANICE JACKSON-WILLIAMS, and WHITNEY VAUGHAN ("Plaintiffs"), on behalf of themselves and all others similarly situated hereby respond to Defendants' Motion to Dismiss.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendants Motion to Dismiss ("Motion" or "Mot.") is based on a disingenuous presentation of the federal District Court's Orders in the related *Sargent v. HG Staffing, LLC* ("*Sargent*"). Specifically, and contrary to Defendants' assertion, no class certification analysis

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has ever been undertaken for the Plaintiffs here or any of GSR's employees on their Nevada State law wage and hour claims because the federal District Court in *Sargent* incorrectly based its decision to dismiss the GSR employees' Nevada wage claims on the premise that Nevada employees do not have a private right to sue under Chapter 608 of the Nevada Revised Statute ("NRS") ***prior*** to ever reaching the merits of the employees' class certification arguments. Because the Supreme Court of Nevada, in *Neville v. Terrible Herbst, Inc.,* resoundingly rejected that notion and held that Nevada employees do indeed have a right to sue their employers in court for violations of Chapter 608, Defendants' arguments have no basis in fact or in law. *See Neville v. Eighth Judicial District Court in & for Cty. of Clark*, Case No. 70696, 133 Nev. Adv. Op. 95, 2017 WL 6273614, at *4 (Nev. Dec. 7, 2017) (Dec. 7, 2017).

Furthermore, there is no issue or claim preclusions because the court in *Sargent* explicitly based its decision to decertify the *Sargent* plaintiffs' federal Fair Labor Standards Act ("FLSA") claims on the reasoning that the employee plaintiffs' claims were not similarly situated to the named plaintiffs. *See Sargent et al v. HG Staffing,* 171 F.Supp. 3d 1063 (D. Nev. March 22, 2106). The court's decision necessarily precludes all of Defendants' arguments that the claims of Plaintiffs here are "identical" to the claims of the *Sargent* plaintiffs; indeed, if they were identical class certification would have been granted and the Plaintiffs here would still be part of that ongoing action. Likewise, Defendants' so-called "first to file" argument is inapplicable.

Defendants Motion also relies on the faulty argument that an invalid collective bargaining agreement ("CBA") somehow prevents Plaintiff Williams from proceeding in this action because it is a question of law. Although Plaintiffs' vehemently deny the CBA refenced by Defendants is valid, whether it is valid or not and, ultimately, whether it "provides otherwise for overtime" must be fully briefed in order to give this Court the facts and law upon which to make such decisions. Regardless, even if Defendants are correct, Defendants make no such argument precluding Plaintiff Capilla and other employees from proceeding with this action.

Moreover, Defendants' statute of limitations argument is in reality an improper and premature attempt to summarily adjudicate an issue relevant to an affirmative defense—

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namely, the length of the limitations period. In other words, Defendants are not arguing that Plaintiffs' claims are barred by the applicable statute of limitations, but they are merely arguing that Plaintiffs' damages should be limited to a two-year period. This affirmative defense does not form the grounds for a motion to dismiss. Indeed, Defendants acknowledge that one or more of the Named Plaintiffs do have valid claims, even based on a two-year period.

And finally, other than the issue of the pleading standards set forth by *Johnson v. Travelers*, *Nevada Power Co. v. Eighth Judicial Dist. Court of Nevada ex rel. Cty of Clark,* and *Landers*, none of the arguments Defendants' make are appropriate for consideration on a Nevada Rule of Civil Procedure ("NRCP") 12 motion to dismiss. For these reasons more fully set forth below, Defendants' motion to dismiss must be denied in its entirety.

II. PROCEDURAL HISTORY

Plaintiffs filed their original 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. Defendants removed to the Federal District Court, District of Nevada on July 25, 2106. That court remanded back to this Court on December 6, 2016.

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. *Id.*

Defendants filed their motion to dismiss on January 12, 2017 and Plaintiffs filed their Opposition on February 2, 2017.

The Parties stipulated, and the Court granted a stay of all proceedings pending the Supreme Court of Nevada's decision in *Neville v. Terrible Herbst.* The Parties filed a status report in light of the *Neville* decision and the Court lifted the Stay and withdrew Defendants 1/12/17 motion to dismiss on December 27, 2017.

Defendants filed their renewed motion to dismiss on January 12, 2018.

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III. LEGAL ARGUMENT

Nevada's wage and hour statutes provided under NRS Chapter 608 are remedial in nature. *See Terry v. Sapphire Gentlemen's Club*, 130 Nev. Adv. Op. 87 (2014). As such, NRS Chapter 608 must be liberally construed in order to effectuate the purpose of the legislation. *Int'l Game Tech., Inc. v. Second Judicial Dist. Court ex rel. Cnty. of Washoe*, 124 Nev. 193, 201, 179 P.3d 556, 560-61 (2008) ("[R]emedial statutes . . . should be liberally construed to effectuate the intended benefit."); *Eddington v. Eddington,* 119 Nev. 577, 80 P.3d 1282, 1287 (2003) ("[S]tatutes with a protective purpose should be liberally construed in order to effectuate the benefits intended to be obtained."); *Colello v. Administrator, Real Est. Div.,* 100 Nev. 344, 347, 683 P.2d 15, 17 (1984) (recognizing that "[s]tatutes with a protective purpose should be liberally construed in order to effectuate the benefits intended to be obtained."); *SIIS v. Campbell,* 109 Nev. 997, 1001, 862 P.2d 1184, 1186 (1993) (citing the "long-standing policy to liberally construe workers' compensation laws to protect injured workers and their families"); *Hardin v. Jones,* 102 Nev. 469, 471, 727 P.2d 551, 552 (1986) (applying same principle to unemployment statute). The purpose of NRS Chapter 608 is to protect the health and welfare of workers employed in private enterprise and provide concrete safeguards concerning hours of work, working conditions, and employee compensation. *See* NRS 608.005 ("The Legislature hereby finds and declares that the health and welfare of workers and the employment of persons in private enterprise in this State are of concern to the State and that the health and welfare of persons required to earn their livings by their own endeavors require certain safeguards as to hours of service, working conditions and compensation therefor.").

Likewise, the class action process provides for important public policy goals that have long been recognized by the judiciary. United States Supreme Court Justice Douglas reasoned, "The class action is one of the few legal remedies the small claimant has against those who command the status quo." *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 186, 94 S. Ct. 2140, 2156, 40 L. Ed. 2d 732 (1974) (Douglas, J, dissenting).[1] This sentiment holds true here, and is

[1] The footnote to Justice Douglas' dissent cites to Judge Weinstein writing in the N.Y. Law Journal, May 2, 1972, p. 4, col. 3, who said:

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comparable to that of the Las Vegas Sands' former casino employees who sought damages for failure to provide a statutorily required 60-day notice before closure:

> This case involves multiple claims, some for relatively small individual sums. Counsel for the would-be class estimated that, under the most optimistic scenario, each class member would recover about $1,330. If plaintiffs cannot proceed as a class, some – perhaps most – will be unable to proceed as individuals because of the disparity between their litigation costs and what they hope to achieve.

Local Joint Executive Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc., 244 F.3d 1152, 1163 (9th Cir), *cert. denied,* 534 U.S. 973,122 S. Ct. 395 (2001) ("Local Joint Executive Bd.") ("Class actions … may permit the plaintiffs to pool claims which would be uneconomical to litigate individually.")(citing *Phillips Petroleum Co. v. Shutts,* 472 U.S. 797, 809 (1985)).

Remarkably, Defendants seem to blame Plaintiffs' counsel for ongoing litigation on behalf of minimum wage employees who have been deprived of proper compensation for the work done on behalf and at the direction of GSR. Contrary to Defendants' characterization that Plaintiffs' counsel had to "chase down [] plaintiffs" (Mot. at pp. 2:27-3:1) as long as employers such as the GSR skirt Nevada wage and hour laws and extract free labor from its employees to fund renovations and profits for the Meruelo Group[2], employees will search out attorneys who

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"Where, however, public authorities are remiss in performance of this responsibility for reason of inadequate legal authority, excessive workloads or simple indifference, class actions may provide a necessary temporary measure until desirable corrections have occurred. The existence of class action litigation may also play a substantial role in bringing about more efficient administrative enforcement and in inducing legislative action.

The matter touches on the issue of the credibility of our judicial system. Either we are committed to make reasonable efforts to provide a forum for adjudication of disputes involving all our citizens—including those deprived of human rights, consumers who overpay for products because of antitrust violations and investors who are victimized by insider trading or misleading information—or we are not. There are those who will not ignore the irony of courts ready to imprison a man who steals some goods in interstate commerce while unwilling to grant a civil remedy against the corporation which has benefited, to the extent of many millions of dollars, from collusive, illegal pricing of its goods to the public.

When the organization of a modern society, such as ours, affords the possibility of illegal behavior accompanied by widespread, diffuse consequences, some procedural means must exist to remedy—or at least to deter—that conduct." *Eisen*, 417 U.S. 186, footnote 8.

[2] It is true that this case was born out of the original *Sargent Action,* which was brought by plaintiff employees after a change in ownership at the GSR lead to alleged widespread wage

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are willing to take their cases and attempt to recover at least some of the wages owed to those employees.

A. The Facts Alleged In Plaintiffs' Complaint Plead A Plausible Wage Claims Under The Standards Set Forth By *Landers* And Nevada Law

1. Plaintiffs clearly meet the Supreme Court of Nevada and *Landers* pleadings standard because they have alleged at least one week when they worked without being paid their minimum wage.

All that is required to avoid dismissal are "facts sufficient to establish the necessary elements of the claim for relief." *Johnson v. Travelers Ins. Co.,* 89 Nev. 467, 472 515 P.2d 68, 71 (1973). Here, Plaintiffs' Complaint has clearly alleged that Defendants' policy of "requiring various employees to perform work activities without compensation … either by rounding hours so that employees who were technically on the clock did not receive pay for all their hours worked or by having employees perform work without being logged in to the timekeeping system" could not be more clear. These facts are "not just labels used in the complaint" and are more than sufficient to meet the Nevada pleading requirements. *Nevada Power Co. v. Eighth Judicial Dist. Court of Nevada ex rel Cty or Clark,* 120 Nev. 948, 960, 102 P.3d 578, 586 (2004).

Defendant's citation to *Landers v. Quality Communications, Inc.,* actually supports Plaintiffs' position. In *Landers* the Ninth Circuit held, "We decline to impose a requirement that a plaintiff alleging failure to pay minimum wages or overtime wages must approximate the number of hours worked without compensation. However, at a minimum the plaintiff must allege at least one workweek when he worked in excess of forty hours and was not paid for the

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and hour violations and age discrimination. Following a brief period of bank ownership, the GSR was purchased on a fire sale by the Meruelo Group, which owns and operates Defendants HG Staffing LLC and MEI-GSR Holdings LLC d/b/a Grand Sierra Resort. *See* http://archive.rgj.com/article/20110223NEWS/110223042/New-owners-Grand-Sierra-Resort-announced (last visited Aug. 26, 2015). The new ownership took over and changed everything, slashing and burning labor costs in an attempt to maximize profits and create a new Vegas-style, younger looking, casino. Defendants have, in many ways, achieved their desired result but at a real cost to its employees; a cost that was both unlawful and immoral. In order to achieve its goal, Defendants extracted free labor from its hard-working employees and eliminated its older workforce in favor of younger employees. Accordingly, GSR employees continue to seek to bind together to remedy the wrongs committed by Defendants.

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excess hours in that workweek or was not paid minimum wages." *Landers v. Quality Commc'ns, Inc.,* 771 F.3d 638, 646 (9th Cir. 2014), *as amended* (Jan. 26, 2015), *cert. denied,* 135 S. Ct. 1845, 191 L. Ed. 2d 754 (2015). Plaintiffs here have clearly done so.

In Plaintiffs' complaint Plaintiffs Capilla and Jackson-Williams alleged they were scheduled for, and regularly worked five (5) shifts per week, at least eight (8) hours per shift, and forty (40) hours per workweek and worked jammed shifts especially during special events such as, but not limited to, concerts, Burning Man, Hot August Nights, and Street Vibrations. *See* Complaint at ¶14. Plaintiffs Martel and Vaughan worked shifts over eight hours per shift one or more times a week on a regular basis and worked jammed shifts during special events such as, but not limited to, concerts, Burning Man, Hot August Nights, and Street Vibrations. *Id.* at ¶15. Plaintiffs also allege that Defendants' policy, practice, and plan was to either round employee hours so that employees who were technically "on the clock" did not receive pay for all hours worked, or had employees perform work without being logged into the timekeeping system. *Id.* at ¶16. These company-wide policies, practices, and plans resulted in 15 minutes or more of uncompensated time for Plaintiff Martel (*id.* at ¶19), two to four hours of uncompensated time for Plaintiff Vaughan (*id.* at ¶21), twenty (20) minutes or more of uncompensated time for Plaintiff Jackson-Williams (*id.* at ¶22) and ten (10) minutes or more of uncompensated time for Plaintiff Capilla (*id.* at 24). Because Plaintiffs have clearly alleged that they worked over eight hours in a day and more than forty hours in a week during at least one work week (during special events such as concerts, Burning Man, Hot August Nights, and Street Vibrations) Plaintiffs have very clearly plead a plausible minimum wage claim. These factual contentions are more than sufficient to allow the court to draw reasonable inferences that Defendants are liable for the misconduct alleged under the *Landers* standard.

2. Plaintiffs' minimum wage claims are supported by Nevada wage and hour law because Nevada law has a daily overtime requirement as well as a workweek overtime requirement.

Nevada law consistently and repeatedly affirms that an employee must be paid "wages for each ***hour*** the employee works." NRS 608.016 (emphasis added); *see also* Nev. Const. Art. 15 §16 (Employers must "pay a wage to each employee of not less than the ***hourly*** rates set

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forth in this section."). Overtime is similarly not limited to hours worked in a workweek. Nevada maintains a daily overtime requirement which requires overtime pay and one and one-half times the regular rate of pay for hours worked in excess of eight (8) in a workday for the employees at issue here. NRS 608.018(1).[3]

As a result of Defendants' unlawful off-the-clock and rounding policies, Plaintiffs have shown that they did not receive pay for all time worked by the employees at the direction of Defendants, including time worked by the employees outside the scheduled hours of work of the employee." NAC 608.115(1). And, employees did not receive overtime pay of one and one half their regular rate of pay for all hours worked over eight (8) in a workday or for the hours worked over forty (40) in a workweek. In other words, Plaintiffs and all other class members did not receive ***any*** pay for off-the-clock work required by Defendants, let alone minimum wage. Plaintiffs' allegations that Defendants failed to pay Plaintiffs the constitutionally required minimum wage for all hours worked are thus sufficient to support a claim under Section 16(B) of Article 15 of the Nevada State Constitution and the Nevada Revised Statutes and Defendants' motion to dismiss Plaintiffs' minimum wage claim must be denied.

B. Plaintiffs' Claims Are Not Barred By Issue Or Claim Preclusion Because The *Sargent* Court Never Certified The *Sargent* Plaintiffs' Claims

Contrary to Defendants' assertion that the federal court's decision not to certify the employee-plaintiffs' claims in *Sargent* somehow has a preclusive effect on the Plaintiffs here is incorrect because there is "no law delineating the preclusive effect of an order from one [of Nevada's] courts denying class certification." *See In re Wal-Mart Wage and Hour Employment Practices Litigation,* 2008 WL 3179315, *7 (D. Nev. 2008). The plaintiffs in *Sargent et al v. HG Staffing,* filed their action as a collective action pursuant to the federal Fair Labor Standards

[3] NRS 608.018(1) provides the following: An employer shall pay 1 ½ times an employee's regular wage rate whenever an employee who receives compensation for employment at a rate less than 1 ½ times the minimum rate pursuant to NRS 608.250 works: (a) More than 40 hours in any scheduled week or work; or (b) More than 8 hours in any workday unless by mutual agreement the employee works a scheduled 10 hours per day for four calendar days within any scheduled week of work.

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Act ("FLSA") and as a class action pursuant to FRCP 23 for their state law wage and hour claims.[4]

In holding that the plaintiffs' claims were not barred by collateral estoppel, either under a theory of issue preclusion or claim preclusion, the court in *In re Wal-Mart* explained, that Nevada has looked to the Restatement (Second) of Judgements to inform its law on preclusion issues. *In re Wal-Mart,* 2008 WL 3179315, *7, citing *Edwards v. Ghandour,* 159 P.3d 1086, 1094 (Nev. 2007); *Univ. of Nev. v. Tarkanian,* 879 P.2d 1180, 1191-92 (Nev. 1994). The court further explained, "[i]n § 41, the Restatement discusses when a person who is not a party to an action may be barred even though not a litigant to the prior action. Among the possibilities is a member of a class action even if he is not a class representative. However, the Restatement ***limits that situation to when the court approves the class action***. Restatement (Second) Judgments § 41(1)(e), cmt. e & illus. 8." *Id.* at *8 (emphasis added).

The court further noted that "Nevada's rules on issue preclusion are not concerned with interlocutory rulings" *Id., citing Bull v. McCuskey,* 615 P.2d 957, 960 (Nev. 1980) *overruled on other grounds by Ace Truck & Equip. Rentals, Inc. v. Kahn,* 746 P.2d 132 (Nev. 1987) (internal quotation marks omitted). The *In re Wal-Mart* court reasoned that there was no preclusive effect in part because "class certification is a non-final, interlocutory decision." *See* Nev. R. Civ. P. 23(c)(1) (indicating a decision on class certification "may be conditional and may be altered or amended before the decision on the merits"). Many courts have held that the interlocutory nature of a certification order prevents satisfying the "final judgment" aspect of issue preclusion

[4] FLSA collective actions are distinct from FRCP 23 class actions whereby a 29 U.S.C. § 216(b) collective action requires a party to opt-in to the action by filing a consent to sue with the court. This "opt-in" requirement differs from the requirements under FRCP 23 whereby under Rule 23(b)(3), each person within the class definition of a ***certified class*** is considered to be a class member. The court in *Sargent* decertified the collective action under the FLSA on the basis that the plaintiff employees were not similarly situated to each other. The *Sargent* court never certified the *Sargent* plaintiffs' Rule 23 claims on two grounds. First, it never reached the state law claims because it dismissed them on the incorrect premise that Nevada employees do not have a private right of action for wage claims. Second, it reasoned that the *Sargent* plaintiffs failed to provide the court with facts sufficient to allow the court to make "a rigorous analysis, that the prerequisites of Rule 23 have been satisfied" for their Nevada Constitution wage claims and the age discrimination claims, only. *See Sargent,* 171 F. Supp. 3d at 1073-74.

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and have rejected defendant's attempts to bar subsequent class allegations based on decertification of a prior action against the same defendant. *See Fair Housing for Children Coal, Inc. v. Porncahi Int'l.,* 890 F.2d 420 (9th Cir. 1989) (in Rule 23 decertification court stated defendant "is simply misguided when it characterizes the district court's early, tentative rulings as a determination of classwide liability. … No final judgment of any kind was rendered, no permanent injunction issued, and no damages were awarded. When no classwide determination has been made, Rule 23(c)(1), by its terms, permits amendment and alteration of the class."); *Davidson v. RGIS Inventory Specialists,* 553 Supp. 2d 703, 706-07 (E.D. Tex. 2007) (holding that Rule 23 certification decisions held that they were not final judgments for issue preclusion purposes, and extending that reasoning to decisions on conditional certification under FLSA 16(b)); *cf Baldridge v. SBC Commc'ns Inc.,* 404 F. 3d 930, 931 (5th Cir. 2005) (decisions granting or denying conditional certification are not appealable as final judgments under 28 U.S.C. § 1291); *Camesi v. Univ. of Pittsburgh Med. Ctr.,* 729 F.3d 239, 242 (3d Cir. 2013) (same).

1. Because the *Sargent* action was never certified, the precondition for binding Plaintiffs here is not present.

Similarly, Defendants' "first-to-file" arguments are inapplicable to the present case. Under the first-to-file rule, "[w]hen cases involving the same parties and issues have been filed in ***two different districts***," the first-to-file rule grants "the second district court [the] discretion to transfer, stay, or dismiss the second case in the interest of efficiency and judicial economy." *Wright v. RBC Capital Markets Corp.,* 2010 WL 2599010, at *4 (E.D. Cal. June 24, 2010). The *Wright* court explained, "[t]he rule derives from principles of federal comity." *Id., citing Cedars–Sinai Med. Ctr. v. Shalala,* 125 F.3d 765, 769 (9th Cir. 1997). "Its purpose is to avoid placing an unnecessary burden on the federal judiciary, and to avoid the embarrassment of conflicting judgments." *Id. citing, Church of Scientology of Cal. v. U.S. Dep't of the Army,* 611 F.2d 738, 750 (9th Cir. 1979).

Defendants citation in support of its first-to-file argument actually supports Plaintiffs, here. In *Smith v. Bayer Corp.,* Respondent (Bayer) moved in Federal District Court for an

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injunction ordering a West Virginia state court not to consider a motion for class certification filed by petitioners (Smith), who were plaintiffs in the state-court action. *Smith v. Bayer Corp.,* 564 U.S. 299, 131 S. Ct. 2368, 2370, 180 L. Ed. 2d 341 (2011). Bayer thought such an injunction was warranted because, in a separate case, Bayer had persuaded the same Federal District Court to deny a similar class-certification motion that had been filed against Bayer by a different plaintiff, George McCollins. *Id.* The District Court had denied McCollins' certification motion under Fed. Rule Civ. Proc. 23. *Id.* The Supreme Court held:

> A federal court "may not grant an injunction to stay proceedings in a State court except" in rare cases, when necessary to "protect or effectuate [the federal court's] judgments." 28 U.S.C. § 2283. The Act's "specifically defined exceptions," *Atlantic Coast Line R. Co. v. Locomotive Engineers,* 398 U.S. 281, 286, 90 S.Ct. 1739, 26 L.Ed.2d 234, "are narrow and are 'not [to] be enlarged by loose statutory construction,'" *Chick Kam Choo v. Exxon Corp.,* 486 U.S. 140, 146, 108 S.Ct. 1684, 100 L.Ed.2d 127. Indeed, "[a]ny doubts as to the propriety of a federal injunction against state court proceedings should be resolved in favor of permitting the state courts to proceed." *Atlantic Coast Line R. Co.,* 398 U.S., at 297, 90 S.Ct. 1739. The exception at issue in this case, known as the "relitigation exception," authorizes an injunction to prevent state litigation of a claim or issue "that previously was presented to and decided by the federal court." *Chick Kam Choo,* 486 U.S., at 147, 108 S.Ct. 1684. This exception is designed to implement "well-recognized concepts" of claim and issue preclusion. *Ibid.* ***Because deciding whether and how prior litigation has preclusive effect is usually the bailiwick of the second court—here, the West Virginia court—every benefit of the doubt goes toward the state court***, see *Atlantic Coast Line,* 398 U.S., at 287, 297, 90 S.Ct. 1739.

Smith v. Bayer Corp., 564 U.S. at 2376-77 (emphasis added). In coming to this holding, the Supreme Court noted, "[a]bsent clear evidence that the state courts had adopted an approach to State Rule 23 tracking the federal court's analysis in McCollins' case, this Court could not conclude that they would interpret their Rule the same way and, thus, could not tell whether the certification issues in the two courts were the same." *Id.* at 2372.

Furthermore, the Supreme Court rejected the same arguments Defendants make here when the Court reasoned:

> In general, "[a] 'party' to litigation is '[o]ne by or against whom a lawsuit is brought,' " *United States ex rel. Eisenstein v. City of New York,* 556 U.S. 928, —

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> —, 129 S.Ct. 2230, 2234, 173 L.Ed.2d 1255 (2009), or one who "become[s] a party by intervention, substitution, or third-party practice," *Karcher v. May,* 484 U.S. 72, 77, 108 S.Ct. 388, 98 L.Ed.2d 327 (1987). And we have further held that an unnamed member of a *certified* class may be "considered a 'party' for the [particular] purpos[e] of appealing" an adverse judgment. *Devlin v. Scardelletti,* 536 U.S. 1, 7, 122 S.Ct. 2005, 153 L.Ed.2d 27 (2002). But as the dissent in *Devlin* noted, no one in that case was "willing to advance the novel and surely erroneous argument that a nonnamed class member is a party to the class-action litigation *before the class is certified.*" *Id.,* at 16, n. 1, 122 S.Ct. 2005 (opinion of SCALIA, J.). Still less does that argument make sense *once certification is denied*. The definition of the term "party" can on no account be stretched so far as to cover a person like Smith, whom the plaintiff in a lawsuit was denied leave to represent.

Id. at *2380 (emphasis in the original).

The same reasoning must be applied here. The *Sargent* plaintiffs failed to obtain class certification, which meant that they could not represent other employees in an action against the employer, GSR. As the Supreme Court said in *Smith v. Bayer Corp.,* "absence of a certification under [FRCP 23], the precondition for binding [non-named plaintiffs] was not met. Neither a proposed class action nor a rejected class action may bind nonparties." *Id.* And, in foreclosing Defendants arguments that counsel for Plaintiffs here "will most likely simply recruit a new set of Plaintiffs to start a new class action" as a form of "blatant forum shopping" (*see* Motion at p. 19:3-6) the Supreme Court held:

> "… this form of argument flies in the face of the rule against nonparty preclusion. That rule perforce leads to relitigation of many issues, as plaintiff after plaintiff after plaintiff (none precluded by the last judgment because none a party to the last suit) tries his hand at establishing some legal principle or obtaining some grant of relief. We confronted a similar policy concern in *Taylor,* which involved litigation brought under the Freedom of Information Act (FOIA). The Government there cautioned that unless we bound nonparties a "'potentially limitless" number of plaintiffs, perhaps coordinating with each other, could "mount a series of repetitive lawsuits" demanding the selfsame documents. 553 U.S., at 903, 128 S.Ct. 2161. But we rejected this argument, even though the payoff in a single successful FOIA suit—disclosure of documents to the public—could "trum[p]" or "subsum[e]" all prior losses, just as a single successful class certification motion could do. *In re Bridgestone/Firestone,* 333 F.3d, at 766, 767. As that response suggests, our legal system generally relies on principles of *stare decisis* and comity among courts to mitigate the sometimes substantial costs of similar litigation brought by different plaintiffs. We have not thought that the

> right approach (except in the discrete categories of cases we have recognized) lies in binding nonparties to a judgment.

Id. at 2381.

This is not a case where two different cases involving the same parties and issues have been filed in two different districts—the actual first-to-file rule—but a case nearly identical in analysis to the *Smith v. Bayer* decision by the Supreme Court. Here, the named-Plaintiffs are not the same as in *Sargent*. The *Sargent* action was never certified and thus the named-Plaintiffs here have never had their claims adjudicated. Accordingly, Defendants' arguments that Plaintiffs' case here is a wrongful attempt at re-litigation must fail.

C. Plaintiff's Nevada Wage Statute Claims Are Not Barred By Any Statute Of Limitations.

Perhaps recognizing the weaknesses of its arguments, Defendants assert that Plaintiffs' statutory claims are subject to a two-year limitations period. However, Defendants do not actually argue that a two-year limitations period would bar all of Plaintiffs' claims. Defendants cannot make this argument, because, as Defendants' concede (Mot. at p. 3:18-19) Plaintiffs Martel and Williams were still employed by Defendants within the last two years, and Defendants' statutory violations are ongoing. Rather, it appears that Defendants' statute of limitations argument is in reality an improper and premature attempt to summarily adjudicate an issue relevant to its affirmative defense—namely, the length of the limitations period. In other words, Defendants are not arguing that Plaintiffs' claims are barred by the applicable statute of limitations but is merely arguing that Plaintiffs' damages should be limited to a two-year period. This affirmative defense does not form the grounds for a motion to dismiss. Because judging the validity of an affirmative defense "often requires consideration of facts outside of the complaint[,]" an affirmative defense generally does not provide grounds for a court to grant a motion to dismiss. *TMX, Inc. v. Volk,* No. 65807, 2015 WL 5176619, at *1 (Nev. App. Aug. 31, 2015) (citing, *Kelly–Brown v. Winfrey,* 717 F.3d 295, 308 (2d Cir.2013); *see also In re CityCenter Constr. Lien Master Litig.,* 129 Nev. Adv. Op. 70, n. 3, 310 P.3d 574, 579 n. 3 (2013) (noting courts generally do not consider matters outside the pleading in determining a motion to dismiss); *Lubin v. Kunin,* 117 Nev. 107, 116, 17 P.3d

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422, 428 (2001) (noting at the NRCP 12(b)(5) stage, defenses generally should not be considered)).

For the purposes of a motion to dismiss, it is irrelevant whether some of the plaintiff's damages might be barred by the applicable limitation periods, and it is equally irrelevant whether such damages should be cut off at two years, three years, or some other point in Plaintiffs' or putative class members' employment history, if at all. So long as Plaintiffs' claims are timely, this Court should not humor Defendants' attempt to prematurely limit damages by entertaining its statute of limitations argument. *Lubin v. Kunin,* 117 Nev. 107, 116, 17 P.3d 422, 428 (2001) (noting at the NRCP 12(b)(5) stage, defenses generally should not be considered).

In any event, Defendants' analysis of the applicable limitations periods is incorrect. Absent specific statutory direction to the contrary, NRS 11.190(3)(a) provides a general three-year limitations period for "an action upon a liability created by statute."

Moreover, a plain reading of NRS 608.260 illustrates that the two-year limitations period set forth therein applies only to actions brought under NRS 608.250.[5] NRS 608.260 does not purport to limit causes of action arising under different statutory or constitutional provisions. Nor do other provisions within NRS 608 impose internal limitations periods similar to NRS 608.260. Had the Legislature intended to impose such limitations, it could have easily done so. The Legislature's decision not to do so indicates its intent that, outside of claims specifically arising out NRS 608.250, all other statutory wage and hour claims are subject to the more general three-year limitations period set forth in NRS 11.190. By specifically including a limitations period for claims arising out of NRS 608.250, while remaining silent as to claims arising from other statutory provisions, the Legislature indicated that the statute provides an exception, not a general rule. This Court should not transform

[5] NRS 608.260 provides in full that "[i]f any employer pays any employee a lesser amount than the minimum wage prescribed by regulation of the Labor Commissioner pursuant to the provisions of NRS 608.250, the employee may, at any time within 2 years, bring a civil action to recover the difference between the amount paid to the employee and the amount of the minimum wage. A contract between the employer and the employee or any acceptance of a lesser wage by the employee is not a bar to the action."

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NRS 608.260's specific exception into a generally applicable rule by applying it to statutes outside the context of NRS 608.250 that do not contain a similar limiting language. A court cannot read into a statute words that are not there. *Silvers v. Sony Pictures Entm't, Inc.*, 402 F.3d 881, 885 (9th Cir. 2005) (en banc) ("The doctrine of *expressio unius est exclusio alterius* 'as applied to statutory interpretation creates a presumption that when a statute designates certain persons, things, or manners of operation, all omissions should be understood as exclusions.'").

1. Plaintiffs and all putative class members are entitled to *American Pipe* tolling.

Plaintiffs pointed out in their complaint that the *Sargent Action* was originally filed on June 21, 2013 as a proposed class action for failure to pay wages due and owing in the Second Judicial District Court of the State of Nevada in and for the County of Washoe. (*See* CV13 01351.) Defendants removed that action to the United States District Court District of Nevada on August 22, 2013. The named-Plaintiffs' claims here were dismissed ***prior to being certified as a class action*** on January 12, 2016. Thus, pursuant to *American Pipe & Construction Co., v. Utah*, the Plaintiffs' claims here, and those of the proposed class, must be tolled as of the date of the filing of the original *Sargent* complaint. *See e.g., American Pipe & Constr. Companys. Utah*, 414 U.S. 538,554,94 3X1756, 38 L.Ed. 2nd (1974) (FRCP 23, 23(a), (a)(1–4), (b)(3), (c)(1), (d)(3), 24, 24(a), (a)(2), (b), (b)(2), 28 U.S.C.A.; Clayton Act, §§ 4B, 5(b), 15 U.S.C.A. §§ 15b, 16(b)) (Commencement of class action suspends applicable statute of limitations as to all asserted members of class *who would have been parties had the suit been permitted to continue as class action.*) (emphasis added); *Crown, Cork & Seal Co. v. Parker*, 462 U.S. 345,354,103 S. Ct. 2392, 76 L. Ed. 2nd 628 (1983) (tolling rule of *American Pipe* applies not just to interveners, but also to class members who wish to file separate actions); *Allen v. KB Home Nevada Inc.,* 2013 WL 8609775 (Nev.Dist.Ct.), 1. ("It is determined that pursuant to *Jane Roe Dancer I-VII v. Golden Coin, Ltd.*, 124 Nev. 28, 176 P.3d 271 (2008), that based on the complaint filed on December 2, 2008, which alleges class action status as a remedy, the statute of limitations and/or repose is tolled for all putative class members. Additionally, the

American Pipe tolling rule applies to putative class members filing individual actions as well as to interveners.) (internal citations omitted). *See* Complaint at pp. 8-9, fn. 1.

Defendants are simply incorrect in their assertion that Plaintiffs are engaged in "blatant forum shopping." *See* Mot. at p. 9:1-3. As discussed in §B, above, the *Sargent Action* was never certified as a class action on the Nevada wage claims because the federal court dismissed those claims prior to considering the certification issue. Further, Defendant' citation to NRS 11.500[6] is curious at best. NRS 11.500 is limited to recommencement of an action dismissed for lack of subject matter jurisdiction, which Defendants acknowledge is not the case here.

Likewise, Defendants argument that *Griffin v. Singletary* somehow bars the Named-Plaintiffs and putative class members to a limitation period after June 2014, is inapplicable because no class was ever certified in the *Sargent Action.* See Mot. at §D, *citing Griffin v. Singletary,* 17 F. 3d 356, 359 (11th Cir. 1994). The *Griffin* case is not binding on this Court, nor is it analogous. In *Griffin* the class had previously been certified. *Id.* at 358. No certification analysis has ever been undertaken for the Named-Plaintiffs or putative class members here. And, as discussed directly above, Defendants' statute of limitations argument is in reality an improper and premature attempt to summarily adjudicate an issue relevant to its affirmative defense. Moreover, Plaintiffs Martel and Williams were still employed by Defendants within the last two years, and Defendants' statutory violations are ongoing.

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[6] In its entirety: **NRS 11.500 Recommencement of actions dismissed for lack of subject matter jurisdiction.**

1. Notwithstanding any other provision of law, and except as otherwise provided in this section, if an action that is commenced within the applicable period of limitations is dismissed because the court lacked jurisdiction over the subject matter of the action, the action may be recommenced in the court having jurisdiction within: (a) The applicable period of limitations; or (b) Ninety days after the action is dismissed, whichever is later.

2. An action may be recommenced only one time pursuant to paragraph (b) of subsection 1.

3. An action may not be recommenced pursuant to paragraph (b) of subsection 1 more than 5 years after the date on which the original action was commenced.

4. Paragraph (b) of subsection 1 does not apply to a contract that is subject to the provisions of chapter 104 of NRS.

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C. Plaintiffs' Claims For Wages And Overtime Are Not Preempted By The Alleged Collective Bargaining Agreement

The reality is that Defendants do not have a valid CBA in effect. The last CBA that purportedly covered Plaintiff Williams and any members of the putative class expired on or about May 2011 and has never been renewed. The last CBA in effect expired 30-days after the sale of the property located at 2500 East Second Street, Reno, Nevada 89595. The property was sold to Defendants in February 2011 and the sale closed on or about March 31, 2011. According to the express language of the prior CBA of the former owners of the GSR and the Culinary Workers Union Local 226, the CBA expired by its own terms in May 2011:

> [I]f the Employer sells the property located at 2500 East Second Street, Reno, Nevada 89595 (i.e., the Grand Sierra Resort and Casino) to third party during the ninety-day (90) initial extension period or any month-to-month renewal period thereafter, **the CBA will remain in effect (30) days after the property sale closes**[.]

See Exhibit 1, hereinafter "Worklife Financial, Inc. dba Grand Sierra Resort and Casino and Culinary Workers Union Local 226 – 2009-2010" BATES stamped GSR-1687-GSR-1756.

Defendants now attach as an exhibit, yet another invalid CBA, that is in a redline form, not dated, and *not* signed.[7] Defendants' argument that an invalid CBA somehow preempts Plaintiff's claims or prevents one of the four named Plaintiffs from pursuing their claims individually or on behalf of a putative class is simply unsupportable. *See* Motion at §§ C, E, and F.

Moreover, Plaintiffs are not attempting to enforce any overtime provisions in the CBA, but only the statutory obligation to pay overtime in absence of a contrary provision in the CBA. The Ninth Circuit considered and rejected the same arguments Defendants rely on here in *Jacobs v. Mandalay Corp*., 378 Fed. Appx. 685 (9th Cir. Nev. 2010). In *Jacobs*, the plaintiff claimed he wasn't paid overtime based upon the guaranteed gratuity called commissions in the collective bargaining agreement. The parties disputed whether plaintiff Jacobs's "regular wage

[7] *See* Mot. at Exhibit A, for just few key examples: p. 6 (no dates); p. 9 (redline); p. 11 (redline and question marks in the margins); p. 18 (strike through sections); p. 29 (redline); pp. 34, 60, (no dates for force and effect or termination); p. 36 (redline); p. 37 (no signatures from employer or union); pp. 56, 58, 59, 61, 66, 67, 69, 71, 73, (no signatures from employer or union).

rate" under NRS section 608.018 included only his hourly wages, or both his hourly wages and per job commissions, such that section NRS 608.125 would also apply to him. Contrary to the district court's finding, the Court of Appeals held that the meaning of "regular wage rate" as provided in NRS section 608.018 was a question of state law, requiring no reference to the terms of the CBA except for the mere numbers to be applied to the calculation of overtime. Relying solely on Nevada's definition of "regular wage rate," a court could calculate the exact amount of overtime pay that is owed by looking to the CBA but not interpreting it. The Ninth Circuit said that referring to the CBA in this way, for the purpose of calculating damages, does not require an interpretation of the CBA.

Likewise, in this case, the definition of all hours worked is a matter of state law and was not mentioned in the CBA at all. NRS 608.016 states: "An employer shall pay to the employee wages for each hour the employee works. An employer shall not require an employee to work without wages during a trial or break-in period." NAC 608.115(1) states: "An employer shall pay an employee for all time worked by the employee at the direction of the employer, including time worked by the employee that is outside the scheduled hours of work of the employee." We need only look to the CBA in this case to find the rate per hour worked. The remaining terms are all statutory.[8]

[8] In *Bonilla v. Starwood Hotels & Resorts Worldwide, Inc.*, 407 F. Supp. 2d 1107 (C.D. Cal. 2005), the Court determined that plaintiffs' claims for missed meal period and rest breaks were not preempted, notwithstanding the need to reference the CBA to determine damages. *See id.* at 1113 ("The calculation of damages may require reference to wage payment calculations dictated by the CBA, as well as factual evidence such as time worked by employees and how they were compensated, but not interpretation of the CBA." (citation omitted)); *see also Acosta v. AJW Constr.*, No. 07-4829 SC, 2007 U.S. Dist. LEXIS 91045, 2007 WL 4249852, at *2 (N.D. Cal. Nov. 30, 2007) ("The dispute does not hinge on the calculation of each Plaintiff's hourly wages. . . . Instead, the claims will hinge on the number of hours Plaintiffs worked for which they were not paid."); *Macque-Garcia v. Dominican Santa Cruz Hosp.*, No. C01-00734TEH, 2001 U.S. Dist. LEXIS 4866, 2001 WL 406311, at *4 (N.D. Cal. Apr. 17, 2001) (holding that Plaintiffs' claims, which included violations of wage provisions of the California Labor Code, were not preempted, and stating that the case "undeniably involves a dispute over the payment of wages, yet every wage dispute is not necessarily preempted by federal law"). In *Daniels v. Recology*, No. C 10-04140 JSW, 2010 U.S. Dist. LEXIS 137613, 2010 WL 5300878 (N.D. Cal. Dec. 20, 2010), the Court rejected the defendant's argument that because the court would be required to calculate damages based on wages due under the CBA, the plaintiff's wage and hour claims were preempted. In so

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Whether the Defendants' purported CBA is valid or not and, ultimately, whether it "provides otherwise for overtime" must be fully briefed in order to give this Court the facts and law upon which to make such decisions and is thus not an issue proper for determination on a motion to dismiss under NRCP 12. Regardless, even if Defendants are correct, Defendants make no such argument precluding Plaintiffs Martel, Capilla, Vaughan, and other employees from proceeding with this action.

IV. CONCLUSION

For the reasons expressed above, Plaintiffs respectfully requests that Defendants' motion to dismiss be denied in its entirety. Alternatively, to the extent this Court grants Defendants' motion in whole or any part thereof, Plaintiffs should be granted leave to file an amended complaint to cure any deficiencies noticed by the Court.

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: February 5, 2018

Respectfully Submitted,

THIERMAN BUCK LLP

/s/ *Leah L. Jones*
Mark R. Thierman
Joshua D. Buck
Leah L. Jones

Attorneys for Plaintiffs

holding, the court stated that, as is true in the instant action, the plaintiff did not dispute the wage rate paid, but rather that he was not paid at all. 2010 U.S. Dist. LEXIS 137613, [WL] at *4. The court also noted, as we have above, that the "calculations are also not so complex such that this Court would have to interpret, as opposed to reference, the CBA to determine damages." 2010 U.S. Dist. LEXIS 137613, [WL] at *5.

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Index of Exhibits

1. Collective Bargaining Agreement

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CERTIFICATE OF SERVICE BY E-FILING

I certify that I am an employee of the Thierman Buck Law Firm 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:

COHEN|JOHNSON|PARKER|EDWARDS
H. Stan Johnson, Nev. Bar No. 00265
sjohnson@cohenjohnson.com
Chris Davis, Nev. Bar No. 6616
cdavis@cohenjohnson.com
255 E. Warm Springs Road, Suite 100
Las Vegas, Nevada 89119
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MERUELO GROUP, LLC
Susan Heaney Hilden, Nev. Bar No. 5358
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 February 5, 2018, at Reno, Nevada.

/s/Tamara Toles
Tamara Toles

EXHIBIT 1

Collective Bargaining Agreement

EXHIBIT 1

COLLECTIVE BARGAINING AGREEMENT

between

WORKLIFE FINANCIAL, INC.

dba

GRAND SIERRA RESORT AND CASINO

and

CULINARY WORKERS UNION LOCAL 226

2009-2010

TABLE OF CONTENTS

AGREEMENT

THIS AGREEMENT is made and entered into as of the 19th day of November, 2010, by and between Worklife Financial, Inc. dba Grand Sierra Resort and Casino (hereinafter, called the "Employer") and its successors and assigns, and the Culinary Workers Union Local 226 (hereinafter, called the "Union").

WITNESSETH:

WHEREAS, the parties, by negotiations and collective bargaining, reached complete agreement on wages, hours of work, working conditions and other related, negotiable subjects to be incorporated into a new Labor Agreement which shall supersede all previous verbal or written agreements applicable to the employees in the bargaining unit defined herein which may have existed between the Employer or between the predecessor of the Employer, if any, and the predecessor of the Union, if any.

NOW, THEREFORE, in consideration of the forgoing, the execution of this Agreement and the full and faithful performance of the covenants, representations and warranties contained herein, it is mutually agreed as follows:

ARTICLE 1: RECOGNITION AND CONTRACT COVERAGES

1.01. Recognition of the Union.
The Employer recognizes the Union as the collective bargaining representative for the Employer's employees working under the Union's jurisdiction at the Employer's facility located at 2500 East Second Street, Reno, Nevada 89595, and working in those job classifications listed in Exhibit 1 attached hereto and made a part of this Agreement. The term "employee" or "employees" as used in this Agreement means all persons directly employed by the Employer within the classifications set forth in Exhibit 1 attached hereto and made a part of this Agreement. The term "employee" or "employees" as used in this Agreement means all persons directly employed by the Employer within the classifications set forth in Exhibit 1, but excluding all other employees and excluding supervisors, as defined in the Labor Management Relations Act as amended. Any classification established by the Employer not listed in Exhibit 1 where the employees perform duties covered by this Agreement shall be a part of this Agreement at a wage rate comparable to related job classifications. If the Union and the Employer cannot agree on the wage rate or the inclusion for any new classification, the issue may be submitted to the grievance procedure. The present practice of the hotel in regard to bargaining unit and non-bargaining unit work will continue, but cannot be expanded unless the Employer meets with the Union and bargains for any changes.

1.02. Masculine Gender.
In this Agreement the use of masculine gender shall be construed to equally include the feminine.

ARTICLE 2: HIRING OF EMPLOYEES

2.01. Hiring Procedure.
Whenever the Employer finds it necessary to hire new employees for vacancies in job classifications covered by this Agreement, the Employer, upon hiring such new employees, shall make available for the Union, on a monthly basis, their names, classifications and wage rates for inclusion into the Union's list of employees represented. In the event the Union has available qualified employees for the job classification within the unit, the Union may furnish the same to the Employer for consideration by the Employer. The Union's selection of applicants for the referral shall be on a nondiscriminatory basis and shall not be based upon, or in any way affected by, membership in the Union or the Union's bylaws, rules, regulations, constitutional provisions, or any other aspect or obligation of Union membership policies or requirements, or upon an applicant's race, color, religion, sex, age, sexual orientation, or national origin.

The Employer shall be the sole judge of an applicant's suitability, competence and qualifications to perform the work of any job to be filled. The Employer may accept or reject any applicant for employment referred by the Union, provided that the Employer's acceptance or rejection of an applicant shall be solely upon the Employer's judgment and determination as to the factors set forth in the preceding sentence. The Employer's decision in matters pertaining to hew hires shall not be subject to grievance and arbitration procedures.

ARTICLE 3: STATE LAWS

3.01. Invalidity of a Portion of Agreement.
If any portion or portions of this Agreement are found to be invalid or void by a competent court, board or authority, the remaining portions of the Agreement shall remain intact and in effect.

3.02. Indemnification.
The Union will indemnify and save the Employer harmless against any and all claims, demands or other forms of liability, which may arise out of or by reason of, any action taken or not taken by the Employer, at the request of the Union, in violation of the Nevada Right-to-Work law.

3.03. Check-Off.
(a) Monthly Dues. The Employer will check off and remit to the Union initiation and monthly dues for employees who have executed and furnished to the Company a Payroll Deduction Authorization in the form of Exhibit 2 attached to this Agreement, which by this reference is made a part hereof.

(b) Billing Procedure. The Union will remit to the Employer a monthly billing stating the amount to be deducted from the wages of each employee pursuant to the Payroll Deduction Authorization form signed by the employee. (See Exhibit 2 for a copy of such authorization form). The Employer will deduct the funds so billed and remit them to the Union no later than twenty (20) days of the month following receipt of the monthly billing.

(c) Indemnification. The Union shall indemnify and hold the Employer harmless against any and all claims, demands, suits, and other form of liability which shall arise out of or by reason of action taken or not taken by the Employer at the request of the Union under the terms of this Article.

ARTICLE 4: UNION REPRESENTATIVES

4.01. Access to Employer Property.
Non-employee Union Representatives shall have the following rights of access to bargaining unit employees on the Employer's property:

(a) Visitation Rights. The Union shall designate in writing to the Employer the names of the authorized representatives who may exercise the Union's visitation rights.

(b) Designated Areas. The designated Union Representatives shall have access to areas where bargaining unit employees are working solely for the purpose of observing matters relevant to the investigation of grievances. The designated Union Representative shall also have access to the employee cafeteria in order to conduct Union business. The majority of discussions/meetings between employees and the Union Representatives will only occur in the employee cafeteria, provided such meetings do not disrupt the atmosphere conducive to the employees' meal/break periods.

(c) Work Interference. In no case shall such access interfere with the work of any employee or guest's activities or otherwise disrupt the Employer's operations.

(d) Sign-In. Before entering the Employer's property for the purposes of contacting bargaining unit employees, the designated non-employee Union Representatives shall be required to report to a designated office, sign in and wear appropriate identification while on the premises of the Employer. In the event the designated office is not open, the Union Representative shall contact the security shift supervisor.

4.02. Shop Stewards.
Both the Employer and the Union agree that the Union may, at its discretion, have Shop Stewards from among the bargaining unit employees covered by this Agreement. The parties agree that there shall be no more than twenty (20) Shop Stewards and twenty (20) alternates. The Union shall notify the Employer in advance and in writing of the names of all Shop Stewards and alternates.

It shall be the recognized duty of the Shop Stewards to assist the bargaining unit representatives of the employees in monitoring contract compliance. Union business will be conducted by Union members, employees and Shop Stewards on their own time. The Shop Stewards shall confine themselves to the business of the Employer during working hours and they will not engage in any Union activities during working hours which will in any way, either directly or indirectly, interfere with operations, except as is expressly provided for in this Agreement.

The Employer agrees that it shall not discriminate against Shop Stewards because of their activities as such. When practical, and in accordance with the needs of the employer's business, Shop Stewards shall be scheduled to be off without pay to attend Union meetings so long as at least one (1) week's written notice has been given of the meeting date to the designated Employer representative.

ARTICLE 5: SALARIES AND WAGES

5.01. Weekly Payment.
Regular employees shall be paid weekly, semi-monthly or bi-weekly as is the practice of the Employer, in accordance with the wage scales set forth in Exhibit 1. The Employer may change the pay cycle with thirty (30) days' advance notice to the Union. Records on the source and dates of any gratuities included on paychecks shall be made available to the employees on request.

5.02. Equal Pay.
The wage scales set forth in Exhibit 1 shall apply equally to male and female employees covered by this Agreement.

5.03. Deductions and Donations.
(a) No employee shall be required to subscribe to any form of insurance or to make contributions or suffer any deduction from wages without written authorization of such employee, except as may be required by law.

(b) Cash Shortages. The Union agrees that the Employer can change its cash shortage procedures upon providing a 30-day notice to the Union. In no instances will the Employer make automatic cash deductions from employees' wages for any cash shortages until after consultation with the employee and the responsibility for the shortage has been established by the Employer.

5.04. Gratuities.
(a) All gratuities left by the customers are property of the employees exclusively, and no Employer or department head not covered by this Agreement shall take any part of such gratuities or credit the same in any manner toward the payment of an employee's wages. This provision does not apply to any present gratuity distribution in a department where splits include payment to supervisors/managers.

(b) When the Employer has special events, sales promotions or other functions where the price charged includes gratuities, the Employer may publish and distribute literature, brochures and tickets for same which contain a notice or statement that gratuities are included in such price. Gratuities, regardless of the amount, signed by a registered hotel guest on the guest's individual hotel check, or by a registered hotel guest or other customer on his individual credit card, shall be paid to the employee in cash either after the end of the shift or immediately prior to the commencement of the employee's next shift; provided that, in the case of gratuities signed on a hotel check, the employee must have followed the Employer's established policy for verifying that the person who signed for the gratuity is a registered hotel guest and is not exceeding his established credit limit. No employee shall solicit gratuities from other employees or guests.

(c) A special event shall be deemed to be any event for persons or groups arranged by a travel agent, booking agent, hotel sales representative, convention agent, promotional representative, operator or any other individual or agency where pre-delivered tickets or coupons, or package prices for food and/or beverages to be served to patrons of such events are

involved and where regular employees of an establishment covered by this Agreement provide such service, excepting those from the exceptions listed in Article 5.

(d) Presentation of Checks. Management reserves the right to present checks to guests in situations deemed appropriate; however, it is understood that gratuities associated with the check are the property of the Food Server.

5.05. Complimented Guests.

(a) On those occasions when individuals or members of a group are provided with food and/or beverages which are complimented by the Employer, there shall be no guaranteed gratuity; provided, however, that, if these individuals or group members are presented with check indicating the complimentary nature of the food and/or beverages provided, the check shall contain the words in prominent letters "COMPLIMENTARY – GRATUITY NOT INCLUDED." This provision will not apply where the complimented guests are (1) those who are staying at the Employer's hotel and are complimented when they check out; (2) participants of bus tours; (3) participants on champagne parties; and (4) drink coupons.

(b) Complimented Groups. On those occasions when members of a group, which is not a special event as defined in Section 5.04(c), are complimented as a group and not individually, with food and/or beverages, except as provided in Section 5.04(b), there shall not be any guaranteed gratuity payable by the Employer.

(c) Officers' Checks. Officers' checks and the employees' dining room are exempt from the provisions of Sections 5.04.

(d) According to the schedule provided at negotiations, gratuities paid by the Employer for all other complimentary services shall be in the Employer's discretion and proceed through Payroll so as to appear on the employee's check.

5.06. Terminated Employees.

(a) Applicable Laws to Article 5, Section 607.020 – Discharge of an Employee – Immediate Payment: Whenever the Employer discharges an employee, the wage and compensation earned and unpaid at the time of discharge shall become due and payable within twenty-four (24) hours.

(b) Section 608.030 – Payment of Employee Who Resigns or Quits His Employment: Whenever an employee resigns or quits his employment, the wages and compensation earned and unpaid at the time of his resignation or quitting must be paid no later than:

1. The day on which he would have regularly been paid the wage or compensation; or

2. Seven (7) days after he quits or resigns, whichever is earlier.

5.07. Health and Welfare.

The Union and the Employer agree that eligible employees will be covered by the Grand Sierra Resort Health & Welfare Plans for the life of this Agreement. Bargaining unit employees will be required to pay the same monthly rate as non-bargaining unit employees. The Union understands and agrees that the current healthcare benefit costs are split on an approximately 75

percent/25 percent basis between eligible employees and the Employer, with the 75 percent being paid by the Employer. Future increases in healthcare benefits costs will similarly be passed through to bargaining unit employees on an approximately 75 percent/25 percent basis, with the 75 percent being paid by the Employer. Upon renewal of insurance contracts, the Employer may modify the terms, benefits, deductible and other terms of the Health and Welfare plans at its discretion; however, the bargaining unit employees will be subject to the same terms and conditions as non-bargaining unit employees. Finally, the Employer is and has been offering a Health and Welfare program for part time employees, at 100 percent cost to the employee. GSR agrees to negotiate in good faith with the insurance carrier for the continuation of these benefits and pass the cost to part-time employees based on the contract the Employer is able to negotiate.

5.08. Superior Worker.
The wage scales in this Agreement are minimum scales and do not prohibit the Employer from paying higher wages. It is specifically agreed that employees compensated at said higher wage rates may be returned to the scales published herein at the sole discretion of the Employer. Employees paid Superior Workmen rates shall have their wages increased by amounts of not less than the increases in the minimum wage scales as specified in Exhibit 1, attached to and made part of this Agreement, for the classifications in which they are employed.

5.09. Combination Jobs and Cross-Training.
When an employee works in two (2) or more job classifications in any day, he shall be paid for that day at the rates of pay for the time worked in each classification; provided that this shall not apply in cases of relief for meal and rest periods. Further, the different pay rates for different job classifications apply only if employees actually work in a different classification for more than 1 hour. If employees perform the duties of both classifications interchangeably throughout the day, they will be paid a blended rate, which would be the average of the rates applicable to the different classifications.

Combination of cocktail waitress and slot associate positions. Supervisors will have discretion to act upon their observations concerning floor activity that warrants using the combination position. The combination duties are triggered during any shift/period that is similar to the graveyard shift on a typical Monday, Tuesday or Wednesday shift. The wage rate of the person performing combination duties will be the same as the slot attendant's wage rate. This will not be a new classification. The Employer retains discretion to determine which supervisor will make the decision to trigger the combination duties and who will act as supervisor of the combined duty employee(s).

Bar helper and bar porter combination. The Employer will eliminate the bar porter position and combine the duties of bar helper and bar porter. As bar helper is the higher classification, it will remain in existence, while the bar porter classification will be eliminated. In addition to any existing rights a bar porter may have, the Employer is willing to offer available housekeeping positions to the eliminated bar porters if they are otherwise qualified or are readily trainable (i.e., require minimal training). Bartenders will be expected to perform the duties outlined in the bartender job description as it presently exists, which include light cleaning. At the Union's request, as a one-time and non-precedential arrangement, the eliminated bar porters

will have priority in any bar helper and utility steward positions that may become available, on the condition that they have the requisite qualifications or are readily trainable.

Cross-training is to occur throughout the organization – up, down, and on peer level classifications – to ensure that employees are trained in multiple positions and can assist as business need requires. If cross-training is voluntary, the cross-training will be by seniority. If cross-training is involuntary, it will be conducted in reverse seniority. Further, in all jobs and classifications, employees' duties will now include light cleaning in their usual areas of work (e.g., wiping things down, picking up items left by customers, removing trash from the floor). This will not result in any change of pay or classification.

ARTICLE 6: DISCHARGE

6.01. Cause for Discharge.

(a) No regular employee, after having completed the probationary period under Section 17, shall be discharged except for just cause. Prior to any discharge for reasons other than dishonesty, willful misconduct, drunkenness, drinking on the job, being under the influence of a controlled substance on duty, unlawful possession of a controlled substance, or using a controlled substance at any time while on the Employer's premises, unlawful usage in accordance with the Employer's Drug & Alcohol policy, serious improper behavior or discourtesy toward a guest, insubordination, failure to report for work in accordance with the Employer's Attendance policy, walking off the job during a shift, possession of weapons on the Employer's property, and sexual harassment or any other inappropriate harassment of a co-worker or guest, such an employee must be given a written warning and an opportunity to correct the deficiency. The above provisions relating to controlled substances will not apply to medicine lawfully prescribed for the employee using the substance by a licensed physician and used in accordance with the prescription.

Upon the discharge or suspension of any employee for reasons other than dishonesty, the reason therefore shall be given to the employee in writing, and a legible copy thereof shall be mailed or given to the Union within seventy-two (72) hours after the discharge or suspension. When an employee is discharged or suspended for willful misconduct, the notice shall contain the specific conduct or offense deemed by the Employer to constitute willful misconduct. Upon request by the Union, legible copies of all documents relied upon by the Employer in making the discharge or suspension, including copies of any written complaints or reports concerning the employee, either by the customer, an outside agency, or by the Employer's own employees, and copies of any relevant cash register tapes, shall be furnished to the Union within three (3) working days after such request. An employee may not be discharged solely on a basis of verbal complaints by customers. The Union shall furnish the Employer with any statements and/or documents pertinent to the investigation within seventy-two (72) hours of request. The Union will have the right to view copies of videotapes at the hotel during an investigation of a case.

6.02. Warning Notices.

(a) Warning notices issued to employees must specify the events or actions for which the warning is issued. Warning notices shall be issued to employees as soon as possible after the Employer is aware of the event or action for which the warning notice is issued and has a reasonable period of time to investigate the matter, and may be issued by the Employer any time

throughout the day, as business allows. All warning notices must be given to employees no later than fifteen (15) days from the occurrence or knowledge of the event which results in the warning, except for ongoing investigations. A legible copy of any written warning notice shall be given to the employee for review by himself and, if desired, to the Union. Legible copies of all documents relied upon by the Employer in issuing the warning notice, including copies of any written complaints or reports concerning the employee, either by a customer, an outside agency or by the Employer's own employees, and copies of any relevant cash register tapes, shall be furnished to the Union within three (3) working days after such request.

The names and addresses of customers who make written complaints against an employee shall be furnished to the Union on request if such are relied on by the Employer as a basis for the warning notice. An employee may not be issued a warning notice solely on the basis of verbal complaints by customers. Warning notices, written customer complaints and reports of outside agencies or the Employer's own security force concerning conduct of an employee (except sexual harassment or any other inappropriate harassment of a co-worker or guest) shall become null and void one (1) year after the date of issuance and may not thereafter be used as a basis for or in support of any subsequent discharge or disciplinary action.

6.03. Final Warning.
No employee shall receive a final written warning or be paid off or have his shift, station or days off changed for discriminatory reasons, or for disciplinary purposes unless a prior written warning has been given to the employee. If an employee is arrested or charged with a crime related to job conduct, the Employer may take disciplinary action for just cause without regard to the disposition of the criminal charge. In such circumstances, the Employer bears the burden of demonstrating just cause independent of the legal process, and the disciplinary actions can be grieved pursuant to this Agreement. In such cases, the employee's job status shall be determined by this Agreement. Alternatively, if an employee is arrested or charged with a felony, or a misdemeanor offense that tends to discredit the Employer or its operations, or tends to reflect unfavorably on the Employer or its operations, the Employer may suspend the employee without pay pending the outcome of the charge. If the employee is found not guilty, the employee shall be reinstated, and the Employer shall not then be able to take disciplinary action. If the employee is found guilty, the employee may be terminated. No employee shall be disciplined on account of a criminal proceeding which is not employment-related. After a period of eighteen (18) months, final written warnings shall not be considered in any disciplinary proceedings, except sexual harassment or any other inappropriate harassment of a co-worker or guest.

6.04. Time of Discharge.
The Employer has discretion to discharge employees at any time, subject to the provisions of this Agreement.

6.05. Controlled Substance.
In accordance with the Company practice, where there is reasonable cause to believe that an employee is under the influence of alcohol or a controlled substance, the employee, after being notified of the contents of this sub-Section, must consent to an immediate physical examination at an independent medical facility or suffer the penalty of discharge. The Employer shall pay for the cost of the examination. A blood alcohol level of .08 provides an absolute presumption that

the employee is under the influence of alcohol or, in the event there is a statutory revision lowering the blood alcohol level by the state.

ARTICLE 7: EARLY SHIFT RELEASE

7.01. Voluntary.
An employee, with the Employer's approval, may voluntarily leave work early if he so desires and shall be paid only for the time actually worked on that shift. The Employer may solicit volunteers for early shift release who shall be paid only for the time actually worked on that shift.

7.02. Involuntary Release.
The Employer may request that employees leave their shifts early due to lack of business, whereupon employees shall be paid a minimum of two (2) hours or half (1/2) of their scheduled shift, whichever is greater; provided however, that this provision is not intended to be used in bad faith or to deny an employee legitimate overtime pay and provided further that the Employer will take first take request for early outs and then require early outs in ascending order of seniority of those employees on duty, provided this does not require the Employer to pay overtime. When a tipped employee is required to take an early out, under this section, the open station, if any, shall be offered in descending order of seniority to those employees on duty.

ARTICLE 8: DISCRIMINATION

8.01. Prohibited Discrimination.
There shall be no discrimination by the Employer or the Union against any employee because of membership or non-membership in or activity on behalf of the Union, provided that an employee's Union activities shall not interfere with the performance of his or other employees' work for the Employer. In accordance with applicable laws, there shall be no discrimination against any employee with respect to compensation, terms, conditions, privileges of, or opportunities for employment because of race, color, religion, sex, age or national origin, ancestry or disability, or sexual orientation.

8.02. Confessions or Statements.
When a supervisor, manager, or security person interviews an employee for disciplinary reasons, or in a fact-finding interview which might reasonably lead to discipline, the employee shall have the right to be represented by an authorized Union Representative or Shop Steward. It shall be the responsibility of the employee to request such a representative or steward. Upon the employee's request, the Employer shall contact the representative or steward, provided that the Union has supplied an updated list containing the representative's or steward's contact information and schedule. If the Union has not provided such list, it will be up to the employee to contact the representative or steward. If an authorized Union Representative or Shop Steward is not available, the employee can request that the interview be rescheduled or continue with the interview without the representative or steward, if the employee so chooses.

Each employee shall be required to sign a background investigation release for the purpose of allowing the Employer, Gaming Control Board, Nevada Gaming Commission, or any law

enforcement agency to check the background and history of the employee or prospective employee.

ARTICLE 9: WORK SHIFTS, WORKWEEK AND OVERTIME

9.01. Shift and Weekly Overtime.
The workweek pay period shall be from Friday through Thursday. For purposes of computing overtime, for an employee scheduled to work five (5) days in one (1) workweek, any hours in excess of eight (8) hours in a day or forty (40) hours in a week shall constitute overtime. For an employee scheduled to work four (4) days in one (1) workweek, any hours worked in excess of ten (10) hours in a day or forty (40) hours in a week shall constitute overtime. Overtime shall be effective and paid only after the total number of hours not worked due to early outs 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 shall provide five (5) days' advance notice.

This provision will remain in effect for the duration of this Agreement. However, at the expiration of the Agreement, the Employer shall have the right to compute and pay overtime in accordance with the provisions of 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.

9.02. Days Off.
The Employer supports the principle of providing its employees with two (2) days off, or three (3) days off for employees on a ten (10)-hour per day schedule, during each seven (7)-day work period. The Employer will schedule them consecutively, except that when business conditions dictate, the Employer may split them. In those instances, scheduling of split days off will be done according to the provisions of Section 17.04(b) of this Agreement. An employee may voluntarily split his/her days off.

9.03. Single Shift.
No employee shall be required to work more than one (1) shift on any one (1) calendar day. This shall not prohibit the performance of overtime work consecutive with the employee's regular shift, as requested by the Employer.

9.04. Posting.
The Employer shall post each week in a conspicuous place in each department, available to Union Representatives, a work schedule showing the first and last name and classification of each employee, and specifying days off and starting and finishing time. When employees not originally scheduled to work during any week are later called to work during that week, their names and classifications shall be added to the posted work schedule not later than the end of the first shift they work.

ARTICLE 10: CATEGORIES OF EMPLOYEES

10.01. Regular Full-Time Employees.
Regular Full-Time employees are employees carried on the Employer's regular payroll who are hired to work thirty (30) hours per week or more and are eligible for all benefits provided for in this Agreement.

10.02. Regular Part-Time Employees.
Regular Part-Time employees are employees carried on the Employer's regular payroll who are hired to work less than thirty (30) hours per week.

10.03. Extra Employees.
Extra employees are employees hired to perform work in addition to or as vacation, LOA or temporary absence replacements for regular employees. Extra employees shall not be covered by Articles 6, 11, 13 (except in relation to FMLA), 17, or by Sections 5.07, 9.02, and 9.03.

10.04. Reduction of Full-Time Employees to Part-Time.
At any point in time, no more than 25% of the entire bargaining unit may be comprised of part-time employees. Additionally, no more than 50% of cocktail servers and housekeeping porters can be part-time employees. Regarding the cocktail servers and housekeeping porters, 15% of the 50% limit stated in the prior sentence shall be achieved through attrition and hiring new employees. With respect to all other classifications, no more than 35% of the employees in each classification can be part-time employees, and the attrition requirements do not apply. Employees who are on-call (or "extra") are not considered for purposes of determining the applicable percentages.

The Employer may freely, and in its absolute discretion, within the limits set forth in this paragraph as to the percentages of full-time vs. part-time employees, move employees by order of seniority from full-time to part-time and vice-versa. If a classification or total limits are exceeded, for any reason other than the Employer moving an employee from full-time to part-time (such as termination, resignation, retirement, transfer, etc), the Employer will have a reasonable opportunity to adjust the work force (including hiring, transfer and/or moves from part-time to full-time) without being in violation of the applicable limits. The Employer may elect to move some of the employees to part-time by attrition (e.g., keep current full-time employees and replace them upon separation of employment with part-time employees). However, except as otherwise provided in this paragraph, the Employer has the absolute discretion to move employees by seniority, at any time, between full-time and part-time classifications.

ARTICLE 11: PAID TIME OFF

11.01. Amount of PTO.
All Union regular full-time eligible employees scheduled to work an average of at least 30 hours per week earn PTO based on length of service. PTO time accrues on a monthly basis from the date of hire as follows:

Months of Years of Continuous Service With Employer	Amount of Paid PTO
Hire to 1 year (6.66 hours per month)	80 hours per year
1 Year (10.00 hours per month)	120 hours per year
5 Years (13.33 hours per month)	160 hours per year

Employees will continue to accrue PTO until their bank reaches 2 times their annualized number of allowable PTO hours. However, the maximum number of accrued PTO hours will be 240. Employees who reach the 240 hours cap will not accrue any more PTO until they use some of the PTO already accrued.

All regular part-time employees who work 16 hours per week will accrue PTO at the rate of 3.33 hours per month and will continue to accrue until the bank reaches 80 hours. Once they reach the 80-hour maximum, employees will not accrue any additional PTO until they use some of the PTO already accrued.

For employees who have accrued PTO above the 240-hour limit as of the day when this Agreement is signed, all current accrued but unused PTO over 240 hours will be grandfathered in and employees will be allowed to use it for 1 year after the effective date of the new contract, or sell it back to the Employer for 50 cents on the dollar, as provided above. If grandfathered PTO is not used within 1 year after inception of the new contract or sold back to the company, it will be lost.

Additionally, Union employees can sell their accrued PTO hours back to the Employer (twice a year on the announced dates in June and December) at 50 cents on the dollar. Employees can sell their accrued, but unused PTO to the Employer at 100 percent if they fulfilled the requirements for a PTO request (including that the request does not exceed the applicable peak/non-peak limits), but were denied.

Further, assuming all procedural requirements for seeking and obtaining PTO have been met (including the limits on PTO use during peak periods), employees may be allowed to take 1 week PTO in July and 1 week PTO in August. However, these two weeks cannot be taken back to back in the end of July and beginning of August to result in a 2-week uninterrupted PTO time in the end of July and beginning of August.

An employee whose employment terminates, for whatever reason (voluntary or involuntary), prior to completion of the employee's introductory period will not receive payment for his or her accrued but unused PTO. An employee whose employment terminates, for whatever reason (voluntary or involuntary), after completion of the employee's introductory period will receive payment for accrued but unused PTO with the employee's final paycheck.

11.02. Break in Employment.
A change in ownership of the Employer shall not break an employee's continuity of service for the purpose of PTO eligibility. Except as provided otherwise in Section 13, time absent from work while on authorized leave of absence shall not break an employee's continuity of service.

Neither time absent from work while on authorized leave of absence nor while on layoff shall change an employee's anniversary date.

11.03. Time of Taking PTO.
PTO is due on the employee's anniversary date of employment as set forth in Section 11.01, and shall be requested in accordance with these time limits: by November 1 for the following January through April period; by March 1 for May through August period; and by July 1 for September through December period. The Employer shall grant PTOs to those employees who have given proper notice. PTO requests shall be made in writing to the Employer, and the Employer shall provide the employee with a copy of the request indicating that such request was received. The Employer shall respond to the PTO request within three (3) weeks. An employee's PTO request may be denied if any of the following conditions apply:

1. The employee did not comply with the time limits for requesting PTO.

2. The employee is not eligible for PTO by the date the requested PTO would begin.

3. The employee requesting the PTO has less seniority than another employee requesting the same PTO period.

When an employee is denied his/her initial PTO request, the Employer shall provide the employee with a list of available PTO periods. The employee may then request PTO from the provided list within one (1) week. The Employer shall respond to the second request within two (2) weeks.

After the outlined timelines and procedures for PTO requests are followed, awards will be given on a first-come basis.

An employee's second request may be denied if any of the above-enumerated conditions apply. All PTO requests for the months of July and August shall be limited to one (1) week per employee (which cannot be taken back to back in the end of July and beginning of August), and no more than five percent (5%) of regular employees in any job classification (by shift in Housekeeping) or restaurant may take the same PTO period. The five percent (5%) restriction shall also apply to New Year's Eve and Hot August Nights. No more than ten percent (10%) of regular employees in any job classification or restaurant may take the same PTO period during all other months in any calendar year. However, if business conditions allow, the Employer may increase that percentage at the Employer's sole discretion.

11.04. PTO Pay.
PTO must be taken as paid time off and no employee shall be allowed to work for the Employer during his PTO. PTO pay shall be computed on the basis of the employee's current rate of pay. Provided, however, that if an employee is regularly scheduled to work in two (2) or more classifications with different rates of pay, his PTO pay shall be computed at the rate of pay at which the majority of hours have been worked in the preceding anniversary year. For temporary layoffs of less than ninety (90) days, employees have the option of taking their PTO earned or continuing to carry it. If a layoff exceeds ninety (90) days, all earned PTO is paid out. Only earned PTO is paid. Employees may request upfront pay of PTO when their PTO is to last 5 days or more, provided that the employee pays a $5.00 administrative fee for the special

processing of a separate check. The Employer may charge the $5.00 administrative fee as a payroll deduction. Unless the employee requests special processing and upfront pay, the Employer will include the PTO pay in the employee's regular paycheck. Pay for PTO lasting less than 5 days will be included in the employee's regular paycheck.

ARTICLE 12: RESERVED

ARTICLE 13: LEAVE OF ABSENCE

Union employees will be subject to the Employer's standard and uniform policies on the Family and Medical Leave Act ("FMLA"), the Uniform Services Employment and Reemployment Act ("USERRA"), and the discretionary Personal Leave of Absence. The Union shall have the right to review these policies 30 days before the policies become effective. Nothing in this Article shall preclude the Employer from complying with applicable law before giving the Union an opportunity to review any necessary policy changes, if such law gives the Employer less than 30 days to effectuate compliance.

ARTICLE 14: MEALS

14.01. Meals.
For the convenience of the Employer and employees, all employees covered by this Agreement may take their meals in the employee cafeteria, upon paying a $2.00 fee per meal. Said meals shall be palatable, wholesome and comparable in quality to those served to customers. The $2.00 fee will apply uniformly to both Union and non-Union employees, unless another current collective bargaining agreement precludes such charges. The Employer will make 2 more microwaves and additional silverware available to employees, but will not provide any other food storage facilities to employees. The Employer will make milk available to Union employees in the front area of the cafeteria, where employees will not need to swipe their employee cards to access the milk. The existing rule that employees may not remove food or drinks from the cafeteria remains in effect.

The Employer will have discretion to implement any policies related to the administration of the $2.00 fee per meal, including refusal to accept cash and handling the payments through payroll deductions. The Employer shall allow each employee an uninterrupted unpaid meal period of thirty (30) minutes. The Employer will provide travel time where appropriate, but travel time will not exceed five (5) minutes to and from the employee's place of work.

The Employer will have management discretion to adopt the policies, procedures, and make any changes necessary to implement the 30-minute unpaid meal period, including but not limited to installing new time clocks and clocking in/out procedures, installing security doors, requiring employees to clock in/out at particular locations, and passing cards to record in/out times in certain areas of the property.

14.02. Break Periods.
Scheduling of break periods shall be a the sole discretion of the Employer. However, such schedules shall be reasonably related to each shift.

HOURS WORKED	MEAL ENTITLEMENT	BREAK ENTITLEMENT
Less than 4 hours	No meal period No $2.00 meal	One 10-minute break
4 hours but less than 6 hours	No meal period One $2.00 meal before or after shift	One 10-minute break
6 hours but less than 8 hours	1 unpaid meal period** One $2.00 meal during shift	One 10-minute break
8 hours but less than 10 hours	1 unpaid meal period** One $2.00 meal during shift	Two 10-minute breaks (May be combined with meal period)
10 hours or more	1 unpaid meal period** One $2.00 meal during shift	Three 10-minute breaks (May be combined with meal period)
** Does not include travel time		

14.03. Pay for Meals Not Furnished.
If an employee is required by the Employer to work through a shift without being given a meal period as required under Section 14.02, the employee shall be paid time and one-half (1-1/2X) the employee's straight-time hourly rate for the period.

ARTICLE 15: BREAK PERIODS AND ABSENCE FROM WORK

15.01. Call-In Policy.
The Company agrees to maintain its current attendance and tardiness policies on call-ins for the duration of this Agreement.

ARTICLE 16: SPECIAL EVENTS/MISCELLANEOUS

16.01. Union Buttons.
One (1) official Union button, no larger than two inches (2") in diameter, may be worn on the job at all times until a mutually agreed upon button is finalized between the Employer and the Union.

16.02. New Equipment Introduction.
Whenever the Employer proposes the introduction of new equipment which may significantly and substantially affect the terms and conditions of work or the wages of employees in a classification covered by this Agreement, the Employer shall advise the Union in writing sufficiently in advance of the proposed date of introduction of such equipment to enable the Union, if it so desires, to discuss with the Employer the possible significant and substantial

effects of the introduction of such equipment upon the employees in classifications covered by this Agreement. Upon request by the Union, the Employer will meet with it for the purpose of discussing the possible effects of the introduction of such equipment on such employees. The Employer will not introduce any such new equipment until it has afforded the Union a reasonable opportunity to discuss with the Employer all aspects of the possible significant and substantial effects upon such employees.

16.03. Uniforms.
All uniforms and/or accessories distinctive by style, coloring or material required by the Employer to be worn by employees on the job shall be furnished and maintained by the Employer at no charge to the employee. The Employer shall make available a sufficient supply and variety of sizes of uniforms so that all employees will have clean and properly-fitting uniforms at all times. Alterations to uniforms may only be made by the Employer. Employees shall treat such clothing carefully and with respect so as not to unnecessarily damage or destroy it. If an employee intentionally damages a uniform, that employee shall bear the cost of replacement of said uniform. If an employee is terminated or otherwise leaves his employment, the employee shall return all such clothing to the Employer in good condition, reasonable wear and tear excepted; and if the employee fails to do either, the Employer shall deduct the cost thereof from the employee's final paycheck.

16.04. Rotation of Stations.
The Company will continue its current policy of equitable rotation of stations for the duration of this Agreement.

16.05. Health/Safety Regulations.
All Health Department and Safety regulations will be followed in accordance with law and specific departmental rules.

16.06. Union Notices.
The Employer shall furnish the Union with a bulletin board, to be located near the time clocks, for the purpose of posting Union information. All materials must be reviewed and approved prior to posting by Human Resources. The Company will not unreasonably withhold approval.

16.07. Change.
The Employer may assign Bartenders to make change on those bars having poker machines, and the Employer may establish reasonable rules to govern the handling of change banks.

16.08. Construction.
Employees in the affected area shall be given at least two (2) weeks' advance notice of construction, except in emergencies, which may affect the employees' schedules, provided the Employer was aware of the construction sufficiently in advance to give such notice.

16.09. Health and Safety Committee.
The Employer, the Union and the employees agree to use existing practices with respect to Safety Committees/Safety Inspector.

16.10. Customary Work.
Employees shall only be required to perform work which is customarily in their respective crafts and in practice in their facility. Sweeping, mopping, or general porter work shall be the duty of the Porters or Kitchen miscellaneous employees. Any employee may be required to conduct light cleaning in their areas, including clean up of accidental spillage or breakage in the room or area to which they are assigned.

16.11. Payments of Special Events Gratuities.
Gratuities for special events shall be paid to employees who provide service not later than the payday for the payroll period in which such service was rendered. At such time, the Employer shall make available to the Union the names and dates of the special event groups and the names of employees and amount of gratuities received by them on their paychecks for the pay period involved, with the gratuities broken down by source.

16.12. 401(k) Plan.
The Employer is uniformly eliminating its 401K match for both bargaining unit members represented by the Union and employees outside of all bargaining units.

16.13. Room Service.
There will be a sixteen percent (16%) gratuity on all room service deliveries and a flat rate for non-PPE items/amenities delivered.

16.14. Employee Parking.
The Employer will provide free and secure employee parking.

16.15. Housekeeping.
The Employer shall post known overtime dates every ten (10) days. Sign-up sheets will be provided and an interested employee may only sign the sheet. The sign-up sheet will be available for sign-up until two (2) days prior to the date the overtime is needed.

There will be an equitable distribution of overtime.

The Company will post classification seniority for the affected employees.

ARTICLE 17: SENIORITY

17.01. Probation Period.
An employee will be considered as a probationary employee for the first three (3) months of employment from his/her most recent date of hire by the Employer, which may be extended for an additional three (3) months by mutual agreement. A probationary employee may be terminated at the discretion of the Employer, and such termination shall not be subject to the grievance and arbitration provisions in Article 18.

17.02. Definition of Seniority.
House seniority is an employee's length of continuous service in years, months and days from his most recent date of hire by the Employer. Classification seniority is the employee's length of continuous service in years, months and days from his most recent date of hire or transfer, at a particular establishment covered by this Agreement, into his present job classification with the

Employer. Transfers from one department to another or from one restaurant to another (Food Servers, Bus Persons and Food Runners only) shall constitute a change in job classification.

17.03. Layoff and Recall.
In the event of layoffs due to a reduction in force, probationary, Part-Time and extra within the affected classification(s) will be the first to be laid off. Employees will be laid off from and recalled to their regular job classification in accordance with their house seniority, provided they have the qualifications to perform satisfactorily the work available in their regular job classification. Employees have the initial obligation to provide the Employer with correct contact information. At the time an employee is laid off, the Employer shall ascertain the current address and telephone number of the employee.

Subsequent to that time, it is the responsibility of the employee to advise the Employer of a change in either address or telephone number. In order to maximize work opportunities for all employees, the Employer, during times of layoff/recall, may utilize the following method of reductions:

1. volunteer days off
2. volunteer early outs
3. reduce work equally where currently practiced or by house seniority where done by length of service

These options are purely optional and can be used by any department or group in any order, or can be skipped altogether and a layoff can be effectuated. Before implementing any of these three options, the Employer shall meet with the affected employees and use best efforts, as determined by the context of the situation, to reach an agreement with the employees. If the Employer and the employees are unable to reach an agreement, the Employer may implement any of the three options set forth above, at its discretion. The requirement that the Employer meet with the affected employees does not apply to situations when the Employer decides to conduct a layoff.

In accordance with their house seniority, regular employees in layoff status will be offered but not required to perform, all extra work in their classifications except for banquets or parties, before probationary employees are hired; provided, however, that such employees who have not completed their probationary period who are offered and accept extra work shall be paid as extra employees for such work.

17.04. Promotions and Preference for Shifts.
(a) Promotions. When the Employer promotes an employee to another covered classification, the Employer will consider the employee's house seniority, qualifications to perform satisfactorily the work in the other classification, and prior performance. Where qualifications to perform the work and prior performance in the other covered classification are relatively equal among employees, the senior employee shall be the one promoted. For purposes of this paragraph (a) and Section 2.01(a), a "promotion" shall be deemed to be a transfer to another covered classification in which the transferred employee has an opportunity for increased compensation or for subsequent job progression as a result of the transfer. An employee promoted under this Section who cannot perform satisfactorily the work of the job to which he or

she was promoted, may be transferred back to his/her former job, within thirty (30) shifts after the date of the promotion. If the employee's former shift and station are no longer available, the employee shall be entitled to displace the least senior employee in the former classification. Permanent vacancies to be filled by promotion under this paragraph shall be posted for seventy-two (72) hours near the employee time clock or other locations to which employees have regular access. The Employer may fill the vacancy temporarily during the posting period.

(b) Preference for Shifts. When there is a permanent vacancy on a particular shift or schedule, or in the case of temporary summer shifts, employees in the same job classification on other shifts or schedules who desire to transfer to the vacancy will be transferred on the basis of their classification seniority, provided that the senior employee desiring transfer is qualified to perform satisfactorily the work on the shift and/or schedule applied for and that a qualified employee is available to replace the employee desiring the transfer. An employee transferred under this Section shall assume the weekly and daily shift schedule, days of work and days off applicable to the vacant position to which transferred. The resulting vacancy or vacancies created by a transfer under this Section shall be filled by the next senior qualified employee(s) from another shift and/or schedule who desires to work on a shift or schedule where the vacancy exists. All employees in bargaining unit classifications on the date this Agreement is effective will retain their current seniority date for classification purposes. In the event that employee shifts overlap resulting in a division of a work area, the manner in which the area is divided will be determined by the Employer, and the employee with the most classification seniority will have first preference of work area. Permanent vacancies under this Section shall be posted for minimum of seventy-two (72) hours and up to five (5) days, depending upon the reduction of the workforce in a department. The vacancies shall be posted where employee notices are normally posted. The Employer may fill the vacancy temporarily during the posted period.

17.05. Extra Work.
At the time of layoff, the employee shall state availability or non-availability for work.

17.06. Break in Continuous Service and Seniority.
An employee's continuous service, seniority and status as an employee will be broken down when:

(a) he/she quits

(b) he/she is discharged for just cause

(c) he/she is absent exceeding the period of an authorized leave of absence

(d) he/she is absent due to injury or illness sustained during the course of employment, exceeding the period for which statutory, temporary, total disability payments are payable under the Nevada Industrial Insurance Act, provided that the employee shall have one (1) week after his/her release by an Employer's approved and qualified physician in which to return to work;

(e) he/she is absent because of layoff exceeding six (6) months if he had less than six (6) months of active employment when the layoff began, or absent because of layoff exceeding twelve (12) months if he/she had six (6) months of active employment when the layoff began.

17.07. Notification.
An employee who is to be recalled to work by the Employer under Section 17.03 shall be notified to return to work by the Employer advising the employee by telephone, certified mail, return receipt requested, or other available means of communication of the date and the time employee is to report; and by confirming such communication by certified mail, return receipt requested, to the employee's current address of record on file with the Employer. Employees are initially responsible for providing the Employer with correct contact information and have the obligation to continue to provide the Employer with a current and correct phone number during the period in which they are subject to recall, so that the Employer can contact them immediately for any applicable recall position. A copy of the confirmation letter shall be sent to the Union. Reasonable advance notice must be given to an employee being recalled. If such employee fails to report to work within forty-eight (48) hours after the time specified for the employee to report, his seniority and continuous service shall be terminated, and the Employer shall be free to hire a replacement in accordance with Article 2 of this Agreement.

17.08. Bartender Promotion.
The Employer and the Union will review, study and jointly work on the establishment of a mutually-agreed upon Bartender certification course and test, which will allow for a job ladder progression. First priority for the course study shall be current eligible Bar Persons. All new hires or transferees applying for a Bartender position shall pass the test before being deemed qualified.

ARTICLE 18: GRIEVANCES AND ARBITRATION

18.01. Definition.
For purposes of this Agreement, a grievance is a dispute or difference of opinion between the Union and the Employer involving the meaning, interpretation of and application to employees covered by this Agreement, or alleged violation of any provision of this Agreement.

18.02. Time Limit for Filing Grievances.
(a) No grievance shall be entertained or processed unless it is received in writing by either party within fifteen (15) workdays after occurrence of the event giving rise to the grievance or after the aggrieved party hereto acquires knowledge of the occurrence of such event, whichever is later. The written grievance shall set forth the provision(s) of this Agreement alleged to have been violated, and every effort will be made to set forth all the known facts allegedly constituting the violation.

(b) As used in this Article, the term "workdays" means from Monday through Friday, inclusive, but excluding any legally recognized federal and state holiday

18.03. Procedure for Adjusting Grievances.
All grievances shall be adjusted exclusively in the following manners:

1. It is mutually agreed between the parties that the speedy resolution of grievances is in the best interests of the employees and the Employer. For that reason, the parties have created the following grievance procedure which encourages the employee to first talk to his/her supervisor when questions, problems, complaints or disputes arise, and encourages the resolution of

grievances at the lowest possible levels and provides for a quick and fair resolution of problems and disputes.

The employee may, within three (3) working days of the incident or circumstance giving rise to the dispute, take the matter up with his/her immediate supervisor. The employee has the full right to and involvement of the Shop Steward in this step. Settlements reached at this level shall be considered non-precedential, unless the Employer and the Union Representative agree that the settlement shall be reduced to writing and may be used as a precedent in the future.

The supervisor involved in the Step 1 meeting shall respond within three (3) days of the Step 1 meeting. While this step is encouraged, it is not required.

2. SECOND STEP – GRIEVANCE MEETING. The parties shall meet to discuss the grievance within ten (10) workdays from the filing thereof. For the purpose of attempting to resolve grievances prior to arbitration, the parties, at this meeting, shall make full disclosure to each other of all facts and evidence then known to them which bear on the grievance, including interviews with all witnesses. If such interviews cannot be scheduled for the Second Step – Grievance Meeting, they shall be conducted prior to or during the Third Step – Board of Adjustment.

3. BOARD OF ADJUSTMENT. Any unresolved grievance shall be reduced to writing and scheduled for hearing by a Board of Adjustment within 15 calendar days of the filing of the grievance. The Board of Adjustment shall be comprised of not more than two (2) representatives of the Employer and two (2) representatives of the Union. For the purpose of attempting to resolve grievances prior to arbitration, the parties, at any meeting prior to the Board of Adjustment hearing and at that hearing, shall make full disclosure to each other of all facts and evidence then known to them which bear on the grievance. A decision concurred in by a majority of the members of the Board shall be considered final and binding on all parties. If a majority cannot agree to a decision, the company shall give its decision on the grievance within five (5) work days after the Board meets.

4. ARBITRATION. If the parties are unable to resolve the grievance during the Board of Adjustment, either party may, within seven (7) calendar days after the company issues its decision on the grievance (which decision shall be issued within 5 work days after the Board of Adjustment meeting), submit written demand to the other party requesting that the grievance be submitted to arbitration. Such written request for arbitration shall specify the issue(s) and provision(s) of the Agreement alleged to be involved, the name of the aggrieved employee(s) or party, the events giving rise to the grievance and the relief requested. Unless the time requirements are met, the grievance shall be considered waived or abandoned and no further action may be taken on such grievance.

In the event the parties are unable to agree upon an arbitrator within ten (10) days of the appeal to arbitration, the arbitrator shall be chosen by lot from a ten (10) member panel (to be decided upon following the signing of this Agreement), except that either party may strike one (1) arbitrator from the panel for a particular arbitration before drawing by lot. On each anniversary date of the Agreement, either party may strike up to three (3) members of the panel. The parties shall attempt to agree upon replacement members of the panel, but in the event they cannot reach

agreement, the required replacements shall be selected through an alternate striking procedure from the Federal Mediation and Conciliation Service arbitration panel. No arbitrator shall be chosen to serve in two (2) consecutive arbitrations unless by mutual consent of the parties. The decision of any arbitrator shall be final and binding upon the parties. An arbitrator shall only have the power and authority to interpret and apply the provisions of this Agreement to the grievance presented, and his decision shall apply only to the issue arising out of the facts of such grievance. The arbitrator shall have no authority to alter, amend, modify, nullify, ignore or add to the provisions of the Agreement either by implication or otherwise. The costs and expense of arbitration shall be shared equally by the parties, except that each party shall bear the expense of its own witnesses and representation at the hearing. Alternatively, by mutual agreement, the parties may submit to an expedited arbitration utilizing an arbitrator selected from the system provided in this Section; however, the parties will not be represented by counsel, an bench decisions will be rendered. These cases will be non-precedent setting.

ARTICLE 19: BANQUETS

19.01. Definition.
A banquet shall be deemed to be any function which has been regarded as a banquet according to the custom and usage so the hotel-casino industry in Nevada, including receptions. Banquet Captains, Banquet Bartenders, Coffee Servers, Banquet Bar Runners, Banquet Cocktail Servers, and Banquet Food Servers are Banquet employees carried by the Employer on its regular payroll and are covered by all provisions of this Article. Seniority under Article 17 shall be for the purpose of layoff and recall only, and shall be applicable only as among the Employer's Banquet employees.

19.02. Scheduling.
(a) Banquet Bartenders, Banquet Bar Runners, and Banquet Cocktail Servers will schedule themselves for available work by signing for posted Banquet bar functions according to their respective seniority. The Employer shall post all Banquet bar functions known to them thirteen (13) days in advance.

(b) Total Event Banquet Employees shall be scheduled among themselves for Total Event functions and, in the event there are no Total Event Functions available, they shall schedule themselves for Banquet events according to their Full-Time seniority.

(c) Banquet Core List Servers shall be voluntarily scheduled among themselves for Coffee Service functions before "A" list and "B" List employees. In order to qualify for Coffee Service, a Banquet Server must complete the appropriate training.

The Employer shall post the tracking list in a conspicuous area accessible to all Banquet employees.

19.03. Banquet Vacancies.
When permanent vacancies for Banquet Captains, Total Event or Coffee Servers must be filled, the Employer shall give preferential consideration to qualified Banquet Core List Food Servers before other employees or new hires. The Employer shall consider qualifications and prior performance when making a decision.

19.04. On-Call Banquet Food Servers and Bartenders.

(a) The Employer may establish an "A" List, an In-House "A" list, a "B" List and an In-House "B" list for Banquet employees to be used only when staffing requirements exceed the Employer's regular Banquet staff.

(b) The Employer may determine the number of "A" List, In-House "A" List, "B" List and In-House "B" List Banquet Food Servers, Bartenders, and Cocktail Servers.

(c) Scheduling will be done by seniority and availability. The order will be "A" List, In-House "A" List, "B" List, and In-House "B" List.

19.05. Meals for Banquet Employees.

Meals for Banquet Employees shall be in accordance with the guidelines for all employees.

19.06. Service Charge.

On all banquets, excluding Total Event, the Employer shall pay the traditional service charge of eighty-five and one quarter percent (85-1/4 %) of sixteen percent (16%) of the total charges for food and beverage (except beverages served from a bar) to Food Servers and Captains who work the function, who shall receive equal shares of the service charge. The Employer shall pay a service charge of eighty-five and one quarter percent (85-1/4 %) of sixteen percent (16%) of charges for all banquet bar functions, including hosted or cash, to the Bartenders who actually perform the work of preparing or delivering drinks. The service charge for banquet bar functions shall be separate from the service charges paid to other Banquet employees. All Banquet employees may keep any cash tips from customers. The Employer shall provide to Banquet employees, prior to or during the function, the menu, the number of guests, and the name of the group. If the service charge increases during the duration of this Agreement, the percentage formula shall remain the same. The Employer will give the Union thirty (30) days notice if the service charge percentage increases. If there is an increase, the Employer and the Union will agree on the additional employees who may share in the tip pool.

On In-House, Local and any event deemed as a "Special Function," gratuity will be fixed and set at $75.00 per Bartender and $150.00 per Food Server. The Employer shall have the right to increase these gratuity amounts based on the length and size of the event. The $75.00 and $150.00 limits shall apply to a maximum of 3 In-House, Local, or "Special Function" events per calendar year.

19.07. Banquet Minimums.

Banquet Captains, Food Servers, Bartenders, Banquet Bar Runners, and Cocktail Servers shall be paid for actual hours worked. A 2-hour minimum show up time will be paid if warranted.

19.08. Setup and Breakdown.

Banquet Captains, Food Servers, Bartenders, Banquet Bar Runners, and Cocktail Servers are responsible for all setup to all Banquet functions, as well as breakdown of same in banquet rooms, to the extent that these duties are specific to their classifications. This Section 19.08 does not relate to splitting gratuities and does not entitle any employees to participate in any gratuity pool except as otherwise provided in this Agreement.

19.09. Full Function.
No Banquet Captain eligible for gratuities shall share in the gratuities unless the employee works both set-up and service, or service and break-down. No Banquet Food Server eligible for gratuities shall share in the gratuities unless the employee works a full function, including set-up and service; provided that, at banquets where clean-up work must be delayed until the conclusion of speeches or a program, only the number of employees sufficient to perform the clean-up work need to be retained, and those employees not retained shall nevertheless share in the gratuities.

ARTICLE 20: PROHIBITION OF STRIKES AND LOCKOUTS

20.01. Strikes.
Both the Union and the Employer recognize the service nature of the hotel/casino business and the duty of the Employer to render continuous and hospitable service to the public in the way of lodging, food and other amenities and accommodations. The Union agrees that it will not call, engage in or sanction any strike, sympathy strike, work stoppage, slow down, picketing, sit down, boycott, refusal to handle merchandise, or any other interference with the conduct of the Employer's business for any reason whatsoever, including organizational picketing. This shall include dealings by the Employer with non-union suppliers, deliverymen, organizations, or other employees not covered by the Agreement.

20.02. Action By Union.
Should any of the activities prohibited by this Article occur, the Union shall immediately:

(a) Publicly disavow such action by the employees:

(b) Advise the Employer in writing that such action by employees has not been called or sanctioned by the Union;

(c) Notify employees of its disapproval of such action and instruct such employees to cease such action and return to work immediately. Should such employees refuse to follow the Union's direction to cease such activity and return to work within one(1) hour of receipt of such direction, the Union will allow the Employer to take disciplinary action against such employees; and

(d) Provide notices to the Employer to post on the appropriate bulletin board advising that it disapproves such action, and instructing employees to return to work immediately.

20.03. Lockout.
The Employer agrees that, during the term of this Agreement, it shall not lockout any of the Employees in the defined bargaining unit.

20.04. Action By Employer.
The Employer shall have the right to maintain an action for damages resulting from the Union's violation of these provisions. Any claim by the Employer for damages resulting from any violation of this Article shall not be subject to the grievance and arbitration provisions of this Agreement. While disciplinary action taken against employees for violating this Article or any other provision of this Agreement is subject to the grievance clause hereof, the Employer is entitled to seek injunctive relief against any strike in violation of the Article pending the decision

of an arbitrator. Grievances over disciplinary action taken against employees found to have violated this Article shall be limited to the issue of whether or not the employee in question actually engaged in the prohibited activity. If the Employer determines that an employee engaged in an activity prohibited under this Article, any disciplinary measures taken by the Employer against the employees must be left unmitigated.

ARTICLE 21: MANAGEMENT RIGHTS AND RESPONSIBILITIES

21.01. Rights.
It is agreed that the Employer alone shall have the authority to determine and direct the policies and method of operating the business without interference by the Union, except as otherwise expressly provided for or required by the Agreement. Except to the extent abridged, delegated, granted, limited or modified by specific provision of this Agreement, the Employer retains all following rights, powers and authorities that the Employer had prior to the signing of this Agreement, including but not limited to: the right to close its business or any part thereof; to discontinue or automate processes or operations; to determine the qualifications for new employees and to select its employees; to determine work schedules; to determine the number and type of equipment, material and supplies to be used; to hire, promote, transfer, assign in accordance with past practice; lay off and recall employees to work in accordance with this Agreement; to discipline employees for just cause (i.e., reprimand, suspend or discharge); to determine the assignment of work; to schedule the hours and days to be worked on each job and each shift; to discontinue, transfer, subcontract or assign all or any part of its business operations; to control and regulate or discontinue the use of supplies, equipment and other property owned or leased by the Employer; and otherwise generally to manage the business and direct the workforce. The Employer shall determine the size and composition of the workforce in all job classifications on all shifts. The Employer shall meet with a committee of employees in a particular department or restaurant before mass scheduling to obtain the employees views on how the Employer-determined jobs shall be scheduled. The Employer retains the right to make the final decision, but the employees' proposal will receive full consideration. Any grievance over whether the action of management is contrary to the terms of the Agreement may be taken upon Article 18.

21.02. Rules and Posting.
The Employer may establish and administer reasonable rules, regulations and procedures governing the conduct of employees, provided that such rules, regulations and procedures are not inconsistent with any provisions of the Agreement. The Employer shall make such rules available to employees and the Union upon request so that all employees affected thereby and Union representatives may have an opportunity to become familiar with them. The Employer shall post and maintain any such rules in such places within its establishment so that all employees affect thereby and Union representatives may have an opportunity to become familiar with them. As business demands may dictate changes in company policies and procedures, the Employer will give the Union 30-days notice of any applicable changes, unless circumstances render such notice impractical, in which case notice will be given as soon as practicable. The reasonableness of any rules, regulations and procedures provided herein is subject to the grievance procedures of this Agreement. The parties agree that all Hotel and Department Rules, policies, procedures and provisions of the Employer in effect at the time of the execution of this Agreement are accepted by the Union as effective and binding.

ARTICLE 22: COURT APPEARANCE AND JURY DUTY

22.01. Court Appearance.
Employees required to appear in court, administrative hearings, or at the police department on behalf of the Employer during their normal working hours shall receive their straight time rate of pay for hours lost from work, less witness fees received. If an employee appears in court, administrative hearings, or at the police department on behalf of the Employer on his days off or after normal working hours, he shall receive his straight time rate of pay for the hours spent in such appearances, less the witness fees received, but such time shall not be considered as time worked for any purposes under this Agreement.

22.02. Jury Duty.
A Regular Full-Time or Part-Time employee who has completed thirty (30) continuous days of employment with the Employer and who is required to serve on a jury and loses work time because of such service shall be paid the difference between the jury fee received and his straight-time rate of pay for not more than eight (8) hours per day. This Section shall apply only with respect to an employee's regularly-scheduled days of work and shall not be applicable with respect to days which the employee was not scheduled to work. Payment for such service hereunder shall be limited to not more than thirty (30) days in any calendar year. At the request of the Employer, the employee shall furnish satisfactory evidence of such service for which he claims payment hereunder. No employee, after having served on jury duty or having been required to stand by for same at the courthouse, shall be required to report for work prior to eight (8) hours after completion of his jury service, unless his jury service ended in time for him to report for a regularly-scheduled swing shift beginning no later than 4:00 p.m. and ending no later than 12:00 midnight. This Section shall not apply with respect to any jury summons received by an employee prior to his date of hire.

ARTICLE 23: SUCCESSORSHIP AND SUBCONTRACTING

23.01. Successors and Assigns.
In the event that the Employer sells or assigns his business or in the event that there is a change in the form of ownership, the Employer shall give the Union reasonable advance notice thereof in writing and shall make all payments which are due or shall be due as the date of transfer of the business for wages for employees covered by this Agreement. In addition, the Employer shall be responsible for earned vacation payments for each employee covered by this Agreement.

The Employer further agrees that as a condition to any such sale, assignment or transfer of ownership, he will obtain from successors in interest a written assumption of this Agreement and furnish a copy thereof to the Union.

23.02. Subcontracting.
It is recognized that the Employer and the Union have a common interest in protecting work opportunities for all employees covered by this Agreement and employed on a regular basis. Therefore, no work customarily performed by Union employees shall be performed under any sublease, subcontract, or other agreement unless the terms of any lease, contract or other agreement specifically state that (a) all such work shall be performed only by members of the bargaining unit covered by this Agreement, and (b) the Employer shall at all times hold and

exercise full control of the terms and conditions of employment of all such employees pursuant to the terms of this Agreement. Any sublease, subcontract or other agreement for the performance of cleaning or janitorial services presently performed adequately by members of the bargaining unit shall first require the approval of the Union. Notwithstanding the foregoing provisions hereof, the Employer may purchase from outside sources for use in its establishment convenience foods, prepared frozen foods, pre-mixed salads and peeled vegetables.

Notwithstanding the foregoing, the Employer may lease space for up to five (5) food and beverage operations, which total includes the present four operations of (1) Johnny Rockets; (2) The Beach; (3) the former "Pearl" location (which is to be converted to a sports bar); and (4) the empty coffee shop location (which is being considered for an Asian theme restaurant). This leaves the Employer with one more non-Union operation, for a total of five operations.

(a) Existing food and beverage outlets will continue in operations at substantially the same number of hours of operations subject to normal seasonal and weather changes.

(b) No employee on the Employer's bargaining unit payroll as of the effective date of such leased restaurant operation will suffer a layoff or reduction in hours as a result of the leased operation.

(c) The employer will notify the Union of its intention to lease space to a restaurant operator and the name and address of the operator within (i) 30 days before the lease is to commence; or (ii) what the contract with the vendor provides; or (iii) the amount of notice that is actually provided in the case of a lease termination. The Employer will provide the requisite notice to the Union within 7 days of the events contemplated in sections (ii) and (iii), whichever occurs sooner. With respect to replacing the departing vendors with new tenants, GSR will notify the Union of the particulars of the replacement tenant within 30 days after GSR and the replacement tenant enter into a valid and binding contract.

(d) The leased food and beverage operation must be independent of the Employer. There shall be no room service or banquet functions of the Hotel serviced from the leased operation.

(e) The Employer will arrange and participate in a meeting with the operator of the leased facility and the Union to determine whether the operator will sign a neutrality/card check agreement acceptable to the Union.

(f) If an unfair labor practices complaint is issued against the operator of the leased restaurant or its agents by the National Labor Relations Board, then Article 19 of this Agreement, Prohibition of Strikes and Lockouts, will not have any application to actions whose object is the leased food and beverage facility or its operator or employees.

(g) If the Employer's premises have a physical expansion exceeding fifty thousand (50,000) sq. ft. on the current footprint of the Hotel, the Employer may lease an additional two (2) food and beverage operations based on the same conditions in this Article.

23.03. Transfer and Sell.
In the event the Employer agrees to sell or assign its business or in the event there is a change in the form of ownership, the Employer shall give the Union notice thereof in writing with in

fifteen (15) days of the first non-refundable deposit made by the other party or parties to the transaction and shall set up a meeting between the prospective buyer and the Union.

The Employer shall make all payments which are due or shall be due for wages for employees covered by this Agreement as of the date of transfer of the business. In addition, the Employer shall be responsible for earned unused vacation payments for each employee covered by this Agreement unless the buyer assumes such liability.

23.04. Nikki Beach, Pearl, and Dolce.
The tenants previously operating "Nikki Beach," "Pearl," and "Dolce" locations have vacated or are about to vacate the respective premises. New tenants have began operating the former Nikki Beach location as "The Beach," a non-Union venue. The Union agrees that the tenant may continue so operating "The Beach," without any objections or disputes by the Union. The Employer is considering the opening of a non-Union sports bar and lounge, which would contain food and gambling operations, at the location previously occupied by "Pearl." The Union agrees that the Employer may so operate at the former "Pearl" location without any objections or disputes by the Union.

The Employer is presently in discussions with Charlie Palmer who may assume the "Dolce" location. Such assumption will convert the location from non-Union to Union, which will create approximately 20 new Union positions. The employees working at the new Charlie Palmer location (old "Dolce" location) will be the Employer's employees and will, therefore, be covered under this Agreement The Employer may make work rules for employees working at Charlie Palmer that are different from the rules applicable to employees in other food and beverage venues, so long as those rules are consistent with this Agreement.

The Union agrees that this Article 23 became effective on June 4, 2009, regardless of the fact that the parties had not yet executed the rest of the Agreement, and that the Employer could allow the operation of "The Beach" by another tenant without awaiting ratification of the entire Agreement. The Union represents that it has not and will not file an unfair labor practice charge in connection with the operation of "The Beach" pursuant to this paragraph.

ARTICLE 24: TERMINATION

24.01.
The Agreement shall be in full force and effect for eighteen (18) months from June 10, 2009, which is the date when the Union ratified the Agreement. Accordingly, the Agreement shall expire on December 10, 2010.

ARTICLE 25: MISCELLANEOUS ITEMS

25.01. Bakery Reduction in Force. The Employer has the right to conduct a reduction in force in the Bakery (and even eliminate the bakery altogether) as business needs dictate. The Employer agrees to place the affected Union employees in available positions for which they are qualified, if any, which are open at the time of lay off. To be eligible for placement in these alternative open positions, the employees must require no more than minimal training. The agreement to place employees in alternative positions applies only to the Union employees currently working in the Bakery. Laid off Bakery employees will have 24-month recall rights in

the event the Employer (or its successor) decides to re-open the bakery. These 24-month recall rights extend only with respect to the Bakery employees who are being laid off as a result of the reduction in force in the Bakery (or the Bakery's elimination) and are not precedent-setting or applicable to any other situation. Employees will be recalled to their regular job classification in accordance with their house seniority, provided that they have the qualifications to perform satisfactorily the work available in their regular job classification.

25.02. Change in Room Attendant Credits Calculation. The necessary daily room credits will be increased from 15 to 16. The credit values for the various rooms will be changed as set forth in the schedule attached to this Agreement as **Exhibit 4**.

25.03. Change in Hours of Starbucks' Operation. Working hours can be contracted or extended as business requires at the Employer's unilateral discretion because any such determinations are within the Employer's management rights.

25.04. Migration of Late Night Room Service to 2nd Street Express. The Employer has unilateral discretion to decide from where to provide room service because any such determinations are within the Employer's management rights.

25.05. Closure of Café Sierra during the Graveyard Shift. The Employer has unilateral discretion whether to have a particular venue open and what the venue's operating hours would be because any such determinations are within the Employer's management rights.

25.06. Other Employment. Except as otherwise provided in this paragraph, employees are not allowed to work another job while on leave from the Employer, including self-employment, without approval by the Employer. Employees are not permitted to work another job during the hours of their regular schedule with the Employer. An employee will be considered terminated on the day he/she begins new/concurrent employment in violation of this paragraph.

Employees may, however, work for another employer outside the hours when they are scheduled to work for the Employer, if the second employment does not interfere with and adversely affect the employees' duties for the Employer. Additionally, employees who are on FMLA leave may hold other jobs to the extent these jobs are not inconsistent with the reasons for which the employee sought FMLA leave. Finally, when employees are granted leave for to conduct Union business or participate in Union meetings, their activities on behalf of the Union shall be deemed to have been approved by the Employer for purposes of this paragraph.

25.07. Immigration. In the event that a post-introductory employee has a problem with his or her right to work in the United States, the Employer shall notify the Union a reasonable time after the problem is known. Upon the Union's request, the Employer shall meet with the Union to discuss the nature of the problem to see if a resolution can be reached. However, the Employer may take any appropriate action before conducting the meeting.
A post-introductory employee who is not authorized to work in the United States and whose employment has been terminated for this reason shall be reinstated to his or her former classification without loss of prior seniority if the employee produces proper work authorization within twelve (12) months of the date of termination and shows, to the Employer's satisfaction, that the employee lost his or her work authorization through no fault of the employee.

Employees do not accrue vacation or other benefits based upon particular plan policies during such loss of employment. In such a case, where the employee lost their employment through no fault of the employee, the Employer will rehire the employee into the next available opening in the employee's former classification, without loss of seniority, upon the former employee providing proper work authorization within a maximum of twelve (12) months from the date of termination.

This new immigration policy is in no way intended to alter the interpretation or application of other applicable Employer policies (e.g., the obligation to provide proof of an employee's legal right to work in the United States, falsification of company records, etc.) These policies shall remain in full force and effect (as they may vary from time to time), and the Employer reserves every right to take action (up to and including employment termination) for violation of these policies.

25.08. New Classifications. The Employer may implement a new classification, in Café Sierra and elsewhere, which will be expediter/runner/backserver. The Employer will have the discretion to eliminate the position if practice shows that the position does not add the contemplated value. The position will be paid the equivalent of the pay for front servers at Charlie Palmer - $6.55 or $7.55 (effective July 1, 2009), depending on which tier minimum wage applies. Additionally, the Employer may add a wine runner, who will be a Union member and will be compensated at $8.50 per hour. The Employer expects to hire the employee on a part-time basis, but will have the discretion to vary the employee's schedule from part time to full time as business needs require.

25.09. Snack Cart and Beverage Stations. The Employer may implement a cart serving Danish, snacks, and hot beverages on the casino floor for 2-3 hours in the morning and 2-3 hours in the afternoon. The cart will be serviced by the slot ambassadors on duty in the morning and the slot associates on duty in the afternoon. The cart will not operate for more than 6 hours per day.

The Employer may also implement 3-5 self-serve non-alcoholic beverage stations at select locations on the casino floor. The stations will be available 24 hours per day, 7 days per week and will be stocked and cleaned by Union employee(s). The Employer has the discretion to determine the locations of these stations.

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25.10. Wage Freeze. The wages in effect at the time when the parties execute this Agreement will remain frozen for the duration of this Agreement. This wage freeze also applies to any new classifications that the Employer may implement as provided in the Agreement.

25.11. Bartender and Cocktail Server Work Rules. The work rules attached hereto as **Exhibit 5** shall apply to all Banquet Bartenders and Banquet Cocktail Servers.

IN WITNESS WHEREOF, there parties hereto, by there duly-designated representatives, have hereunder set their hands this 19th day of November, 2010, in Clark County, Nevada.

EMPLOYER:	UNION:
WORKLIFE FINANCIAL, INC. dba GRAND SIERRA RESORT AND CASINO	CULINARY WORKERS UNION LOCAL 226
By: _____	By: _____
Its: V.P. of Human Resources	Its: Chief Negotiator

EXHIBIT 1

Classification	Pay Rate*	
	Full Time	Part Time/On-Call
		(if diff from FT)
Baker	$ 11.45	
	$ 11.95	
	$ 12.50	
	$ 13.00	
	$ 14.40	
	$ 15.10	
	$ 15.70	
	$ 15.95	
Baker's Helper	$ 8.70	
	$ 8.95	
	$ 9.45	
	$ 10.45	
	$ 10.95	
Banquet Bar Runner	$ 9.20	
Banquet Bartender	$ 7.25	$ 8.25
	$ 11.30	
Banquet Captain	$ 7.25	
	$ 7.40	
	$ 7.70	
Bar Helper	$ 8.25	
	$ 8.30	
Bar Porter	$ 8.25	
Graveyard Pay Rate	$ 9.25	
Bartender	$ 8.00	$ 8.25
	$ 8.45	
	$ 8.60	
	$ 8.75	
	$ 8.90	
	$ 10.25	

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	$	10.40	
	$	10.85	
	$	11.00	
	$	11.45	
	$	11.60	
	$	12.05	

Bell Dispatch	$	8.70	
	$	8.95	

Bell Person	$	8.25	

Booth Cashier	$	8.45	
	$	8.70	
	$	8.95	
	$	9.20	
	$	9.70	
	$	10.45	
	$	10.95	
	$	11.95	
	$	12.55	
	$	13.00	

Bread Server	$	9.45	
	$	9.95	

Bus Person	$	8.25	
	$	8.45	

Butcher	$	12.55	

Cafeteria Aide	$	8.70	

Charlie Palmer			
Lead Bartender	$	12.05	
Back Server-Fin Fish	$	7.25	
Reservationist/Host	$	12.00	
Gardemanger (Cook I)	$	11.45	
Prep Cook	$	9.45	
Line Cook (Cook II)	$	13.00	

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Cocktail Server	$	7.25	$	8.25
Cocktail Server Trainer	$	10.00		

Cook I	$ 10.75	
	$ 10.95	
	$ 11.45	
	$ 11.95	

Cook II	$ 11.45	
	$ 11.45	
	$ 12.55	
	$ 13.00	
	$ 13.55	

Cook's Helper	$ 8.25	
	$ 8.70	
	$ 9.45	
	$ 9.70	
	$ 10.45	

Dishwasher	$ 8.25	
	$ 8.95	
	$ 9.20	
	$ 9.45	
	$ 9.95	
Event Porter	$ 8.70	
	$ 8.95	
	$ 9.45	
	$ 9.70	
	$ 10.45	
	$ 10.95	
Food & Beverage Cashier	$ 8.45	
	$ 8.95	
	$ 8.95	
	$ 10.45	
	$ 10.45	
	$ 11.45	
Food Runner	$ 8.25	
	$ 9.20	
Food Server	$ 7.25	$ 8.25
Graveyard-Café Sierra	$ 10.00	

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Sidewalk Café	$	10.00	
Guest Room Attendant	$	8.25	
	$	8.45	
	$	8.70	
	$	8.95	
	$	9.20	
	$	9.45	
	$	9.70	
	$	10.45	
Host	$	8.25	
	$	8.45	
	$	8.70	
	$	9.20	
	$	9.45	
	$	9.95	
	$	10.95	
Laundry I	$	8.25	
	$	8.45	
	$	8.95	
	$	9.70	
Laundry II	$	8.25	
	$	8.45	
	$	8.70	
	$	8.95	
	$	9.45	
	$	9.70	
	$	10.45	
Laundry III	$	9.95	
	$	10.95	
Lead Event Porter	$	10.45	
	$	11.95	
Lead Host	$	10.95	
	$	11.45	
	$	12.55	
Liquor Room Attendant	$	8.95	
	$	9.20	
	$	9.70	
Porter	$	8.25	
	$	8.95	
	$	9.20	
	$	9.45	

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	$	9.70	
	$	9.95	
Reserve Wine Bar Host/Server	$	14.00	
Saucier	$	13.55	
	$	14.20	
Scrub Captain	$	7.25	
Seamstress	$	10.45	
Service Bartender	$	8.60	
	$	8.75	
Slot Associate	$	8.25	
	$	8.45	
	$	9.20	
	$	9.45	
	$	9.70	
	$	9.95	
Snack Bar Attendant	$	9.50	
	$	9.70	
Graveyard Attendant	$	9.50	
Lead Barista	$	10.00	
Lead Attendant	$	10.00	
Steward Supervisor	$	10.95	
	$	12.55	
	$	13.00	
Utility Cleaner	$	8.25	
	$	8.95	
	$	9.45	
	$	9.70	
	$	10.95	
Utility Porter	$	8.25	
	$	8.70	
	$	9.45	
	$	10.45	
Graveyard PAH Utility	$	9.25	

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EXHIBIT 1 SIGNATURE PAGE

IN WITNESS WHEREOF, there parties hereto, by there duly-designated representatives, have hereunder set their hands this 19th day of November, 2010, in Clark County, Nevada.

EMPLOYER:	UNION:
WORKLIFE FINANCIAL, INC. dba GRAND SIERRA RESORT AND CASINO	CULINARY WORKERS UNION LOCAL 226
By: _____	By: _____
Its: V.P. of Human Resources	Its: Chief Neg.

EXHIBIT 2

CHECK-OFF AGREEMENT

1. Pursuant to the Union Security provision of the Agreement between WORKLIFE FINANCIAL, INC. dba GRAND SIERRA RESORT AND CASINO (hereinafter referred to as the "Employer") and the CULINARY WORKERS UNION LOCAL 226 (hereinafter referred to as the "Union"), the Employer, during the term of the Agreement, agrees to deduct each month Union membership dues (including initiation fees, fines and assessments) from the pay of those employees who have authorized such deductions in writing as provided in this Check-Off Agreement. Such membership dues shall be limited to amount levied by the Union in accordance with its Constitution and Bylaws. Deductions shall be made only for those employees who voluntarily submit to the hotel employing them the original or a facsimile of a written authorization in accordance with the "Authorization for Check-Off of Dues" form set forth below. It is the Union's responsibility to provide the employees with this form.

On and after the date this Agreement is ratified by employees represented by the Union, the required authorization shall be in the following form:

PAYROLL DEDUCTION AUTHORIZATION

Date _____

I, the undersigned, hereby request and voluntarily authorize the Employer to deduct from any wages or compensation due me, an amount equal to the regular monthly dues uniformly applicable to members of _____ ("Union") in accordance with the Constitution and Bylaws of the Union.

This authorization shall remain in effect and shall be irrevocable unless I revoke it by sending written notice to both the Employer and the Union by registered mail during a period of fifteen (15) days immediately succeeding any yearly period subsequent to the date of this authorization or subsequent to the date of termination of the applicable contract between the Employer and the Union, whichever occurs sooner, and shall be automatically renewed as an irrevocable check-off from year to year unless revoked as hereinabove provided, irrespective of whether I am a Union member.

Signed _____
Social Security No. _____

The Employer shall continue to honor authorization in the following form executed by employees prior to the date this Agreement is ratified by employees represented by the Union:

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PAYROLL DEDUCTION AUTHORIZATION

Date _____

1. I, the undersigned, a member of _____, hereby request and voluntarily authorize the Employer to deduct from any wages or compensation due me, an amount equal to the regular monthly dues uniformly applicable to members of _____ ("Union") in accordance with the Constitution and Bylaws of the Union.

2. This authorization shall remain in effect and shall be irrevocable unless I revoke it by sending a written notice to both the Employer and _____, by registered mail during a period of fifteen (15) days immediately succeeding any yearly period subsequent to the date of this authorization or subsequent to the date of termination of the applicable contract between the Employer and the Union, whichever occurs sooner, and shall be automatically renewed as an irrevocable Check-Off from year to year unless revoked as herein above provided.

3. Deductions shall be made only in accordance with the provisions of said Authorization for Check-Off of Dues, together with the provisions of this Check-Off Agreement.

4. The original or a facsimile of a properly executed Authorization for Check-Off of Dues form for each employee for whom Union membership dues are to be deducted hereunder shall be delivered to the Employer before any payroll deductions are made. Deductions shall be made thereafter only under Authorization for Check-Off of Dues forms which have been properly executed and are in effect. Any Authorization for Check-Off of Dues which in incomplete or in error will be returned to the Union by the Employer.

5. Check-off deductions under all properly executed Authorization for Check-Off of Dues forms which have been delivered to the Employer on or before the fifteenth (15^{th}) day of any particular month thereafter shall begin with the following calendar month.

6. Deductions shall be made in accordance with the provisions of this Check-Off of Union Membership Dues section, from the pay received on the first payday of each month regardless of the payroll period ending date represented on that payroll check. These provisions for dues deductions shall not apply to Banquet workers.

7. The Employer agrees to make deductions as otherwise provided in this Check-Off of Union Membership Dues section in the case of employees who have returned to work after authorized leave of absence.

8. In cases where a deduction is made which duplicates a payment already made to the Union by an employee, or where a deduction is not in conformity with the provisions of the Union Constitution and By-laws, refunds to the employee will be made by the Union.

9. The Employer shall remit each month to the designated financial officer of the Union, the amount of deductions made for that particular month, together with a list of employees and their Social Security numbers, for whom such deductions have been made. The

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information shall be in computer readable electronic form, in any one of the following media:

1. 3-1/2" diskette in Formatted Text (Space Delimited) format or other electronic format, including thumb/jump drive, CD ROM in Formatted Text (Space Delimited), etc.

The report shall contain header information and be set up so that position "1" is the first position (not position 0). The positional formatting shall be as follows:

Positions 1-13:	Social Security Number with the dashes
Position 14-54:	Name as Last Name, First Name
Position 55-60:	The dollar amount of the remittance without a dollar sign, Left justified, and with the minus sign in front for negative Amounts (such as -30.00)

The remittance shall be forwarded to the above-designated financial officer not later than the twentieth (20^{th}) of the month, for the deduction from the first paycheck (prior to the fifteenth {15^{th}} of the month) received by the employee for the month the dues are being paid.

10. Any employee whose seniority is broken by death, quit, discharge or layoff, or who is transferred to a position outside the scope of the bargaining unit, shall cease to be subject to check-off deductions beginning with the month immediately following that in which such death, quit, discharge, layoff, or transfer occurred.

11. In the event any employee shall register a complaint with the Employer alleging his/her dues are being improperly deducted, the Employer will make no further deductions of the employee's dues. Such dispute shall then be reviewed with the employee by a representative of the Union and a representative of the Employer.

12. The Employer shall not be liable to the Union by reason of the requirements of this Check-Off Agreement for the remittance of payment of any sum other than that constituting deduction made from employee wages earned.

13. The Union shall indemnify, defend and save the Employer harmless against any and all claims, demands, suits or other forms of liability that shall arise out of or by reason of action taken by the Employer in reliance upon payroll deduction authorization cards submitted to the Employer.

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EXHIBIT 2 SIGNATURE PAGE

IN WITNESS WHEREOF, there parties hereto, by there duly-designated representatives, have hereunder set their hands this 19th day of November, 2010, in Clark County, Nevada.

EMPLOYER:	UNION:
WORKLIFE FINANCIAL, INC. dba GRAND SIERRA RESORT AND CASINO	CULINARY WORKERS UNION LOCAL 226
By: _____	By: _____
Its: V.P. of Human Resources	Its: Chief Neg.

EXHIBIT 3

POLITICAL ACTION COMMITTEE

The Employer agrees to honor political contribution deduction authorization from its employees, in the following form:

> I hereby authorize the Employer to deduct from my pay the sum of $1.00 per month and to forward that amount to the Unite Here TIP Campaign Committee. This authorization is signed voluntarily and with the understanding that the Unite Here TIP Campaign Committee will use this money to make political contributions and expenditures in connection with Federal elections.
>
> I am aware of my rights to refuse to sign this authorization without reprisal. This authorization may be revoked by mailing notices of revocation by United States Registered or Certified Mail, Return Receipt Requested, to the Unite Here TIP Campaign Committee at 275 Seventh Avenue, 11th Floor, New York, New York 10001 and to the Employer.

The political contribution shall be made once each month during which an employee who has performed compensated service as in effect a voluntarily executed political contribution deduction authorization. The money shall be remitted within thirty (30) days after the last day of the preceding month to the Unite Here TIP Campaign Committee at 275 Seventh Avenue, 11th Floor, New York, New York 10001, accompanied by a form stating the name and social security number of each employee for whom a deduction has been made, and the amount deducted.

The Union shall indemnify, defend and save the Employer harmless against any and all claims, demands, suits, or other terms of liability that shall arise out of or by reason of action by the Employer in reliance upon payroll deduction authorization cards submitted to the Employer.

Employees who revoke their authorization will not have a subsequent authorization honored by the Employer until the commencement of the following calendar quarter, at the earliest.

IN WITNESS WHEREOF, there parties hereto, by there duly-designated representatives, have hereunder set their hands this 19th day of November, 2010, in Clark County, Nevada.

EMPLOYER:	UNION:
WORKLIFE FINANCIAL, INC. dba GRAND SIERRA RESORT AND CASINO	CULINARY WORKERS UNION LOCAL 226
By: Stanley S. Ng	By: Kim Kin
Its: V.P. of Human Resources	Its: Chief Neg.

MEMORANDUM OF AGREEMENT

Banquet Captains

Definitions

Coffee functions are defined as coffee breaks, continentals with no table set-up, continentals with table set up for less than three hundred (300) guests, beverage and snack-only breaks, working lunches, snack bars, bag lunches for less than five hundred (500) guests, and roll-in receptions.

Total Event Catering is defined as all off-property Food and Beverage functions not sponsored by the Employer.

Captain is defined as a supervisor to Banquet Servers.

Servers are defined as an employee not hired by the Banquet Department as Captain.

Captain Scheduling

The Banquet Managers will be responsible for scheduling Captains for banquet functions.

Banquet Captains are scheduled for food functions before all other personnel, excluding Coffee functions and Total Event functions. Captains are scheduled by Banquet Captain seniority, with the most senior Captain scheduled for one (1) function per day first. Captains are scheduled up to two (2) shifts each day (doubles).

It is the Banquet Manager's responsibility to designate which Captains are the Lead Captains. The Lead Captains will be rotated on an equitable basis depending on availability of Captains that day. All Lead Captains scheduled by management will receive 1.5 shares of the gratuity. The number of Lead Captains will be determined by the Standard Count Table of this Memorandum of Agreement.

All other Captains will be scheduled by management to control excessive hours worked by a Captain to provide coverage for understaffed events or, if neither are necessary, to maximize contributions to the Captain's pool.

All Captains not scheduled as Lead Captains by management will be signed up in Core or Server slots and will receive 1.0 share of the gratuity. Captains retain the responsibility of their job position whether working as a Lead Captain or a Food Server.

Work distribution

The Banquet Managers will determine how many Captains are necessary for the day and will schedule Captains unless a Captain has asked for one-half (1/2) day off. If there are not enough Captain or Server slots to work all Captains that day, Captains will be scheduled by job position seniority.

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Each food function must have supervising Captains. If possible, all Captains available will be scheduled for at least one (1) shift per day. All available Captains will be scheduled for two (2) functions per day before Core or Servers are scheduled.

Banquet Managers will be solely responsible for scheduling Captains-in-training (Scrub Captains) to enhance development.

Some Captains may not be booked for the day.

Captains will not be signed up for less than two (2) functions per day unless:

- they write the day off on the scheduling calendar;
- they sign up for one-half (1/2) day off on the scheduling calendar;
- the Banquet Manager determines that one (1) party to which a Captain has been assigned will require the maximum amount of work an employee is able to do in one (1) twelve (12)-hour day.;
- there are not enough functions to schedule the Captains for two (2) functions per day, in which event the most senior Captain is given first chance to have one (1) shift for the day.

Captains who not able to fill their schedule of two (2) functions per day in Captain assignments per "Standards per Function" will fill their schedule in Core or Server assignments.

After being scheduled for a shift, a Captain can request to be cancelled on that shift if management feels there is sufficient coverage and ample opportunity to replace that Captain. All other rules apply to this change. Captains may exchange shifts with other Captains with management approval.

Pop-up Functions

In the event of a Pop-up function, the Captains will be scheduled by Banquet Managers. A Captain asked to work less than twenty-four (24) hours prior to the scheduled shift time may refuse the function the first time without going to one-half (1/2)-day gratuity.

If all Captains available have been asked to work, the least to most senior Captains available will be asked again and will then go to one-half (1/2)-day gratuity split if they cannot work. The Banquet Manager retains the right to insist the Captain work if no other Captain is available or if the Captain is the last to write his/her name off in the scheduling calendar.

Cancellations/Count Drops

In the event of cancellations or count drops, Captains will be moved to other functions that day, least senior to senior, displacing any employee except another scheduled Captain. If Captains choose not to displace a Server, they will be subject to the one-half (1/2)-day rules stated below. If there are no Servers working and the count drops, the early out rules set forth below will apply. If a function cancels and no Servers are working, Captains will have the shift off.

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Days Off

Banquet Captains may request days off for the following week commencing on Sunday by writing their requests on the Banquet Manager's calendar prior to Wednesday of the preceding week. Captains may also request up to two (2) one-half (1/2) days off per pay period. Captains will be allowed only additional one-half (1/2) days off with permission from the Captain-scheduling Banquet Manager. Banquet Managers may deny all requests if business warrants.

Gratuity Pooling

All Captain gratuities, whether or not the Captain is designated as a Captain or a Server for the shift, go into the Captain's gratuity pool for the day. Client Gratuities above the contractual amount which are added to the check or left post-function are split only among the Captains who work that function. Gratuities specified by the client to go to an individual Captain are not included in the split.

Employees hired as Banquet Captains will pool gratuities which will be on a twenty-four (24)-hour basis (defined as call-in times started after midnight to call-in times before midnight) among Captains who worked that day. All Captains' shares of a function gratuity will go into the Captain pool. A Captain will receive a full share of that gratuity pool for the days worked if available to work any shift.

A Captain will be paid only one-half (1/2) the tip for the day, with the remaining one-half (1/2) going into the Captain gratuity pool to be divided equally among the Captain, if:

1. the Captain calls in or cancels a scheduled shift for any reason; or

2. the Captain requests one-half (1/2) day off, resulting in the Captain working only one (1) shift for the day and there is more than one (1) Captain working that day Captains on the Captain's rate-per-hour shift will receive a full share of the gratuity if they work another function that day contributing to the gratuity pool. If they do not work to contribute to the pool, they will not receive a share of the gratuity pool for the day.

Multiple Function Pooling

If a Captain is in charge of more than one (1) concurrent function, those functions' gratuities will be pooled together. The functions will be posted for scheduling as pooled functions. The Captain gets 1.5 share gratuity of the pooled total.

Early/Late Captains

One Captain appointed by the Banquet Manager will review the schedule and adjust Captains for opening and closing using the following guidelines:

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- Lead Captain will always open. The schedule will be checked so that Captains on breakfast the next day will not close. Captains on singles for the day will arrive at the scheduled time and close the function. If an individual function lasts over six (6) hours and two (2) or more Captains are scheduled on singles, the Captains may split the shift.

- Closing Captains will arrive no later than one (1) hour prior to the meal service.

- If all Captains are on doubles, the closing Captains will be assigned least senior to most senior, excluding the Lead Captain. Only the necessary number of Captains will remain to close.

- The closing Captains will be released from the luncheon function early, if possible.

- There will be one (1) closing Captain per forty (40) Servers.

- The schedule will be re-checked each day to adjust for management changes to the schedule.

- Efforts will be made to adjust the schedule to equal out hours for the day, on the assumption that the Lead Captain will clock in one (1) hour prior to a large party.

Captains scheduled as Servers will be included in the early/late rotation.

Miscellaneous

Captains may clock in early with pay to prepare for upcoming functions. Captains may request volunteers among the Serving crew to come in early for functions. Mandatory time changes for Servers will be handled solely by Banquet Managers. Monetary designations have been used to determine the counts set forth below because they regularly denote VIP status of menus, guaranteeing superior service for those functions. Management has the right to adjust scheduling to control excessive hours worked by a Captain or to provide coverage for understaffed events.

Standard Count Table for maximum Captains plus Servers per function

Standard Servers and Captains working a function, excluding training sessions for individual Servers at training wage, with no gratuity. Captains will be scheduled to oversee each function according to the following table. The following are maximum counts:

Buffet and sit down meal function	*Menu cost per meal non-inclusive	**Servers per set count	Lead Captains per set count if available
Continental	Standard retail	1/40	1/1000
Breakfast 1	Over $24.99	1/22	1/300
Breakfast 2	Under $25.00	1/25	1/600
Lunch 1	Over $29.99	1/22	1/300

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Lunch 2	Under $30.00	1/25	1/600
Dinner 1	Over $49.99	1/16	1/100
Dinner 2	Under $50.00	1/20	1/600

Reception counts include all Captains in Server-per-guest count.

Reception	Menu cost per guest non-inclusive	Number of Servers per guest by guarantee	Lead Captains per guest by guarantee
Reception 1	$100.00 or more	1/25	1/100
2	$50.00 – 99.99	1/50	1/300
3	$5.00 – 49.99	1/80	1/600
4	$0.00 – 4.99	Server $ 12.00/hour Count per management	1/1000 All Captains signed up receive $15.00/hour
Bag lunches over 500 guests	Standard retail	1/80	1/800
Bar only events		Server $ 12.00/hour	No Captain

* In the event of special reduced prices, gratuity will be based on standard retail prices and, therefore, will be staffed according to retail. Costs not to include liquor. Per meal indicates amount of meals guaranteed by client on Banquet event order.

** Set count for scheduling purposes not to exceed five percent (5%) of guarantee.

Captain seniority by job classification

	Employee Number
Maria Delgado	**54020**
Charity Crouch	**81894**
Rigaberto Reyes	**55876**
Ismael Fernandaz	**83117**
Colter, Bill	**89280**
Duey, Leanne	**89281**

EMPLOYER:

WORKLIFE FINANCIAL, INC. dba GRAND SIERRA RESORT

By: Stanley S. Ng

Its: V.P. of Human Resources

UNION:

CULINARY WORKERS UNION LOCAL 226

By: Kim Kri

Its: Chief Neg.

MEMORANDUM OF AGREEMENT

Banquet Food Servers – Work Rules

THIS AGREEMENT is made and entered into this 19th day of November, 2010, by and between WORKLIFE FINANCIAL, INC. dba GRAND SIERRA RESORT(hereinafter referred to as "Employer") and the CULINARY WORKERS UNION LOCAL 226 (hereinafter referred to as "Union"), and attached to and made a part of the Collective Bargaining Agreement.

1. The Banquet Food Servers Core List will be comprised of up to fifteen (15) employees.

2. Scheduling will be done in order of seniority, first from the Core List, then from the "A" list.

3. Scheduled events for the upcoming week will be posted in the Banquet Office.

4. Core List Banquet Servers must sign up for work on the Server Sign-Up Sheet at sign-ups on Wednesday at 11 a.m.

5. Core List Servers and Captains must be available for a minimum of forty (40) hours per week when business needs warrant.

6. Work will be assigned to those Core List Servers who have not signed up for work five (5) days prior to the function and who do not have at least forty (40) hours per week.

7. All event service charge distributions will be posted in the Banquet Office and at the Red Table within seventy-two (72) hours of the event.

8. Employees must sign in and out, and must notify management immediately of any discrepancies in the posted gratuity sheets.

9. The Company will disclose menu items in the BEO (example: steak, chicken, fish or pretzels).

10. The Company will have a designated stationary sign-up area for each function, which will be located in the Convention Gray Area.

11. Core List Servers and "A" List Servers will be scheduled by seniority. "B" List Servers will be scheduled by rotation.

12. Servers who leave the Core List but wish to continue working will move to the top of the "A" List.

_____ / KK
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13. Any function that is scheduled within seventy-two (72) hours preceding the function shall be considered a pop-up event. Pop-up events will be scheduled by expedient seniority.

EMPLOYER:

WORKLIFE FINANCIAL, INC. dba GRAND SIERRA RESORT

By: _____

Its: V.P. of Human Resources

UNION:

CULINARY WORKERS UNION LOCAL 226

By: _____

Its: Chief Neg.

MEMORANDUM OF AGREEMENT

Scheduling of Banquet Food Servers

Banquet Food Servers may be required to call a designated number reserved exclusively for banquet scheduling each week to advise the Scheduling Coordinator (or leave a message) of his/her availability for the upcoming workweek.

The Scheduling Coordinator will notify Banquet Food Servers of their upcoming weekly schedule by phone. It is understood that if the Coordinator is unable to reach the Banquet employee personally, and cannot leave a message, the Coordinator may proceed to the next Banquet employee on the list for distributing banquet food function assignments.

The Scheduling Coordinator shall allow a reasonable amount of time for Banquet Food Servers to respond to messages that are left with an individual or on a telephone-answering device.

EMPLOYER:

WORKLIFE FINANCIAL, INC. dba GRAND SIERRA RESORT

By: _____

Its: V.P. of Human Resources

UNION:

CULINARY WORKERS UNION LOCAL 226

By: _____

Its: Chief Neg.

MEMORANDUM OF AGREEMENT

Coffee Service

THIS AGREEMENT is made and entered into this 19th day of November, 2010, by and between WORKLIFE FINANCIAL, INC. dba GRAND SIERRA RESORT (hereinafter referred to as "Employer") and the CULINARY WORKERS UNION LOCAL 226 (hereinafter referred to as "Union"), and attached to and made a part of the Collective Bargaining Agreement.

The parties hereby agree to the following terms:

Coffee Service shall be responsible for the following:

1. All bag lunches for under five hundred (500) people;

2. All working lunches;

3. All roll-in Continental Breakfasts;

4. All roll-in Theme Breaks;

5. All Deli lunches for fewer than sixty (60) people;

6. All roll-in breaks that are not full sit-down service, other than receptions and/or pop-ups, which shall continue to be at management's discretion;

7. Coffee Service Department shall have a Coffee Core List of not more than three (3) people. The Core List must be available for the Coffee Department functions before the Banquet Department, and shall be accessed prior to any other crew for scheduling extras.

8. The Coffee Captains shall receive the same tip as the rest of the crew.

9. Opportunities for promotion to the supervisory position shall be offered within the Department whenever possible.

10. The Company will make available all equipment necessary for personnel to complete assigned duties and tasks.

11. The Coffee Department is responsible for set-up and break-down of Coffee Department functions.

///

Initialed

12. The Coffee Department is responsible for ordering and/or stocking of supplies for all Department functions.

EMPLOYER:

WORKLIFE FINANCIAL, INC. dba GRAND SIERRA RESORT

By: Stacy S. Ogden

Its: V.P. of Human Resources

UNION:

CULINARY WORKERS UNION LOCAL 226

By: Kim Kline

Its: Chief Neg.

SIDE LETTER # 1

Slot Techs

After passing a probationary period of three (3) months, all new hires who have past experience of two (2) years or more in the industry (or a similar industry) as a Slot Tech will have the opportunity to take a test for the purpose of determining their skill level. If the employee passes the test, he will become a Slot Tech I when a position becomes available. All new hires with less than two (2) years of experience in the industry (or similar industry) who fail to pass the test must complete a two (2)-year training period as an Apprentice Slot Tech.

After completing two (2) years as a Slot Tech I, the employee will have the opportunity to take a test to determine their skill level. If the employee passes the test, he will be promoted to a Slot Tech II when a position becomes available.

After passing the probationary period, all new hires that have four (4) years of experience or more in the industry as a Slot Tech will have the opportunity to take a test to determine their skill level. If they pass the Slot Tech II test, they will be promoted to a Slot Tech II when a position becomes available. If they fail the Slot Tech II test, they will have the opportunity to take the Slot Tech I test. If they pass the Slot Tech I, they will be promoted to a Slot Tech I when a position becomes available.

Testing: It is understood that within the Slot Tech craft there are many areas of specialization. With the exception of general knowledge, the test should be consistent within the realm of the employee's work experience.

The test shall consist of two (2) parts:

1. Written Test. The Company will keep a database of standard questions from relevant manufacturing manuals. A study guide will be provided to the employee no less than sixty (60) days before the test is given. A committee from the Union will work with management for the purpose of instituting changes in the testing based on industry changes and standards. All testing will be standardized.

2. Practical Test. Basic knowledge, validators and progressive units, slot machines, slot system components and ticket printers.

An employee must achieve a combined score of seventy-five percent (75%) in order to have passes the test.

Testing will be offered to qualified persons when there is a need for additional Slot Techs. Classification seniority dates will be assigned when a bid is awarded. Seniority ranking will be assigned according to classification seniority within the group that has received a passing score on the test. If there is a ten (10)-point difference on a passing score within the test group, the person who has the better score will receive a classification seniority date before the person who has the lesser score, regardless of classification seniority. No additional testing will be given as

Initialed

long as there is a person who has passed the test and has not been awarded a bid within the classification.

Training. The Company will make every effort to provide on-the-job training. Whenever practical, Slot Tech II level employees will assist and help in the training of Slot Tech I employees. Whenever practical, Slot Tech I employees will assist and help in the training of Apprentice Slot Tech employees.

The Company will provide the opportunity for formal training. The Company will pay for classes that are relevant for the enhancement of job duties and advancement in skills as a Slot Tech.

Employees who have superior skills in an area of knowledge will agree to assist in the training of co-workers for up to a two (2)-week period each year. The Company may request an extension of the training period for an additional three (3) weeks if it is shown to be necessary. The forum of training will be determined in discussions between the employee and the Company.

Number of Slot Techs.

Traditional staffing levels of Slot tech II and Slot Tech I positions will be maintained by the Company, unless the Company request a meeting with the Union and can demonstrate a significant change in the business needs to justify the change.

Wages.

New Hire	70%	$10.49
Apprentice	75%	$11.24
One (1) year	85%	$12.74
Slot Tech I	90%	$13.49
One (1) year	95%	$14.24
Slot Tech II	100% of	$14.99

EMPLOYER:

WORKLIFE FINANCIAL, INC. dba GRAND SIERRA RESORT

By: Stacy S. Ogan

Its: V.P of Human Resources

UNION:

CULINARY WORKERS UNION LOCAL 226

By: Kim Kri

Its: Chief Neg.

SIDE LETTER #2

INCENTIVE PLAN FOR "BUYING" ROOMS

1. Overtime will be obtained in the order of the following schedule: (1) in advance; (2) same day; (3) buy back (incentive rooms); and, lastly (4) outside of classification.

2. The incentive plan enables Guest Room Attendants to clean additional rooms during their regular eight (8)-hour shift and to receive incentive pay for each additional room cleaned.

3. This plan would be implemented only when Housekeeping is unable to obtain overtime according to the schedule listed in 1 above.

4. At the time when this Agreement was originally executed, a Guest Room Attendant received incentive pay in the amount of Six Dollars and Thirty Cents (6.30) per room. As the time of signing of this version of the Agreement, a Guest Room Attendant receives incentive pay in the amount of Six Dollars and Eighty-Nine Cents (6.89) per room. The room rate will increase annually by the same formula used to reach the original rate of $6.30.

5. The utilization and/or experience of the incentive plan for "buying" rooms will not result in raising the room cleaning expectations.

Purpose

To obtain enough staff to cover any extra room because of (1) inability to obtain overtime in advance or same day overtime, (2) call-ins, and/or (3) unexpected increase in overnight occupancy.

Benefits to the Employee

1. The incentive plan allows the employee to make extra money without having to (1) stay late; (2) incur additional childcare expenses; or (3) worry about finding alternative transportation home.

2. A GRA may elect to "buy" an extra room to clean during her/his regular eight (8)-hour shift and receive incentive pay for it. Or, the GRA may elect to work same day overtime and complete a room(s) after her/his eight (8)-hour shift and receive regular overtime pay for it. There shall be no pyramiding of "incentive" pay or "buy" rooms and overtime.

Considerations

1. Guest Room Attendants must consistently meet standards in order to "buy" rooms(s). If, at any time, a GRA's performance falls below standards as defined by established room standards and based on room inspections, guest complaints and other evaluative measurements, and progressive discipline with regard to quality of work is being administered,

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the GRA will not qualify to "buy" rooms until standards are consistently met for one (1) month. **This would not necessarily prevent an employee from signing up for regular overtime, but only from doing additional room(s) within an eight (8)-hour period.*

2. No more than three (3) rooms may be "purchased within an eight (8)-hour shift as a matter of right. Additional rooms may be purchased at the manager's discretion.

Implementation

1. If it is determined that additional same-day help is needed, GRAs will be asked if they wish to "buy" a room(s). This will be done as early as possible after A.M. Room Check (9:30 a.m.).

2. Rooms will be awarded to GRAs on a rotational basis to ensure equitable distribution of same day overtime/incentive pay rooms.

3. If a GRA "buys" a room and cannot complete it during the eight (8)-hour shift and chooses to do it as regular overtime (after the eight (8)-hour shift), she/he may have that option, but must notify her/his supervisor or management.

4. Once the GRA has signed the "Extra Room" form, he/she has agreed to modify his/her work schedule to include the additional rooms. A refusal will count as a turn on the rotational list.

5. If, at DND time, it is determined that we do not need as much additional help as previously thought, the additional room time will be taken away from some GRAs based on rotational lists established.

6. Only after completing sixteen (16) values within his/her (8)-hour shift will a GRA qualify for incentive pay for any additional room cleaned within the same time period.

<u>Internal Procedures</u>

1. Scheduler advises management that additional same day help may be needed.

2. A notice is posted in Housekeeping and/or linen rooms asking if anyone wishes to "buy" a room today if it becomes necessary.

3. A GRA who wishes to "buy" rooms for incentive pay or work overtime for regular overtime pay will complete an "Extra Room" form and return it to his/her supervisor or Housekeeping office prior to 11:00 a.m.

4. After A.M. Room Check, management will determine how many rooms to "sell."

5. Assistant Housekeepers will report the extra room numbers to the scheduler or the Assistant Housekeeping Administrator. See Form – Extra Room List for Incentive Pay/Overtime

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Pay. These should be reported after any rooms have been assigned based on the A.M. Room Check.

6. Extra rooms will be given after 2:00 p.m DND check so that GRAs who have less than sixteen (16) values will get their replacement rooms first and whatever is left will be distributed to those who opted to buy a room. Initially, if there are not enough rooms to distribute to everyone who opted to buy a room, the lowest seniority will not be awarded rooms. Henceforth, a list will be established allowing rooms to be awarded on a rotational basis.

7. Housekeeping Supervisors will notify those who will be buying rooms by returning the "Extra Room" form with room number(s) to the qualified GRAs.

8. To ensure accurate accounting, the GRA activity sheet must indicate the equivalent of sixteen (16) or more values for whoever purchased additional room(s). (Dialing in and out room status.) The Assistant Housekeeper will collect the forms at the end of the shift and verify that the equivalent of sixteen (16) or more values has been cleaned. These papers will be reconciled with the Incentive Pay/Overtime Pay Extra Room List.

9. A list of GRAs qualified to receive incentive pay for that day will be approved by the Director of Housekeeping and submitted to Payroll.

IN WITNESS WHEREOF, there parties hereto, by there duly-designated representatives, have hereunder set their hands this 19th day of November, 2010, in Clark County, Nevada.

EMPLOYER:	UNION:
WORKLIFE FINANCIAL, INC. dba GRAND SIERRA RESORT AND CASINO	CULINARY WORKERS UNION LOCAL 226
By: Stanley S. Ng	By: K. Ki
Its: V.P. of Human Resources	Its: Chief Neg.

SIDE LETTER #3

LAUNDRY DEPARTMENT

It is hereby agreed that Employees of the Laundry who are assigned to the flatwork section shall be rotated daily on an equitable basis.

After lateral transfers, all open grade II or grade III positions should be considered for promotional opportunities. Promotional opportunities should be offered to current employees of the laundry before transfers from other departments or new hires. Promotions will be awarded on qualifications, seniority and work record. The posting shall be for three (3) days.

IN WITNESS WHEREOF, there parties hereto, by there duly-designated representatives, have hereunder set their hands this 19th day of November, 2010, in Clark County, Nevada.

EMPLOYER:	UNION:
WORKLIFE FINANCIAL, INC. dba GRAND SIERRA RESORT AND CASINO	CULINARY WORKERS UNION LOCAL 226
By: _____	By: _____
Its: V.P. of Human Resources	Its: Chief Neg.

SIDE LETTER #4

OVERTIME

Kitchen and Steward

The Employer shall post known overtime dates every ten (10) days. Sign-up sheets will be provided; and only interested qualified employees may sign the sheet.

The sign-up sheet will be available for sign-up until five (5) days prior to the date the overtime is needed.

There will be an equitable distribution of overtime.

The Company will post classification seniority for the affected employees.

Laundry

The Employer shall post known overtime dates every two (2) weeks. Sign-up sheets will be provided; and only interested, qualified employees may sign the sheet. The sign-up sheet will be available for sign-up until five (5) days prior to the date the over tie is needed.

There will be an equitable distribution of overtime.

The Company will post classification seniority for the affected employees.

Porter

The Employer shall post known overtime dates every ten (10) days. Sign-up sheets will be provided; and only interested, qualified employees may sign the sheet. The sign-up sheet will be available for sign-up until two (2) days prior to the date the overtime is needed.

There will be an equitable distribution of overtime.

The Company will post classification seniority for the affected employees.

IN WITNESS WHEREOF, there parties hereto, by there duly-designated representatives, have hereunder set their hands this 19th day of November, 2010, in Clark County, Nevada.

EMPLOYER:	UNION:
WORKLIFE FINANCIAL, INC. dba GRAND SIERRA RESORT AND CASINO	CULINARY WORKERS UNION LOCAL 226
By: Stacy S. Cl	By: Kri K
Its: V.P. of Human Resources	Its: Chief Neg.

SIDE LETTER #5

BELL DEPARTMENT

This is to confirm that the schedule of payments and distribution of gratuities as set forth below will be maintained for the duration of the labor agreement:

1. Service Charge for deliveries to guests' room (exclusive of luggage): Bell Persons receive Fifty Cents ($.50) to deliver an item outside the room (i.e., door knob "goodie" bag) and One Dollars ($1.00) to deliver an item inside the room. This is a per room delivery, not a per item delivery.

2. Flower Deliveries: Bell Persons are paid Three Dollars ($3.00) for delivery of flowers from the gift shop. If a guest and/or outside flower company wants flowers delivered to a room, this is treated as a routine front, with no guarantee of gratuity.

3. Newspaper Deliveries: Bell Persons and/or Dispatcher are paid Twenty Cents ($.20) per paper delivered to the doorstep of the guestroom.

4. Bus Group Service Charge Distributions: Bus groups are usually charged an average of Three Dollars ($3.00) per person for the deliver/pick-up of luggage. Bell Captains receive fifteen percent (15%) from the total service charge, after which Bell Persons doing the check-in receive sixty percent (60%) of the balance of the service charge, and Bell Persons doing the checkout receive the remaining forty percent(40%). If a service charge is collected for luggage delivery and the Bell Person does not provide the service, the balance of the service charge (after Captain's fifteen percent (15%) is retained by the Employer to offset salaries and wages. If the Bell Person carries less than fifty-one percent (51%) of the group, the employee receives One Dollar and Fifty Cents ($1.50) per person, with fifteen percent (15%) going to the Captain and the balance going to the Employer.

5. Bus Group Assignments: Assignments are made to the low Bell Person based on the "PAX" count, which is a cumulative total of the number of people for which bags were moved. New Bell Persons are averaged in upon their position date. Low Bell Person is low for the shift; however, Captains have the discretions to reassign or change based on last-minute limo runs or other business-related issues.

6. Promotional Events and Complimented Guests: There is no guaranteed gratuity or service charge for these activities. They are treated as regular Front.

7. Limo Runs: One (1) point is assigned for departures and one(1) point for arrivals, which are accumulated for the duration of employment and tracked on the "limo" board. The lowest point Bell Person on the shift is assigned as many runs as possible during the shift. The second lowest is assigned the next run; however, Captains have discretion to reassign or change based upon last-minute runs and/or Bell Persons not available. New Bell Persons are averaged in upon their position date. Bell Persons are paid an additional Four Dollars (4.00) per hour (above

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base wage) for limo and other authorized runs. Runs over one (1) hour and five (5) minutes are billed two (2) hours (exclusive of time for gas and maintenance runs). Tips are at the discretion of the guest; however, for Sales Department VIP transports, "entertainment runs," Employer pays a gratuity to the driver.

IN WITNESS WHEREOF, there parties hereto, by there duly-designated representatives, have hereunder set their hands this 19th day of November, 2010, in Clark County, Nevada.

EMPLOYER:	UNION:
WORKLIFE FINANCIAL, INC. dba GRAND SIERRA RESORT AND CASINO	CULINARY WORKERS UNION LOCAL 226
By: Stacy S.	By: Kim K.
Its: V.P. of Human Resources	Its: Chief Neg.

SIDE LETTER #6

INVOLUNTARY RELEASE

Already implemented in Article 7.02.

IN WITNESS WHEREOF, there parties hereto, by there duly-designated representatives, have hereunder set their hands this 19th day of November, 2010, in Clark County, Nevada.

EMPLOYER:	UNION:
WORKLIFE FINANCIAL, INC. dba GRAND SIERRA RESORT AND CASINO	CULINARY WORKERS UNION LOCAL 226
By: _____	By: _____
Its: V.P. of Human Resources	Its: Chief Neg.

SIDE LETTER #7

HOLIDAY PAY

In the event a pattern of early out request based on illness occurs on holidays, the Union agrees it will meet with the Employer for the purpose of correcting such abuse.

IN WITNESS WHEREOF, there parties hereto, by there duly-designated representatives, have hereunder set their hands this 19th day of November, 2010, in Clark County, Nevada.

EMPLOYER:	UNION:
WORKLIFE FINANCIAL, INC. dba GRAND SIERRA RESORT AND CASINO	CULINARY WORKERS UNION LOCAL 226
By: Shirley S. Ogan	By: Kim Kri
Its: V.P. of Human Resources	Its: Chief Neg.

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MEMORANDUM OF AGREEMENT

Extension of the Collective Bargaining Agreement Executed on November 19, 2010

THIS AGREEMENT is made and entered into this 7TH day of DECEMBER, 2010 by and between WORKLIFE FINANCIAL, INC. dba GRAND SIERRA RESORT (hereinafter referred to as "Employer") and the CULINARY WORKERS UNION LOCAL 226 (hereinafter referred to as "Union"), and attached to and made a part of the Collective Bargaining Agreement executed on November 19, 2010 (the "CBA").

1. By its own terms, the CBA is set to expire on December 10, 2010. The Employer and the Union mutually agree and desire to extend the CBA for ninety (90) days from December 10, 2010 or until March 10, 2011.

2. Either the Employer or the Union may give a written notice of desire not to renew and to renegotiate the CBA ("Notice") no later than seven (7) calendar days before the March 10, 2011 deadline (or by March 3, 2011). If such Notice is given, the parties will confer with respect to when, where, and how new negotiations will begin.

3. If no Notice is given by March 3, 2011, the CBA shall be deemed to renew automatically on a month-to-month basis from the new March 10, 2011 expiration date (e.g., until April 10, May 10, June 10, etc.), unless Notice is given pursuant to Paragraph 5.

4. During the period when the CBA is being renewed on a month-to-month basis, either the Employer or the Union may give Notice no later than seven (7) calendar days before the expiration of every month-to-month term. If such Notice is given, the parties shall confer with respect to when, where, and how new negotiations will begin.

5. Notwithstanding the foregoing paragraphs, if the Employer sells the property located at 2500 East Second Street, Reno, Nevada 89595 (i.e., the Grand Sierra Resort and Casino) to a third party during the ninety-day (90) initial extension period or any month-to-month renewal period thereafter, the CBA will remain in effect for thirty (30) days after the property sale closes, unless either party has already given Notice, and the Union or the buyer may seek to immediately confer with respect to when, where, and how new negotiations will begin.

EMPLOYER:	UNION:
WORKLIFE FINANCIAL, INC. dba GRAND SIERRA RESORT AND CASINO	CULINARY WORKERS UNION LOCAL 226
By: Shelby S Ogden	By: Kevin Kline
Its: V.P. of Human Resources	Its: International Vice President UNITE HERE

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CULINARY WORKERS UNION LOCAL 226 - RENO

1135 TERMINAL WAY SUITE 100
RENO, NV 89502

PHONE: ~~(775) 689-8670~~ 702-610-0201

~~FAX: (775) 689-8674~~

Fax

To: ANTHONY HALL From: KEVIN KLINE

Fax: 775-786-6179 Date: 12/7/10

Phone: Pages: 2

Re: CC:

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

•Comments: Please sign- FAX back to me to #: 702-386-9517 #
ATTENTION KEVIN KLINE

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Facsimile: (702) 823-3400
Attorneys for Defendants

IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

EDDY MARTEL (also known as MARTEL-RORIGUEZ), MARY ANNE CAPILLA, JANICE JACKSON-WILLIAMS and WHITNEY VAUGHAN on behalf of themselves and all others similarly situated, 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 **REPLY IN SUPPORT OF MOTION TO DISMISS**

COHEN | JOHNSON | PARKER | EDWARDS
375 E. Warm Springs Road, Ste. 104
Las Vegas, Nevada 89119
(702) 823-3500 FAX: (702) 823-3400

POINTS AND AUTHORITIES

I. INTRODUCTION

The state law wage claims alleged in the Class Action Complaint ("Complaint") of Plaintiffs Eddy Martel ("Martel"), Mary Anne Capilla ("Capilla"), Janice Jackson-Williams (Williams) and Whitney Vaughan ("Vaughan") (collectively, "Plaintiffs") are untimely and without merit. Contrary to Plaintiffs' contentions, the Nevada Supreme Court has expressly endorsed motions to dismiss based on statute of limitations grounds and has never adopted tolling for class action claims pending in federal court. Plaintiffs' claims should therefore be

dismissed to the extent they are barred by the two (2) year statute of limitation found in NRS 608.260.

Plaintiffs' argument for a three (3) year statute of limitation is entirely based on misinformation. The Nevada Supreme Court has expressly held that claims under Nevada's Minimum Wage Amendment are subject to the two (2) year statute of limitation found in NRS 608.260 because that statute is the most closely analogous with respect to wage claims. That same reasoning supports applying the two (2) year limitation in NRS 608.260 to all of Plaintiffs' wage claims. Plaintiffs improperly argue for a three (3) year limitation in NRS 11.190(3)(a), even though its express terms forecloses its application where claims are subject to penalties such as those found in NRS Chapter 608. Plaintiffs, however, intentionally misquote NRS 11.190(3)(a) so as to give the false impression that it applies to claims subject to a penalty. Because a two (2) year limitation applies, ***not*** three (3) year, and Plaintiffs filed their complaint on June 14, 2016, all claims accruing before June 14, 2014 are bared, including all of Vaughan's and Capilla's claims, all but one (1) month of Martel's claims, and all but six (6) months of Williams' claims.

Plaintiffs do not dispute that they are seeking to pursue an almost identical class action that was rejected by the federal district court in *Sargent v. HG Staffing, LLC*, Case No. 3:13-cv-453-LRH-WGC, 171 F. Supp. 3d 1063 (D. Nev. 2016), Mot. Ex. 1, and also by the Ninth Circuit Court of Appeals in *Sargent v. HG Staffing, LLC*, Case No. 16-80044, Mot. Ex. 2. Contrary to Plaintiffs' unsupported argument, Plaintiffs Martel, Capilla, and Vaughan's (collectively the "*Sargent* Parties") claims are precluded because they were parties to the *Sargent* action, by virtue of voluntarily filling consents to join that action, and therefore class certification was not required to grant party status. *See* Mot. Ex. 3, Sargent Action, Docket with Party List. While Plaintiff Williams was not a party, Plaintiffs do not dispute that she is in privity with the parties in *Sargent* because she seeks to represent them, and therefore is also barred by *Sargent.* Plaintiffs also cannot dispute that Judge Hicks' well-reasoned decision denying class certification in the *Sargent* action is sufficiently firm to afford preclusion because the issue of

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class certification in the *Sargent* action was fully briefed and tested on appeal. Accordingly, Plaintiffs' class action claims are barred by both issue preclusion and the first-to-file rule.

Plaintiffs also have failed to plead facts necessary to establish their statutory wage claims. Courts have uniformly dismissed wage claims where Plaintiffs fail to identify even one week in which Plaintiffs were not paid the proper wage by alleging the number of hours worked and the amount that Plaintiffs were underpaid, all of which are required facts necessary to state a wage claim.

Plaintiffs also do not dispute that Plaintiff Williams failed to exhaust the grievance procedures set forth in the collective bargaining agreement which covered Williams. Plaintiffs' assertion that the collective bargaining agreement was unenforceable because it was not signed has been repeatedly rejected by the courts. Authority cited by Plaintiffs does not contradict the numerous authorities which have held that the failure to follow grievance procedures in the collective bargaining agreement when pursing state law statutory wage claims mandates dismissal. Plaintiff Williams also does not dispute that her statutory overtime claims are without merit because, under Nevada law, those statutory overtime provisions do not apply when the collective bargaining agreement provides otherwise for overtime.

Finally, Plaintiffs do not address, much less dispute, that they are not entitled to seek class certification on behalf of GSR employees that are represented by a union because the union is the exclusive representative with respect to wages. Accordingly, Plaintiffs concede that Federal law prohibits former employees from using a class action to usurp the Union's role as the exclusive representative for an employee's bargaining unit. Accordingly, as Plaintiffs claims have no merit and are untimely, this Court should grant GSR's motion and dismiss Plaintiffs' Complaint in its entirety.

II. ARGUMENT

A. All or Part of Plaintiffs' Claims Are Barred by the Statute of Limitations.

1. Plaintiffs' Claims Are Subject to a Two (2) Year Statute of Limitation.

Plaintiffs' attempt to avoid the two (2) year limitation that bars all or part of their claims is a blatant effort to mislead this Court on the state of Nevada law. Plaintiffs improperly argue

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that the two (2) year limitation found in NRS 608.260 only applies to minimum wage claims provided by NRS 608.250 (*see* Op. at 14:14-18), even though the Nevada Supreme Court expressly held in *Perry v. Terrible Herbst, Inc*., 132 Nev. Adv. Op. 75, 383 P.3d 257, 260-62 (2016), that claims made under the Minimum Wage Amendment ("MWA"), added to the Nevada Constitution, are governed by the two-year statute of limitation found in NRS 608.260 for statutory minimum wage claims because "when a statute lacks an express limitations period, courts look to analogous causes of action for which an express limitations period is available either by statute or by case law." In direct contravention of their duty of candor to the courts, counsel for Plaintiffs do not even mention *Perry*, much less attempt to refute *Perry*, which applies to both Plaintiffs' MWA claims and all other analogous wage claims. Plaintiffs simply do not dispute that the two (2) year limitation in NRS 608.260 is the "most closely analogous" limitation period with respect to all of their wage claims.[1]

Plaintiffs' reliance on NRS 11.190(3)(a) to support its claims for a three (3) year limitation period is only made possible by ***deleting*** language from the statute. *See* Op. at 14:12-13. NRS 11.190(3)(a), in full, provides for a three (3) year limitation for an "action upon a liability created by statute, ***other than a penalty or forfeiture.***" Plaintiffs intentionally deleted the phrase "other than a penalty or forfeiture," without providing the required punctuation signaling the deletion, because Plaintiffs are fully aware that wage claims made under NRS

[1] Plaintiffs did not attempt to dispute that the two (2) year limitation periods found in NRS 608.260 and NRS 11.290(1)(a), governing wage claims against Nevada Contractors, are the most closely analogous" limitation periods. Plaintiffs have also conceded that the Nevada Labor Commissioner has also recognized a two-year limitation period is the most analogous for claims under NRS Chapter 608. *See* NAC 607.105 ("the Commissioner will not accept any claim or complaint based on an act or omission that occurred more than 24 months before the date on which the claim or complaint is filed"); *Baldonado v. Wynn Las Vegas, LLC*, 124 Nev. 951, 963, 194 P.3d 96, 104 (2008) (recognizing Labor Commissioner's "special expertise" as to NRS Chapter 608); *Nevada Comm'n on Ethics v. JMA/Lucchesi*, 110 Nev. 1, 5–6, 866 P.2d 297, 300 (1994) (holding a district court is "obligated to give deference to the construction afforded" by the "agency charged with the duty of administering an act" because "the agency is impliedly clothed with power to construe it"); *State ex rel. Nevada Tax Comm'n v. Saveway Super Serv. Stations, Inc.*, 99 Nev. 626, 630, 668 P.2d 291, 294 (1983) (holding "[g]reat deference will be afforded to an administrative body's interpretation when it is within the statutory language; moreover, the Legislature's acquiescence in an agency's reasonable interpretation indicates that the interpretation is consistent with legislative intent").

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Chapter 608 are subject to a "penalty," therefore precluding the application of NRS 11.190(3)(a). *See* NRS 608.040 ("Penalty for failure to pay discharged or quitting employee"); NRS 608.050 ("Wages to be paid at termination of service: Penalty"); NRS 608.195(2) (providing for an "administrative penalty" for violation of "NRS 608.005 to 608.195"). Even if this Court choose to apply a statute of limitation under NRS Chapter 11, which the Nevada Supreme Court found in *Perry* to be inapplicable to wage claims, a two (2) year limitation would still be required by NRS 11.190(4)(b) (emphasis added) which applies to an "action upon a statute ***for a penalty or forfeiture***, where the action is given to a person or the State, or both, except when the statute imposing it prescribes a different limitation." *See Algarin v. CTX Mortg. Co., LLC,*, Case No. 3:11-CV-229-RCJ-VPC, 2012 WL 3205519, at *4 (D. Nev. Aug. 3, 2012) (holding that claims brought under NRS Chapter 598D were barred under two (2) year limitation found in NRS 11.190(4)(b) because NRS Chapter 598D.110 expressly provided for a penalty in addition to compensatory damages).[2]

Plaintiffs also ignore that their wage claims are ***not*** an "action upon a liability created by statute," which is a prerequisite for NRS 11.190(3)(a) to apply. Liability for wages under NRS Chapter 608 is created by contract, not statute. *See* NRS 608.012 (defining "wages" as the "amount an employer agrees to pay an employee for the time the employee has worked"). Without a contract for wages, there cannot be any liability under NRS Chapter 608. In *Gonzalez v. Pac. Fruit Exp Co*, 99 F. Supp. 1012, 1015 (D. Nev. 1951), the court held that the "phrase 'liability created by statute' means a liability which would not exist but for the statute." *See also Torrealba v. Kesmetis*, 124 Nev. 95, 102 & n.10, 178 P.3d 716, 722 & n.10 (2008) (citing

[2] NRS 608.140 also provides a penalty in the form of attorney fees for the employee in a "suit for wages." *See Gonzalez*, 99 F. Supp. at 1015 (holding the two (2) year limitation in NRS 11.190(4)(b) applied as the statute provided treble damages and the "costs of bringing the action and reasonable attorney's fees," which the court both found to be a "penalty" because "the amount Plaintiffs would receive is larger than their actual damages"); *Albios v. Horizon Communities, Inc.*, 122 Nev. 409, 420 132 P.3d 1022, 1029 (2006) (finding attorney fee awarded by statute to be a "penalty"). This attorney fee provision is clearly a penalty imposed on employers as employers are not similarly entitled to attorney fees if employees wage claims are unsuccessful. Accordingly, as claims under NRS Chapter 608 provides for an amount more than actual damages, the two (2) year limitation found in NRS 11.190(4)(b) would be applicable.

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Gonzales with approval and finding the same meaning). The *Gonzales* court refused to find "liability created by statute" when the employer remains liable to the employee regardless of the statute. 99 F. Supp. at 1015. Even if NRS Chapter 608 failed to imply a cause of action for wages, employers would still be subject to a common law claim for wages. Accordingly, NRS 11.190(3)(a) does not apply, but instead the more analogous two (2) year limitation found in NRS 608.260 applies to all of Plaintiffs' wage claims.

2. The Nevada Supreme Court Has Expressly Held that the Statute of Limitation May Be Raised in a Motion to Dismiss.

Plaintiffs' argument that statute of limitations may not be asserted in a motion to dismiss is nothing short of frivolous. *See* Op. at 13:12 – 14:10. In *Holcomb Condo. Homeowners' Ass'n, Inc. v. Stewart Venture, LLC*, 129 Nev. Adv. Op. 18, 300 P.3d 124, 128 (2013), the Nevada Supreme Court expressly held that a "court may dismiss a complaint for failure to state a claim upon which relief can be granted when an action is barred by the statute of limitations." The Court reasoned that "[w]hen the facts are uncontroverted, as we must so deem them here, the application of the statute of limitations is a question of law" subject to a motion to dismiss. *Id*.

Here, Plaintiffs indisputably filed their complaint on June 14, 2016. Based on a two (2) year statute of limitation for wage claims (*see* Mot. at 5:4 – 6:15), all claims accruing before June 14, 2014 are bared. Plaintiffs also do not dispute that their Complaint asserts claims from March 2011. *See* Complaint at 3:8-21, ¶¶ 5-8; 8:18 – 9:22, ¶ 39. Accordingly, Plaintiffs' claims, both individual and class claims, accruing between March 2011 and June 14, 2014 are barred and should be dismissed.

Plaintiffs' Complaint specifically admits that Plaintiff Capilla was employed by Defendants from only "March 2011" to "September 2013;" and Plaintiff Vaughan was employed by Defendants from "August 2012" through "June 2013." *See* Complaint at 3, ¶¶ 6, 8. Based on a two (2) year statute of limitation provide for wage claims, all of Vaughan's and Capilla's claims, are barred as a matter of law. Plaintiffs' Complaint also specifically admits that Plaintiff Martel was employed by Defendants from "January 2012" to "July 2014;" and Plaintiff Williams was employed by Defendants from "April 2014" to "December 2015." *See* Complaint at 3, ¶¶ 5,

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7. 2013. Accordingly, based on the same two (2) year statute of limitation for wages, all but one (1) month of Martel's claims, and all but six (6) months of Williams' claims are barred.

3. All of Plaintiffs' Claims Need Not Be Subject to Dismissal to Apply the Statute of Limitations, but instead, Plaintiffs' Claims Should Be Dismissed to the Extent They Are Barred by the Statute of Limitations.

Plaintiffs' argue, without support, that Defendants may only seek dismissal based on the statute of limitations if all Plaintiffs and all claims are barred by the statute of limitations. *See* Op. at 13:12-21. This argument defies logic as it would enable untimely Plaintiffs, such as Vaughan and Capilla, to avoid dismissal of their untimely claims simply by joining those with another's timely claim -- nothing short of an absurd result. Counsel for Plaintiffs made this identical argument in *Rivera v. Peri & Sons Farms, Inc.*, 735 F.3d 892, 901-02 (9th Cir. 2013), which was summarily rejected by the Ninth Circuit. The Ninth Circuit held that the "district court properly dismissed the state [law wage] claims ***to the extent they accrued more than two years*** before the [employees] filed suit." *Id*. at 902 (emphasis added); *Figueroa v. D.C. Metro. Police Dep't*, 633 F.3d 1129, 1136 (D.C. Cir. 2011) (affirming dismissal of wage claims accruing after statute of limitation expired, but reversing dismissal of claims accruing before expiration of the statute of limitation because "each failure to pay overtime begins a new statute of limitations period as to that particular event"); *Tyus v. Wendy's of Las Vegas, Inc.*, Case No. 214-CV-00729-GMN-VCF, 2015 WL 1137734, at *3 (D. Nev. Mar. 13, 2015) (partially "dismiss[ing] with prejudice all wage claims accruing more than two years before Plaintiffs filed suit").

Accordingly, this Court should dismiss all of Plaintiffs' wage claims "to the extent they accrued" more than two (2) years before Plaintiffs filed suit. Based on the statute of limitations, this Court should therefore dismiss all of the claims of Plaintiff Vaughan and Plaintiff Capilla, all but one month of (1) month of Plaintiff Martel's claims, and all but six (6) months of Williams' claims.

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4. Plaintiffs Have *NOT* Cited Any Authority Supporting Cross-Jurisdictional Tolling and the Nevada Supreme Court Has Never Adopted Cross-Jurisdictional Tolling.

As predicted, Plaintiffs are attempting to extend the deadline for filing their claims based on federal tolling of putative class members' claims, as recognized by the United States Supreme Court in *American Pipe & Const. Co. v. Utah*, 414 U.S. 538, 554 (1974). *See* Op. at 15:14 -24. Plaintiffs, however, ignore that *American Pipe* only applies to the tolling of statutes of limitations when federal class actions are pending in federal court, are not ultimately certified, and the putative class members raise those identical claims in federal court as individual claims. *See Casey v. Merck & Co.*, 653 F.3d 95, 100 (2d Cir. 2011) (holding when "evaluating the timeliness of state law claims," a court "must look to the law of the relevant state to determine whether, and to what extent, the statute of limitations should be tolled by the filing of a putative class action in another jurisdiction"); *Clemens v. DaimlerChrysler Corp*., 534 F.3d 1017, 1025 (9th Cir. 2008) (holding that the rule of *American Pipe*—which allows tolling within the federal court system in federal question class actions—***does not*** "mandate cross-jurisdictional tolling as a matter of state procedure").

While Plaintiffs string cite *Jane Roe Dancer I-VII v. Golden Coin, Ltd*., 124 Nev. 28, 34, 176 P.3d 271, 275 (2008) to support its claim of tolling, *Jane Roe Dancer* did not involve the prohibited cross-jurisdictional tolling. There, the tolling occurred in a single class-action, filed in a single state court, and only because the named plaintiff was not an appropriate class representative which required a putative class member to substitute for the named plaintiff. *Id*. at 31-34, 176 P.3d at 273-75. Plaintiffs simply ignore the long line of authority which has held that even though states courts "permit tolling for purported class members who file individual suits ***within the same court system after class status is denied***," those courts uniformly reject tolling "during the pendency of a class action in federal court" because cross-jurisdictional tolling of a "state statute of limitations" would "increase the burden on that state's court system" and would expose the state court system to the evils of "forum shopping." *Portwood v. Ford Motor Co*., 701 N.E.2d 1102, 1103-05 (Ill. 1998) (emphasis added); *see also Clemens v. DaimlerChrysler Corp*., 534 F.3d 1017, 1025 (9th Cir. 2008) (holding the "weight of authority and California's

interest in managing its own judicial system counsel us not to import the doctrine of cross-jurisdictional tolling into California law"); *Ravitch v. Pricewaterhouse*, 793 A.2d 939, 944 (Penn. Super 2002) (rejecting cross-jurisdictional tolling based on the persuasive reasoning in the Illinois Supreme Court's decision in *Portwood*); *Maestas v. Sofamor Danek Grp., Inc*., 33 S.W.3d 805, 808–09 (Tenn. 2000) (rejecting "the doctrine of cross-jurisdictional tolling in Tennessee" because it would "sanction . . . forum shopping" and would improperly "grant to federal courts the power to decide when Tennessee's statute of limitations begins to run," which "outcome is contrary to our legislature's power to adopt statutes of limitations and the exceptions to those statutes" and therefore would "offend the doctrines of federalism and dual sovereignty"); *Casey v. Merck & Co*., 722 S.E.2d 842, 845 (Va. 2012) (rejecting the "tolling of a statute of limitations based upon the pendency of a putative class action in another jurisdiction"); *Bell v. Showa Denko K.K*., 899 S.W.2d 749, 757–58 (Tex. App. 1995), writ denied (Oct. 5, 1995) (rejecting argument that "that *American Pipe* operates to toll our state statute of limitations" because under *Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938) and its progeny, where a claim is derived from state law, as is appellant's suit, state law governs the tolling of the statute of limitations").

Contrary to Plaintiffs' unsupported assertions, this case is a prime example of why this Court should also reject cross-jurisdictional tolling in order to prevent forum shopping. Plaintiffs falsely claim that all of their state law wage claims were dismissed prior to considering certification. *See* Op. at 16:4-6. Plaintiffs' state law minimum wage claims, however, had yet to be dismissed when the federal district court denied certification in *Sargent v. HG Staffing, LLC*, Case No. 3:13-cv-453-LRH-WGC, 171 F. Supp. 3d 1063 (D. Nev. 2016) (Mot. Ex. 1), and when the Ninth Circuit Court of Appeals summarily rejected Plaintiffs' appeal of that decision in *Sargent v. HG Staffing, LLC*, Case No. 16-80044 (Mot. Ex. 2). Plaintiffs do not dispute that they have improperly split their federal wage claims from their state law wage claims in order prevent the federal court from again denying certification. *See* Motion at 8:24- 9:1 & n.3. As with the majority of other states, this Court should prohibit such blatant forum shopping by rejecting the

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notion of cross-jurisdictional tolling of the statute of limitations.[3] As the Nevada Supreme Court has never adopted cross-jurisdictional tolling, Plaintiffs' claims have not been tolled during the pendency of the federal action in *Sargent* and this Court should dismiss all claims which accrued before June 14, 2014, including all claims asserted by Plaintiffs Vaughan and Capilla.

B. Even under Federal Law, Class Claims, Accruing Before June 14, 2014, Are Barred.

Plaintiff does not dispute that, in *Griffin v. Singletary*, 17 F.3d 356, 359 (11th Cir. 1994), the Eleventh Circuit held that "the pendency of a previously filed class action does not toll the limitations period for additional class actions by putative members of the original asserted class," thus preventing plaintiffs from "'piggyback[ing] one class action onto another,' . . . and thereby engag[ing] in endless rounds of litigation in the district court and in this Court over the adequacy of successive named plaintiffs to serve as class representatives." Plaintiffs wrongly seem to believe that because the class action in *Griffin* had been previously certified, that somehow effects the outcome in this case. *See* Op. at 16:9-15. In *Ewing Indus. Corp. v. Bob Wines Nursery, Inc.*, 795 F.3d 1324, 1326 (11th Cir. 2015), the Eleventh Circuit affirmed that the rule in *Griffin* applied even when "class certification is denied," and even if the "class action fails due to the inadequacy of the class representative—rather than due to defects in the class itself" -- because a "contrary result would allow a purported class almost limitless bites at the apple as it continuously substitutes named plaintiffs and relitigates the class certification issue."

Contrary to Plaintiffs' claim, the statute of limitations has not been tolled so that they may repeatedly assert one class action after another. The United States District Court in *Sargent* already declined to certify the identical claims raised in this action as a class action. Plaintiffs do not dispute that to allow tolling of class action claims would permit Plaintiffs to repeatedly file new class action claims, based on the same set of facts, as long as another of GSR's more than

[3] Plaintiffs also admit that pursuant to NRS 11.500, the Nevada Legislature has determined that a statute of limitations should only be tolled based on an action filed in another jurisdiction when "the court lacked jurisdiction over the subject matter of the action," (which it did not here), and then limited tolling to "[n]inety days after the action is dismissed." Op. at 16:6-8. Plaintiffs, however, ignore the obvious point that the Legislature knows how to provide for tolling, and this Court should not seek to provide for tolling where the Legislature has failed to do so.

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8000 employees is persuaded by Plaintiffs' attorney to file, thus creating an endless stream of class actions. This Court, just like the Eleventh Circuit, should refuse to permit Plaintiffs to prolong class action litigation further. This Court should therefore dismiss all class action claims that accrued before June 14, 2014.

C. Plaintiffs Lack Standing to Represent Union Employees, Who Are Exclusively Represented by their Respective Unions.

Plaintiffs do not dispute that, pursuant to 29 U.S.C. § 159(a), they may not pursue class actions on behalf of union employees because they are not union representatives, who have the exclusive right to represent members of the union with respect wages. *See* Mot. at 10:12 – 11:17. Plaintiffs therefore concede that, by seeking to represent union employees in this action, they are attempting to usurp the respective unions' roles as the exclusive representatives for their bargaining units by attempting to pursue a class action on behalf of those employees. Accordingly, Plaintiffs concede that they lack standing to represent such union employees and that their class action claims seeking to do so should be dismissed.

D. Plaintiffs Have Failed to State a Claim for Wages, Including Minimum Wages.

Plaintiffs do not dispute that the Ninth Circuits decision in *Landers* controls. *See* Op. at 6:17 – 7:3. The Ninth Circuit, in *Landers*, held that a complaint "failed to state a claim for unpaid minimum wages and overtime wages" when the "complaint did not allege facts showing that there was a given week in which he was entitled to but denied minimum wages or overtime wages" because without any facts "regarding a given work week when" the employee "was not paid overtime for that given workweek and/or was not paid minimum wages," the complaint fails to state a claim under Rule 8." 771 F.3d at 644-46. Contrary to Plaintiffs' arguments, Plaintiffs have not met that standard, but have only provided conclusions instead of alleging facts showing an underpayment of wages. In *Landers*, the Ninth Circuit rejected allegations that the "compensation system used by the defendants for the plaintiff was a de facto 'piecework no overtime' system, meaning such employees were being paid a certain amount for each 'piece' of work they performed pursuant to a schedule, the plaintiffs not being paid time and one-half their 'regular hourly rate' for work in excess of 40 hours a week" as sufficient to establish a wage

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claim. 771 F.3d at 645. Plaintiffs similarly allege that they are generally entitled to additional wages and overtime, but, like the employees in *Landers,* fail to isolate even one work week in which they identify the number hours worked that week, which of those hours were overtime hours, their regular rate of pay for that week, and the total amount paid for that week. Without such facts, Plaintiffs are merely speculating that they were underpaid, and their claims should again be dismissed.

E. Plaintiff Williams' Clams for Wages and Overtime Are Barred for Failing to Exhaust Grievance Procedures of the Collective Bargaining Agreement.

Plaintiffs do not dispute that union employees must exhaust the grievance procedures in a valid Collective Bargaining Agreement ("CBA") or face dismissal of the employee's state law wage claims. Instead, Plaintiffs argue that Plaintiff Williams is not subject to a valid CBA because it is unsigned. *See* Op. at 17:15-16. Courts have uniformly held that unsigned drafts of collective bargaining agreements are enforceable. In *Bloom v. Universal City Studios*, 933 F.2d 1013, 1991 WL 80602 at *1 (9th Cir. 1991), the Ninth Circuit held that the lack of signatures on collective bargaining agreement was not material when employer continued to treat the CBA as binding and effective and employee pointed to no evidence to the contrary. This ruling has been repeatedly been reaffirmed. *See Line Const. Ben. Fund v. Allied Elec. Contractors, Inc*., 591 F.3d 576, 580 (7th Cir. 2010) (holding a "signature to a collective bargaining agreement is not a prerequisite to finding an employer bound to that agreement"); *N.L.R.B. v. Haberman Const. Co.*, 618 F.2d 288, 294 (5th Cir. 1980) (holding that "a union and employer's adoption of a labor contract is not dependent on the reduction to writing of their intention to be bound"); *Warehousemen's Union Local No. 206 v. Cont'l Can Co*., 821 F.2d 1348, 1350 (9th Cir. 1987) (explaining that collective bargaining agreement are enforceable "regardless of whether either party later refuses to sign a written draft"); *N.L.R.B. v. Electra-Food Mach., Inc*., 621 F.2d 956, 958 (9th Cir. 1980) (holding oral agreement was sufficient to create a binding collective agreement even though the written agreement was unsigned).

Larry Montrose specifically affirmed that the CBA was in effect, that both GSR and Culinary Union have treated the CBA as binding by employing the CBA's grievances

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procedures, and that Plaintiff Williams, along with other putative class members, were covered by the CBA. *See* Mot. Ex. 4, Montrose Declaration, at 1-2, ¶¶ 2-6. As both GSR and the Culinary Union have treated the CBA as binding, Plaintiffs' unsupported argument to the contrary has no merit. Because Plaintiff Williams and the other putative class members that are similarly covered by the CBA do not allege that they have exhausted the required grievance procedures under the CBA, their claims must be dismissed. *See Kostecki v. Dominick's Finer Foods, Inc. of Illinois*, 836 N.E.2d 837, 842 (Ill. App. 2005) (explaining that "[f]ederal labor policy provides that when resolution of a state law claim depends on an analysis of the terms of the agreement, the claim must either be arbitrated as required by the collective bargaining agreement or dismissed as preempted under section 301 of the Labor Management Relations Act").

Plaintiff Williams appears to argue that her wage and overtime claims exist independently of the CBA and therefore are not subject to the CBA grievance procedures. With respect to overtime, Plaintiff Williams does not dispute that the CBA expressly provides otherwise for overtime (*see* Mot. Ex. 4, Montrose Dec., at p. 1, ¶ 2; Mot. Ex. 4A, CBA, Article 9.01, at p. 15), and therefore, pursuant to NRS 608.018(3), Plaintiff Williams and other union putative class members are not entitled to statutory overtime under NRS 608.018,[4] but are only entitled to overtime under the CBA. Accordingly, NRS 608.018 does not apply to Plaintiff Williams and the other union putative class members, and their Second Cause of Action for statutory overtime should be dismissed. *See Wuest v. California Healthcare W.*, Case No. 3:11-CV-00855-LRH, 2012 WL 4194659, at *5 (D. Nev. Sept. 19, 2012) (holding that overtime guarantees of NRS 608.018 are suspended where the CBA "provides otherwise" for overtime payments—that is, when the CBA contains a negotiated provision on the same subject but different from the statutory provision").

[4] *See* NRS 608.018(3) (providing that the overtime "provisions of subsections 1 and 2 do not apply to . . . (e) Employees covered by collective bargaining agreements which provide otherwise for overtime").

While Plaintiffs claim that their state law wage claims are not mentioned at all in the CBA (*see* Op. at 18:10-11), Plaintiffs ignore that the CBA expressly specifies amount, method, and timing of payment of wages and overtime. *See* Mot. Ex. 4, Montrose Dec., at p. 1, ¶ 2; Mot. Ex. 4A, CBA, at pp. 9, 15, and CBA Exhibit 1. Plaintiff Williams' statutory claims for wages or overtime therefore are not independent of the collective bargaining agreement, but are expressly dependent upon finding a breach of that agreement to maintain those claims. In *Barton v. House of Raeford Farms, Inc*., 745 F.3d 95, 107–09 (4th Cir. 2014), the Fourth Circuit held that statutory wage claims of plaintiffs should be "dismissed as preempted by § 301 of the LMRA" when plaintiffs "did not pursue the grievance and arbitration procedures provided by the CBA" because "any entitlement the plaintiffs have in this case to unpaid wages under the [state's] Wages Act must stem from the CBA that governed the terms and conditions of their employment, including their wages." Courts have uniformly reached this same conclusion.[5] *See Cavallaro v. UMass Mem'l Healthcare, Inc*., 678 F.3d 1, 7-9 (1st Cir. 2012) (holding that a statutory state-law wage claim could only be asserted after exhausting the grievance procedures of the collective bargaining agreement because those claims necessarily relied on the amount of wages provided in the collective bargaining agreement even if those amounts were altered or enlarged by state law); *Wheeler v. Graco Trucking Corp*., 985 F.2d 108, 113 (3d Cir. 1993) (holding that before, asserting state law statutory wage claims, plaintiff "was first required to attempt to make use of the exclusive grievance and arbitration procedures contained in the collective bargaining agreement").

Because Plaintiff Williams' statutory claims for wages or overtime are expressly dependent upon finding a breach of the CBA to maintain those claims, she was require to pursue

[5] Plaintiffs cite *Jacobs v. Mandalay Corp*., 378 Fed. Appx. 685 (9th Cir. 2010) and numerous other federal cases for the proposition that state law statutory wage claims are not always dependent on an interpretation of a collective bargaining agreement. *See* Op. at 17:20 – 18:28 & n.8. None of the case cited by Plaintiffs, however, dealt with the issue of whether the grievance procedures of the collective bargaining agreement were exhausted. As set forth above, when the issue is raised and addressed, courts have uniformly held that the grievance procedures of the collective bargaining agreement must be exhausted prior to asserting state law statutory wage claims or be dismissed as preempted by § 301 of the Labor Management Relations Act.

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those claims by means of the grievance procedures set forth in the collective bargaining agreement. *See* Mot. Ex. 4, Montrose Dec., at p. 1, ¶ 2; Mot. Ex. 4A, CBA, at p. 26-27. Williams, however, does not dispute that she failed to exhaust the grievance procedures in the collective bargaining agreement and therefore her first, third, and fourth causes of action should be dismissed.

F. Plaintiffs' Wrongful Attempt to Re-Litigate the Federal District Court's Order, Denying Certification of an Identical Class Action, Is Barred by Issue Preclusion.

Plaintiffs do not dispute that Judge Hicks, in his well-reasoned order dated March 22, 2016, already determined that Plaintiffs' wage claims cannot proceed as a class action or collective action based on the exact same set of facts alleged in Plaintiffs' current complaint in this action. *See* Mot. Ex. 1, *Sargent*, 171 F. Supp. 3d at 1073-77. Plaintiffs also do not dispute that issue preclusion prevents re-litigation of those issues when: "(1) the issue decided in the prior litigation [is] identical to the issue presented in the current action; (2) the initial ruling [was] on the merits and have become final; (3) the party against whom the judgment is asserted [was] a party or in privity with a party to the prior litigation; and (4) the issue was actually and necessarily litigated." *See Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1054-55, 194 P.3d 709, 713 (2008). Plaintiffs wrongly claim, however, that they were not parties to the *Sargent* action or in privity with them, and that the *Sargent* order was not sufficiently final to be accorded preclusive effect. *See* Op. at 9:3 – 10:14.

Plaintiffs Martel, Capilla and Vaughan's ("*Sargent* Plaintiffs") claim that they were not parties to the *Sargent* action is frivolous. While the *Sargent* action was never certified as a class action, they indisputably became parties to that action by executing their voluntary consent to join that action, pursuant to 29 U.S.C. § 216(b). *See Prickett v. DeKalb Cty*., 349 F.3d 1294, 1297 (11th Cir. 2003) (holding that "by referring to them as 'party plaintiffs,'" in 29 U.S.C. § 216(b), "Congress indicated that opt-in plaintiffs should have the same status in relation to the claims of the lawsuit as do the named plaintiffs"). Plaintiffs do not dispute that when the *Sargent* Plaintiffs filed their consent, they became parties with respect to the action as a whole. *See Id*. (holding that "plaintiffs do not opt-in or consent to join an action as to specific claims, but as to

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the action as a whole" because congress did "not indicate that opt-in plaintiffs have a lesser status than named plaintiffs insofar as additional claims are concerned"); *Fengler v. Crouse Health Sys., Inc*., 634 F. Supp. 2d 257, 262 (N.D.N.Y. 2009) (holding "once a potential [FLSA] plaintiff opts in, that person is a party to the action, not just to a claim"). In fact, Plaintiffs do not dispute that the *Sargent* action expressly lists Martel, Capilla and Vaughan as parties to that action. *See* Mot. Ex. 1, Sargent Action, Docket with Party List.

While Plaintiff Williams was not a party to the *Sargent* Action, she is in privity with them. In *Nationwide Mut. Fire Ins. Co. v. George V. Hamilton, Inc*., 571 F.3d 299, 312 (3d Cir. 2009), the Third Circuit held that a nonparty is in privity with a party for purposes of preclusion when the nonparty "attempts to bring suit as the designated representative of someone who was a party in the prior litigation." *Citing Taylor v. Sturgell*, 553 U.S. 880, 895 (2008). Williams does not dispute that she is now attempting to represent all of those listed as plaintiffs in the *Sargent* action, based on their filing consents in that action. Accordingly, Plaintiff Williams has conceded that she is in privity with parties to the *Sargent* action and therefore bound by its results. *See Belle v. Univ. of Pittsburgh Med. Ctr*., Case No. CIV-A-13-1448, 2014 WL 4828899, at *4 n.2 (W.D. Pa. Sept. 29, 2014) (holding that named-plaintiffs who seek to represent parties in a previous FLSA collective action were in "privity" with those parties because "traditional notions of privity may extend bar to nonparty . . . where 'the nonparty attempts to bring suit as the designated representative of someone who was a party in the prior litigation'").

Plaintiffs' assertion that the order denying class certification in *Sargent* action was not a final decision on the merits for purposes of issue preclusion is equally frivolous. Plaintiffs admit Nevada looks to the Restatement (Second) of Judgment when determining whether preclusion applies. *See* Op. at 9:5-6. The Restatement (Second) of Judgments § 13 (1980) (emphasis added) expressly states that "for purposes of issue preclusion (as distinguished from merger and bar), "final judgment" includes any prior adjudication of an issue in another action that is determined to be ***sufficiently firm*** to be accorded conclusive effect." The Nevada Supreme Court expressly adopted this rule in *University of Nevada v. Tarkanian*, 110 Nev. 581, 599, 879

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P.2d 1180, 1191 (1994). Comment g to § 13 of the Restatement explained that factors showing that a prior adjudication was "sufficiently firm" include: "the parties were fully heard;" "the court supported its decision with a reasoned opinion;" and "the decision was subject to appeal or was in fact reviewed on appeal. . . ." All of these factors have been met.

Prior to the entry of Judge Hick's order, the parties fully briefed the issue of class certification and the issue of collective action certification. Judge Hicks provided a well-reasoned opinion denying not only class certification, but also decertifying the FLSA collective action for failing to meet the "similarly situated" standard, which Plaintiffs do not dispute is much less stringent than the standard required to certify a class action under Nev. R. Civ. P. 23. *See* Mot. Ex. 1, *Sargent,* 171 F. Supp. 3d at 1079-84; *see also O'Brien v. Ed Donnelly Enterprises, Inc.*, 575 F.3d 567, 584 (6th Cir. 2009) (explain that the "'similarly situated' requirement [required to certify a collective action under the FLSA] is less stringent than . . . Rule 23(b)(3)'s requirement that common questions predominate for a 23(b)(3) class to be certified") abrogated on other grounds by *Campbell-Ewald Co. v. Gomez,* 136 S. Ct. 663, 193 L. Ed. 2d 571 (2016). Finally, Plaintiffs do not dispute that the denial of class certification in the *Sargent* action was the subject of an appeal to the Ninth Circuit which was summarily denied. *See* Mot. Ex. 2, *Sargent v. HG Staffing Inc*., Case No. No. 16-80044, Order filed June 13, 2016. Accordingly, all of the factors have been met to find that Judge Hick's order in the *Sargent* action was "sufficiently firm" to be afforded preclusive effect. *See Goldsworthy v. Am. Family Mut. Ins. Co.*, 209 P.3d 1108, 1118 (Colo. App. 2008) (holding the "denials of class certification," pursuant to the Restatement (Second) of Judgments § 13, "when the named plaintiffs [in the prior action] had an opportunity to be heard" with respect to certification issue and there was an "opportunity for review" in the prior action).

As all the requirements of issue preclusion have been met, Plaintiffs are precluded from relitigating Judge Hick's order which denied certification of the very class that Plaintiffs wrongly now seek to certify. This Court should therefore grant Defendants' motion to dismiss Plaintiffs' class action claims.

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G. Plaintiffs' Wrongful Attempt to Re-Litigate the Federal District Court's Order Denying Certification of an Identical Class Action Should Also Be Denied on Principles of Comity and the First-to-File Rule.

Plaintiffs do not dispute that the first-to-file rule is a doctrine of comity providing that "where substantially identical actions are proceeding in different courts, the court of the later-filed action should defer to the jurisdiction of the court of the first-filed action by either dismissing, staying, or transferring the later-filed suit." S*AES Getters S.p.A. v. Aeronex, Inc*., 219 F.Supp.2d 1081, 1089 (S.D.Cal.2002) cited with approval by *Sherry v. Sherry*, Case No. 62895, 2015 WL 1798857, at *1 (Nev. Apr. 16, 2015). Under the first-to-file Rule, the two actions need not be identical, only substantially similar. *See Inherent.com v. Martindale–Hubbell*, 420 F.Supp.2d 1093, 1097 (N.D.Cal.2006), also cited with approval by *Sherry*, Case No. 62895, 2015 WL 1798857, at *1. Plaintiffs agree that *Wright v. RBC Capital Markets Corp*., Case No. CIV-S-09-3601-FCD-GGH, 2010 WL 2599010, at *5 (E.D. Cal. June 24, 2010) accurately reflects the factors required to establish the first-to-file rule, which include: (1) the chronology of the two actions; (2) the similarity of the parties; and (3) the similarity of the issues." *See* Op. at 10:20-21.

Plaintiffs further do not dispute that each of these *Wright* factors have been met because: (1) the Sargent Action was filed first in 2013, and that the parties fully briefed the issue of class certification, which was denied by the district court; (2) all of the Plaintiffs in this action were parties to the *Sargent* Action, or are in privity with them; and (3) Plaintiffs are seeking class certification of the identical claims raised in the *Sargent* Action on behalf of the very same class of employees. *See Wright*, 2010 WL 2599010, at *5 -*7 (finding dismissal of class claims "appropriate" under the first-to-file rule when the issue of class certification was "fully briefed," the prior "court rendered its decision," and the prior class action was brought "on behalf of the very same class of . . . employees that plaintiff seeks to represent here on the same core issues at stake in the [prior] action"). Just as in *Wrigh*t, it would be a misuse of this Court's and GSR's resources to permit Plaintiffs and their counsel to relitigate the issues of class certification. *See also Baker v. Home Depot USA, Inc*., Case No. 11-C-6768, 2013 WL 271666, at *5 (N.D. Ill.

Jan. 24, 2013) (refusing to consider class claims under the first-to-file rule when class certification sought in previous cases were "materially identical to the instant action").

Because Plaintiffs cannot dispute that the first-to-file rule applies in this action, Plaintiffs argue that *Smith v. Bayer*, 564 U.S. 299 (2011) forecloses application of the first-to-file rule, even though the first-to-file rule was never raised in *Smith*. *See* Op. at 10:27-13:3. In *Smith*, the Court merely held that the federal district court improperly enjoined a state court from considering a plaintiff's request to approve a class action, and therefore the state court was never even given the opportunity to consider the first-to-file rule. *See* 564 U.S. at 302. The United States Supreme Court in *Smith*, however, explained that the proper course would have been to "apply principles of comity to each other's class certification decisions when addressing a common dispute." 564 U.S. at 317. As Plaintiffs admit that the first-to file rule derives from principals of comity (*see* Op. at 10:21-22), Plaintiffs likewise must concede that, under the principles of comity, this Court should apply the first-to-file rule to "mitigate the sometimes substantial costs of similar litigation" as recommended by *Smith*. 564 U.S. at 317. This Court should therefore dismiss this action pursuant to the first-to-file rule, and thus preventing counsel for Plaintiffs from burdening the Court with an endless stream of class action lawsuits involving almost identical class action claims.

III. CONCLUSION

Pursuant to the foregoing, this Court should grant GSR's motion and dismiss Plaintiffs' Class Action Complaint with prejudice.

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Affirmation Pursuant to NRS § 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security numbers of any person.

Dated this 22nd day of February 2018

COHEN|JOHNSON|PARKER|EDWARDS

By: */s/ Chris Davis*

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PROOF OF SERVICE

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

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

REPLY IN SUPPORT OF MOTION TO DISMISS

_____ by placing an original or true copy thereof in a sealed envelope, with sufficient postage affixed thereto, in the United States Mail, Las Vegas, Nevada and addressed to:
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Mark R. Thierman, Esq.
Leah L. Jones, Esq.
THIERMAN| BUCK LAW FIRM
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Attorney for Plaintiffs

DATED the 22nd day of February 2018.

_/s/ Sarah Gondek
An employee of
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