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 8 OF 16

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ORDERS ON APPEAL

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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' FIRST AMENDED COMPLAINT

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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

To be clear, the Plaintiffs here are not the same parties to the Sargent Action; this is a separate Nevada state law wage and hour action brought on behalf of GSR's non-exempt, hourly-paid employees. No class certification analysis has ever been undertaken for the Plaintiffs here or any of GSR's employees for that matter, on their Nevada State law wage and hour claims because the federal District Court in Sargent based its decision to dismiss the GSR employees' Nevada wage claims on the erroneous 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. See Sargent et al v. HG Staffing, 171 F.Supp. 3d 1063 (D. Nev. March 22, 2016) (noting that "[b]ecause summary judgment has been granted on Plaintiff's (sic) fourth, fifth, seventh, and eighth causes of action" pursuant to NRS 608.140, 608.016, 608.018, 608.020-.050 and 608.100 as well as the shift jamming and waiting time penalty subclasses "are no longer at issue, and thus certification is denied …" referencing the court's January 12, 2016 Order granting GSR's motion for summary judgment. See Exhibit 1, Docket No. 172, CASE No. 3:13-cv-00453-LRH-WGC (January 12, 2016)). For this reason alone, Defendants' arguments supporting its Motion to Dismiss Plaintiffs' First Amended Complaint ("Motion" or "Mot.") must fail.

Furthermore, there is no issue or claim preclusion 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 were not

similarly situated to the named plaintiffs. See Sargent et al v. HG Staffing, 171 F.Supp. 3d at 1079-1084. 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 because it is designed to avoid conflicting judgments between two federal districts/courts, but is not applicable to a federal and a state court.

Moreover, Defendants' statute of limitations argument is in reality an improper and premature attempt to summarily adjudicate an issue relevant to an affirmative defense—namely, the length of the limitations period. Indeed, Defendants acknowledge that at least two of the Named Plaintiffs, Martel and Williams do have valid claims, even based on a two-year period.

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 whether the alleged CBA is valid is a question of law and must be fully briefed in order to give this Court the facts and law upon which to make such a decision. Moreover, even if the Court was to accept any part of Defendants' CBA argument, the **only** claim the alleged CBA would effect is Plaintiffs' overtime claims under NRS 608.018. Any alleged CBA cannot preclude Plaintiffs' Constitutional minimum wage claims, and statutory wage claims for all hours worked claims under NRS 608.016, or the derivative continuation wage claims under NRS 608.010.050. Although Plaintiffs' vehemently deny the CBA (which remains unsigned and in draft form after five-plus years of litigation) refenced by Defendants is valid, even if Defendants are correct, Defendants make no such argument precluding Plaintiff Capilla and other employees from proceeding with this action on their minimum wage, all hours worked, and continuation wage claims.

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And finally, contrary to Defendants' assertions (and far exceeding the pleading standards set for by Johnson v. Travelers and Nevada Power Co. v. Eighth Judicial Dist. Court of Nevada ex rel. Cty of Clark) Plaintiffs have provided hourly rates of pay, dates of employment, alleged per shift unpaid work activities, and preliminary damage analysis for each Plaintiff setting forth not only the amount of damages owed to the named Plaintiffs, but also for the putative class members; a sum equating to approximately $10.5 million[1] in wages stolen by the employer, GSR.

For these reasons more fully set forth below, Defendants' Motion to Dismiss Plaintiffs' First Amended Complaint 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, 2016. That court remanded back to this Court on December 6, 2016 on the grounds that there was no federal question pre-emption based on the alleged CBA. See Exhibit 2, attached, Docket No. 13, CASE No. 3:16-cv-004400-RCJ-WGC.

Defendants filed their motion to dismiss on January 12, 2017 and Plaintiffs filed their Opposition on February 2, 2017. Prior to full briefing the Parties stipulated, and this Court granted a stay of all proceedings pending the Supreme Court of Nevada's decision in Neville v. Terrible Herbst. 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) (unanimous decision confirming Nevada

[1] See FAC, sum of: Cash Bank Class owed approximately $4,195,216.78, at ¶ 21; Dance Class owed approximately $282,126.90, at ¶ 26; Room Attendant Class owed approximately $1,949,380.54, at ¶ 30; Pre-Shift Meeting Class owed approximately $4,083,787.88; and Uniform Class owed approximately $1,197,561.78; equates to $10,510,512.10.

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employees have a private right of action to bring statutory wage claims pursuant to NRS 608.140, 608.016, 608.018, and 608.020-.050). The Parties filed a status report in light of the Neville decision, and on December 27, 2017, the Court lifted the Stay and withdrew Defendants' 1/12/17 motion to dismiss.

Defendants filed their renewed motion to dismiss on January 12, 2018, which was fully briefed. The Court requested supplemental briefing and then heard oral argument on July 19, 2018. The Court granted Defendants' motion to dismiss on October 9, 2018. Plaintiffs filed a motion to reconsider or in the alternative leave to file an amended complaint, which Defendants opposed. The Court granted Plaintiffs leave to file the First Amended Complaint (hereinafter, "FAC", the operative complaint), which was filed January 29, 2019.

Plaintiffs FAC alleges 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. Defendants filed their motion to dismiss Plaintiffs' FAC, which Plaintiffs now oppose.

III. LEGAL ARGUMENT

Nevada's wage and hour statutes 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

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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).[2] This sentiment holds true here, and is comparable to that of the Las

[2] 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:

"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

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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 will have to "chase down [] plaintiffs" (Mot. at pp. 2:22), as long as employers such as the GSR skirt Nevada wage and hour laws and extract free labor from their employees to fund renovations and profits for their parent employer the Meruelo Group[3], employees will search out

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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.

[3] 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 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-

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

A. The Supreme Court Of Nevada Unanimously Recognized A Private Right Of Action In *Neville* And Thus Defendants' Exhaustion Arguments Are Wholly Incorrect

Defendants are incorrect in their assertion that employee Plaintiffs must exhaust administrative remedies with the Office of the Labor Commissioner prior to filing suit in court for three reasons. See Mot. at § II.C and D. Most notably, the Neville Court made it abundantly clear that the Labor Commissioner does not have exclusive jurisdiction over wage claims, holding that employee-plaintiffs in Nevada can seek redress for wage theft in court. See Neville v. Terrible Herbst, Inc., 133 Nev. Adv. Op. 95, 406 P.3d 499, 504 (Dec. 7, 2017) (unanimous decision confirming Nevada employees have a private right of action to bring statutory wage claims pursuant to NRS 608.140, 608.016, 608.018, and 608.020-.050).

First, contrary to Defendants' analysis that the Baldonado v. Wynn case supports its contention, Baldonado has always supported a private right of action for wages. See Baldonado v. Wynn Las Vegas, LLC, 124 Nev. 951, 194 P.3d 96, 968-69 (2008). Baldonado was a tip case as opposed to a wage case. In Baldonado the Supreme Court of Nevada clearly held that employees in Nevada are prevented from seeking *non-wage* recovery, such as tips, in court pursuant to NRS 608.160, NRS

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announced (last visited Aug. 26, 2015). The new ownership took over, 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. Accordingly, GSR employees continue to seek to bind together to remedy the wrongs committed by Defendants.

608.100, or NRS 613.120, *only*. Id. at 968-69. However, the Baldonado court noted that NRS 608 "expressly recognize[s] a civil enforcement action to recoup unpaid wages" *as opposed* to tips. Id. at 104 n. 33.

Second, the Neville court unmistakably addressed Defendants' Labor Commissioner arguments and soundly rejected them as well. The court first noted that "claims under the Nevada Constitution's Minimum Wage Amendment "MWA") … expressly provides for a private cause of action to enforce the provisions of the Minimum Wage Amendment." Id. at 501. The court also explained "NRS 608.140 demonstrates the Legislature's intent to create a private cause of action for unpaid wages" and that the Labor Commissioner does ***not*** have exclusive authority to hear wage claims on two grounds. Id. at 504-05. The court initially analyzed NRS Chapter 607's grant to the Labor Commissioner, for the authority to bring "claims on behalf of those who cannot afford counsel".[4] Id. The court next noted, "[i]t would be absurd to think that the Legislature intended a private cause of action to obtain attorneys' fees for an unpaid wages suit but no private cause of action to bring the suit itself." Id. at 504.

And third, Defendants' argument that NRS 607 and NAC 608 require a "good faith attempt to collect wages" prior to filing suit ignores NRS 608's statutory language and the Neville court's clear edict that when an employee "tie[s] his NRS Chapter 608 claims with NRS 608.140" that employee "has [] properly stated a private cause of action for unpaid wages." Id. at 504. Plaintiffs here have tied each of their statutory wage claims to NRS 608.140 and made the requisite demand to Defendant prior to

[4] The Plaintiff in Neville, as well as Plaintiffs here, have retained counsel and thus there is no need to resort to the Labor Commissioner for redress of wage theft.

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filing suit. See FAC at ¶ 1; see also Exhibit 3, attached, "NRS 608.140 Demand Letter" dated 6/6/2016.

Accordingly, there is no doubt that employee-plaintiffs such as Plaintiffs here have a private right of action to pursue wage claims in court, the Labor Commissioner does *not* have exclusive jurisdiction, *nor* is there a pre-suit exhaustion requirement through the Office of the Labor Commissioner. Thus, Defendants' argument that Plaintiffs' First, Third, and Fourth Causes of Action for failure to exhaust administrative remedies through the Office of the Labor Commissioner must be rejected.

B. The Facts Alleged In Plaintiffs' Complaint Plead Plausible Wage Claims Under The Standards Set Forth By Nevada Law

1. Plaintiffs clearly meet the Supreme Court of Nevada pleadings standard because they have alleged specific work activities for which they were not paid their minimum wage, provided estimated damages owed to Plaintiffs and the putative classes, and provided documentary evidence in their possession and control specifying hours, dates, and times worked without pay.[5]

[5] Plaintiffs do not concede that an employee-plaintiff must provide "allege[d] estimates of unpaid time for any single plaintiff, … specific unpaid hours for stated events, … dates, times, or hours worked for such events, … rates of pay or how much any Plaintiff is owed for any one work day" (see Order at p. 8:7-14) such that Plaintiffs' original complaint failed to sufficiently give fair notice of the basis of claims and the resulting relief requested as required by the liberal pleading standards in Johnson and Nevada Power Co., and/or under the inapplicable federal Fair Labor Standards Act standard as articulated in Landers. Once again, Defendants argue that Nevada state courts should follow the federal FLSA standard on a motion to dismiss from Landers v. Quality Commc'ns, Inc. As Plaintiffs pointed out in their Motion for Reconsideration Landers is **not** the proper standard on a motion to dismiss in Nevada. Nonetheless, even if this Court was to apply the Landers standard, Plaintiffs have also provided factual allegations sufficient to meet Landers. Specifically, in Landers the Ninth Circuit held, "[w]e 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 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 have explicitly done so here in that Plaintiffs have provided detailed analysis based on the records in their possession to support Plaintiffs' class claims as required by this Court.

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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' FAC 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 precise. 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).

Attached as an Exhibit to the FAC, Plaintiffs have provided preliminary damage analysis for each Plaintiff setting forth the not only amount of damages for the named Plaintiffs, but also for the putative class members, equating to approximately $10.5 million in wage theft by their employer, GSR. And, although Defendants are the only Party in this action who are required to maintain Plaintiffs' full schedule, pay, time, and employment records, each of the named Plaintiffs have alleged to the best of their recollection, information, and belief, their hourly rate of pay[6], dates of employment,[7]

[6] See FAC: Plaintiff Martel believes his last hourly rate of pay was between $8.25 and $8.57, at ¶ 4; Plaintiff Capilla believes her last hourly rate of pay was $7.25, at ¶ 5; Plaintiff Jackson-Williams believes her last hourly rate of pay was between $8.25, at ¶ 6; Plaintiff Vaughan believes her last hourly rate of pay was between $8.25, at ¶7.

[7] See FAC: Plaintiff Martel believes he was employed from on or about 1/2012 through 7/2014, at ¶ 4; Plaintiff Capilla believes she was employed from on or about 3/201 through 9/2013, at ¶ 5; Plaintiff Jackson-Williams believes she was employed from on or about 4/2014 through 12/2015, at ¶ 6; Plaintiff Vaughan believes she was employed from on or about 8/2012 through 6/2013, at ¶7.

per shift off-the-clock and unpaid work activities[8], and approximate wages and penalties owed to each of them.[9]

These factual contentions are more than sufficient to establish all necessary elements of a claim for unpaid wages under the NRS, as well as allow the court to draw reasonable inferences that Defendants are liable for the misconduct alleged under the liberal Nevada pleading standards set forth by Johnson v. Travelers, Ins. Co. and Nevada Power Co.

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 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.

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[8] See FAC: Plaintiff Martel believes he spent approximately fifteen (15) minutes per shift where he was required to carry a cash bank performing unpaid banking activities, at ¶ 19 and ten (10) minutes of pre-shift meeting activities that were unlawfully rounded off time for pay purposes, at ¶ 32; Plaintiff Capilla believes she spent approximately ten (10) minutes of pre-shift meeting activities that were unlawfully rounded off time for pay purposes, at ¶ 32; Plaintiff Jackson-Williams believes she believes she spent approximately twenty (20) minutes performing unpaid pre-shift work activities, at ¶ 28; Plaintiff Vaughan believes she spent two to four hours per week in mandatory unpaid dance classes, at ¶ 24 and also spent fifteen (15) minutes changing into and out of her uniform without pay, at ¶ 38.

[9] See FAC: Plaintiff Martel believes he is owed approximately $5,160.83 for unpaid cash banking activities, at ¶ 20, and $4,691.99 for unpaid pre-shift meetings, at ¶ 44; Plaintiff Capilla believes she is owed approximately $4,073.69 for unpaid pre-shift meetings, at ¶ 33; Plaintiff Jackson-Williams believes she is owed approximately $6,386.25 for unpaid pre-shift work, at ¶ 29; Plaintiff Vaughan believes she is owed approximately $3,810.58 for unpaid dance classes, at ¶ 25 and $2,938.61 for unpaid uniform changing activities, at ¶ 39.

NRS 608.018(1).[10] Nevada statutory authority also specifically provides that employees must be compensated for all hours worked, whether scheduled or not. See NAC 608.115(1) (stating that "[a]n 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.").[11]

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 the employer Defendants. 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

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[10] 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.

[11] Defendants' argument that the compensable work activities of changing clothes and collecting equipment or supplies are not deemed to be work and therefore not compensable under NRS 608 because they are postliminary is simply incorrect and another example of Defendants' erroneously conflating the federal FLSA and Nevada state wage and hour law. See Mot. at p. 16:18-25, citing Integrity Staffing Sols., Inc. v. Busk, 135 S. Ct. 513,517-19 (2014). In addition to differences between the FLSA and Nevada wage hour law pointed out in footnote 12, infra, the Sixth Circuit of Appeals recently held that Nevada has **not** adopted the federal Portal-to-Portal Act as part of the FLSA (see § B.4.a) and that Nevada's definition of work includes "all time worked by the employee at the direction of the employer, including any time worked by the employee that is outside the scheduled hours of work of the employee." (citing NAC 608.115(1)) as well as NRS 608.016 providing that "an employer shall pay an employee for all time worked by the employee wages for each hour the employee works" and "[a]n employer shall not require an employee to work without wages during a trial or break-in period." See Exhibit 4, Opinion of United States Court of Appeals for the Sixth Circuit, Jesse Busk, et al v. Integrity Staffing Solutions, Inc. et al, 905 F.3d 387, 402-405 (Sept. 19, 2018).

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.

Accordingly, Defendants' motion to dismiss Plaintiffs' statutory as well as minimum wage claims must be rejected.

C. Plaintiffs' Claims Are Not Barred By Issue Or Claim Preclusion Because The Sargent Court Never Certified The Sargent Plaintiffs' Nevada Wage Claims

To be clear, the Plaintiffs here are not the same parties to the Sargent Action; this is a separate Nevada state law wage and hour action brought on behalf of GSR's non-exempt hourly-paid employees. The Sargent court never certified the Sargent plaintiffs' Rule 23 claims on two grounds that are dispositive to this Court's inquiry. First, the federal district court 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, at summary judgment, and ***prior*** to the court's decertification order on the FLSA 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.

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 patently 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 Act ("FLSA") and as a class action pursuant to FRCP 23 for their state law wage and hour claims. Defendants' arguments intentionally fail to acknowledge the distinction between the opt-in mechanism for an

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FLSA action and the NRCP 23 class certification procedures. This Court is undoubtedly cognizant of the fact that FLSA collective actions are distinct from an FRCP or NRCP 23 class action because 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. See also, Jane Roe Dancer I-VII v. Golden Coin, Ltd., 124 Nev. 28, 176 P.3d 271, fn 2 (2008) (describing difference between 216(b) opt-in mechanism under the FLSA and a true class action pursuant to FRCP 23). This "opt-in" requirement differs from the requirements under NRCP 23 whereby under Rule 23(b)(3), each person within the class definition of a ***certified class*** is considered to be a class member. Id.

The court in In re Wal-Mart held that the plaintiffs' claims were not barred by collateral estoppel, either under a theory of issue preclusion or claim preclusion, explaining 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 In re Wal-Mart 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 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

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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 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. The *Sargent* action was never certified and thus the precondition for binding Plaintiffs here is not present and therefore no issue or claim preclusion can apply.

In Five Star Capital Corp. v. Ruby, the Nevada Supreme Court explained that "…issue preclusion only applies to issues that were actually and necessarily litigated and on which there was a final decision on the merits." The Five Star Court further explained that the distinction between issue preclusion and claim preclusion is "claim preclusion applies to preclude an entire second suit that is based on the same set of facts and circumstances as the first suit, while issue preclusion … applies to prevent relitigation of only a specific issue that was decided in a previous suit between the parties …." See Five Star Capital Corp. v. Ruby, 124 Nev. 1048, 1055, 194 P.3d 709,

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713–14 (2008), *holding modifying only the privity requirement for nonmutual claim preclusion by* Weddell v. Sharp, 131 Nev. Adv. Op. 28, 350 P.3d 80 (2015) (internal citations omitted). After proving a detailed history of the doctrines of issue and claim preclusion in Nevada, the court affirmed the Tarkanian test for issue preclusion adding a fourth factor. Five Star, 124 Nev. at 1051. The Five Star Court also set forth the test for claim preclusion in Nevada. Five Star at 1054.

a. Issue preclusion does not apply because the Sargent court never decided the Nevada wage claims, there has been no ruling on the merits, and the Plaintiffs and putative class members are not parties or in privity.

The Tarkanian issue preclusion test as amended by Five Star sets forth the following four factors: (1) the issue decided in the prior litigation must be identical to the issue presented in the current action; (2) the initial ruling must have been on the merits and have become final; (3) the party against whom the judgment is asserted must have been a party or in privity with a party to the prior litigation, ***and*** (4) the issue was actually and necessarily litigated. Id. at 1055. All factors must be met; here, Defendants cannot even meet one single factor.

Specific to the first, second, and fourth factors, class certification was never addressed in Sargent for the Nevada wage claims[12] and the Court in Sargent has since reversed the grant of summary judgment in light of Neville. There is no issue preclusion because class certification was never independently decided, there has

[12] Defendants are likely to argue that the FLSA claims are identical to the Nevada wage claims, however they are incorrect. Nevada wage hour law is distinct from the FLSA in many respects and exceeds the FLSA in numerous respects. Specific to the off-the-clock claims alleged in the instant action under Nevada law, (1) Nevada has not adopted the Portal-to-Portal Act which is part of the FLSA; (2) Nevada law requires employees to be paid for each hour worked and the Nevada Administrative Code defines hours worked as "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" *see* NAC 608.115(1); and (3) Nevada provides for daily overtime where the FLSA only requires overtime for hours worked over forty (40) in a workweek. Thus, the difference between federal and Nevada law, as it applies to the facts of the case present different issues, none of which have been ruled on by the Sargent court.

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been no ruling on the merits of any of the employees' FLSA ***or*** Nevada wage claims, and the issue has not actually and necessarily been litigated. Indeed, the claims of the six-named Plaintiffs in Sargent are ***still*** pending before the federal court. See Mot. at Ex. 3.

Specific to the third factor, the Supreme Court of the United States has held, unnamed members of a proposed class are not bound by any decisions made before a class is certified, ***including denial of class certification***. See Smith v. Bayer Corp., 564 U.S. 299, 131 S. Ct. 2368, 2372, 180 L. Ed. 2d 341 (2011). Additionally, the Ninth Circuit explained that privity is present when "[t]he representative of a class of persons similarly situated, ***designated as such with the approval of the court***, of which the person is a member." Headwaters Inc. v. U.S. Forest Serv., 399 F.3d 1047, 1053 (9th Cir. 2005), *citing* Restatement (Second) of Judgments § 41(1) (emphasis supplied). The Headwaters court explained that privity is not present when a party has not had his "interests adequately represented by someone with the same interests who is a party, including class or representative suits." Headwaters Inc., 399 F.3d at 1053 (internal quotations and citation omitted). Defendants contend that Plaintiffs here are trying to represent all of the plaintiffs in the Sargent Action even though the Sargent court dismissed Plaintiffs' Nevada wage and hour claims ***prior*** to ever undertaking an FRCP 23 analysis. Defendants contention is just plain incorrect; by no stretch of the law can the Plaintiffs here be considered a party or in privity with the Sargent named-Plaintiff or any putative Sargent class member because they were ***never*** certified as representative or class action.

Nor are they in privity with any employee who previously opted-in to the decertified FLSA portion of the Sargent action. Courts reject the argument that opt-in plaintiffs in a decertified FLSA action have the same status as both the named and putative plaintiffs' alleging state law claims. See Albritton v. Cagle's, Inc., 508 F.3d 1012, 1018 (11th Cir. 2007) (*citing* Prickett v. DeKalb Cty., 349 F.3d 1294, 1297-98

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(11th Cir. 2003) and noting the lesson from Prickett is that we must interpret consent forms according to the plain meaning of their language.). In the instant case, the consent forms in Sargent specifically state: "I CONSENT TO JOIN THIS LAWSUIT. By signing this Consent to Join, I am agreeing to have Plaintiffs TIFFANY SARGENT …, act as my agents to make decisions on my behalf concerning litigation and resolution *of my FLSA claims*." See Exhibit 5, "Martel Consent to Join." And, the last sentence of the Consent to Join, directly above the opt-ins' signature, states: "This provision *does not apply to other federal and to state law claims*." Id. Thus, even the Plaintiffs who have signed consents to join in the Sargent action cannot be deemed to be a party or in privity for claims based on Nevada wage and hour law in the instant case.

Furthermore, in an analogous case[13], the Supreme Court of the United States in Smith v. Bayer Corp. 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, ——, 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

[13] Respondent (Bayer) moved in Federal District Court for an 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 Federal District Court to deny a similar class-certification motion that had been filed against Bayer by a different plaintiff, George McCollins. Id.

> 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 recruit a new set of Plaintiffs to start a new class action" as a form of "blatant forum shopping" (*see* Mot. at p. 24:3-5) 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

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

Id. at 2381.

Accordingly, all four factors for issue preclusion cannot be met and issue preclusion does not apply.

b. Claim preclusion does not apply because there has been no decision on any of the employees' Nevada wage claims, the Neville decision reversed the Sargent court's reasoning for granting the motion to dismiss, and there is no privity among parties.

The Five Star claim preclusion test sets out the following three factors: (1) the parties or their privities are the same; (2) the final judgment is valid; **and** (3) the subsequent action is based on the same claims or any part of them that were or could have been brought in the first case. Five Star at 1055. All factors must be met; here, Defendants cannot even meet one single factor.

For the same reasons set forth directly above regarding the first factor that the parties or their privities be the same, none of the Plaintiffs here were parties to the Sargent action because the Sargent FRCP 23 class certification was never independently decided—there has never been a certified Nevada wage claim class. See Smith v. Bayer Corp., 564 U.S. 299, 131 S. Ct. 2368, 2372, 180 L. Ed. 2d 341 (2011) (unnamed members of a proposed class are not bound by any decisions made before a class is certified, *including denial of class certification*). Nor can they be held in privity with the Sargent plaintiffs because simply opting-in to the FLSA portion of the Sargent action does not create privity where the consent specifically rejects state law claims and the Sargent court never certified a FRCP 23 class.

The second factor of final judgment is also not present. Although the Restatement sets forth that summary judgment for the defendant may satisfy the final judgment rule, an exception to that general rule is found in § 26, whereby an

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"erroneous decision in the first action does not preclude the plaintiff from maintaining a second action." Restatement (Second) of Judgments § 26 (1982). This is exactly the situation here, where the Sargent court's grant of summary judgment was based on the erroneous reasoning the plaintiff-employees do not enjoy a private right of action for NRS 608.016, 608.018, and 608.020-.050 claims.

The third factor favors Plaintiffs as well. As explained in footnote 12 above, Nevada wage hour law is distinct from the FLSA in many respects and exceeds the FLSA in numerous respects, particularly in relation to these Plaintiffs' unpaid wage, daily overtime, and continuation wage claims. The FLSA claims and the Nevada wage claims are not the same. Furthermore, the Sargent court has yet to rule on the merits of the FLSA claims.

Accordingly, all three factors for claim preclusion cannot be met in the instant action and claim preclusion does not apply.

c. The first-to-file rule is inapplicable because it is designed to avoid conflicting judgments between two sovereign federal district courts.

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).

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This is a federal deference standard and has nothing to do with a sovereign Nevada state court because, as explained throughout this Opposition, the instant litigation 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. Here, the named-Plaintiffs are not the same as in Sargent. The Sargent action was never certified, the Sargent plaintiffs could not and cannot represent any of GSR's employees, and thus the named-Plaintiffs here have never had their claims adjudicated.

Accordingly, all of Defendants' arguments that Plaintiffs' case is a wrongful attempt at re-litigation must fail.

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

1. NRS 608.016 all hours worked and NRS 608.018 overtime violation claims carry three-year statutes of limitations.

Defendants actually admit, "[o]ther than the two-year limitation period found in NRS 608.260, NRS Chapter 608 lacks an express limitation period." (Mot. at p. 5:22-24.) Nevada's statute governing the limitations of actions expressly states that the limitations period for asserting a violation of a statute is 3-years ***unless further limited by specific statute***. *See* NRS 11.190 ("Except as otherwise provided in NRS 40.4639, 125B.050 and 217.007, actions other than those for the recovery of real property, ***unless further limited by specific statute***, may only be commenced as follows: (3)(a) An action upon a liability create by statute, other than a penalty or forfeiture." (emphasis added)). NRS 608.016, NRS 608.018, and NRS 608.040-.050, do not limit the 3-year statute of limitations. Accordingly, the NRS 11.190(3)(a)'s 3-year limitation period must apply. Here, Plaintiff Martel's last day worked was June 13, 2014; Plaintiff Capilla's last day worked was Sept. 19, 2013; Plaintiff Williams' last day worked was in December 2015; and Plaintiff Vaughn's last day worked was June

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18, 2013. All named-Plaintiffs are within the 3-year statute of limitations commencing on June 14, 2013.

Nevertheless, Defendants base their argument that Plaintiffs' statutory wage claims should be limited to a two-year SOL on an impermissibly broad reading of the Nevada Supreme Court's Perry v. Terrible Herbst decision. *See* Perry v. Terrible Herbst, Inc. 383 P. 3d 257 (2016). In Perry the Court did hold that a two-year limitations period is applicable to the Minimum Wage Amendment, but it did not extend that holding to NRS 608 claims subject to a private cause of action. The very narrow question the Court answered was whether the two-year limitations period of NRS 608.260 (an example of where the Legislature limited the statute of limitations periods found in NRS 11.190 "by specific statute") applies to the Nevada Constitution Minimum Wage Amendment. Id. at p. 258. Although the Court did reason that a two-year SOL was analogous to NRS 608.260, the Court did not extend its analysis to all Chapter 608 statutory causes of action but found the underpinning for its argument in NRS 608.250 specific to the Labor Commissioner. The Court—as well as the Legislature—very easily could have included claims brought by employees through their private right to bring actions in court pursuant to NRS 608.140, but the Court declined to do so limiting its decision to Constitutional Minimum Wage Amendment claims. This Court should not transform 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.'").

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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.[14] 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.[15]

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 two years receding filing of Plaintiffs' complaint, and Defendants' statutory violations are ongoing. Even if this Court agrees with Defendants that Plaintiffs NRS 608.016, 608.018, and NRS 608.020-.050 claims are subject to a two-year limitations period, Plaintiffs Martel and Williams still have valid claims and could represent a class of individuals who worked during the relevant time period. And, specific to this Court's previous question for supplement of whether the

[14] 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."

[15] Further, Defendant' citation to NRS 11.500 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.

limitations period is two, three, or four years and would require dismissal or simply a limitation on damages, even under the two-year period dismissal is not appropriate because both Martel's and Williams' claims have been timely brought. Should this case be certified as a class action—or proceed on an individual basis—any damage calculation would be based on the relevant time period as determined by the Court, which may include the entire statutory period or a portion thereof specific to the employees' tenure and wage rate.

2. Plaintiffs' NRS 608.020-.050 wages due and owing claims are derivative of Plaintiffs' NRS 608.016 and 608.018 and thus the applicable limitations period from the originating statute applies.

In Nevada, an employer must compensate an employee for all the wages due and owing at a time certain depending on whether an employee quits or is terminated. *See* NRS 608.020 ("Whenever an employer discharges an employee, the wages and compensation earned and unpaid at the time of such discharge shall become due and payable immediately."); *see also* NRS 608.030 ("Whenever an employee resigns or quits his or her employment, the wages and compensation earned and unpaid at the time of the employee's resignation or quitting must be paid no later than: 1). The day on which the employee would have regularly been paid the wages or compensation; or 2). Seven days after the employee resigns or quits, whichever is earlier.").

Two independent and separate statutes provide for continuation wages (30-days wages under each statute) when a terminated employee does not receive everything that is owed to him or her at the time of termination. *See* NRS 608.040;[16] NRS

[16] NRS 608.040 Penalty for failure to pay discharged or quitting employee.
1. If an employer fails to pay:
(a) Within 3 days after the wages or compensation of a discharged employee becomes due; or
(b) 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 or for 30 days, whichever is less.

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608.050;[17] see also Evans v. Wal–Mart Stores, Inc., No. 14-16566, 2016 WL 4269904, at *1 (9th Cir. Aug. 15, 2016).

Defendants' seem to purposely misunderstand that Plaintiffs' NRS 608.020-.050 claims are derivative of their NRS 608.016, 608.018, and minimum wage claims. Plaintiffs' underlying claims are for unpaid wages due and owed; these are continuation wages owed for worked performed but not compensated. Any putative class member who has a valid wage claim under any of these theories and who is no longer employed by GSR is entitled to the continuation ***wages*** imposed by NRS 608.020-.050.

By failing to pay Plaintiffs and any members of a certified class their minimum wages, wages for all hours worked, and/or overtime wages due and owing at the time of separation of employment, Defendants have failed to pay Plaintiffs and all members of the putative Waiting Time Penalty Class their full wages within the time frames established by NRS 608.020-.030. There is no limitations period on these claims other that the applicable limitations period for the employees' underlying wage claims. Even if this court was to accept Defendants' argument that a two-year statute of limitations applies to Plaintiffs' NRS 608.016 and 608.018 claims, Plaintiffs Martel and Williams

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2. Any employee who secretes or absents himself or herself to avoid payment of his or her wages or compensation, or refuses to accept them when fully tendered to him or her, is not entitled to receive the payment thereof for the time he or she secretes or absents himself or herself to avoid payment.

[17] NRS 608.050 Wages to be paid at termination of service: Penalty; employee's lien.

1. Whenever an employer of labor shall discharge or lay off employees without first paying them the amount of any wages or salary then due them, in cash and lawful money of the United States, or its equivalent, or shall fail, or refuse on demand, to pay them in like money, or its equivalent, the amount of any wages or salary at the time the same becomes due and owing to them under their contract of employment, whether employed by the hour, day, week or month, ***each of the employees may charge and collect wages*** 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.

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

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still have valid claims, are both former employees who have not been paid all wages due and owing at the time of separation from employment, and thus can represent a class of individuals who also are no longer employed by GSR and have not been paid all wages due and owing to them for work done on behalf of and at the direction of their employer. Accordingly, dismissal of Plaintiffs' NRS 608.020-.050 claims is not be appropriate.

3. The recent Supreme Court Of The United States' decision In *China Agritech* has not been accepted by the Supreme Court of Nevada and thus, Plaintiffs and all putative class members are entitled to tolling under Nevada law.

The Nevada Supreme Court clearly grants equitable tolling for all putative class members. Golden Coin, Ltd., 124 Nev. at 34, 176 P.3d at 275 ("[C]lass actions brought under NRCP 23 toll the statute of limitations on all potential unnamed plaintiffs' claims[.]"); *see also* Allen v. KB Home Nevada, Inc., 2013 WL 8609775 (Nev. Dist. Ct. July 25, 2013) (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." (citations omitted)). Accordingly, pursuant to Golden Coin tolling, Plaintiffs and putative class members' wage claims go back to June 21, 2010, three years prior to the original filing of the Sargent Action.

Plaintiffs pointed out in their FAC at footnote 4 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 Nevada law, the Plaintiffs' claims here, and those of the proposed class, must be tolled as of the date of the filing of the original Sargent

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complaint. See e.g., 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." (internal citations omitted). See FAC at p. 19, fn. 4.

Defendants' argue that the Supreme Court of the United States very recent ruling in China Agritech will foreclose Plaintiffs' argument that tolling under Golden Coin should be granted. However, Nevada state courts have not imported federal court doctrine into state law matters where it did not previously exist. Defendants' actually support Plaintiffs' position, emphasizing that a state's interest in managing its own judicial system counsel courts not to import the doctrine of cross-jurisdictional tolling into state law based on the reasoning in Clemens v. DaimlerChrysler Corp. See Motion at p. 8:1-14. In that case the court held 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." Clemens v. DaimlerChrysler Corp., 534 F.3d 1017, 1025 (9th Cir. 2008). The flip side of this ruling is that cross-jurisdictional tolling is a matter of state procedural law that must be settled by the state court system, which Defendants actually agree in urging this Court not to "adopt a policy which would permit federal courts to decide when Nevada's statute of limitation has run, as those consideration are best left to the legislature." See Mot. at p. 9:6-8. Indeed, state law is expressly preempted only when federal law explicitly sets forth the degree to which it preempts state law. See Jane Roe Dancer I-VII v. Golden Coin, Ltd., 124 Nev. 28, 176 P.3d 271 (2008).

Accordingly, based on Nevada state law, Plaintiffs and putative class members wage claims go back to June 21, 2010, three years prior to the original filing of the Sargent Action

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E. Plaintiffs' Claims For All Hours Worked, Derivative Claims, And Overtime Claims Are Not Preempted By Any Alleged Collective Bargaining Agreement

As an initial matter, even if the Court was to accept any part of Defendants' CBA argument, the **only** claim the alleged CBA would effect is Plaintiffs' overtime claims under NRS 608.018. Any alleged CBA cannot affect Plaintiffs' Constitutional minimum wage claims, all hours worked claims under NRS 608.016, or the derivative continuation wage claims under NRS 608.020-.050 because they are statutory.

In this case, the definition of all hours worked is a matter of state law and is 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.[18] In

[18] 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 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

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remanding this case back to State Court the federal court agreed, noting, the rights at issue were created by Nevada law not the CBA and the employees' claims are not dependent on the terms of any alleged CBA. See Exhibit 2, Docket No. 13, CASE No. 3:16-cv-004400-RCJ-WGC at §§ III.a and III.b.

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 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.

Moreover, the reality is that Defendants do not have a valid CBA in effect and thus cannot represent allegedly covered employees. 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.[19] The last CBA in effect expired 30-days

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*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.

[19] Defendants' footnote 4 on p. 15 erroneously alleges that Plaintiffs FAC includes stage technicians and engineering department employees who are purportedly covered by

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 6, hereinafter "Worklife Financial, Inc. dba Grand Sierra Resort and Casino and Culinary Workers Union Local 226 – 2009-2010" BATES stamped GSR-1687-GSR-1756. Indeed, in remanding the case back to state court, the federal district court noted that the CBA had "expired by its own terms on or around May 1, 2011" a fact "Defendants do not contest." See Exhibit 2, attached, Docket No. 13, CASE No. 3:16-cv-004400-RCJ-WGC at p. 6:13-14.

Defendants now attach as an exhibit, yet another invalid CBA, which is still (after 5-plus years of litigation) in a redline form, ***not*** dated, and ***not*** signed.[20] Defendants' argument that an invalid CBA somehow preempts Plaintiffs' claims or prevents one of the four named Plaintiffs from pursuing their claims individually or on

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CBAs and cites to Plaintiffs' original Complaint, even though Plaintiffs do not now and have not proposed to represent stage technicians and engineering employees. See FAC, generally. Accordingly, whether the International Alliance of Theatrical Stage Employees Local 362 or the International Union of Operating Engineers Stationary Local No. 39 AFL-CIO have a CBA in effect with GSR is a non-issue, red herring, or purposeful misdirection.

[20] *See* Mot. at Exhibit 4, for just few key examples by page number of the document: p. 6 (no dates); p. 9 (redline); p. 11 (redline and question marks in the margins); p. 18 (strike through sections); pp. 28-29 (redline); pp. 34, 60, (strike through of previous expiration date of December 10, 2010, but 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). Remarkably, given that Defendant has been arguing this issue for the past 5-plus years, they have still been unable to get this document signed by the Union, further supporting Plaintiffs' position that it is not valid, nor has it been ratified by the Union or the employees.

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behalf of a putative class is simply unsupportable. See Motion at §§ E, G and H. 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 request that Defendants' Motion to Dismiss Plaintiffs' First Amended Complaint 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 28, 2019

Respectfully Submitted,

THIERMAN BUCK LLP

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

1. Order dismissing Sargent Action Nevada wage and hour claims, dated January 12, 2106; Docket No. 172, CASE No. 3:13-cv-00453-LRH-WGC.
2. Order remanding case back to State Court, dated December 6, 2016; Docket No. 13, CASE No. 3:16-cv-004400-RCJ-WGC.
3. NRS 608.140 demand dated 6/6/2016.
4. Opinion of United States Court of Appeals for the Sixth Circuit, Jesse Busk, et al v. Integrity Staffing Solutions, Inc. et al, 905 F.3d 387, 402-405 (Sept. 19, 2018)
5. Martel Consent to Join FLSA action in Sargent.
6. Worklife Financial, Inc. dba Grand Sierra Resort and Casino and Culinary Workers Union Local 226 – 2009-2010" BATES stamped GSR-1687-GSR-1756.

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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:

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I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct. Executed on February 28, 2018, at Reno, Nevada.

/s/Tamara Toles
Tamara Toles

EXHIBIT 1

Order Dismissing Sargent Action Nevada Wage and Hour Claims
Dated January 12, 2106; Docket No. 172
CASE No. 3:13-cv-00453-LRH-WGC

EXHIBIT 1

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

TIFFANY SARGENT, BAILEY CRYDERMAN, SAMANTHA L. IGNACIO (formerly SCHNEIDER), 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, Defendants.	3:13-CV-00453-LRH-WGC ORDER

Before the court is Defendant MEI-GSR Holding LLC's (GSR) Motion for Partial Summary Judgment. Doc. #135.[1] Plaintiffs filed an Opposition (Doc. #140), to which Defendants' replied (Doc. #148). Plaintiffs also filed a Motion for Leave to File Excess Pages for their Response to Defendant's Motion for Summary Judgement. Doc. #141. Additionally, Plaintiffs filed an Objection to Working Drafts of Unsigned Collective Bargaining Agreements not Produced in Discovery. Doc. #139. Defendants filed a Response (Doc. #149), to which Plaintiffs' replied (Doc. #154).

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[1] Refers to the Court's docket number.

I. Facts and Procedural History

On June 21, 2013, Plaintiffs Tiffany Sargant ("Sargant") and Bailey Cryderman ("Cryderman") filed their original collective and class action Complaint against Defendants in the Second Judicial District Court for the State of Nevada in and for the County of Washoe. Doc. #1, Ex. A. On August 22, 2013, Defendants filed a Petition for Removal. Doc. #1. On June 13, 2014, Plaintiffs filed the operative Second Amended Complaint ("SAC") before the Court. Doc. #47.

On August 14, 2015, GSR filed a motion for partial summary judgment on Plaintiff's Fourth (Failure to Compensate for All Hours Worked in Violation of NRS 608.140 and 608.016), Sixth (Failure to Pay Overtime in Violation of NRS 608.140 and 608.018), Seventh (Failure to Timely Pay All Wages Due and Owing in Violation of NRS 608.140 and 608.020-050), and Eighth (Unlawful Chargebacks in Violation of NRS 608.140 and 608.100) causes of action. Doc. #135. On August 28, 2015, Plaintiffs filed an objection to working drafts of unsigned collective bargaining agreements ("CBA") not produced in discovery, a response, and a motion for leave to file excess pages for their response. Doc. #140, 141, and 142. On September 21, 2015, GSR filed its reply and its response to the CBA objection. Doc. #148 and 149. On September 30, 2015, Plaintiffs filed a reply for the CBA objection. Doc. #154.

II. Legal Standard

Summary judgment is appropriate only when the pleadings, depositions, answers to interrogatories, affidavits or declarations, stipulations, admissions, and other materials in the record show that "there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). In assessing a motion for summary judgment, the evidence, together with all inferences that can reasonably be drawn therefrom, must be read in the light most favorable to the party opposing the motion. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp*., 475 U.S. 574, 587 (1986); *Cnty. of Tuolumne v. Sonora Cmty. Hosp*., 236 F.3d 1148, 1154 (9th Cir. 2001). A motion for summary judgment can be complete or partial, and must identify "each claim or defense—or the part of each claim or defense—on which summary judgment is sought." Fed. R. Civ. P. 56(a).

The party moving for summary judgment bears the initial burden of informing the court of the basis for its motion, along with evidence showing the absence of any genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). On those issues for which it bears the burden of proof, the moving party must make a showing that no "reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). On an issue as to which the nonmoving party has the burden of proof, however, the moving party can prevail merely by demonstrating that there is an absence of evidence to support an essential element of the non-moving party's case. *Celotex*, 477 U.S. at 323.

To successfully rebut a motion for summary judgment, the nonmoving party must point to facts supported by the record that demonstrate a genuine issue of material fact. *Reese v. Jefferson Sch. Dist. No. 14J*, 208 F.3d 736, 738 (9th Cir. 2000). A "material fact" is a fact "that might affect the outcome of the suit under the governing law." *Liberty Lobby*, 477 U.S. at 248. Where reasonable minds could differ on the material facts at issue, summary judgment is not appropriate. *See v. Durang*, 711 F.2d 141, 143 (9th Cir. 1983). A dispute regarding a material fact is considered genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Liberty Lobby*, 477 U.S. at 248. The mere existence of a scintilla of evidence in support of the party's position is insufficient to establish a genuine dispute; there must be evidence on which a jury could reasonably find for the party. *See id*. at 252. "[S]peculative and conclusory arguments do not constitute the significantly probative evidence required to create a genuine issue of material fact." *Nolan v. Cleland*, 686 F.2d 806, 812 (9th Cir. 1982).

III. Discussion

Plaintiffs' Fourth, Sixth, Seventh, and Eighth causes of action are premised on violations of Nevada Revised Statutes NRS 608.140, 608.016, 608.018, 608.020, 608.030, 608.040, 608.050, and 608.100. GSR argues that Nevada employees do not have a private right of action to assert Nevada state wage claims in court because no private right of action was created by the statutes at issue in this case. Plaintiffs argue that a private right of action does exist. However, recent case law from this district has held that no private right of action exists to enforce labor

statutes arising from any of the statutes at issue here. *See Johnson v. Pink Spot Vapors Inc.*, No. 2:14-CV-1960-JCM-GWF, 2015 WL 433503, at *5 (D. Nev. Feb. 3, 2015) (holding that no private right of action exists under NRS 608.018 and NRS 608.020 without a contractual claim); *Miranda v. O'Reilly Auto. Stores, Inc*., No. 2:14-CV-00878-RCJ, 2014 WL 4231372, at *2 (D. Nev. Aug. 26, 2014) (holding that there is no private right of action under NRS 608.100 and dismissing claims under NRS 608.106, 608.018, and 608.020-.050 because the private right of action that can be implied under NRS 608.140 only reasonably includes pre-wage-and-overtime-law contractual claims); *McDonagh v. Harrah's Las Vegas, Inc.*, No. 2:13-CV-1744-JCM-CWH, 2014 WL 2742874, at *3 (D. Nev. June 17, 2014) (holding that no private right of action exists to enforce labor statutes arising from NRS 608.010 et. seq. and 608.020 et. seq and that NRS 608.140 only provides private rights of action for contractual claims); *Dannenbring v. Wynn Las Vegas*, LLC, 907 F.Supp.2d 1214, 1219 (D.Nev.2013) (finding that NRS 608.140 implies a private right of action to recover in contract only and dismissing NRS 608.140, 608.018, 608.020, and 608.040 claims); *Descutner v. Newmont USA Ltd*., 3:13–cv–00371–RCJ–VPC, 2012 WL 5387703, *2 (D.Nev.2012) (finding no private right of action under NRS 608.018 or NRS 608.100); *Garcia v. Interstate Plumbing & Air Conditioning*, LLC, No. 2:10-CV-410-RCJ-RJJ, 2011 WL 468439, at *6 (D. Nev. Feb. 4, 2011) (holding that NRS 608.018 does not provide for a private right of action because it is enforced by the Nevada Labor Commissioner); *Lucas v. Bell Trans*, No. 2:08-CV-01792-RCJ-RJJ, 2009 WL 2424557, at *4 (D. Nev. June 24, 2009) (holding that there is no private right of action in NRS 608.100). Further, it is settled law that NRS 608.140 "does not imply a private remedy to enforce labor statutes, which impose external standards for wages and hours," but only provides private rights of action for contractual claims. *Gamble v. Boyd Gaming Corp*., No. 2:13–CV–1009-JCM-PAL, 2014 WL 2573899, at *4 (D. Nev. June 6, 2014) (citing *Descutner v. Newmont* USA Ltd., 3:12–cv–00371–RCJ–VPC, 2012 WL 5387703, *2 (D.Nev.2012)) (emphasis added). Other courts in this district have thoroughly explained the rationales for these conclusions, and the Court cites the decisions of Judge Mahan and Judge Jones with approval. E.g., *Descutner*, 2012 WL 5387703, at *3. This Court

particularly agrees with the decisions of Judges Mahan and Jones and rules accordingly in this case in favor of GSR.

Here, plaintiffs do not seek wages and overtime pursuant to an employment contract, therefore the Court grants summary judgment on the Plaintiffs' Fourth, Sixth, Seventh, and Eighth causes of action. Moreover, because the Court has based its decision on statutory grounds, the Court does not need to examine Plaintiffs' objections to the CBA.

IV. Conclusion

IT IS THEREFORE ORDERED that GSR's Motion for Partial Summary Judgment (Doc. #135) is GRANTED in accordance with this order.

IT IS FURTHER ORDERED that the Clerk of Court shall enter judgment in favor of Defendants and against Plaintiffs on Plaintiff's Fourth, Sixth, Seventh, and Eighth causes of action.

IT IS FURTHER ORDERED that Plaintiffs' Motion for Leave to File Excess Pages (Doc. # 141) is GRANTED.

IT IS FURTHER ORDERED that Plaintiffs' Objection to Working Drafts of Unsigned Collective Bargaining Agreements not Produced in Discovery (Doc. #139) is denied as moot.

IT IS SO ORDERED.

DATED this 11th day of January, 2016.

LARRY R. HICKS
UNITED STATES DISTRICT JUDGE

EXHIBIT 2

Order Remanding Case Back to State Court
Dated December 6, 2016; Docket No. 13
CASE No. 3:16-cv-004400-RCJ-WGC

EXHIBIT 2

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

EDDY MARTEL et al.,

Plaintiffs,

vs.

MEI-GSR Holdings, LLC et al.,

Defendants.

3:16-cv-00440-RJC-WGC

ORDER

This putative class action arises out of alleged wage-and-hour violations under NRS Chapter 608. Now pending before the Court are Plaintiffs' Motion to Remand (ECF No. 8.) and Defendants' Motion to Dismiss (ECF No. 6). For the reasons given herein, the Court grants the Motion to Remand and denies the Motion to Dismiss as moot.

I. FACTS AND PROCEDURAL HISTORY

Plaintiffs Eddy Martel, Mary Anne Capilla, Janice Jackson-Williams, and Whitney Vaughan (collectively "Plaintiffs") are former non-exempt hourly employees of Defendants HG Staffing, LLC and MEI-GSR Holdings, LLC d/b/a Grand Sierra Resort (collectively "Defendants" or "GSR"). (Compl. ¶¶ 5–13, ECF No. 1-1.) Martel was a Bowling Center Attendant from January 2012 through July 2014; Capilla was a Dealer from March 2011 through September 2013; Jackson-Williams was a Room Attendant from April 2014 through December

2015; and Vaughan was a "Dancing Dealer"—described by Plaintiffs as "part cards dealer, part go-go dancer"—from August 2012 through June 2013. (*Id.* ¶¶ 5–8.)

On June 14, 2016, Plaintiffs filed a class action complaint in Nevada's Second Judicial District Court, alleging Defendants maintained several policies or practices that resulted in off-the-clock work and the underpayment of overtime:

Off-the Clock Work Due to Time Clock Rounding. First, Plaintiffs allege generally that GSR's policy of rounding time clock punches to the nearest quarter-hour prior to calculating payroll is unlawful, in that it "favors the employer and deprives the employees of pay for time they actually perform work activities." (*Id.* at ¶ 16.)

Off-the-Clock Work Due to Cash Bank Policy. In addition, Martel alleges he was required to carry a "cash bank" during his shifts. (*Id.* at ¶¶ 17–19.) Prior to starting his shift, Martel had to retrieve the cash bank from GSR's dispatch cage and then proceed to his workstation. (*Id.*) After his shift ended, he was required to reconcile and return the bank to the same cage. (*Id.*) Martel alleges GSR required these tasks to be done off the clock, and estimates he spent approximately fifteen minutes a day completing them. (*Id.*) Martel also alleges the policy was applicable to "cashiers, bartenders, change persons, slot attendants, retail attendants, and front desk agents." (*Id.*)

Off-the-Clock Work Due to Dance Class Policy. Vaughan alleges that "servetainers" and "dancing dealers" were not compensated for mandatory off-the-clock dance classes, which resulted in roughly two to four hours of uncompensated work time each week. (*Id.* at ¶¶ 20–21.)

Off-the-Clock Work Due to Pre-Shift Meetings. Jackson-Williams alleges that room attendants and housekeepers were required to arrive to work twenty minutes prior to the beginning of each scheduled shift to receive assignments, submit to a uniform inspection, and collect tools and materials necessary to complete their jobs. (*Id.* at ¶¶ 22–23.) Employees were

not compensated for these twenty minutes. (*Id.*) Capilla and Martel also allege that all cocktail waitresses, bartenders, dealers, security guards, technicians, construction workers, and retail attendants had to attend a mandatory pre-shift meeting every workday. (*Id.* at ¶¶ 24–25.) These meetings lasted "ten minutes or more" and were uncompensated. (*Id.*)

Off-the-Clock Work Due to Uniform Policy. Vaughan alleges that dancing dealers, waitresses, and baristas were required to change into their uniforms on site and off the clock. (*Id.* at ¶¶ 26–28.) Vaughan estimates it took her a total of at least fifteen minutes each workday to change into and out of her uniform. (*Id.*)

Underpayment of Overtime Due to "Shift Jamming." Lastly, Plaintiffs allege Defendants' "shift-jamming" policy resulted in the underpayment of overtime wages. (*Id.* at ¶¶ 29–37.) This claim is based on Nevada's statutory definition of "workday," which is "a period of 24 consecutive hours which begins when the employee begins work." NRS § 608.0126. According to Plaintiffs, Defendants "routinely" required employees to work eight-hour shifts, and then begin subsequent shifts less than twenty-four hours after the start of the previous shift. (Compl. ¶¶ 29–37.) Plaintiffs' theory is that if an employee works an eight-hour shift on Monday beginning at 9:00 a.m., and then starts another shift on Tuesday at 8:00 a.m., the employee would be entitled to overtime compensation for the first hour of Tuesday's shift under § NRS 608.018 ("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 . . . [m]ore than 8 hours in any *workday*.") (emphasis added).

On July 25, 2016, Defendants timely removed the action to this Court. (Pet. Removal, ECF No. 1.) Defendants' basis for invoking the Court's jurisdiction is Section 301 of the Labor Management Relations Act of 1947 ("LMRA"). (*Id.* at ¶ 6.) Defendants assert that a valid

collective-bargaining agreement ("CBA") between GSR and certain classes of employees was in effect at times relevant to the Complaint, and argue that Plaintiffs' action arises under or is at least "substantially dependent" on a CBA. (*Id.* at ¶¶ 7–11.) Of the four named plaintiffs in this action, Defendants assert only that Jackson-Williams was ever subject to a CBA, and "readily admit" that Martel and Capilla were not covered by any such agreement. (Resp. 9, ECF No. 10.)

On August 1, 2016, Defendants filed a Motion to Dismiss. (ECF No. 6.) On August 17, 2016, Plaintiffs filed their Motion to Remand. (ECF No. 8.) On August 24, 2016, the Court partially granted a stipulation of the parties to stay proceedings, and stayed briefing on Defendants' Motion to Dismiss pending the Court's determination of the Motion to Remand. (ECF No. 9.)

II. LEGAL STANDARDS

Section 301 of the LMRA provides that the United States district courts have original jurisdiction over "[s]uits for violation of contracts between an employer and a labor organization representing employees . . . without respect to the amount in controversy or without regard to the citizenship of the parties." 29 U.S.C. § 185(a). It is now well settled that "the preemptive force of § 301 is so powerful as to displace entirely any state cause of action for violation of contracts between an employer and a labor organization." *Franchise Tax Bd. v. Constr. Laborers Vacation Trust*, 463 U.S. 1, 23 (1983) (internal quotation marks omitted). Accordingly, any suit for violation of a CBA "is purely a creature of federal law, notwithstanding the fact that state law would provide a cause of action in the absence of § 301." *Id.* Indeed, state-law claims arising under a labor contract are entirely preempted by Section 301, "even in some instances in which the plaintiffs have not alleged a breach of contract in their complaint, if the plaintiffs' claim is either grounded in the provisions of the labor contract or requires interpretation of it." *Burnside v. Kiewit Pac. Corp.*, 491 F.3d 1053, 1059 (9th Cir. 2007).

The Ninth Circuit, citing Supreme Court precedent, has articulated a two-step analytical framework for determining whether state-law causes of action are preempted by Section 301. *See id.* at 1059–60, citing *Caterpillar Inc. v. Williams*, 482 U.S. 386, 394 (1987) ("Section 301 governs claims founded directly on rights created by collective-bargaining agreements, and also claims substantially dependent on analysis of a collective-bargaining agreement."). First, the court must determine "whether the asserted cause of action involves a right conferred upon an employee by virtue of state law, not by a CBA. If the right exists solely as a result of the CBA, then the claim is preempted, and [the] analysis ends there." *Id.* at 1059. To determine whether a right derives from state law or a CBA, the court must consider "the legal character of a claim, as 'independent' of rights under the collective-bargaining agreement [and] not whether a grievance arising from 'precisely the same set of facts' could be pursued." *Id.* at 1060, quoting *Livadas v. Bradshaw*, 512 U.S. 107, 123 (1994).

Second, if the asserted right "exists independently of the CBA," the court must then determine whether the right "is nevertheless substantially dependent on analysis of the collective-bargaining agreement." *Id.* at 1059 (internal quotation marks omitted). This determination is made by considering whether the claim requires the court to "interpret" the CBA. *Id.* at 1060. If so, the claim is preempted. In contrast, if the court need only "look to" the agreement to resolve a state-law claim, there is no preemption. *Id.* (providing examples of situations in which courts may "look to" a CBA without triggering Section 301 preemption).

Furthermore, the Supreme Court has established that a defendant's invocation of a CBA in a defensive argument cannot alone trigger preemption:

> It is true that when a defense to a state claim is based on the terms of a collective-bargaining agreement, the state court will have to interpret that agreement to decide whether the state claim survives. But the presence of a federal question, even a § 301 question, in a defensive argument does not overcome the paramount policies embodied in the well-pleaded complaint rule—*that the plaintiff is the master of the complaint, that a federal question must appear on the face of the*

> *complaint, and that the plaintiff may, by eschewing claims based on federal law, choose to have the cause heard in state court*. . . . [A] defendant cannot, merely by injecting a federal question into an action that asserts what is plainly a state-law claim, transform the action into one arising under federal law, thereby selecting the forum in which the claim shall be litigated. If a defendant could do so, the plaintiff would be master of nothing.

Caterpillar, 482 U.S. at 398–99 (emphasis added).

III. ANALYSIS

There is, of course, the threshold matter of whether a valid CBA was in effect at times relevant to this action. There are two agreements at issue here: (1) a fully executed agreement with an initial term of June 10, 2009, through December 10, 2010 ("June 2009 CBA"); and (2) an unsigned, undated, redlined draft agreement which Defendants assert is valid and has been in effect "since 2010" ("Redlined Draft CBA"). There are complex issues arising from both agreements.

First, it appears the June 2009 CBA expired by its own terms on or around May 1, 2011. (*See* Reply 6–7, ECF No. 11.) Defendants do not contest this fact. Generally, "[w]hen a complaint alleges a claim based on events occurring after the expiration of a collective bargaining agreement, courts have held that section 301 cannot provide a basis for jurisdiction." *Derrico v. Sheehan Emergency Hosp.*, 844 F.2d 22, 25 (2d Cir. 1988) (collecting cases). However, Plaintiffs allege that Defendants' liability for off-the-clock work dates back to March 31, 2011.[1] By arguing the June 2009 CBA expired in May 2011, Plaintiffs effectively concede that there was a valid CBA in effect during at least the month of April 2011, which does overlap with the alleged period of liability. (*See* Mot. Remand 5, ECF No. 8.)

1 Plaintiffs argue their claims were tolled from June 21, 2013, to January 12, 2016, as a result of another class action complaint asserting the same claims, which was dismissed prior to class certification. (Compl. 8, n. 1, ECF No. 1-1.) Neither this issue nor the related statute of limitations issue is presently before the Court. The Court need not address these issues to rule on the Motion to Remand.

In addition, the Redlined Draft CBA is extremely problematic. Defendants submit the declarations of Larry Montrose, Human Resources Director of MEI-GSR Holdings, and Kent Vaughan, Senior VP of Hotel Operations of MEI-GSR Holdings, wherein both declarants assert that the Redlined Draft CBA has been in effect "from 2010 to present." (Montrose Decl. ¶ 3, ECF No. 10 at 17; Vaughan Decl. ¶ 2, ECF No. 10 at 107.) However, the Redlined Draft CBA is unsigned and undated. (Redlined Draft CBA, ECF No. 10 at 20–93.) It is also clearly a preliminary draft, not in final form. (*Id.*) Moreover, Defendants' names do not appear anywhere on the face of the Redlined Draft CBA; rather, the document indicates that the "Employer" is Worklife Financial, Inc. d/b/a Grand Sierra Resort and Casino ("Worklife"), which was the Employer under the June 2009 CBA and Defendants' apparent predecessor-in-interest. (*Id.*) In support of the Redlined Draft CBA's validity, Defendants argue, correctly, that a CBA need not always be signed to be enforceable. *See Warehousemen's Union Local No. 206 v. Continental Can Co.*, 821 F.2d 1348, 1350 (9th Cir. 1987) ("Union acceptance of an employer's final offer is all that is necessary to create a contract, regardless of whether either party later refuses to sign a written draft."). Moreover, Defendants point to communications from Culinary Workers Union Local 226 ("Union") to Defendants between May 2015 and February 2016, which indicate that the Union was invoking the Redlined Draft CBA to initiate grievance proceedings throughout this timeframe.[2] (Union Letters, ECF No. 10 at 95–97, 99, 105.) *See S. California Painters & Allied Trade Dist. Council No. 36 v. Best Interiors, Inc.*, 359 F.3d 1127, 1133 (9th Cir. 2004),

2 Specifically, on June 23, 2015, the Union took the position that Defendants had violated "Exhibit 1 and all other pertinent provisions of the Collective Bargaining Agreement." (June 23, 2015 Union Letter, ECF No. 10 at 97.) The alleged violation related to "bringing wages consistent to $15.16 for all Slot Tech I" positions. (*Id.*) The June 2009 CBA includes an Exhibit 1, but it does not address Slot Tech wage rates. (June 2009 CBA at Ex. 1, ECF No. 8-4 at 42.) Rather, the June 2009 CBA covers Slot Tech wages exclusively in Side Letter #1. (*Id.* at Side Letter #1, ECF No. 8-4 at 59.) In contrast, Exhibit 1 in the Redlined Draft CBA includes a Slot Tech Wage Chart. (Redlined Draft CBA at Ex. 1, ECF No. 10 at 93.) Therefore, of the two CBAs provided to the Court, the Union's June 23, 2015 letter can only be referencing the Redlined Draft CBA.

quoting *NLRB v. Haberman Constr. Co.*, 641 F.2d 351, 356 (5th Cir. 1981) (en banc) ("To determine whether a party has adopted a contract by its conduct, the relevant inquiry is whether the party has displayed 'conduct manifesting an intention to abide by the terms of the agreement.'").

The Court need not and will not determine whether either the June 2009 CBA or the Redlined Draft CBA was valid and in effect during times relevant to the Complaint. Because the Motion to Remand may be decided on other grounds, as shown below, the Court declines to wade into the waters of whether and when these contracts may have been in force.

a. The rights at issue were created by Nevada law and not by a CBA.

Plaintiffs advance three primary legal theories: (1) they were required to work while off the clock, and therefore did not receive compensation of at least minimum wage for all hours worked; (2) they were deprived of overtime when they worked a shift that began within the same statutory "workday" as their previous shift; and (3) Defendants' alleged failure to compensate Plaintiffs pursuant to theories (1) and (2) resulted in a failure to timely pay Plaintiffs all wages due and owing upon termination of employment. All of Plaintiffs' claims arise specifically under Nevada law, independently of any CBA. Plaintiffs' claims are expressly based on NRS 608.016 ("[A]n employer shall pay to the employee wages for each hour the employee works."); Article 15, Section 16 of the Nevada Constitution ("Each employer shall pay a wage to each employee of not less than the hourly rates set forth in this section."); NRS 608.018 ("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 [wage] works . . . [m]ore than 8 hours in any workday."); and NRS 608.020–050 ("Whenever an employer discharges an employee, the wages and compensation earned and unpaid at the time of such discharge shall become due and payable immediately.").

Therefore, the rights asserted by Plaintiffs—the right to be compensated at minimum wage for all hours worked, the right to overtime compensation, and the right to be paid all wages due and owing at the time of termination—are created by Nevada law, not a CBA. Each right "arises from state law, not from the CBA, and is vested in the employees directly, not through the medium of the CBA." *Burnside*, 491 F.3d at 1064. Moreover, notwithstanding the fact that some of the rights asserted by Plaintiffs may be waived pursuant to a bona fide CBA, they are still conferred upon Plaintiffs by virtue of state law. *See id.* ("[A]s a matter of pure logic, a right that inheres *unless* it is waived exists independently of the document that would include the waiver, were there a waiver.").

b. Plaintiffs' claims are not substantially dependent on the terms of a CBA.

Having concluded that the rights asserted in Plaintiffs' Complaint inhere in state law, the Court must now consider whether those rights are nonetheless "substantially dependent" on a CBA (i.e., whether resolving Plaintiffs' claims will require interpretation of a CBA). *See id.* at 1060. Defendants have not met their burden to show that the interpretation of a CBA will be required.

First, in arguing that Plaintiffs' claim for failure to pay wages for all hours worked requires interpretation of a CBA, Defendants' focus is NRS 608.012, which defines "wages" as the "amount which an employer agrees to pay an employee for the time the employee has worked . . . ." (Resp. 6, ECF No. 10.) Defendants contend that because NRS Chapter 608 requires only the payment of "wages," and the "wages" of employees governed by the CBA are set by the CBA, all wage claims are "effectively claims for breach of the CBA." (*Id.*) Defendants' conclusion is incorrect. "[N]either looking to the CBA merely to discern that none of its terms is reasonably in dispute, *nor the simple need to refer to bargained-for wage rates in computing a penalty*, is enough to warrant preemption." *Burnside*, 491 F.3d at 1060 (emphasis added) (brackets and citations

omitted), citing *Livadas*, 512 U.S. at 125. With respect to off-the-clock work, Defendants have identified no CBA provision that has any bearing on the issue, much less a relevant provision that is reasonably in dispute. Merely "looking to" a CBA to calculate the amount of unpaid wages does not trigger Section 301 preemption.[3] *See id.* at 1074.

The same reasoning applies to Plaintiffs' constitutional minimum wage claim. Plaintiffs allege they were required to work without pay, and that under the Nevada Constitution these unpaid hours should have been paid at no less than the state minimum wage. Defendants do not argue that the CBA contains any particular provision that must be interpreted in order to resolve this claim. Nor do Defendants contend that the Union waived the right to minimum wages under Article 15, Section 16(B). Indeed, the Redlined Draft CBA contains no such waiver. On the contrary, the wage rate tables in Exhibit 1 all reference a footnote, which reads: "Where these standard rates fall below the applicable minimum wage, the rates have been adjusted accordingly to satisfy Nevada's minimum wage requirements." (Redlined Draft Agreement, Ex. 1, ECF No. 10 at 86–93.) *See Cramer v. Consol. Freightways, Inc.*, 255 F.3d 683, 692 (9th Cir. 2001), *as amended* (Aug. 27, 2001) ("[A] court may look to the CBA to determine whether it contains a clear and unmistakable waiver of state law rights without triggering § 301 preemption.").

Similarly, Plaintiffs' claim for failure to timely pay wages due and owing upon termination is not preempted. Again, Defendants fail to identify any provision in a CBA that must be interpreted to resolve this claim. Furthermore, the Supreme Court has examined Section 301

3 Defendants also assert that this and other claims in Plaintiffs' Complaint are alleged here improperly, because another court in this District recently granted summary judgment for Defendants in a related case, finding that "except for claims for minimum wage pursuant to NRS 608.250, […] Nevada does not recognize a private statutory cause of action for wages." (Resp. 2, ECF No. 10.) However, the validity of Plaintiffs' claims is not properly before the Court on Plaintiff's Motion to Remand. Indeed, a court must first determine whether it has subject matter jurisdiction to hear a claim before ruling such claim is invalid.

preemption in the context of a closely analogous California statute—Labor Code § 203—and opined:

> The only issue raised by [plaintiff's] claim, whether [defendant] "willfully failed to pay" her wages promptly upon severance, was a question of state law, entirely independent of any understanding embodied in the collective-bargaining agreement between the union and the employer. There is no indication that there was a "dispute" in this case over the amount of the penalty to which [plaintiff] would be entitled, and [*Lingle v. Norge Div. of Magic Chef, Inc.*, 486 U.S. 399 (1988)] makes plain in so many words that when liability is governed by independent state law, the mere need to "look to" the collective-bargaining agreement for damages computation is no reason to hold the state-law claim defeated by § 301.

Livadas, 512 U.S. at 124–25 (brackets and citation omitted). The same reasoning applies here, and the Court reaches the same conclusion.

Defendants present a somewhat more persuasive argument that Plaintiffs' overtime claim based on allegations of "shift-jamming" requires interpretation of a CBA. NRS 608.018(3)(e) expressly provides that statutory overtime requirements do not apply to "[e]mployees covered by collective bargaining agreements which provide otherwise for overtime." The Redlined Draft CBA provides for overtime compensation. (Redlined Draft CBA ¶ 9.01, ECF No. 10 at 35.) Therefore, Defendants contend that any employees subject to the CBA waived their statutory right to overtime pay, and any claim for unpaid overtime must arise under the contract. (Resp. 10, ECF No. 10.) Furthermore, Defendants argue that NRS 608.018 requires daily overtime for each "workday," as defined in the statute, while the Redlined Draft CBA requires overtime for each "day," which is undefined and should be given its ordinary meaning. (*Id.* at 12–13.) Therefore, Defendants argue, a court must interpret the CBA to determine the meaning of "day" as the term is used in the CBA. (*Id.*)

The Court declines to reach Defendants' arguments with respect to the alleged shift-jamming policy and the respective meanings of "day" and "workday." Plaintiffs' Complaint

provides: "The claim for unpaid overtime wages pursuant to Defendants' shift jamming policy is *only brought on behalf of employees who are not covered* by a valid and effective collective bargaining agreement." (Compl. ¶ 37, ECF No. 1-1 (emphasis added).) There is no need to interpret a CBA to resolve Plaintiffs' shift-jamming claims because Plaintiffs have specifically pled around any valid CBA that may be applicable. "[T]he plaintiff is the master of the complaint . . . and . . . may, by eschewing claims based on federal law, choose to have the cause heard in state court." *Caterpillar*, 482 U.S. at 398–99.

Lastly, with respect to unpaid overtime on the basis of off-the-clock work, the Court's decision is governed by *Burnside* and *Livadas*. As in those cases, Plaintiffs are not "complaining about the wage rate the employees were paid for certain work, but about the fact that [they were] not paid at all." *Burnside*, 491 F.3d at 1073. The Redlined Draft CBA contains provisions governing the regular rate and the rate of overtime wages. *See id* at 1073–74. However, as in *Burnside* and *Livadas*, "there is no indication in this case of any dispute concerning which wage rate would apply to" off-the-clock hours, *if* such hours are compensable. *See id.* at 1074. Therefore, the conclusion in *Burnside* is directly applicable to Plaintiffs' overtime claim:

> The basic legal issue presented by this case, therefore, can be decided without interpreting the CBA. Depending on how that issue is resolved, damages may have to be calculated, and in the course of that calculation, reference to—but not interpretation of—the CBAs, to determine the appropriate wage rate, would likely be required. Under *Livadas*, this need to consult the CBAs to determine the wage rate to be used in calculating liability cannot, alone, trigger section 301 preemption.

491 F.3d at 1074 (finding overtime claims not preempted where based on allegedly compensable off-the-clock travel time).

Accordingly, all of Plaintiffs' claims can be resolved without interpretation of a CBA. Plaintiffs' claims are not preempted by Section 301, and may not be removed to federal court.

/ / /

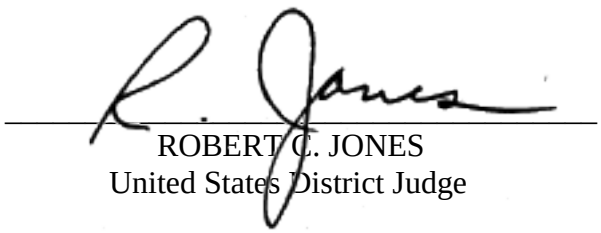
CONCLUSION

IT IS HEREBY ORDERED that the Motion to Remand (ECF No. 8) is GRANTED.

IT IS FURTHER ORDERED that Defendants' Motion to Dismiss (ECF No. 6) is DENIED as moot.

IT IS FURTHER ORDERED that the case is REMANDED to the Second Judicial District Court of Washoe County, Nevada, and the Clerk shall close the case.

IT IS SO ORDERED December 6, 2016.



ROBERT C. JONES
United States District Judge

EXHIBIT 3

NRS 608.140 Demand Dated 6/6/2016

EXHIBIT 3

THIERMAN | BUCK
LAW FIRM

7287 Lakeside Drive
Reno, NV 89511
T: (775) 284-1500
F: (775) 703-5027
info@thiermanbuck.com
www.ThiermanBuck.com

June 6, 2016

Via Certified Mail

HG STAFFING, LLC and
MEI-GSR HOLDINGS LLC d/b/a/ GRAND SIERRA RESORT
Attn: Susan Heaney Hilden
2500 East Second Street
Reno, NV 89585

COHEN JOHNSON
Attn: H. Stan Johnson
225 East Warm Springs Road
Suite 100
Las Vegas, NV 89119

Re: Violation of Nevada State Wage and Hour Laws

Dear Ms. Heaney Hilden and Mr. Johnson,

Pursuant to Nevada Revised Statute Section 608.140, demand is hereby made for payment within five (5) days for unpaid wages, penalties, interest, and attorneys' fees, due and owing to EDDY MARTEL (also known as MARTEL-RODRIGUEZ), MARY ANNE CAPILLA, JANICE JACKSON-WILLIAMS, and WHITNEY VAUGHAN, and a class of all similarly situated former employees of HG STAFFING, LLC. MEI-GSR HOLDINGS LLC d/b/a/ GRAND SIERRA RESORT ("GSR"). As a courtesy, I have enclosed a confidential draft complaint providing a more complete factual and legal basis of our client's claims.

As evidenced by the draft complaint, Plaintiffs intend to file the complaint as a class action on behalf of all other similarly situated and typical persons employed by GSR. For Plaintiffs' overtime claims Plaintiffs estimate an average amount of $2,010.60[1] per full time equivalent employee (FTE) for overtime wages due. Additionally, for Plaintiffs' Wages Due and Owing claims Plaintiffs' demand 60 days of wages for each employee who has separated from employment based on Defendant's employment records.

[1] Plaintiffs' Complaint alleges at least one half hour of unpaid wages per shift. Upon information and belief, the average rate of pay for non-exempt hourly employees is $11.17. Using the average rate of $11.17 multiplied by 1.5 is equal to $16.755 per hour or $8.3775 unpaid wages per shift worked. This figure multiplied by 240 shift in a year, equals a sum for each FTE of $2,010.60 in unpaid wages.

For Plaintiffs' failure to compensate for all hours worked, minimum wage claims, breach of contract claims, fees, costs, and interest, Plaintiffs provide the following formula:

DAMAGES FORMULA	
Failure to Compensate for All Hours Worked in Violation of NRS 608.140 and 608.016	(Total number of Class Members) x (Total Number of Unpaid Hours Worked over the 3-Year Liability Period for each Class Member) x (Class Members' Regular Rate of Pay)
Failure to Pay Minimum Wages in Violation of the Nevada Constitution	(Total number of Class Members) x (Total Number of Unpaid Hours Worked over the 4-Year Liability Period for each Class Member) x (Applicable Minimum Wage Rate)
Breach of Contract	(Total number of Class Members) x (Total Number of Unpaid Hours Worked over the 6-Year Liability Period for each Class Member) x (Applicable Overtime or Regular Rate)
Attorneys' Fees	Recoverable in Addition to Unpaid Wages At One Third to Total Recovery (Half of What the Class Recovery) or Lodestar, Whichever is Greater, As Provided by Statute.
Interest	5.25% of Wages Owed over the Relevant Liability Period

This letter also serves to give you notice that legal action may be taken against you; thus, you have a duty to preserve evidence that is relevant to this potential action. See Bass-Davis v. Davis, 122 Nev. 442, 450 (2006); Banks v. Sunrise Hosp., 120 Nev. 822, 830-31 (2004). In addition to your duty to preserve traditional forms of documentary evidence (e.g., hard copy documents), we fully expect that any future litigation relating to this action will involve significant amounts of electronic and recorded data. Due to its format, such data is particularly susceptible to deletion, modification, and corruption. Accordingly, we hereby demand that you cease any and all existing electronic and recorded data deletion (whether pursuant to a data retention policy or not) and preserve all such information until the final resolution of this matter.

For the purposes of this preservation demand letter, "electronic and recorded data" includes, but is not limited to, the following: audio recordings, videotape, e-mail, instant messages, word processing documents, spreadsheets, databases, calendars, telephone logs, telephone recorded messages, voicemail messages, internet usage files, and all other electronically stored information created, received, and/or maintained by the parties on computer systems. The sources of the documentary evidence and electronic and recorded data include, but are not limited to, all hard copy files, computer hard drives, removable media (e.g., CDs, DVDs, and flash/thumb drives) and the like, file server or data array (e.g. RAID), laptop computers, cell phones, Blackberry devices, personal digital assistants (PDAs), and any other locations where hard copy and electronic data is stored. Keep in mind that any of the above-mentioned sources of relevant information may include personal computers the parties or their employees use or have access to at home, or from other locations. It also includes inaccessible storage media, such as back-up tapes that may contain relevant electronic information not existing in any other form.

Your attention to these matters is appreciated. Please do not hesitate to contact me if you have questions or would like to discuss possible early resolution of this action.

Very truly yours,

THIERMAN BUCK, LLP

Leah B. Jones on behalf of Joshua D. Buck

JOSHUA D. BUCK

Enclosure

7006 0100 0004 5361 8168

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Street, Apt. No.; or PO Box No.: 225 E. Warm Springs Rd #100
City, State, ZIP+4: Las Vegas, NV 89119

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- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

COHEN JOHNSON
Attn: H. Stan Johnson
225 East Warm Springs Road
Suite 100
Las Vegas, NV 89119

COMPLETE THIS SECTION ON DELIVERY

A. Signature
x Nina Little ☒ Agent ☐ Addressee

B. Received by *(Printed Name)*: N. Little
C. Date of Delivery: 6/9/16

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail® ☐ Priority Mail Express™
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4. Restricted Delivery? *(Extra Fee)* ☐ Yes

2. Article Number *(Transfer from service label)*: 7006 0100 0004 5361 8168

PS Form 3811, July 2013 — Domestic Return Receipt

EXHIBIT 4

Opinion of United States Court of Appeals for the Sixth Circuit, Jesse Busk, et al v. Integrity Staffing Solutions, Inc. et al, 905 F.3d 387, 402-405 (Sept. 19, 2018)

EXHIBIT 4

RECOMMENDED FOR FULL-TEXT PUBLICATION
Pursuant to Sixth Circuit I.O.P. 32.1(b)

File Name: 18a0207p.06

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

IN RE: AMAZON.COM, INC., FULFILLMENT CENTER FAIR LABOR STANDARDS ACT (FLSA) AND WAGE AND HOUR LITIGATION.

JESSE BUSK; LAURIE CASTRO; SIERRA WILLIAMS; MONICA WILLIAMS; VERONICA HERNANDEZ,

Plaintiffs-Appellants,

v.

INTEGRITY STAFFING SOLUTIONS, INC.; AMAZON.COM, INC.,

Defendants-Appellees.

Nos. 17-5784/5785

Appeal from the United States District Court
for the Western District of Kentucky at Louisville.
Nos. 3:14-cv-00139; 3:14-md-02504—David J. Hale, District Judge.

Argued: June 14, 2018

Decided and Filed: September 19, 2018

Before: BATCHELDER and CLAY, Circuit Judges; SARGUS, District Judge.*

COUNSEL

ARGUED: Joshua D. Buck, THIERMAN BUCK LLP, Reno, Nevada, for Appellants. Rick D. Roskelley, LITTLER MENDELSON, Las Vegas, Nevada, for Appellee Integrity Staffing Solutions. Richard G. Rosenblatt, MORGAN, LEWIS & BOCKIUS, LLP, Princeton, New Jersey, for Appellee Amazon.com. **ON BRIEF:** Joshua D. Buck, Mark R. Thierman, THIERMAN BUCK LLP, Reno, Nevada, for Appellants. Rick D. Roskelley, LITTLER MENDELSON, Las Vegas, Nevada, Cory G. Walker, LITTLER MENDELSON, Phoenix,

*The Honorable Edmund A. Sargus, Jr., Chief United States District Judge for the Southern District of Ohio, sitting by designation.

Arizona, for Appellee Integrity Staffing Solutions. Richard G. Rosenblatt, MORGAN, LEWIS & BOCKIUS, LLP, Princeton, New Jersey, for Appellee Amazon.com.

CLAY, J., delivered the opinion of the court in which SARGUS, D.J., joined, and BATCHELDER, J., joined in part. BATCHELDER, J. (pp. 27–28), delivered a separate opinion concurring in part and dissenting in part.

OPINION

CLAY, Circuit Judge. Plaintiffs in this purported class action seek compensation under Nevada and Arizona law for time spent undergoing or waiting to undergo mandatory onsite security screenings at the Amazon facilities where they worked. The district court granted summary judgment for Defendants on the grounds that time related to security checks is not compensable as "hours worked" under Nevada and Arizona labor law. Because we conclude that time spent undergoing mandatory security checks is compensable under Nevada law, we **REVERSE** the district court's judgment with regard to the Nevada claims and **REMAND** for further proceedings. Because we conclude that the Arizona Plaintiffs have failed to satisfy Arizona's "workweek requirement," we **AFFIRM** the district court's dismissal of Plaintiffs' Arizona claims.

BACKGROUND

Factual Background

Defendant Integrity Staffing Solutions, Inc. ("Integrity"), provides warehouse labor services to businesses throughout the United States where hourly workers fill orders, track merchandise, and process returns. Integrity employs thousands of hourly warehouse employees like Plaintiffs at each of Defendant Amazon.com's ("Amazon") facilities. Some Plaintiffs in this case were hourly employees of Integrity at warehouses in Nevada and Arizona. Other Plaintiffs were directly employed by Amazon. According to Plaintiffs, "Amazon.com exercises direct control over the hours and other working conditions of all Plaintiffs and all similarly-situated hourly shift employees who are paid on the payroll of Integrity working at all Amazon.Com's [sic] warehouse locations nationwide." (R. 134, Third Amended Compl., PageID # 2351.)

This case concerns a security clearance policy that is enforced by both Integrity and Amazon at all Amazon locations throughout the United States. Under the policy, Plaintiffs and all other hourly paid, non-exempt employees were required to "undergo a daily security clearance check at the end of each shift to discover and/or deter employee theft of the employer's property and to reduce inventory 'shrinkage.'" (*Id.*) The policy worked like this: "At the end of their respective shifts, hundreds, if not thousands, of warehouse employees would walk to the timekeeping system to clock out and were then required to wait in line in order to be searched for possible warehouse items taken without permission and/or other contraband." (*Id.* at PageID # 2352.) Plaintiffs allege that "Defendants' policy of requiring hourly warehouse employees to undergo a thorough security clearance before being released from work and permitted to leave the employer's property was solely for the benefit of the employers and their customers." (*Id.* at PageID # 2351.) Plaintiffs further allege that this screening process took approximately 25 minutes each day. Plaintiffs were also required to undergo the same security clearance prior to taking their lunch breaks, thereby reducing the full thirty-minute break they were supposed to receive. Because employees were required to "clock out" before undergoing the security screening, they were not compensated for their time spent waiting in line for and then undergoing the screenings. (*Id.* at PageID # 2351, 2352.)

Procedural History

In 2010, Plaintiffs filed a putative class action in the District Court of Nevada against Integrity on behalf of similarly situated employees in the Nevada warehouses for alleged violations of the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* ("FLSA") and Nevada labor laws. The employees alleged that they were entitled to compensation under the FLSA for the time spent waiting to undergo and actually undergoing the security screenings. They also alleged that the screenings were conducted "to prevent employee theft" and thus occurred "solely for the benefit of the employers and/or their customers." (R. 30-3, First Amended Compl., PageID # 223.)

The district court dismissed Plaintiffs' first amended complaint for failure to state a claim, holding that the time spent waiting for and undergoing the security screenings was not compensable under the FLSA. *Busk v. Integrity Staffing Sols., Inc.*, No. 2:10-cv-01854, 2011

WL 2971265 (D. Nev. July 19, 2011). It explained that, because the screenings occurred after the regular work shift, the employees could state a claim for compensation only if the screenings were an integral and indispensable part of the principal activities they were employed to perform. The district court held that these screenings were not integral and indispensable, but instead fell into a noncompensable category of postliminary activities. As for Plaintiffs' Nevada state law claims for unpaid wages arising from the security checks and shortened meal periods, the Nevada district court found that Plaintiffs had properly asserted a private cause of action under Nev. Rev. Stat. § 608.140 but failed to allege sufficient facts to support their clam. *Id.* at *7.

Plaintiffs appealed to the Ninth Circuit, which affirmed the dismissal of the meal-period claims but reversed as to the security-check claims. *Busk v. Integrity Staffing Sols., Inc.*, 713 F.3d 525 (9th Cir. 2013). The Ninth Circuit asserted that post-shift activities that would ordinarily be classified as noncompensable postliminary activities are nevertheless compensable as integral and indispensable to an employee's principal activities if those post-shift activities are necessary to the principal work performed and done for the benefit of the employer. *Id.* at 530. Accepting as true the allegation that Integrity required the security screenings to prevent employee theft, the court concluded that the screenings were "necessary" to the employees' primary work as warehouse employees and done for Integrity's benefit. *Id.* at 531.

The case was then appealed to the Supreme Court, which held that the time related to the security checks was not compensable under the FLSA. *Integrity Staffing Solutions, Inc. v. Busk*, 135 S.Ct. 513 (2014) ("*Integrity Staffing*"). Specifically, the Court found that the security screenings were "noncompensable postliminary activities" under the Portal-to-Portal Act, 29 U.S.C. § 254(a)(2). *Id.* at 518. The Portal-to-Portal Act was enacted as an amendment to the FLSA, and it "narrowed the coverage of the [Act]" by excluding certain "preliminary" and "postliminary" activities from the FLSA's compensation requirements. *See IBP, Inc. v. Alvarez*, 546 U.S. 21, 27 (2005). *Integrity Staffing* clarified that post-shift security screenings are among those noncompensable, "postliminary" activities under federal law. 135 S. Ct. at 518.

Following the Supreme Court's reversal, the Ninth Circuit remanded the remainder of Plaintiff's state law claims to the district court. *Busk v. Integrity Staffing Sols., Inc.*, 797 F.3d

756 (9th Cir. 2015). Plaintiffs again amended their complaint, and the case was then transferred to an ongoing multidistrict litigation in the Western District of Kentucky.

Consistent with the Supreme Court's decision, Plaintiffs' third amended complaint eliminates the claims for compensation under federal law and asserts claims under Nevada and Arizona law for unpaid wages and overtime, as well as minimum wage violations. Plaintiffs asserted their claims as a class action under Rule 23 of the Federal Rules of Civil Procedure on behalf of the following persons:

> **Nevada Class**: All person [sic] employed by Defendants, and/or each of them, as hourly paid warehouse employees who worked for Defendant(s) within the State of Nevada at anytime [sic] within three years prior to the original filing date of the complaint in this action.
>
> **Arizona Class**: All person [sic] employed by Defendants, and/or each of them, as hourly paid warehouse employees who worked for Defendant(s) within the State of Arizona at any time from within three years prior to the filing of the original complaint until the date of judgment after trial, and shall encompass all claims by such persons for the entire tenure of their employment as provided in A.R.S. 23-364 (G).

(R. 134, Third Amended Compl., PageID # 2353.)

The Nevada plaintiffs allege claims on behalf of themselves and the Nevada Class for failing to pay for all the hours worked (NRS § 608.016), daily and weekly overtime (NRS § 608.018), and a minimum wage claim under the Nevada Constitution (Nev. Const. art. 15, § 16). The Nevada plaintiffs seek continuation wages in the amount of 30-days of additional wages for failing to pay employees all their wages due and owing at the time of separation from employment (NRS § 608.020–.050). The Arizona plaintiffs allege claims on behalf of themselves and the Arizona Class for failing to pay regular and minimum wages (A.R.S. § 23-363). These Plaintiffs also seek continuation wages under A.R.S. § 23-353 *et seq.*

Defendants filed a motion to dismiss the claims, which the district court granted. The district court dismissed the Nevada claims on three grounds: first, there was no private right of action to assert claims under Nevada's wage-hour statutes, NRS Chapter 608; second, Nevada law incorporated the FLSA in relevant part and Plaintiffs' Nevada state claims were barred by Nevada's incorporation of the Portal-to-Portal Act and the Supreme Court's decision in *Busk*;

and third, Plaintiffs' claims for minimum wages failed because they failed to identify any workweek in which they were paid less than the minimum wage. The district court concluded the same with respect to the Arizona claims, holding that Arizona impliedly adopted the Portal-to-Portal Act and thus Plaintiffs "have not demonstrated that they are entitled to compensation under Arizona law for time spent undergoing, or waiting to undergo, security screenings." (R. 236, Order, PageID # 4702.) The court also concluded that Arizona minimum wage claims failed because Plaintiffs had failed to identify a particular workweek in which they were paid less than the minimum wage.

Plaintiffs filed a timely notice of appeal.

DISCUSSION

I. Standard of Review

We review the district court's grant of a motion to dismiss under Rule 12(b)(6) *de novo*. *Puckett v. Lexington-Fayette Urban Cty. Gov't*, 833 F.3d 590, 599 (6th Cir. 2016). When reviewing such a grant, "we must 'accept all factual allegations as true,' construing the complaint, 'in the light most favorable to the plaintiff[s].'" *Id.* (quoting *Laborers' Local 265 Pension Fund v. iShares Trust*, 769 F.3d 399, 403 (6th Cir. 2014)) (alteration in *Puckett*). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

II. Analysis

A. Nevada employees have a private right of action to pursue unpaid wage and penalty claims

The court's main basis for dismissing Plaintiffs' Nevada law claims was its legal conclusion that there is no private right of action for the recovery of unpaid wages under Nevada law. The court held that "no private right of action exists for violations of Nevada Revised Statutes §§ 608.005–.195 in the absence of a contractual claim." (R. 236, Order, PageID # 4694.)

Since briefing was completed in this case, the Nevada Supreme Court issued a decision in *Neville v. Eighth Jud. Dist. Ct.*, 406 P.3d 499 (Nev. 2017), which holds exactly the opposite. In *Neville*, the court began its opinion thus: "In this opinion, we clarify that NRS 608.140 explicitly recognizes a private cause of action for unpaid wages." *Id.* at 500. And the court explained as follows:

> Because NRS 608.016, NRS 608.018, and NRS 608.020 through NRS 608.050 do not expressly state whether an employee could privately enforce their terms, Neville may only pursue his claims under the statutes if a private cause of action for unpaid wages is implied. The determinative factor is always whether the Legislature intended to create a private judicial remedy. We conclude that the Legislature intended to create a private cause of action for unpaid wages pursuant to NRS 608.140. It would be absurd to think that the Legislature intended a private cause of action to obtain attorney fees for an unpaid wages suit but no private cause of action to bring the suit itself. *See Bisch v. Las Vegas Metro. Police Dep't*, 129 Nev. 328, 336, 302 P.3d 1108, 1114 (2013) ("In order to give effect to the Legislature's intent, [this court] ha[s] a duty to consider the statute[s] within the broader statutory scheme harmoniously with one another in accordance with the general purpose of those statutes." (internal quotation marks omitted)). The Legislature enacted NRS 608.140 to protect employees, and the legislative scheme is consistent with private causes of action for unpaid wages under NRS Chapter 608.

Id. at 504.

The court's intervening decision thus decides the issue in this case: Plaintiffs *do* have a private cause of action for unpaid wages. The district court's decision to the contrary is reversed.[1]

[1]In its brief on appeal, Defendants anticipated a decision in *Neville* and argued that even if the Nevada Supreme Court went against them, nothing in that decision would support a private right of action for meal break claims under NRS § 608.019. However, the *Neville* decision provides no basis for distinguishing claims brought under § 608.019 from other claims brought under Chapter 608 for unpaid wages. Like claims under §§ 608.016, 608.018, and 608.020–.050, § 608.019 is also a claim for unpaid wages: if Plaintiffs were not provided a full half-hour break, there was no interruption of a "continuous period of work" under the statute, and they must be compensated for that time. Thus, we conclude that, under *Neville*, Plaintiffs have a private cause of action to enforce their rights under § 609.019; hence, Defendants' argument fails.

B. Time spent undergoing security screenings is compensable under Nevada and Arizona law

In *Integrity Staffing*, the Supreme Court held that the post-shift security screenings at issue in this case were noncompensable postliminary activities under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*, as amended by the Portal-to-Portal Act, 29 U.S.C. § 251 *et seq.* 135 S. Ct. at 518–19. The main question on appeal in this case is whether *Integrity Staffing* resolves similar claims brought under Nevada and Arizona law.

"As a federal court applying state law, 'we anticipate how the relevant state's highest court would rule in the case and are bound by controlling decisions of that court.'" *Vance v. Amazon.com*, 852 F.3d 601, 610 (6th Cir. 2017) (quoting *In re Dow Corning Corp.*, 419 F.3d 543, 549 (6th Cir. 2005)). Neither the Nevada Supreme Court nor the Arizona Supreme Court have decided whether their states have adopted the federal Portal-to-Portal Act or whether time spent undergoing mandatory security screening is compensable under the respective states' wage laws. Thus, since "'the state supreme court has not yet addressed the issue,' we render a prediction 'by looking to all the available data.'" *Id.* (quoting *Allstate Ins. Co. v. Thrifty Rent-A-Car Sys., Inc.*, 249 F.3d 450, 454 (6th Cir. 2001). Sources of relevant data include the decisions (or dicta) of the state's highest court in analogous cases, pronouncements from other state courts, and regulatory guidance.

Before turning to an analysis of Nevada and Arizona law, we will first explain how the issue is decided under federal law. We will then address whether time spent undergoing security screenings is compensable under Nevada and Arizona law.

1. Time spent undergoing security screenings is noncompensable postliminary activity under federal law

In *Vance*, this Court recently had occasion to explain the background of the Portal-to-Portal Act and the Supreme Court's decision in *Integrity Staffing* as it was relevant to a case arising out of the same multidistrict litigation as the instant case. The Court explained as follows:

> "Enacted in 1938, the FLSA established a minimum wage and overtime compensation for each hour worked in excess of 40 hours in each workweek."

Integrity Staffing, 135 S.Ct. at 516. "The Act did not, however, define the key terms 'work' and 'workweek.'" *Sandifer v. U.S. Steel Corp.*, —— U.S. ——, 134 S.Ct. 870, 875, 187 L.Ed.2d 729 (2014). Absent congressional guidance, the Supreme Court interpreted these terms broadly. *Integrity Staffing*, 135 S.Ct. at 516. "It defined 'work' as 'physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer and his business.'" *Id.* (quoting *Tenn. Coal, Iron & R. Co. v. Muscoda Local No. 123*, 321 U.S. 590, 598, 64 S.Ct. 698, 88 L.Ed. 949 (1944)). Only months after *Tennessee Coal*, the Court expanded the definition further, "clarif[ying] that 'exertion' was not in fact necessary for an activity to constitute 'work' under the FLSA," for "an employer, if he chooses, may hire a man to do nothing, or to do nothing but wait for something to happen." *IBP*, 546 U.S. at 25, 126 S.Ct. 514 (quoting *Armour & Co. v. Wantock*, 323 U.S. 126, 133, 65 S.Ct. 165, 89 L.Ed. 118 (1944)). "Readiness to serve may be hired, quite as much as service itself," and must therefore also be compensated. *Armour*, 323 U.S. at 133, 65 S.Ct. 165.

The Court took a similar approach with "the statutory workweek," which "include[d] all time during which an employee is necessarily required to be on the employer's premises, on duty or at a prescribed workplace." *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680, 690–91, 66 S.Ct. 1187, 90 L.Ed. 1515 (1946). "That period, *Anderson* explained, encompassed time spent 'pursuing certain preliminary activities after arriving, such as putting on aprons and overalls and removing shirts.'" *Sandifer*, 134 S.Ct. at 875 (quoting *Anderson*, 328 U.S. at 692–93, 66 S.Ct. 1187) (ellipsis and brackets omitted). Per *Anderson*, these preparatory efforts "'are clearly work' under the Act." *Id.* (quoting *Anderson*, 328 U.S. at 693, 66 S.Ct. 1187).

Together, these holdings led to decisions requiring compensation for nearly every minute an employer required its employees to be on the employer's premises, including "the time spent traveling between mine portals and underground work areas," and "walking from timeclocks to work benches." *Integrity Staffing*, 135 S.Ct. at 516 (citing *Tenn. Coal*, 321 U.S. at 598, 64 S.Ct. 698, and *Anderson*, 328 U.S. at 691–92, 66 S.Ct. 1187). They also "provoked a flood of litigation," including 1,500 FLSA actions filed within six months of the Court's ruling in *Anderson*. *Id.*

"Congress responded swiftly." *Id.* Finding the Court's decisions had "creat[ed] wholly unexpected liabilities" with the capacity to "bring about financial ruin of many employers," it enacted the Portal-to-Portal Act of 1947. *Id.* at 516–17 (quoting 29 U.S.C. § 251(a)–(b)). The Act excepted two activities the Court previously deemed compensable: "walking on the employer's premises to and from the actual place of performance of the principal activity of the employee, and activities that are 'preliminary or postliminary' to that principal activity." *IBP*, 546 U.S. at 27, 126 S.Ct. 514; *see also Integrity Staffing*, 135 S.Ct. at 516–17 (detailing history). Under the Portal-to-Portal Act then, an employee's

> principal activities are compensable, while conduct he engages in before and after those activities (i.e., preliminary and postliminary acts) is not.
>
> "[P]rincipal activity" refers to the activity "an employee is employed to perform." *Integrity Staffing*, 135 S.Ct. at 517, 519. "[T]he term principal activity . . . embraces all activities which are an integral and indispensable part of the principal activities." *IBP*, 546 U.S. at 29–30, 126 S.Ct. 514 (internal quotation marks and citation omitted). An activity is "integral and indispensable" to the principal activities an individual is employed to perform "if it is an intrinsic element of those activities and one with which the employee cannot dispense if he is to perform his principal activities." *Integrity Staffing*, 135 S.Ct. at 517. In other words, an activity is integral and indispensable to the work an employee was hired to do if it is a component of that work, and he cannot complete the work without it. *Id.*
>
> Applying these terms, the *Integrity Staffing* Court held that post-shift security screenings were neither the principal activity Amazon hired its employees to perform, nor "integral and indispensable" to that activity:
>
> > To begin with, the screenings were not the "principal activity or activities which [the] employee is employed to perform." Integrity Staffing did not employ its workers to undergo security screenings, but to retrieve products from warehouse shelves and package those products for shipment to Amazon customers.
> >
> > The security screenings also were not "integral and indispensable" to the employees' duties as warehouse workers. . . . The screenings were not an intrinsic element of retrieving products from warehouse shelves or packaging them for shipment. And Integrity Staffing could have eliminated the screenings altogether without impairing the employees' ability to complete their work.
>
> *Id.* at 518 (citation omitted). The screenings were therefore "postliminary" to the employees' principal activities and excluded from compensation pursuant to the Portal-to-Portal Act.

852 F.3d at 608–09.

Thus, Plaintiffs' claims for compensation would fail and have failed under federal law. The question on appeal is whether they also fail under Nevada and Arizona state law.

2. Interpreting Statutes under Nevada and Arizona State Law

a. Nevada

In Nevada, the first rule in construing statutes "is to give effect to the legislature's intent." *Salas v. Allstate Rent-A-Car, Inc.*, 14 P.3d 511, 513 (Nev. 2000) (citing *Cleghorn v. Hess*, 853 P.2d 1260, 1262 (Nev. 1993)). "In so doing, we first look to the plain language of the statute. Where the statutory language is ambiguous or otherwise does not speak to the issue before us, we will construe it according to that which 'reason and public policy would indicate the legislature intended.'" *Id.* at 513–14 (quoting *State, Dep't of Mtr. Vehicles v. Lovett*, 874 P.2d 1247, 1249–50 (Nev. 1994)). "In such situations, legislative intent may be ascertained by reference to the entire statutory scheme." *Id.* at 514 (citation omitted).

"When a federal statute is adopted in a statute of this state, a presumption arises that the legislature knew and intended to adopt the construction placed on the federal statute by federal courts. This rule of [statutory] construction is applicable, however, only if the state and federal acts are substantially similar and the state statute does not reflect a contrary legislative intent." *Century Steel, Inc. v. State, Div. of Indus. Rel., Occupational Safety and Health Section*, 137 P.3d 1155, 1158–59 (Nev. 2006) (adopting a federal construction where the "state and federal statutes [were] nearly identical" and "the state statute [did] not reflect a legislative intent contrary to the federal statute").

Thus, when interpreting state provisions that have analogous federal counterparts, Nevada courts look to federal law unless the state statutory language is "materially different" from or inconsistent with federal law. *Rivera v. Peri & Sons Farms, Inc.*, 735 F.3d 892, 900–01 (9th Cir. 2013); *see Terry v. Sapphire Gentlemen's Club*, 336 P.3d 951, 955–56 (Nev. 2014) (endorsing the rule in *Rivera*). Nonetheless, the Nevada Supreme Court "has signaled its willingness to part ways with the FLSA where the language of Nevada's statutes has so required." *Terry*, 336 P.3d at 955–56.

b. Arizona

Similarly, when interpreting Arizona law, "one of the fundamental goals of statutory construction is to effectuate legislative intent." *Canon Sch. Dist. No. 50 v. W.E.S. Const. Co.*, 869 P.2d 500, 503 (Ariz. 1994) (citing *Automatic Registering Mach. Co. v. Pima County*, 285 P. 1034, 1035 (Ariz. 1930)). "Yet, '[e]qually fundamental is the presumption that what the Legislature means, it will say.'" *Id.* (quoting *Padilla v. Industrial Comm'n,* 546 P.2d 1135, 1137 (Ariz. 1976)). "For this reason, [Arizona courts] have often stated that the 'best and most reliable index of a statute's meaning is its language,' and where the language is plain and unambiguous, courts generally must follow the text as written." *Id.* (quoting *Janson v. Christensen,* 167 Ariz. 470, 471, 808 P.2d 1222, 1223 (1991)).

Arizona courts may look to federal interpretations for guidance where an Arizona statute is "patterned after" a federal statute and where "Arizona courts have not addressed the issue presented." *See Rosier v. First Fin. Capital Corp.*, 889 P.2d 11, 13–14 (Ariz. Ct. App. 1994).

3. Time spent undergoing security screenings is "work" under Nevada and Arizona law

Plaintiffs brought claims under Nev. Rev. Stat. §§ 608.016, 608.018, 608.140, 608.020–.050, and the Nevada Constitution. They also brought claims under Ariz. Rev. Stat. § 23-363 *et seq.*, the statutory codification of the Raise the Arizona Minimum Wage for Arizonans Act, and Ariz. Rev. Stat. § 23-353 *et seq.* Each of these claims turns on whether Plaintiffs were uncompensated for some "work" they performed. *See, e.g.*, NRS § 608.016 ("An employer shall pay to the employee wages for each hour the employee works.").

Plaintiffs contend that "[t]here has never been any dispute that the time spent undergoing the anti-theft security screening is 'work' under either federal or the various state wage-hour laws." (Brief for Appellants at 12.) Defendants, however, argue that "there absolutely *has* been such a dispute throughout the entirety of the case, because time spent passing through security screening *is not work* under either federal, Nevada, or Arizona law." (Brief for Appellees at 6 (emphasis in original).)

Thus, and perhaps unsurprisingly, the first step for this Court in determining whether time spent undergoing mandatory security screenings is compensable is to determine whether such time constitutes "work" under Nevada and Arizona state law.

a. Nevada

Under 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." Nev. Admin. Code § 608.115(1). However, the Nevada legislature has not defined what constitutes "work." Thus, in this instance, it is appropriate to look to the federal law for guidance. *See Rivera*, 735 F.3d 900-01; *Terry*, 336 P.3d 955–56. Under the FLSA, work is defined broadly as any activity "controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer and his business." *Tennessee Coal, Iron & R. Co. v. Muscoda Local No. 123*, 321 U.S. 590, 598 (1944); *see Armour & Co. v. Wantock*, 323 U.S. 126, 133 (1944).

Putting aside the Portal-to-Portal Act for a moment, time spent waiting in line and then undergoing mandatory security screenings clearly seems to fit the federal definition of "work." The screenings surely are "required by the employer," and Plaintiffs have alleged that the screenings are "solely for the benefit of the employers and their customers." (R. 134, Third Amend. Compl., PageID # 2351.)

Nonetheless, Defendants put forth two arguments for why time spent undergoing mandatory security screenings is not "work" under Nevada law: (1) the Portal-to-Portal Act amended the FLSA to exclude postliminary activities from the federal definition of "work;" and (2) for an activity to be considered work, it must involve "exertion" and Plaintiffs have not alleged any exertion. We find neither argument persuasive.

First, Defendants misread what the Portal-to-Portal Act accomplished. Defendants argue that it amended the Supreme Court's definition of "work." (*See, e.g.*, Brief for Appellees at 12.) ("Congress had swiftly disagreed with that Supreme Court holding and clarified that the term 'work' in the FLSA excluded, among others, preliminary and postliminary activities.") But that is not so.

> The Portal-to-Portal Act provides, in relevant part, as follows:
>
> [N]o employer shall be subject to any liability . . . under the Fair Labor Standards Act . . . on account of the failure of such employer to pay an employee minimum wages, or to pay an employee overtime compensation, for or on account of any of the following activities of such employee engaged in on or after May 14, 1947—
>
> (1) walking, riding, or traveling to and from the actual place of performance of the principal activity or activities which such employee is employed to perform, and
>
> (2) activities which are preliminary to or postliminary to said principal activity or activities,
>
> which occur either prior to the time on any particular workday at which such employee commences, or subsequent to the time on any particular workday at which he ceases, such principal activity or activities.

29 U.S.C. § 254(a); 29 C.F.R. § 785.50.

As we read this language, the Portal-to-Portal Act excludes certain work activities from being compensable; it does not, however, redefine the Supreme Court's earlier definitions of "work."[2] This view finds some support in the Supreme Court's decision in *IBP, Inc.*, where it explained:

> Other than its express exceptions for travel to and from the location of the employee's "principal activity," and for activities that are preliminary or postliminary to that principal activity, the Portal-to-Portal Act does not purport to change this Court's earlier descriptions of the terms "work" and "workweek," or to define the term "workday." A regulation promulgated by the Secretary of Labor shortly after its enactment concluded that the statute had no effect on the computation of hours that are worked "within" the workday.

IBP, Inc. v. Alvarez, 546 U.S. 21, 28 (2005). This view also seems to comport with 29 C.F.R. § 785.7, which provides:

> The United States Supreme Court originally stated that employees subject to the act must be paid for all time spent in "physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued

[2]Defendants, at least on some level, seem to recognize the intuitive appeal of this reading. Indeed, before this Court they argue that "[t]he Portal-to-Portal Act and its exclusion of what otherwise might be considered 'work' under federal and state law is not even implicated in this case unless and until a determination is made that the underlying activity at issue rises to the level of 'work.'" (Brief for Appellees at 33.)

> necessarily and primarily for the benefit of the employer and his business." (*Tennessee Coal, Iron & Railroad Co. v. Muscoda Local No. 123*, 321 U. S. 590 (1944)) Subsequently, the Court ruled that there need be no exertion at all and that all hours are hours worked which the employee is required to give his employer, that "an employer, if he chooses, may hire a man to do nothing, or to do nothing but wait for something to happen. Refraining from other activity often is a factor of instant readiness to serve, and idleness plays a part in all employments in a stand-by capacity. Readiness to serve may be hired, quite as much as service itself, and time spent lying in wait for threats to the safety of the employer's property may be treated by the parties as a benefit to the employer." (*Armour & Co. v. Wantock*, 323 U.S. 126 (1944); *Skidmore v. Swift*, 323 U.S. 134 (1944)) The workweek ordinarily includes "all the time during which an employee is necessarily required to be on the employer's premises, on duty or at a prescribed work place". (*Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680 (1946)) *The Portal-to-Portal Act did not change the rule except to provide an exception for preliminary and postliminary activities.* See § 785.34.

29 C.F.R. § 785.7 (emphasis added).

Nothing in the Supreme Court's decision in *Integrity Staffing* changed this definition of "work" or the recognition in *IBP, Inc.* and § 785.7 that the Portal-to-Portal Act did not change the Court's longstanding definition of "work." Instead, *Integrity Staffing* was solely concerned with whether undergoing security screenings fell within the Portal-to-Portal Act's exception for "postliminary" activity; it did not opine on whether such activity constituted work. In short, the Portal-to-Portal Act excludes some "work" from its bucket of what is compensable activity, but that does not mean it is not "work."

Second, Defendants argue that time spent waiting to undergo security screenings is not "work" because "it involves no exertion." (Brief for Appellees at 7.) This argument is highly dubious for a number of reasons, not the least of which is that undergoing security screening clearly does involve exertion. Further, it is not at all clear that Nevada and Arizona's definitions of "work" require "exertion" even if they incorporate the federal definition because even the federal definition no longer requires "exertion." *See* 29 C.F.R. § 785.7.

Defendants cite to the Supreme Court's decision in *Tennessee Coal*, which, in addition to providing the current definition of "work," held that in order for an activity to be "work" it must involve "physical or mental exertion (whether burdensome or not)." 321 U.S. at 598. However,

as this Court recognized in *Vance*, "[o]nly months after *Tennessee Coal*, the Court expanded the definition further, 'clarif[ying] that "exertion" was not in fact necessary for an activity to constitute "work" under the FLSA,' for 'an employer, if he chooses, may hire a man to do nothing, or to do nothing but wait for something to happen.'" *Vance*, 852 F.3d at 608 (quoting *IBP, Inc.*, 546 U.S. at 25.) It may "strain the bounds of reason to argue that the Supreme Court in *Armour* somehow overruled *Tennessee Coal* (decided only 9 months earlier) without saying it was doing so," (Brief for Appellees at 34), but on this particular point, that is precisely what the Supreme Court has recognized. *See IBP, Inc.*, 546 U.S. at 25 (explaining that "[t]he same year [as *Tennesse Coal*], in *Armour & Co. v. Wantock* . . . we clarified that 'exertion' was not in fact necessary for an activity to constitute 'work' under the FLSA."). Thus, "Appellants completely ignore[d] this 'physical or mental exertion' requirement," (Brief for Appellees at 33), because there is no such requirement.

In sum, Nevada law incorporates the federal definition of "work," and this broad definition encompasses the type of activity at issue in this case.[3]

[3]Before proceeding to a discussion of Arizona law and whether the Portal-to-Portal Act applies to these state claims, we can decide whether Plaintiffs state a claim under Nevada law based on their allegations that the mandatory security screenings robbed them of their full lunch time. Plaintiffs alleged that the security screenings that they were required to undergo before taking their lunch breaks resulted in them being "significantly delayed and [] unable to take a full 30-minute uninterrupted lunch period." (R. 134, Third Amend. Compl., PageID # 2352.) Under Nevada law, "[a]n employer shall not employ an employee for a continuous period of 8 hours without permitting the employee to have a meal period of at least one-half hour." Nev. Rev. Stat § 608.019. The law further provides that "no period of less than 30 minutes interrupts a continuous period for work for the purposes of this subsection." *Id.* Thus, because time spent undergoing the security screenings is "work," the Nevada plaintiffs were required to work during their lunch break; thus, they were not given an uninterrupted half-hour, and they should have been paid for their lunch.

The district court dismissed all of Plaintiffs' Nevada wage claims on the grounds that they were noncompensable under the Portal-to-Portal Act. However, even if the Portal-to-Portal Act does apply to Nevada wage claims generally, it does not apply to Plaintiffs' claims relating to their pre-meal security screenings. This is because "[a]s the statute's use of the words 'preliminary' and 'postliminary' suggests, § 254(a)(2), and as our precedents make clear, the Portal-to-Portal Act of 1947 is primarily concerned with defining the beginning and end of the workday." *Integrity Staffing*, 135 S. Ct. at 520 (Sotomayor, J., concurring) (citing *IBP, Inc.*, 546 U.S. at 34-37). On this reasoning, the Portal-to-Portal Act does not apply to claims that employees were uncompensated for time spent *during* the workday. Therefore, if undergoing security screenings is "work" under Nevada law, then the district court erred in dismissing the Nevada plaintiffs' claims relating to their shortened meal-periods.

b. Arizona

Like Nevada, Arizona also fails to define "work." Therefore, it is again appropriate to turn to the federal law for a definition of "work." *See Rosier*, 889 F.2d at 13–14. And, as the analysis above shows, time spent undergoing mandatory security screenings is "work" under federal law and, thus, under Arizona law. But the case under Arizona law may be even stronger.

Arizona law also provides a definition for "hours worked," which states as follows: "'Hours worked' means all hours for which an employee covered under the Act is employed and required to give to the employer, including all time during which an employee is on duty or at a prescribed work place and all time the employee is suffered or permitted to work." Ariz. Admin. Code R20-5-1202(19). "On duty," in turn, means "time spent working or waiting that the employer controls and that the employee is not permitted to use for the employee's own purpose." Ariz. Admin. Code R20-5-1202(22).

Arizona's broad definition of "hours worked" makes it even clearer than Nevada law that time spent undergoing mandatory security screenings is "work."

4. Neither Nevada nor Arizona incorporate the federal Portal-to-Portal Act

a. Nevada

Upon concluding that time spent undergoing mandatory security screenings is "work" under Nevada law, the next question is whether the Nevada legislature has exempted this "work" from being deemed "compensable" under their state wage-hour statutes, as Congress did in enacting the Portal-to-Portal Act.

The district court dismissed both Plaintiffs' Nevada statutory claims and Nevada constitutional claims on the grounds that Nevada had adopted the Portal-to-Portal Act. It concluded that Nevada had adopted the Portal-to-Portal Act because Plaintiffs were unable to "identify any Nevada law that is irreconcilable with the Portal-to-Portal Act." (R. 236, Order PageID # 4695.) The district court reasoned that because Nevada and Arizona wage-hour statutes do not define "work," it must turn to the federal law for a determination of what is "compensable work" and this included the Portal-to-Portal Act. But there is the error of the

district court's analysis: it conflated two independent questions, which we have tried to separate: (1) whether time spent undergoing mandatory security screenings is work, and (2) whether such time is compensable.

Plaintiffs argue that it was appropriate for the district court to look to the federal law's definition of "work," for the reasons we have given above. (Brief for Appellants at 20.) But Plaintiffs also argue that it was inappropriate for the district court to look to the Portal-to-Portal Act to decide the compensability of certain activities. We agree. Absent any affirmative indication that the Nevada legislature intended to adopt the Portal-to-Portal Act, there is no reason to assume that it did.

As mentioned above, the Portal-to-Portal Act provides as follows:

> [N]o employer shall be subject to any liability . . . under the Fair Labor Standards Act . . . on account of the failure of such employer to pay an employee minimum wages, or to pay an employee overtime compensation, for or on account of any of the following activities of such employee engaged in on or after May 14, 1947—
>
> (3) walking, riding, or traveling to and from the actual place of performance of the principal activity or activities which such employee is employed to perform, and
>
> (4) activities which are preliminary to or postliminary to said principal activity or activities,
>
> which occur either prior to the time on any particular workday at which such employee commences, or subsequent to the time on any particular workday at which he ceases, such principal activity or activities.

29 U.S.C. § 254(a).

Plaintiffs argue that Nevada has not adopted "the Portal-to-Portal Act or any comparable legislation." (Brief for Appellants at 13.) Their primary piece of evidence is the absence of evidence that the Nevada legislature did so. They argue that "[t]he problem for Amazon and the District Court is that there are no 'portal-to-portal like' statutes, regulations, or constitutional amendments under Nevada and/or Arizona wage-hour law" and "[t]his fact alone should be the end of the inquiry." (*Id.* at 22–23.)

But Plaintiffs also identify several Nevada laws that they claim are "in direct conflict with the Portal-to-Portal Act." (*Id.* at 23.) For instance, NRS § 608.016 provides that "an employer shall pay to the employee wages for each hour the employee works" and "[a]n employer shall not require an employee to work without wages during a trial or break-in period." Pursuant to this section, Nevada's administrative regulations further provide that "[a]n 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." Nev. Admin. Code § 608.115.

Further, the Nevada legislature expressly included references to federal regulations in multiple parts of NRS Chapter 608. *See, e.g.*, NRS § 608.060(3) (referring to 29 C.F.R. §§ 541.1, 541.2, 41.3, § 541.5, 152); NRS § 608.018(3)(f) (referring to the Motor Carrier Act of 1935); NRS § 608.0116 (29 C.F.R § 541.302; *see also* NAC § 608.100(3)(c) (stating that the Nevada minimum wage provisions do not apply to "[a] person employed as a trainee for a period not longer than 90 days, as described the United States Department of Labor pursuant to section 6(g) of the Fair Labor Standards Act"). That the Nevada legislature expressly adopted some federal regulations indicates that its failure to adopt others was intentional. *See State Dep't of Taxation v. DaimlerChrysler*, 119 P.3d 135, 139 (Nev. 2005) ("[O]missions of subject matters from statutory provisions are presumed to have been intentional.").

There are two Nevada statutes or regulations that bear some resemblance to provisions in the Portal-to-Portal Act. Upon closer examination, however, they are entirely distinct. The first is NRS § 608.200, which limits the 8-hour work requirement to "time actually employed in the mine and does not include time consumed for meals or travel into or out of the actual worksite." Nev. Rev. Stat. § 608.200. But, significantly, this provision applies only to mineworkers, and it includes no mention of "preliminary" and "postliminary" activities. The second is NAC § 608.130, which generally provides payment for travel and training but excludes time the employee spends traveling between work and home. Nev. Admin. Code § 608.130(2)(b). This regulation also omits any reference to "preliminary" and "postliminary" activities. Thus, neither of these provisions can be read to imply that the Nevada legislature intended to adopt the Portal-to-Portal Act. Indeed, if it had adopted the Act, there would be no need to pass NRS § 608.200

or for the Commissioner to issue the regulation § 608.130(2)(b) to exclude time spent traveling to or from a place of work.

Defendants make multiple references to places where Nevada wage-hour law parallels the FLSA, and they refer the Court to cases holding that Nevada courts will interpret a provision of Nevada law the same as its parallel provision in the FLSA. None of that is surprising. But this reasoning is simply irrelevant where Nevada law has no provision parallel to a particular FLSA provision.

Defendants also argue that "there is no Nevada law . . . obviating the Portal-to-Portal amendments to the FLSA." (Brief for Appellees at 23.) True enough. But there is no reason to think such a law would be necessary. Instead, the Nevada legislature has chosen not to affirmatively adopt the law anywhere in the Nevada state code. If, at some point, the Nevada legislature decides to explicitly incorporate the Portal-to-Portal Act into its Code, it can do so.

Furthermore, despite the apocalyptic implications that Defendants seem to believe rejecting the Portal-to-Portal Act in the state of Nevada would have, both California and Washington have declined to incorporate it into their state codes and they seem to be doing fine. *See, e.g.*, *Morillion v. Royal Packing Co.*, 995 P.2d 139 (Ca. 2000) (finding that state labor codes and wage orders "do not contain an express exemption for travel time similar to that of the Portal-to-Portal Act" and holding that "[a]bsent convincing evidence of the [Industrial Wage Commission]'s intent to adopt the federal standard of determining whether time spent traveling is compensable under state law, we decline to import any federal standard, which expressly eliminates substantial protections to employees, by implication"); *Anderson v. State, Dep't of Soc. & Heath Servs.*, 63 P.3d 134, 136 (Wash. Ct. App. 2003) ("We are not persuaded that the Legislature intended to adopt the Portal to Portal Act; and we do not hold that it was adopted.").

In sum, because there is no reason to believe that the Nevada legislature intended to adopt the Portal-to-Portal Act, we are reluctant to infer an entirely unsupported legislative intent.

b. Arizona

As for Arizona, Plaintiffs argue that it too has not "adopted the Portal-to-Portal Act or any comparable legislation." (Brief for Appellants at 13.) The district court, however, held that "[t]he Arizona plaintiffs' claims fail for similar reasons" as the Nevada plaintiffs, (R. 236, Order, PageID # 4699), namely, that Plaintiffs were unable to "identify any [Arizona] law that is irreconcilable with the Portal-to-Portal Act." (*Id.* at PageID # 4695.) As with the Nevada claims, Plaintiffs' argument is that there is no evidence that the Arizona legislature adopted the Act. Indeed, nothing in the Arizona code seems to parallel or incorporate the Portal-to-Portal Act.

Arizona law also seems inconsistent with the Portal-to-Portal Act. For instance, the Industrial Commission[4] has promulgated regulations that state that "no less than the minimum wage shall be paid for *all hours worked*, regardless of the frequency of payment and regardless of whether the wage is paid on an hourly, salaried, commissioned, piece rate, or any other basis." *See* Ariz. Admin. Code R20-5-1206(A) (emphasis added). And as explained above, "hours worked" is defined under Arizona law as "all hours for which an employee covered under the Act is employed and required to give the employer, including *all time during which an employee is on duty or at a prescribed work pace and all time the employee is suffered or permitted to work*." Ariz. Admin. Code R.20-5-1202(9) (emphasis added). And "on duty," means "time spent working or waiting that the employer controls and that the employee is not permitted to use for the employee's own purpose." Ariz. Admin. Code R20-5-1202(12). Plaintiffs thus characterize the Arizona Commission's definitions as creating something of an "'anti' portal-to-portal act." (Brief for Appellants at 29.) Whether or not this is a fair characterization, the language of the regulations strongly suggests that Arizona law is more inclusive than the Portal-to-Portal Act in the types of work it compensates.

[4]The Arizona Industrial Commission is the agency tasked with enforcing and implementing Arizona's wage statute.

Defendants point to an advisory statement from the Commission as evidence that Arizona has adopted the FLSA. As cited by Defendants, that statement reads:

> For purposes of enforcement and implementation of [the Arizona Wage Act], in interpreting and determining "hours worked" under this Act . . . the Industrial Commission of Arizona will be guided by ***and rely upon*** 29 CFR Part 785 – Hours Worked Under the Fair Labor Standards Act . . . .

(Brief for Appellees at 26 (alteration and emphasis in Appellee's brief).) Part 785 includes subpart 785.50, which is the codification of the federal Portal-to-Portal Act. 29 C.F.R. § 785.50. But Defendants' version of the statement omits important qualifying language. Indeed, the ellipses Defendants introduce after the word "Act" and before "the" obscure the full meaning. The unaltered statement reads as follows:

> For purposes of enforcement and implementation of this Act, in interpreting and determining "hours worked" under this Act, *and where consistent with A.A.C. R20-5-1201 et seq. (Arizona Minimum Wage Act Practice and Procedure)*, the Industrial Commission of Arizona will be guided by and rely upon 29 CFR Part 785 – Hours Worked Under the Fair Labor Standards Act of 1938.

Substantive Policy Statement Regarding Interpretation of "Hours Worked" For Purposes of the Arizona Minimum Wage Act, available at https://www.azica.gov/labor-substantive-policy-hours-worked.aspx (last visited May 31, 2018) (emphasis added). The unaltered statement, rather than adopting the FLSA's interpretation in its entirely, merely sets forth the same principle discussed above: namely, that Arizona, like Nevada, looks to the federal law for guidance where it has parallel provisions. Where Arizona law does not have a parallel provision, this statement is not a license to create one.

In sum, there is nothing to suggest that the Arizona legislature intended to adopt the federal Portal-to-Portal Act into its Code. As with Nevada, we refuse to read-in such a significant statute by inference or implication.

C. The Fair Labor Standards Act's "workweek requirement"

The district court dismissed Plaintiffs' Nevada and Arizona claims for the additional reason that they "do not allege that there was a week for which they were paid less than minimum wage." (R. 236, Order, PageID # 4698 (citing *Richardson v. Mountain Range*

Restaurants LLC, No. CV-14-1370-PHX-SMM, 2015 WL 1279237 (D. Ariz. March 20, 2015).) Again, the district court based its conclusion largely on the assumption that Nevada and Arizona incorporate the FLSA.

"The FLSA mandates that '[e]very employer shall pay to each of his employees who in any workweek is engaged in commerce or in the production of goods for commerce' a statutory minimum hourly wage." *Stein v. HHGREGG, Inc.*, 873 F.3d 523, 530 (6th Cir. 2017) (citing 29 U.S.C. § 206(a)). "In addition, if an employee works in excess of forty hours a week, the employee must 'receive[ ] compensation for his employment in excess of [forty hours] at a rate not less than one and one-half times the regular rate at which he is employed.'" *Id.* at 536 (quoting 29 U.S.C. § 207(a)). "The 'regular rate' is 'the hourly rate actually paid the employee for the normal, nonovertime workweek for which he is employed,' and is 'computed for the particular workweek by a mathematical computation in which hours worked are divided into straight-time earnings for such hours to obtain the statutory regular rate.'" *Id.* at 536–37 (quoting 29 C.F.R. § 779.419). "Assuming a week-long pay period, the minimum wage requirement is generally met when an employee's total compensation for the week divided by the total number of hours worked equals or exceeds the required hourly minimum wage, and the overtime requirements are met where total compensation for hours worked in excess of the first forty hours equals or exceeds one and one-half times the minimum wage." *Id.* at 537 (citing *Overnight Motor Transp. Co. v. Missel*, 316 U.S. 572, 580 n.16 (1942); *United States v. Klinghoffer Bros. Realty Corp.*, 285 F.2d 487, 490 (2d Cir. 1960)).

Thus, under federal law, Plaintiffs would be required to identify a particular workweek in which, taking the average rate, they received less than the minimum wage per hour. Plaintiffs argue that Nevada and Arizona law does not calculate the wage requirement in the same way, but that, instead, they only require a plaintiff to allege an hour of work for which she received less than the statutory minimum wage. We agree that there is no basis for concluding that Nevada incorporates the federal workweek requirement. However, we also conclude that Arizona does have an analogous requirement that bars Plaintiffs' claims for minimum wage violations under Arizona law.

1. Nevada Law

The district court held that Plaintiffs' Nevada minimum-wage claims failed for the additional reason that "[u]nder the FLSA, 'the workweek as a whole, not each individual hour within the workweek, determines whether an employer has complied with' the minimum-wage requirement; 'no minimum wage violation occurs so long as the employer's total wage paid to an employee in any given workweek divided by the total hours worked in the workweek equals or exceeds the minimum wage rate.'" (R. 236, Order, PageID # 4697 (quoting *Richardson*, 2015 WL 1279237, at *13–14).) The district court rejected Plaintiffs' argument there was a relevant difference between FLSA and Nevada law.

But there is no basis for the conclusion that Nevada has adopted the FLSA's workweek requirement. Indeed, Nevada's statutes would seem to be inconsistent with such a requirement. NRS § 608.016, for example, provides that an employee must be paid "wages of each *hour* the employee works." Nev. Rev. Stat. § 608.016 (emphasis added). Or Nevada's overtime statute, NRS § 608.018(1)(b), provides that an employer shall pay 1 ½ times an employee's regular wage whenever an employee works "[m]ore than 8 hours in any workday." Nev. Rev. Stat. § 608.018. Further, although Nevada regulations require an employer to "pay an amount that is at least equal to the minimum wage when the amount paid to the employee in a pay period is divided by the number of hours worked by the employee during the pay period," which looks like the FLSA standard, that section explicitly applies only to employees paid "by salary, piece rate or any other wage rate *except for a wage rate based on an hour of time*." Nev. Admin. Code § 608.115(2). The import of § 608.115(2) is clearly that only the minimum wages of *non-hourly* paid employees may be calculated on a per-pay-period basis to determine whether there is a minimum wage violation. Such a regulation is completely inconsistent with the FLSA's workweek requirement.

The cases cited by Defendant for the proposition that Nevada incorporates the federal workweek requirement are not availing. For instance, *Levert v. Trump Ruffin Tower I, LLC*, No. 2:14-cv-01009-RCJ-CWH, (D. Nev. Jan. 9, 2015), actually does not address claims brought under Nevada law. Instead, it holds that Plaintiffs could not bring their FLSA claims because they failed to satisfy the workweek requirement, and then it declined to exercise supplemental

jurisdiction over the Nevada claims. *Id.* at *5. It is not surprising that one needs to satisfy the FLSA's requirements to bring an FLSA claim, but that is hardly relevant here. In *Johnson v. Pink Spot Vapors, Inc.*, No. 2:14-CV-1960 JCM (GWF), 2015 WL 433503 (D. Nev. Feb. 3, 2015), another unpublished district court decision, the court dismissed the plaintiff's FLSA claims for failing to satisfy the workweek pleading requirement and then found that "its analysis of plaintiffs' FLSA claims [was] also applicable" to the plaintiff's state claims. *Id.* at *6. Although this decision nominally supports Defendants' argument, the district court did not give any explanation as to why the FLSA's workweek requirement applied to Nevada state claims.

On balance, we conclude that there is insufficient reason to hold that Nevada adopted the federal workweek requirement.

2. Arizona Law

As for the Arizona plaintiffs, however, we conclude that Arizona does apply a "workweek requirement" analogous to that provided by the FLSA.[5] The district court noted that there was a "dearth of precedent" on whether Arizona adopted the federal workweek standard. (R. 236, Order, PageID # 4701.) However, the regulation is clear:

> (B) If the combined wages of an employee are less than the applicable minimum wage for a work week, the employer shall pay monetary compensation already earned, and no less than the difference between the amounts earned and the minimum wage as required under the Act.
>
> (C) The workweek *is the basis for determining an employee's hourly wage.* Upon hire, an employer shall advise the employee of the employee's designated workweek. Once established, an employer shall not change or manipulate an employee's workweek to evade the requirements of the act.

Ariz. Admin. Code R20-5-1206 (emphasis added).

[5]Additionally, the district court dismissed the Arizona plaintiffs' claims for the recovery of overtime pay under Arizona law on the grounds that Arizona provides no mechanism for the recovery of overtime pay. (R. 236, Order, PageID # 4699) (citing *Reyes v. Lafarga*, No. CV-11-1998-PHX-SMM, 2014 WL 5431172 (D. Ariz. Nov. 20, 2013) ("Arizona does not have an overtime law; consequently, the only overtime protections for Arizonan employees come from the FLSA."). And Plaintiffs have failed to address this issue in their briefs on appeal. Therefore, they have forfeited their claims for overtime pay under Arizona law.

Guidance from the Arizona Industrial Commission is also unhelpful to the Arizona plaintiffs. On its website answering the question, "Is an employer subject to Arizona's minimum wage laws required to pay at least minimum wage for all hours worked?," the Commissioner responds as follows:

> Yes. Minimum wage shall be paid for all hours worked regardless of the frequency of payment *and regardless of whether the wage is paid on an hourly*, salaried, commissioner, piece rate, or any other basis. If in any *workweek* the *combined wages* of an employee are less than the applicable minimum wage, the employer shall pay, in addition to sums already earned, no less than the difference between the amounts earned and the minimum wage.

Industrial Commission of Arizona, Frequently Asked Questions, available at: https://www.azica.gov/frequently-asked-questions-about-wage-and-earned-paid-sick-time-laws (last visited May 31, 2018) (emphasis added).

Thus, because the Arizona plaintiffs have failed to allege a workweek in which they failed to receive the minimum wage, they have failed to plead a violation of Arizona minimum wage law.

CONCLUSION

For the reasons set forth above, we **AFFIRM** the district court's dismissal of Plaintiffs' Arizona claims and **REVERSE** the district court's judgment with regard to the Nevada claims in part and **REMAND** for further proceedings consistent with the opinion of this court.

CONCURRING IN PART AND DISSENTING IN PART

ALICE M. BATCHELDER, Circuit Judge, concurring in part and dissenting in part. "As a federal court applying state law, we anticipate how the . . . state's highest court would rule in the case and . . . [i]f [that] court has not yet addressed the issue, . . . render a prediction by looking to all the available data." *Vance v. Amazon.com*, 852 F.3d 601, 610 (6th Cir. 2017) (quotation marks and citations omitted). In this case, I would expect the Nevada Supreme Court to find that Nevada's wage-and-hour statutes do not differ materially from the FLSA, so they implicitly incorporate the Portal-to-Portal Act's exclusions, and therefore time spent undergoing security checks is not compensable. Because the majority sees this differently, I must respectfully dissent from its analysis of the Nevada-law claims. I otherwise concur in the judgment.

In deciding wage-and-hour issues, Nevada courts look to the FLSA unless Nevada's statutory language is materially different from or inconsistent with it. *Terry v. Sapphire Gentlemen's Club*, 336 P.3d 951, 955-56 (Nev. 2014); *id.* at 958 (harmonizing a state minimum wage law with the FLSA because "the [Nevada] Legislature has not clearly signaled its intent . . . [to] deviate from the federally set course"). To be sure, the Nevada Supreme Court "has signaled its willingness to part ways with the FLSA where the language of Nevada's statutes has so required," *id*. at 956, but it appears to limit that willingness to situations in which it finds "substantive reason to break with the federal courts," *id*. at 957. I find no such reason here.

In *Csomos v. Venetian Casino Resort, LLC*, 381 P.3d 605, *3 (Nev. 2012) (Table), the Nevada Supreme Court found that NRS § 608.018 tracks the FLSA, and has since 2005, because, in amending the provision, the Nevada Legislature expressly intended to "mirror federal law"; citing to comments at the bill's public hearing in 2005 (including "comments from the [Nevada] Labor Commissioner that the exceptions under NRS 608.018 generally track the exceptions that are in the Fair Labor Standards Act"), a Nevada Attorney General Opinion, and further comments during public hearing on a subsequent amendment in 2009. Thus, as the *Csomos* Court put it, NRS § 608.018's "legislative history demonstrates that, although the 2005-2009

version of the statute [wa]s not as clearly worded as the [subsequent] version, the Nevada legislature intended [its overtime law] to track federal law beginning in 2005." *Id*.

Also, in *Rite of Passage v. Nevada Department of Business and Industry*, No. 66388, 2015 WL 9484735, at *1 (Nev. Dec. 23, 2015), the Nevada Supreme Court considered the meaning of the term "work" in NRS § 608.016 and began by citing *Terry*, 336 P.3d at 955-56, for the proposition that, because "Nevada law provides little guidance on this issue, we turn to the federal courts' interpretation of hours worked under the [FLSA]." Consequently, the Nevada Supreme Court decided the meaning of "work" based on the FLSA and federal case law. *Id*.

I recognize that, pursuant to Nevada's Rules of Court, unpublished Nevada Supreme Court opinions do not establish mandatory precedent, Nev. R. App. P. 36(2), and that a party could not even cite *Csomos* or *Rite of Passage* for its persuasive value, *id*. at 36(3). But given that this court is not a "party," and therefore not strictly subject to that limitation, and that our peculiar task is to anticipate or predict the Nevada Supreme Court's opinion "by looking to all the available data," *see Vance*, 852 F.3d at 610, these cases—or at least the underlying support and reasoning therein, even without their explicit holdings—are certainly informative. Regardless, even ignoring them, *Terry* is likely sufficient on its own to establish that the Nevada Supreme Court would follow the FLSA on this issue rather than differentiate it.

For these reasons, I respectfully dissent from the majority's decision as to the Nevada law claims and would instead affirm the judgment of the district court in its entirety.

EXHIBIT 5

Martel Consent to Join
FLSA action in Sargent

Martel Consent to Join

EXHIBIT 3

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

TIFFANY SARGANT, BAILEY CRYDERMAN, 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 **CONSENT TO JOIN**

I understand that this lawsuit has been brought under the Fair Labor Standards Act ("FLSA") and that it seeks unpaid wages from GRAND SIERRA RESORT ("GSR"). I have read the Notice accompanying this Consent to Join. I work, or have worked, for GSR at some point from June 21, 2010, to the present.

I CONSENT TO JOIN THIS LAWSUIT. By signing this Consent to Join, I am agreeing to have Plaintiffs TIFFANY SARGANT, BAILEY CRYDERMAN, HUONG ("ROSIE") BOGGS, and JACQULYN WIEDERHOLT, act as my agents to make decisions on my behalf concerning the litigation and resolution of my FLSA claims. I am also agreeing to be represented by Plaintiffs' attorneys, (Thierman Law Firm, 7287 Lakeside Drive, Reno, NV 89511), and any other attorneys with whom they may associate, unless I hire my own attorney.

Pursuant to 29 U.S.C. 216(b) "No employee shall be a party plaintiff to any such action [under the Fair Labor Standards Act] unless he gives his consent in writing to become such a party and such consent is filed in the court in which such action is brought" and that unless the Court provides otherwise, the statute of limitations is tolled on the federal Fair Labor Standards

Act claims only when the consent to suit is filed with the court. This provision does not apply to other federal and to state law claims.

Signature: Eddy Martel

Date signed: 6/4/14

Print Name: Eddy Martel #2810

EXHIBIT 6

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

EXHIBIT 6

COLLECTIVE BARGAINING AGREEMENT

between

WORKLIFE FINANCIAL, INC.

dba

GRAND SIERRA RESORT AND CASINO

and

CULINARY WORKERS UNION LOCAL 226

2009-2010

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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. <u>Transfer and Sell</u>.
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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Initialed

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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Initialed

	$	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:

K.K / _____
Initialed

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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KK / _____
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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: Stacy S. Ugo	By: Kim Kline
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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Initialed

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.

_____ / KK
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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 Kline

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.

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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: Stanley S. Ugo

Its: V.P. of Human Resources

UNION:

CULINARY WORKERS UNION LOCAL 226

By: Ken Kri

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:	UNION:
WORKLIFE FINANCIAL, INC. dba GRAND SIERRA RESORT	CULINARY WORKERS UNION LOCAL 226
By: Shirley S. Ng	By: Kim Kr
Its: V.P. of Human Resources	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.

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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: Ken 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

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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. Ku
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. Ch	By: Kri Kr
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: Shirley S. Cox	By: Kim Kerr
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 Kin
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:

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•Comments: Please sign- FAX back to me to #: 702-386-9517 #
ATTENTION KEVIN KLINE