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 10 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-RORIGUEZ), MARY ANNE CAPILLA, JANICE JACKSON-WILLIAMS and WHITNEY VAUGHN on behalf of themselves and all others similarly situated, Plaintiffs, v. HG STAFFING, LLC, MEI-GSR HOLDINGS, LLC d/b/a GRAND SIERRA RESORT, and DOES 1 through 50, inclusive, Defendants.	Case No.: CV16-01264 **MOTION FOR SUMMARY JUDGMENT ON ALL CLAIMS ASSERTED BY PLAINTIFFS MARTEL, CAPILLA AND VAUGHN**

Defendants HG STAFFING LLC, and MEI-GSR HOLDINGS, LLC d/b/a GRAND SIERRA RESORT (collectively "GSR"), by and through their counsel of record Cohen|Johnson|Parker|Edwards, hereby move, pursuant to Nev. R. Civ. P. 56, for summary

judgment on all claims asserted by Plaintiffs EDDY MARTEL, MARY ANNE CAPILLA and WHITNEY VAUGHN in their First Amended Class Action Complaint (the "Complaint").

This motion is brought based on the pleadings and papers on file, the attached exhibits, the following Points and Authorities, and any and all argument which may be permitted on a hearing of this matter.

POINTS AND AUTHORITIES

I. INTRODUCTION

The state law wage claims, alleged in the First Amended Class Action Complaint ("Complaint") by Plaintiffs Eddy Martel ("Martel"), Mary Anne Capilla ("Capilla"), and Whitney Vaughn ("Vaughn") (collectively, "Plaintiffs") are all barred by claim preclusion. Plaintiffs wrongly split these state law wage claims from their overtime claims pursued in federal court under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 207, for the sole purpose of avoiding federal jurisdiction. The United State District Court, however, has now dismissed the Plaintiffs Martel, Capilla and Vaughn's federal complaints, alleging these FLSA claims, with prejudice. Because Plaintiffs' state law wage claims asserted in this action, could have been brought in the federal actions, the doctrine of claim preclusion bars Plaintiffs Martel, Capilla and Vaughn's Complaint in this action. Accordingly, this Court should grant GSR's motion for summary judgment on all claims asserted by Plaintiffs Martel, Capilla and Vaughn.

II. BACKGROUND

On January 29, 2019, Plaintiffs Martel, Capilla, Vaughn and Williams filed the First Amended Class Action Complaint ("Complaint") in this action. In their Complaint, Plaintiffs allege that GSR failed to pay certain wages and overtime to Plaintiffs, during their term of employment with GSR, in violation of NRS Chapter 608. *See* Complaint, at ¶¶ 4-7, 20, 25, 29, 33-34, 39, 49-50. Plaintiffs Martel, Capilla and Vaughn, along with numerous other plaintiffs, however, had already filed complaints in federal court alleging GSR failed to pay them overtime, for the same term of employment, but under the FLSA. *See* Exhibit 1, Second Amended Collective Action Complaint "Martel Cash Bank Complaint," Case No. 3:16-CV-00318-LRH-WGC, Doc. 15, ¶¶ 12, 16 (D. Nev. 08/18/16); Exhibit 2, First Amended Collective Action

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Complaint "Vaughn Dance Class Complaint," Case No. 3:16-CV-00386-LRH-WGC, Doc. 14, ¶ 16 (D. Nev. 08/12/16); Exhibit 3, First Amended Collective Action Complaint "Capilla - Vaughn Preshift Meeting Complaint," Case No. 3:16-CV-00392-LRH-WGC, Doc. 12, ¶¶ 11, 15 (D. Nev. 08/12/16).

In orders dated May 15, 2019, the United States District Court dismissed Plaintiffs' federal complaints "with prejudice" based on Plaintiffs' "motion for voluntary dismissal" and "consent to dismissal with prejudice." *See* Exhibit 4, *Ramirez v. HG Staffing, LLC*, Case No. 3:16-cv-00318-LRH-WGC, Order - Doc. 102, at 1:14-21 (D. Nev. 05/14/19); Exhibit 5, *Corral v. HG Staffing, LLC*, Case No. 3:16-cv-00386-LRH-WGC, Order - Doc. 80, at 1:16-23 (D. Nev. 05/14/19); Exhibit 6, *Reader v. HG Staffing, LLC*, Case No. 3:16-cv-00392-LRH-WGC, Order - Doc. 99, at 1:16-23 (D. Nev. 05/14/19); *see also Ramirez v. HG Staffing, LLC*, Case No. 3:16-cv-00318-LRH-WGC, 2019 WL 1177949, at *1 - *4 (D. Nev. Mar. 13, 2019) (granting Plaintiffs' motion for voluntary dismissal pursuant to Fed. R. Civ. 41(a)(2) on condition that Plaintiffs consent to dismissal with prejudice); *Corral v. HG Staffing, LLC*, Case No. 3:16-cv-00386-LRH-WGC, 2019 WL 1177950, at *1 - *4 (D. Nev. Mar. 13, 2019) (same); *Reader v. HG Staffing, LLC*, Case No. 3:16-cv-00392-LRH-WGC, 2018 WL 1973106, at *1 -*4 (D. Nev. Apr. 17, 2018) (same).

Prior to dismissing the Plaintiffs Martel, Capilla and Vaughn's FLSA claims, the United States District court made clear that "whether or not the dismissal of the federal claim here has any implications for the state law claims based upon similar alleged conduct is for the state court to decide." *See* Exhibit 7, *Ramirez v. HG Staffing, LLC*, Case No. 3:16-cv-00318-LRH-WGC, Order - Doc. 101, at 2:1-3 (D. Nev. 04/01/19); Exhibit 8, *Corral v. HG Staffing, LLC*, Case No. 3:16-cv-00386-LRH-WGC, Order - Doc. 79, at 2:1-3 (D. Nev. 04/01/19); Exhibit 9, *Reader v. HG Staffing, LLC*, Case No. 3:16-cv-00392-LRH-WGC, Order - Doc. 98, at 2:1-3 (D. Nev. 04/01/19).

Accordingly, GSR has filed this motion for summary judgment so that this Court may determine the implications of the federal court dismissing Plaintiffs Martel, Capilla and Vaughn's FLSA claims with prejudice on this action asserting state law wage claims for the

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exact same period of employment. Under the test established by the Nevada Supreme Court, Plaintiffs Martel, Capilla and Vaughn's Complaint in this action is barred under the doctrine of claim preclusion. This Court should therefore grant GSR's motion for summary judgment and dismiss all of Plaintiffs Martel, Capilla and Vaughn's claims with prejudice.

III. ARGUMENT

A. Plaintiffs Martel, Capilla and Vaughn's Claims Are Subject to Summary Judgment.

In *Cummings v. City of Las Vegas Mun. Corp*., 88 Nev. 479, 481, 499 P.2d 650, 651 (1972), the Nevada Supreme Court, relying on Nev. R. Civ. P. 56(b), held that a "defendant may move for summary judgment at any time." In *Wood v. Safeway, Inc*., 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005), the Nevada Supreme Court held that summary judgment is appropriate under Nev. R. Civ. P. 56 when "no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law." In *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1058-60 194 P.3d 709, 715-16 (2008), the Nevada Supreme Court held that where "all the necessary elements for claim preclusion are met, summary judgment is appropriate" and should be granted in favor of the defendant.

B. Plaintiffs Martel, Capilla and Vaughn's Complaint Is Barred by Claim Preclusion.

In *Five Star Capital*, the Nevada Supreme Court adopted a "three-part test for determining whether claim preclusion should apply: (1) the parties or their privies 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." 124 Nev. at 1054, 194 P.3d at 713. In the present case, each of these factors have been met and summary judgment should be granted in favor of GSR on all claims brought by Plaintiffs Martel, Capilla and Vaughn.

First, Plaintiffs Martel, Capilla and Vaughn were unquestionably all parties to the federal FLSA wage actions. *See* Exhibit 1, Martel Cash Bank Complaint; Exhibit 2, Vaughn Dance Class Complaint; Exhibit 3, Capilla - Vaughn Preshift Meeting Complaint.

Second, the judgment in the Federal FLSA wage action, based on Martel, Capilla and Vaughn's 's voluntarily dismissal, is valid. The United States District Court dismissed Plaintiffs' federal FLSA claims "with prejudice" based on Plaintiffs' "motion for voluntary

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dismissal" and "consent to dismissal with prejudice." *See* Exhibit 4, *Ramirez*, Case No. 3:16-cv-00318-LRH-WGC, Order - Doc. 102, at 1:14-21; Exhibit 5, *Corral*, Case No. 3:16-cv-00386-LRH-WGC, Order - Doc. 80, at 1:16-23; Exhibit 6, *Reader*, Case No. 3:16-cv-00392-LRH-WGC, Order - Doc. 99, at 1:16-23); *see also Willerton v. Bassham, by Welfare Div., State, Dep't of Human Res.*, 111 Nev. 10, 17, 889 P.2d 823, 827 (1995) (holding "consent judgments do have res judicata effect on the parties to a consent judgment, barring a later suit on the same claims or causes of action as those asserted in a prior proceeding"); *Clark v. Haas Grp., Inc.*, 953 F.2d 1235, 1238 (10th Cir. 1992) ("voluntary dismissal of [wage claims in] first suit, approved by the court with prejudice, was a judgment on the merits" for purposes of res judicata*); Astron Indus. Assocs., Inc. v. Chrysler Motors Corp.*, 405 F.2d 958, 960 (5th Cir. 1968) (holding that "a stipulation of dismissal with prejudice, or, for that matter, a dismissal with prejudice at any stage of a judicial proceeding, normally constitutes a final judgment on the merits which bars a later suit on the same cause of action").[1]

Finally, the state law wage claims of Plaintiffs Martel, Capilla and Vaughn could have been brought in the federal FLSA wage action and therefore are barred by claim preclusion. *See Landers v. Quality Commc'ns, Inc*., Case No. 62181, 2014 WL 3784254, at *3 (Nev. July 30, 2014) (holding that because employee "could have asserted his NRS Chapter 608 claims in the original federal complaint," which federal complaint was dismissed, the employee's complaint filed in state court, alleging NRS Chapter 608 wage claims, was barred by claim preclusion); *Clark*, 953 F.2d at 1238–40 (holding that the employee was precluded from bringing any employment related claims after employee voluntarily dismissed FLSA wage claims because "the doctrine of res judicata precludes parties from relitigating issues that were or could have

[1] *See also Norfolk S. Corp. v. Chevron, U.S.A., Inc*., 371 F.3d 1285, 1288 (11th Cir. 2004) (explaining that "in the absence of a settlement agreement, of course, a judgment of dismissal pursuant to Rule 41 should be given the same res judicata effect as any other judgment"); *Warfield v. AlliedSignal TBS Holdings, Inc*., 267 F.3d 538, 542 (6th Cir. 2001) (holding a "voluntary dismissal with prejudice operates as a final adjudication on the merits and has a res judicata effect"); *United States v. Cunan*, 156 F.3d 110, 114 (1st Cir. 1998) (holding "a voluntary dismissal with prejudice is ordinarily deemed a final judgment that satisfies the res judicata criterion");

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been raised," and "parties cannot defeat its application by simply alleging new legal theories," as this is "precisely the sort of piecemeal litigation, unnecessary expense, and waste of judicial resources that the doctrine of res judicata is designed to prevent"); *Corral v. HG Staffing, LLC*, Case No. 3:16-cv-00386-LRH-WGC, 2017 WL 843172, at *4 (D. Nev. Mar. 2, 2017) (holding that judgment in action alleging "failure to pay overtime in violation of Nevada law" barred FLSA complaint "based in part on the same employer conduct" because "[c]laim preclusion bars a plaintiff from re-litigating the same case based solely on a different legal theory" which "is especially pronounced" when employee's "legal theories are merely state and federal-law duplicates of one another").

As each and every factor for claim preclusion has been met, claim preclusion applies and this Court should grant summary judgment in favor of GSR on all claim brought in this action by Plaintiffs Martel, Capilla and Vaughn.

IV. CONCLUSION

Pursuant to the foregoing, this Court should grant GSR's motion for summary judgment and dismiss the First Amended Class Action Complaint of Plaintiffs Martel, Capilla and Vaughn with prejudice.

AFFIRMATION

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

Dated this 23rd day of May 2019

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PROOF OF SERVICE

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

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

MOTION FOR SUMMARY JUDGMENT ON ALL CLAIMS ASSERTED BY PLAINTIFFS MARTEL, CAPILLA AND VAUGHN

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

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DATED the 23rd day of May 2019.

/s/ Sarah Gondek
An employee of
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EXHIBIT INDEX

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Exhibit 1

Exhibit 1

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ANTONIO RAMIREZ, HILLARY BAKER, RADD BATES, CLAIRE BERRY, BRIGITTE BLISS, FRANCES BOLIN, ESPERANZA BUEHRLE, PATRICK BUKOWSKI, LIZETH CARDENAS-RAMOS, TODD CARNS, TIFFANY CARTER, JESSICA CLAY, JACKLYN CURRY, DAVID DURAN, MELVIN ENGLISH, JAY EYER, LEVI FEUERHERM, DIANA FLORES, FERNANDO GARCIA, MATTHEW GEIS, NICOLE GILDEA, ANDREW GNAGY, ALFRED GORANSON, KEANU GOVAN, STACI GREESON, MARILYN HALL, BRETT HENDERSON, EBONY HOLMES, PATRICIA HUGHES, ASHLIE JONES, SARAH JONES, GERALD LARSON III, CHRISTOPHER LOMBARDO, KEVIN LONG, TERRY MARHANKA, MARY MARSHALL, EDDY MARTEL-RODRIGUEZ, CHRISTINA MARTIN, BONNIE MASSA, CHRISTINA MCCOY, FRANCES MEAGER, KIEL MOORE, ROBERT MORGAN, LOUISE NDOLO-HERMANN, MELISSA NEHRBASS, INEZ NIEGEMANN, STACEY ORNELAS, NANCY PALLAS, SEAN PARK, JAYNE PARTON, MARIA PELAEZ-ROJAS, ARTURO PINEDA, HEATHER RAMIREZ, JOA RECORDS, ADAM REIGLE,

Case No.: 3:16-cv-00318-LRH-WGC

SECOND AMENDED COLLECTIVE ACTION COMPLAINT

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

JURY TRIAL DEMANDED

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CRYSTELLE RIFE, GLORIA ROBOTHAM, MARLENE SANCHEZ, JACQUELINE SANCHEZ (PROVENCIO), BRANDON SCHULTZ, PAUL SCHULTZ, NICOLE SEUFFERT, TRENA SMITH, MICHAEL STEVENS, DARLENE VANCE, EMILY VANDRIELEN, ESPERANZA VASQUEZ, CELENE VASQUEZ, MARIA VESLAZQUEZ-DESED, MICHAEL WALLS, ANDREW WERTH, KARLA WOOLLEY, and MELVIN XITUMUL, 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.

COME NOW Plaintiffs ANTONIO RAMIREZ, HILLARY BAKER, RADD BATES, CLAIRE BERRY, BRIGITTE BLISS, FRANCES BOLIN, ESPERANZA BUEHRLE, PATRICK BUKOWSKI, LIZETH CARDENAS-RAMOS, TODD CARNS, TIFFANY CARTER, JESSICA CLAY, JACKLYN CURRY, DAVID DURAN, MELVIN ENGLISH, JAY EYER, LEVI FEUERHERM, DIANA FLORES, FERNANDO GARCIA, MATTHEW GEIS, NICOLE GILDEA, ANDREW GNAGY, ALFRED GORANSON, KEANU GOVAN, STACI GREESON, MARILYN HALL, BRETT HENDERSON, EBONY HOLMES, PATRICIA HUGHES, ASHLIE JONES, SARAH JONES, GERALD LARSON III, CHRISTOPHER LOMBARDO, KEVIN LONG, TERRY MARHANKA, MARY MARSHALL, EDDY MARTEL-RODRIGUEZ, CHRISTINA MARTIN, BONNIE MASSA, CHRISTINA MCCOY, FRANCES MEAGER, KIEL MOORE, ROBERT MORGAN, LOUISE NDOLO-HERMANN, MELISSA NEHRBASS, INEZ NIEGEMANN, STACEY

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ORNELAS, NANCY PALLAS, SEAN PARK, JAYNE PARTON, MARIA PELAEZ-ROJAS, ARTURO PINEDA, HEATHER RAMIREZ, JOA RECORDS, ADAM REIGLE, CRYSTELLE RIFE, GLORIA ROBOTHAM, MARLENE SANCHEZ, JACQUELINE SANCHEZ (PROVENCIO), BRANDON SCHULTZ, PAUL SCHULTZ, NICOLE SEUFFERT, TRENA SMITH, MICHAEL STEVENS, DARLENE VANCE, EMILY VANDRIELEN, ESPERANZA VASQUEZ, CELENE VASQUEZ, MARIA VESLAZQUEZ-DESED, MICHAEL WALLS, ANDREW WERTH, KARLA WOOLLEY, and MELVIN XITUMUL ("Plaintiffs"), on behalf of themselves and all others similarly situated, and hereby alleges as follows:

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

JURISDICTION AND VENUE

1. This Court has original jurisdiction over the federal claims alleged herein pursuant to the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 216(b).

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

PARTIES

3. Lead named Plaintiff ANTONIO RAMIREZ is natural person who is and was a resident of the State of Nevada at all times relevant herein and was required to carry a cash bank to complete his job duties by Defendants from on or about summer of 2004 through on or about August 2013.

4. Each and every other Plaintiff named herein are natural persons who were employed by Defendants at all times relevant herein.

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

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

7. Defendants, and each of them, are employers under the FLSA and are engaged in commerce for the purposes of the FLSA, 29 U.S.C.§ 201 *et. seq*. For labor relations purposes, Defendants each and together constitute the employer and/or joint employer of Plaintiffs and all Plaintiff class members (hereinafter referred to as "Class Members").

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

FACTUAL ALLEGATIONS

9. Plaintiffs, each and every one named herein, were employed by Defendants as non-exempt hourly employees.

10. Lead named Plaintiff Antonio Ramirez was scheduled for, and regularly worked, five (5) shifts per week, at least eight (8) hours per shift, and forty (40) hours per workweek. Upon information and belief, all other employees, who were required to carry a cash bank in completing their job duties were scheduled for and regularly worked the same or similar schedules.

11. Defendants required all Plaintiffs named herein and all employees who handle monetary transactions in the regular course of their employment to use or "carry" a cash bank. For example, the following job positions are some of those employees who were required to

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carry a cash bank: cashiers, bartenders, change persons, slot attendants, retail attendants, arcade attendants, and front desk agents.

12. Defendants required all Plaintiffs named herein and all employees who carry a cash bank to retrieve and deposit their respective cash bank both before and after the employees' regularly scheduled shifts without compensation. As an example of this policy, lead named Plaintiff Ramirez was required to collect his bank of money at the dispatch cage prior to proceeding to his workstation and without compensation. Similarly, at the end of his regularly scheduled shifts, lead named Plaintiff Ramirez was required to reconcile and deposit his cash bank to the same dispatch cage without compensation. Upon information and belief, all employees who were required to carry a cash bank had to retrieve their cash bank from the same dispatch cage pre- and post-shift and without compensation.

13. Lead named Plaintiff Ramirez estimate it took him approximately 15 minutes each and every work day to perform his banking activities for which he was not paid his regular rate or overtime wages. Upon information and belief, all other GSR employees who carry a cash bank are similarly not compensated for the time in which they spend performing their banking activities.

14. Lead named Plaintiff Antonio Ramirez was paid $8.00 per hour when he left Defendants' employ. Thus, because Defendants' required Mr. Ramirez to work at least 15 minutes of uncompensated work time each and every shift worked, he is owed 1.25 hours or more of overtime (15 minutes per day at five days per week is equal to one hour and 15 minutes). At the required one and one half times his regular rate of pay of $12.00 multiplied by 1.25 hours of overtime he is owed $15.00 per workweek worked.

15. Plaintiffs have attached Exhibit A to this Complaint which contains a table of the calculation of one week of overtime owed to each additional named Plaintiff herein based on their regular rate of pay.

16. Extracting unpaid work from lead named Plaintiff Ramirez and all other Plaintiffs was achieved by either rounding hours so that employees who were technically "on the clock" did not receive pay for all their recorded hours worked or by having employees

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perform work without being logged in to the timekeeping system. Indeed, Defendants maintain an unlawful rounding policy whereby it rounds the time recorded and worked by all hourly employees to the nearest 15 minutes for purposes of calculating payment of wages owed. Such rounding favors the employer and deprives the employees of pay for time they actually perform work activities.

PLAINTIFFS' OPT-IN STATUS

17. Lead named Plaintiff Ramirez and all other Plaintiffs named herein previously opted-in to the case of *Tiffany Sargent, et. al. v. HG Staffing, LLC*, Case No. 3:13-cv-453-LRH-WGC ("*Sargent Action*"). Accordingly, the statute of limitations involved in this case is tolled from the date in which lead named Plaintiff Ramirez and all other Plaintiffs opted-in to the Sargent Action.

COLLECTIVE ACTION ALLEGATIONS

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

19. Plaintiffs seek to represent the following class of employees in Defendants' employ during the relevant time period: **All current and former non-exempt employees employed by Defendants, who worked more than forty (40) hours in any workweek, and who were required to perform banking activities without compensation at any time during the relevant time period alleged herein.**

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

A. Defendants employed Plaintiffs as hourly employees who did not receive overtime premium pay of one and one half times their regular rate of pay for all hours Defendants suffered or permitted them to work over forty (40) hours in a workweek.

B. Plaintiffs' situation is similar to those they seek to represent because Defendants failed to pay Plaintiffs and all other Class Members for all time they were required to conduct banking activities "off the clock" and without compensation but

with the knowledge acquiescence and/or approval (tacit as well as expressed) of Defendants' managers and agents.

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

D. Upon information and belief, Defendants employ, and has employed, in excess of 717 Class Members within the applicable statute of limitations.

E. Plaintiffs have already filed or will file their consents to sue with the Court.

FIRST CAUSE OF ACTION

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

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

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

22. 29 U.S.C. Section 207(a)(1) provides as follows: "Except as otherwise provided in this section, no employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed."

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

24. By failing to compensate Plaintiffs and Class Members for the time spent engaging in the banking activities identified above without compensation, Defendants failed to

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pay Plaintiffs and Class Members overtime for all hours worked in excess of forty (40) hours in a week in violation of 29 U.S.C. Section 207(a)(1).

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

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

JURY TRIAL DEMANDED

Plaintiffs hereby demand a jury trial pursuant to Federal Rule of Civil Procedure 38.

PRAYER FOR RELIEF

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

1. For an order conditionally certifying this action under the FLSA and providing notice to all members of the Class so they may participate in this lawsuit;
2. For an order appointing Plaintiffs as the Representatives of the Class and their counsel as Class Counsel;
3. For damages according to proof for overtime compensation at the applicable rate under federal law for all hours worked over 40 per week;
4. For liquidated damages pursuant to 29 U.S. C. § 216(b);
5. For interest as provided by law at the maximum legal rate;
6. For reasonable attorneys' fees authorized by statute;
7. For costs of suit incurred herein;
8. For pre-judgment and post-judgment interest, as provided by law, and

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

DATED: August 18, 2016

Respectfully Submitted,

THIERMAN BUCK LLP

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

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Exhibit 2

Exhibit 2

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

SHENNA CORRAL (formerly MEENDERINK), WHITNEY VAUGHAN, BRANDI SMITH, JUSTINE BRADLEY, TIFFANY CARRERA, and ROXANNE PRIMUS 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.:

FIRST AMENDED COLLECTIVE ACTION COMPLAINT

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

JURY TRIAL DEMANDED

COME NOW Plaintiffs SHENNA CORRAL (formerly MEENDERINK), WHITNEY VAUGHAN, BRANDI SMITH, JUSTINE BRADLEY, TIFFANY CARRERA, AND ROXANNE PRIMUS ("Plaintiffs"), on behalf of themselves and all others similarly situated, and hereby alleges as follows:

All allegations in this First Amended Complaint are based upon information and belief except for those allegations that pertain to the Plaintiffs named herein and their counsel. Each

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allegation in this First Amended Complaint either has evidentiary support or is likely to have evidentiary support after a reasonable opportunity for further investigation and discovery.

JURISDICTION AND VENUE

1. This Court has original jurisdiction over the federal claims alleged herein pursuant to the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 216(b).

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

PARTIES

3. Lead named Plaintiff SHENNA CORRAL (formerly MEENDERINK) is natural person who is and was a resident of the State of Nevada at all times relevant herein and was employed as a cocktail waitress and ServerTainer by Defendants from on or about September 2103 through on or about February 2016.

4. All other Plaintiffs, each of them, named herein are natural persons who were employed by Defendants at all relevant times herein.

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

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

7. Defendants, and each of them, are employers under the FLSA and are engaged in commerce for the purposes of the FLSA, 29 U.S.C.§ 201 *et. seq.* For labor relations purposes, Defendants each and together constitute the employer and/or joint employer of Plaintiffs and all Plaintiff class members (hereinafter referred to as "Class Members").

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

FACTUAL ALLEGATIONS

9. Plaintiffs, each of them, were employed by Defendants as non-exempt hourly employees.

10. Lead named Plaintiff SHENNA CORRAL (formerly MEENDERINK) was occasionally scheduled for and did work, five (5) shifts per week, at least eight (8) hours per shift, and forty (40) hours per workweek especially during special events and busy periods such as, but not limited to, concerts, Burning Man, Hot August Nights, and Street Vibrations. Upon information and belief, all other ServerTainers and dancing dealers were scheduled for and regularly worked the same or similar schedules.

11. ServerTainers are part cocktail waitresses and part go-go dancers. When not serving they are required to perform choreographed dance moves.

12. Dancing dealers are part table games dealers and part go-go dancers. When not dealing they are required to perform choreographed dance moves.

13. At all times relevant herein, Defendants maintained the following policies, practices, and procedures of requiring ServerTainers and dancing dealers to perform work activities without compensation by having employees perform work without being logged in to the timekeeping system. When named Plaintiff Corral was a ServerTainer she was required to attend dance classes of an hour or more, two to four times a week for which she was not paid her regular rate or overtime wages. If the employee did not attend dance classes, they would be taken off the schedule and written up for misconduct. *See* Exhibit A, page 1, attached, "GSR F&B Standard Operating Procedure – GSR ServerTainer Expectations," hereinafter, GSR ServerTainer Expectations.

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a) The GSR ServerTainer Expectations states at No. 2, "As a ServerTainer, you are required to attend 1 paid rehearsal each week when not learning new steps. When new steps are implemented, you are required to attend 2 rehearsals (which again will be paid). With that said, if you are not up to the GSR ServerTainer standards, you will need to attend more classes on your own time."

b) GSR ServerTainer Expectations No. 3 states, "ServerTainers who are not attending their required classes will not be allowed to work. No dance, no work, no exceptions."

14. Lead named Shenna Corral was paid $8.25 per hour. Thus, because Defendants' required Ms. Corral to work at least 2 hours of uncompensated work time each and every week worked, she is owed at least 2 hours or more of overtime for the weeks in which she worked over forty (40) in a workweek. At the required one and one half times her regular rate of pay of $12.38 multiplied by 2 hours of overtime she is owed $24.75 or more per forty-hour workweek worked.

15. Plaintiffs have attached Exhibit B to this First Amended Complaint which contains a table of the calculation of one week of overtime owed to each additional named Plaintiff herein based on their regular rate of pay.

16. Upon information and belief, all other GSR employees who were similarly employed as ServerTainers and dancing dealers were not compensated for the time in which they attended mandatory dance classes.

PLAINTIFFS' OPT-IN STATUS

17. Lead named Plaintiff Corral and all other plaintiffs alleged herein previously opted-in to the case of *Tiffany Sargent, et. al. v. HG Staffing, LLC*, Case No. 3:13-cv-453-LRH-WGC ("*Sargent Action*"). Accordingly, the statute of limitations involved in this case is tolled from the date in which lead named Plaintiff Corral and all other plaintiffs opted-in to the Sargent Action.

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COLLECTIVE ACTION ALLEGATIONS

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

19. Plaintiffs seek to represent the following class of employees in Defendants' employ during the relevant time period: **All current and former non-exempt employees, employed by Defendants, who worked more than forty (40) hours in a workweek, and who were required to attend dance classes without compensation at any time during the relevant time period alleged herein.**

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

A. Defendants employed Plaintiffs as hourly employees who did not receive overtime premium pay of one and one half times their regular rate of pay for all hours Defendants suffered or permitted them to work over forty (40) hours in a workweek.

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

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

D. Upon information and belief, Defendants employ, and has employed, in excess of 55 Class Members within the applicable statute of limitations.

E. Plaintiffs have already filed or will file their consents to sue with the Court.

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FIRST CAUSE OF ACTION

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

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

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

22. 29 U.S.C. Section 207(a)(1) provides as follows: "Except as otherwise provided in this section, no employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed."

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

24. By failing to compensate Plaintiffs and Class Members for the time spent engaging in the dance classes identified above without compensation, Defendants failed to pay Plaintiffs and Class Members overtime for all hours worked in excess of forty (40) hours in a week in violation of 29 U.S.C. Section 207(a)(1).

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

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

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JURY TRIAL DEMANDED

Plaintiffs hereby demand a jury trial pursuant to Federal Rule of Civil Procedure 38.

PRAYER FOR RELIEF

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

1. For an order conditionally certifying this action under the FLSA and providing notice to all members of the Class so they may participate in this lawsuit;
2. For an order appointing Plaintiffs as the Representatives of the Class and their counsel as Class Counsel;
3. For damages according to proof for overtime compensation at the applicable rate under federal law for all hours worked over 40 per week;
4. For liquidated damages pursuant to 29 U.S. C. § 216(b);
5. For interest as provided by law at the maximum legal rate;
6. For reasonable attorneys' fees authorized by statute;
7. For costs of suit incurred herein;
8. For pre-judgment and post-judgment interest, as provided by law, and
9. For such other and further relief as the Court may deem just and proper.

DATED: August 12, 2016

Respectfully Submitted,

THIERMAN BUCK LLP

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

Index of Exhibits

A. "GSR F&B Standard Operating Procedure – GSR ServerTainer Expectations,"
B. Spreadsheet Regarding Overtime Pay Owed Per Week

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Exhibit 3

Exhibit 3

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

THOMAS READER, JOANNE ALEXANDER, MICHAEL ALMARAZ, CAITLIN ATCHLEY, RICHARD AURIERO, SANDRA AURELI, JOHN BAHURKA, WENDY BASSALLO, SHARON BENUM, JUSTINE BRADLEY, ALEXIS BRYANT, DENA BUCHANAN, MICHAEL BUTLER, MICHAEL CAIN, KATRINA CALLAN, MARY ANNE CAPILLA, TIFFANY CARRERA, TIFFANY CARTER, RICHARD CATLIN, III, DEAN COMOLETTI, JAMES CUSICK, KIMBERLY DIXON, MARQUEZ DONALDSON, KATHERINE DOWLING, NATHAN ERHART, GAVINO EVANGELISTA, SHELLEY FAUST, CLEVELAND GRIFFIN, CAITLIN GUNN, LESLIE HALL, KATHLEEN HALLMARK, BOO HAN, RUSSELL HARRINGTON, MANUEL HARRIS, ROBERT HASTINGS, PATRICK HEERAN, LIZ HEERAN, NATALYA HELD, BRIDGETTE HINES, IMOGEN HOLT, SARAH JONES, NIGEL JONES, THERESA KELLY-MONTGOMERY, STEPHANIE KNAUSS, JUSTINE LANG, YULIA LARSON, JUSTIN LEE, SCOTT LINDSAY, CHRIS

Case No.: 3:16-cv-00392-LRH-VPC

FIRST AMENDED COLLECTIVE ACTION COMPLAINT

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

JURY TRIAL DEMANDED

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LITTLEFIELD, SANDRA MARTINEZ, DANNY MCGOWAN, MICHAEL MCKEE, MARIA MCKENZIE, CALLIE MIANO, RAY MORAIN, KEITH MORRISON, GINA NELSON, JENNIFER NICHOLS, KAROLINA OLECH, NATALIE ORDAS, ARLENE OSORMAN, KATHRYN OWEN, KEITH PARKINS, JARROD PEREZ, MARCELLA PLASCENCIA, ERIC PONSOCK, RICHARD POST, ROXANNE PRIMUS, HEATHER RAMIREZ, SCOTT REYNOLDS, CRYSTELLE RIFE, JAY RITT, GAY ROBERTS, BEVERLY RODRIGUEZ, MELISSA ROSINA, MARTHA ROYBAL, JODY RUSSELL, AMES SABELLANO-CLARK, VICKI, SEYLER, MISTY SHELBY, JENNIFER SHIELDS, CRAIG SIMON, SHAWN SKELTON, BRANDI SMITH, GABRIEL SMITH, KRYSTA STEIGLER, JEFFREY STEPRO, ROGER STEVENS, MARC STRASSNER, JOSIE SUSTIGUER, MARK THOMAS, DELLENA THOMPSON, SUSAN TIMM, JACKI TRUESDELL, CELENE VASQUEZ, WHITNEY VAUGHN, RACHEL WERNER, DANA WOLFF, MEI-SHING WRATSCHKO, and DEAN ZATTERSTROM 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.

COME NOW Plaintiffs THOMAS READER, JOANNE ALEXANDER, MICHAEL ALMARAZ, CAITLIN ATCHLEY, RICHARD AURIERO, SANDRA AURELI, JOHN BAHURKA, WENDY BASSO, SHARON BENUM, JUSTINE BRADLEY, ALEXIS BRYANT, DENA BUCHANAN, MICHAEL BUTLER, MICHAEL CAIN, KATRINA

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CALLAN, MARY ANNE CAPILLA, TIFFANY CARRERA, TIFFANY CARTER, RICHARD CATLIN, III, DEAN COMOLETTI, ROCIO CORIA, JAMES CUSICK, KIMBERLY DIXON, MARQUEZ DONALDSON, KATHERINE DOWLING, NATHAN ERHART, GAVINO EVANGELISTA, SHELLEY FAUST, CLEVELAND GRIFFIN, CAITLIN GUNN, LESLIE HALL, KATHLEEN HALLMARK, BOO HAN, RUSSELL, HARRINGTON, MANUEL HARRIS, ROBERT HASTINGS, PATRICK HEERAN, LIZ HEERAN, NATALYA HELD, BRIDGETTE HINES, IMOGEN HOLT, SARAH JONES, NIGEL JONES, THERESA KELLY-MONTGOMERY, STEPHANIE KNAUSS, JUSTINE LANG, YULIA LARSON, JUSTIN LEE, SCOTT LINDSAY, CHRIS LITTLEFIELD, SANDRA MARTINEZ, DANNY MCGOWAN, MICHAEL MCKEE, MARIA MCKENZIE, CALLIE MIANO, RAY MORAIN, KEITH MORRISON, GINA NELSON, DANIELLE NESBITT-ALCORN, JENNIFER NICHOLS, KAROLINA OLECH, NATALIE ORDAS, ARLENE OSORMAN, KATHRYN OWEN, KEITH PARKINS, JARROD PEREZ, MARCELLA PLASCENCIA, ERIC PONSOCK, RICHARD POST, ROXANNE PRIMUS, HEATHER RAMIREZ, SCOTT REYNOLDS, CRYSTELLE RIFE, JAY RITT, GAY ROBERTS, BEVERLY RODRIGUEZ, MELISSA ROSINA, MARTHA ROYBAL, JODY RUSSELL, AMES SABELLANO-CLARK, VICKI, SEYLER, MISTY SHELBY, JENNIFER SHIELDS, CRAIG SIMON, SHAWN SKELTON, BRANDI SMITH, GABRIEL SMITH, KRYSTA STEIGLER, JEFFREY STEPRO, ROGER STEVENS, MARC STRASSNER, JOSIE SUSTIGUER, MARK THOMAS, DELLENA THOMPSON, SUSAN TIMM, JACKI TRUESDELL, CELENE VASQUEZ, WHITNEY VAUGHN, RACHEL WERNER, DANA WOLFF, MEI-SHING WRATSCHKO, DEAN ZATTERSTROM ("Plaintiffs"), on behalf of themselves and all others similarly situated, and hereby alleges as follows:

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

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JURISDICTION AND VENUE

1. This Court has original jurisdiction over the federal claims alleged herein pursuant to the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 216(b).

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

PARTIES

3. Lead named Plaintiff THOMAS READER is natural person who is and was a resident of the State of Nevada at all times relevant herein and was employed as a security guard and was required to attend pre-shift meetings by Defendants from on or about May 2008 through on or about June 2013.

4. All other Plaintiffs, each of them, named herein are natural persons who were employed by Defendants throughout all times relevant herein.

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

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

7. Defendants, and each of them, are employers under the FLSA and are engaged in commerce for the purposes of the FLSA, 29 U.S.C.§ 201 *et. seq*. For labor relations purposes, Defendants each and together constitute the employer and/or joint employer of Plaintiffs and all Plaintiff class members (hereinafter referred to as "Class Members").

8. The identity of DOES 1-50 is unknown at this time and this First Amended Complaint will be amended at such time when the identities are known to Plaintiffs. Plaintiffs are informed and believe that each of Defendants sued herein as DOE is responsible in some

manner for the acts, omissions, or representations alleged herein and any reference to "Defendant," "Defendants," or "GSR" herein shall mean "Defendants and each of them."

FACTUAL ALLEGATIONS

9. Plaintiffs, each of them, were employed by Defendants as non-exempt hourly employees.

10. Lead named Plaintiff T. Reader was scheduled for, and regularly worked, five (5) shifts per week, at least eight (8) hours per shift, and forty (40) hours per workweek. Upon information and belief, all other similarly situated employees were scheduled for and regularly worked the same or similar schedules.

11. Defendants required all employees who worked as dealers, cocktail waitresses, bartenders, security guards, technicians, construction workers, and retail attendants to attend a pre-shift meeting without compensation. The pre-shift meetings were held in order to instruct employees on job duties, special events in the area and at the GSR, occupancy, and other job related information. Pre-shift meetings could take 10 minutes or more and were either held off the clock or during the period of time that was improperly rounded off of employees' time cards.

12. Named Plaintiff T. Reader was required to attend these pre-shift meetings without compensation and for which he was not paid his minimum, regular rate, or overtime wages. Based on his knowledge and belief all employees who were similarly employed as dealers, cocktail waitresses, baristas, security guards, bartenders, and retail attendants followed the same policy and procedure as mandated by Defendant

13. Lead named T. Reader was paid $11.00 per hour. Thus, because Defendants' required Mr. Reader to work at least 10 minutes of uncompensated work time each and every shift worked, she is owed 50 minutes or more of overtime; i.e., 10 minutes per day at five days per week is equal to 50 minutes or .83. At the required one and one half times her regular rate of pay of $16.50 multiplied by .83 hours of overtime she is owed $13.70 per workweek worked.

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14. Plaintiffs have attached Exhibit A to this First Amended Complaint which contains a table of the calculation of one week of overtime owed to each additional named Plaintiff herein based on their regular rate of pay.[1]

15. Extracting unpaid work from Lead named Plaintiff T. Reader and all other Plaintiffs was achieved by either rounding hours so that employees who were technically "on the clock" did not receive pay for all their recorded hours worked or by having employees perform work without being logged in to the timekeeping system. Indeed, Defendants maintain an unlawful rounding policy whereby it rounds the time recorded and worked by all hourly employees to the nearest 15 minutes for purposes of calculating payment of wages owed. Such rounding favors the employer and deprives the employees of pay for time they actually perform work activities.

PLAINTIFFS' OPT-IN STATUS

16. Lead named Plaintiff T. Reader and all other Plaintiffs alleged herein previously opted-in to the case of *Tiffany Sargent, et. al. v. HG Staffing, LLC*, Case No. 3:13-cv-453-LRH-WGC ("*Sargent Action*"). Accordingly, the statute of limitations involved in this case is tolled from the date in which lead named Plaintiff T. Reader and all other Plaintiffs opted-in to the Sargent Action.

COLLECTIVE ACTION ALLEGATIONS

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

18. Plaintiffs seek to represent the following class of employees in Defendants' employ during the relevant time period: **All current and former non-exempt employees employed by Defendants, who worked more than forty (40) hours in any workweek, and who were required to attend a pre-shift meeting without compensation at any time during the relevant time period alleged herein.**

[1] Plaintiffs do not have hourly wage rate information for the following Plaintiffs: Mary Anne Capilla and Gina Nelson.

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

A. Defendants employed Plaintiffs as hourly employees who did not receive overtime premium pay of one and one half times their regular rate of pay for all hours Defendants suffered or permitted them to work over forty (40) hours in a workweek.

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

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

D. Upon information and belief, Defendants employ, and has employed, in excess of 1,377 Class Members within the applicable statute of limitations.

E. Plaintiffs have already filed or will file their consents to sue with the Court.

FIRST CAUSE OF ACTION

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

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

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

21. 29 U.S.C. Section 207(a)(1) provides as follows: "Except as otherwise provided in this section, no employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an

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enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed."

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

23. By failing to compensate Plaintiffs and Class Members for the time spent engaging in the pre-shift activities identified above without compensation, Defendants failed to pay Plaintiffs and Class Members overtime for all hours worked in excess of forty (40) hours in a week in violation of 29 U.S.C. Section 207(a)(1).

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

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

JURY TRIAL DEMANDED

Plaintiffs hereby demand a jury trial pursuant to Federal Rule of Civil Procedure 38.

PRAYER FOR RELIEF

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

1. For an order conditionally certifying this action under the FLSA and providing notice to all members of the Class so they may participate in this lawsuit;

2. For an order appointing Plaintiffs as the Representatives of the Class and their counsel as Class Counsel;

3. For damages according to proof for overtime compensation at the applicable rate under federal law for all hours worked over 40 per week;

4. For liquidated damages pursuant to 29 U.S. C. § 216(b);

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

6. For reasonable attorneys' fees authorized by statute;

7. For costs of suit incurred herein;

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

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

DATED: August 12, 2016

Respectfully Submitted,

THIERMAN BUCK LLP

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

Attorneys for Plaintiffs

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Index of Exhibits

A. Spreadsheet Regarding Overtime Pay Owed Per Week

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Exhibit 4

Exhibit 4

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * *

ANTONIO RAMIREZ, *et al.*, Plaintiffs, v. HG STAFFING, LLC; MEI-GSR HOLDINGS LLC d/b/a GRAND SIERRA RESORT; and Does 1 through 50, inclusive, Defendants.	Case No. 3:16-cv-00318-LRH-WGC ORDER

On March 27, 2019, the court clarified its prior order granting plaintiffs' motion for voluntary dismissal on the condition that it be with prejudice (ECF No. 97). ECF No. 99. The court reiterated that plaintiffs had 30 days from the date of the Order (March 27, 2019) to withdraw their motion or consent to the dismissal despite the condition. *Id.* The court further provided that a failure to respond would constitute a consent to dismissal with prejudice. *Id.* Plaintiffs have filed neither a withdrawal of their motion nor a consent within the required time.

IT IS THEREFORE ORDERED that this case is voluntarily dismissed with prejudice, and the Clerk of Court is ordered to close the case.

IT IS SO ORDERED.

DATED this 14th day of May, 2019.

LARRY R. HICKS
UNITED STATES DISTRICT JUDGE

Exhibit 5

Exhibit 5

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * *

SHENNA CORRAL, *et al.*, Plaintiffs, v. HG STAFFING, LLC; MEI-GSR HOLDINGS LLC d/b/a GRAND SIERRA RESORT; and Does 1 through 50, inclusive, Defendants.	Case No. 3:16-cv-00386-LRH-WGC ORDER

On March 27, 2019, the court clarified its prior order granting plaintiffs' motion for voluntary dismissal on the condition that it be with prejudice (ECF No. 75). ECF No. 77. The court reiterated that plaintiffs had 30 days from the date of the Order (March 27, 2019) to withdraw their motion or consent to the dismissal despite the condition. *Id.* The court further provided that a failure to respond would constitute a consent to dismissal with prejudice. *Id.* Plaintiffs have filed neither a withdrawal of their motion nor a consent within the required time.

IT IS THEREFORE ORDERED that this case is voluntarily dismissed with prejudice, and the Clerk of Court is ordered to close the case.

IT IS SO ORDERED.

DATED this 14th day of May, 2019.

LARRY R. HICKS
UNITED STATES DISTRIACT JUDGE

Exhibit 6

Exhibit 6

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * *

THOMAS READER, *et al.*, Plaintiffs, v. HG STAFFING, LLC; MEI-GSR HOLDINGS LLC d/b/a GRAND SIERRA RESORT; and Does 1 through 50, inclusive, Defendants.	Case No. 3:16-cv-00392-LRH-WGC ORDER

On March 27, 2019, the court clarified its prior order granting plaintiffs' motion for voluntary dismissal on the condition that it be with prejudice (ECF No. 94). ECF No. 96. The court reiterated that plaintiffs had 30 days from the date of the Order (March 27, 2019) to withdraw their motion or consent to the dismissal despite the condition. *Id.* The court further provided that a failure to respond would constitute a consent to dismissal with prejudice. *Id.* Plaintiffs have filed neither a withdrawal of their motion nor a consent within the required time.

IT IS THEREFORE ORDERED that this case is voluntarily dismissed with prejudice, and the Clerk of Court is ordered to close the case.

IT IS SO ORDERED.

DATED this 14th day of May, 2019.

LARRY R. HICKS
UNITED STATES DISTRIACT JUDGE

Exhibit 7

Exhibit 7

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * *

ANTONIO RAMIREZ, *et al.*, Plaintiffs, v. HG STAFFING, LLC; MEI-GSR HOLDINGS LLC d/b/a GRAND SIERRA RESORT; and Does 1 through 50, inclusive, Defendants.	Case No. 3:16-cv-00318-LRH-WGC ORDER

Defendants motion this court to clarify further that its prior order (ECF No. 99) "does not dictate to the state court the preclusive effect of this Court's order dismissing Plaintiffs' federal claims with prejudice." ECF No. 100.

In the court's prior order, it stated, "This ruling is in accordance with *Smith v. Lenches*, 263 F.3d 972, 976 n.6 (9th Cir. 2001)." ECF No. 99. This footnote, in its entirety, states:

> EFI also argues that the district court erred in reciting in its order that the dismissal of the federal claims was "without prejudice to plaintiffs' asserting their state law causes of action in the state court case, even though based upon the same conduct alleged in this federal action." On the basis of this language, EFI argues that this was error because the district court had no jurisdiction to rule on Smith's state law causes of action. However, we do not read the district court's order as making any decision of state law. The district court's order simply dismissed these claims without prejudice to show that the federal district court was not adjudicating anything regarding the state claims. **Whether or not the dismissal of the federal claims here has any implications for assertion of state law claims pending in state court is a question to be decided by the state court.**

Smith, 263 F.3d at 976 n.6 (emphasis added).

///

THEREFORE, it is clear that whether or not the dismissal of the federal claim here has any implications for the state law claims based upon similar alleged conduct is for the state court to decide. The intention of this court is to limit its order specifically to the plaintiffs' federal claims. The Court sees no reason to further clarify its prior order.

IT IS SO ORDERED.

DATED this 1st day of April, 2019.

LARRY R. HICKS
UNITED STATES DISTRICT JUDGE

Exhibit 8

Exhibit 8

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * *

SHENNA CORRAL, *et al.*, Plaintiffs, v. HG STAFFING, LLC; MEI-GSR HOLDINGS LLC d/b/a GRAND SIERRA RESORT; and Does 1 through 50, inclusive, Defendants.	Case No. 3:16-cv-00386-LRH-WGC ORDER

Defendants motion this court to clarify further that its prior order (ECF No. 77) "does not dictate to the state court the preclusive effect of this Court's order dismissing Plaintiffs' federal claims with prejudice." ECF No. 78.

In the court's prior order, it stated, "This ruling is in accordance with *Smith v. Lenches*, 263 F.3d 972, 976 n.6 (9th Cir. 2001)." ECF No. 77. This footnote, in its entirety, states:

> EFI also argues that the district court erred in reciting in its order that the dismissal of the federal claims was "without prejudice to plaintiffs' asserting their state law causes of action in the state court case, even though based upon the same conduct alleged in this federal action." On the basis of this language, EFI argues that this was error because the district court had no jurisdiction to rule on Smith's state law causes of action. However, we do not read the district court's order as making any decision of state law. The district court's order simply dismissed these claims without prejudice to show that the federal district court was not adjudicating anything regarding the state claims. **Whether or not the dismissal of the federal claims here has any implications for assertion of state law claims pending in state court is a question to be decided by the state court.**

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IT IS SO ORDERED.

DATED this 1st day of April, 2019.

LARRY R. HICKS
UNITED STATES DISTRICT JUDGE

Exhibit 9

Exhibit 9

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * *

THOMAS READER, *et al.*, Plaintiffs, v. HG STAFFING, LLC; MEI-GSR HOLDINGS LLC d/b/a GRAND SIERRA RESORT; and Does 1 through 50, inclusive, Defendants.	Case No. 3:16-cv-00392-LRH-WGC ORDER

Defendants motion this court to clarify further that its prior order (ECF No. 96) "does not dictate to the state court the preclusive effect of this Court's order dismissing Plaintiffs' federal claims with prejudice." ECF No. 97.

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IT IS SO ORDERED.

DATED this 1st day of April, 2019.

LARRY R. HICKS
UNITED STATES DISTRICT JUDGE

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Attorneys for Plaintiffs

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 FOR SUMMARY JUDGMENT ON ALL CLAIMS ASSERTED BY PLAINTIFFS MARTEL, CAPILLA AND VAUGHAN

Plaintiffs EDDY MARTEL (also known as MARTEL-RODRIGUEZ), MARY ANNE CAPILLA, JANICE JACKSON-WILLIAMS[1], and WHITNEY VAUGHAN ("Plaintiffs"), on behalf of themselves and all others similarly situated hereby respond to Defendants' Motion for Summary Judgment on all claims asserted by Plaintiffs.

MEMORANDUM OF POINTS AND AUTHORITIES

[1] Named Plaintiff, Janice Jackson-Williams, on behalf of herself and the proposed Room Attendant Class is not included in Defendants' Motion for Summary Judgement.

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I. INTRODUCTION

In dismissing the cases of Benson et al. v. HG Staffing LLC, MEI-GSR Holdings, LLC, dba Grand Sierra Resort, Corral et al. v. HG Staffing LLC, MEI-GSR Holdings, LLC, dba Grand Sierra Resort, S. Reader et al. v. HG Staffing LLC, MEI-GSR Holdings, LLC, dba Grand Sierra Resort, T. Reader et al. v. HG Staffing LLC, MEI-GSR Holdings, LLC, dba Grand Sierra Resort, and Ramirez et al. v. HG Staffing LLC, MEI-GSR Holdings, LLC, dba Grand Sierra Resort, the Honorable Judge Hicks noted that ***only*** the federal Fair Labor Standards Act ("FLSA") claims shall be dismissed with prejudice, ***but that*** the Order "is without prejudice as to plaintiffs' state law causes of action in state court, even though the court acknowledges that the alleged conduct is the same. This ruling is in accordance with Smith v. Lenches, 263 F.3d 972, 976, n. 6 (9th Cir. 2001)."[2]

This Court is bound by both Nevada state law and precedent set by the Court of Appeals for the Ninth Circuit which supports Plaintiffs' ability to seek redress from this Court for Defendants' systematic wage theft. Specific to Nevada law because there is no claim preclusion present for these Plaintiffs under the three factors set forth by Five Star Capital Corp. v. Ruby, 124 Nev. 1048, 1055, 194 P.3d 709, 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). And, pursuant to Ninth Circuit precedence as set forth in Smith v. Lenches.

Defendants' ("Defendants" or "GSR") claim preclusion argument does not meet even one prong of the claim preclusion test set forth by the Supreme Court of Nevada in Five Star/Weddell. First, Martel, Capilla, and Vaughan could not have brought their claims in either the Benson, Corral, S. Reader, T. Reader, or Ramirez actions, because this action (hereinafter "Martel") was filed prior to the federal court actions! The Martel action in this Court was filed on June 14, 2016, weeks prior to the Benson, Corral, S.

[2] See Orders attached to Plaintiffs' Supplemental Authority filed April 3, 2019 at p. 2:1-5.

Reader, and T. Reader, actions being filed in federal court.[3] Defendant then removed to federal court on July 25, 2016 to coordinate this action with the later filed federal actions but the federal court remanded this action back to this Court on December 6, 2016 because the federal court did not have any jurisdiction on this first filed action. See Exhibit 6, 12/06/16 Jones Order. Thus, the Martel action is the first action not the subsequent action and claim preclusion cannot apply.

Second, Judge Hicks' Orders dismissing the Benson, Corral, S. Reader, T. Reader, and Ramirez actions specifically allows for employee plaintiffs such as Martel, Capilla, and Vaughan to file state law causes of action based on Ninth Circuit precedence set forth in Smith v. Lenches. Moreover Martel, Capilla, and Vaughan have never been parties to the Benson, Corral, S. Reader, T. Reader, and Ramirez federal FLSA cases because no consents to join were ever filed with the Benson, Corral, S. Reader, T. Reader, and Ramirez court and those cases have never been certified as collective actions.

And, finally, the voluntary dismissal in Benson, Corral, S. Reader, T. Reader, and Ramirez actions are not final, valid judgments that preclude the Nevada wage and hour claims in this Court because the public policy exception set out Willerton v. Bassham, 111 Nev. 10, 889 P.2d 823 (1995) would contravene important public policy considerations and the remedial nature of Nevada's wage and hour statutes to provide concrete safeguards concerning hours of work, working conditions, and employee compensation. See NRS 608.005.

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[3] See Exhibits 1-5: Benson et al. v. HG Staffing LLC, MEI-GSR Holdings, LLC, dba Grand Sierra Resort, Case No. 3:16-cv-00388-HDM-WGC, filed 6/28/16; Corral et al. v. HG Staffing LLC, MEI-GSR Holdings, LLC, dba Grand Sierra Resort, Case No. 3:16-cv-00386-HDM-WGC, filed 6/28/16; S. Reader et al. v. HG Staffing LLC, MEI-GSR Holdings, LLC, dba Grand Sierra Resort, Case No. 3:16-cv-00387-HDM-WGC, filed 6/28/16; T. Reader et al. v. HG Staffing LLC, MEI-GSR Holdings, LLC, dba Grand Sierra Resort, Case No. 3:16-cv-00392-LRH-WGC, filed 6/29/16. Ramirez et al. v. HG Staffing LLC, MEI-GSR Holdings, LLC, dba Grand Sierra Resort, Case No. 3:16-cv-00318-LRH-WGC, filed 6/10/16 but because the federal court remanded the Martel action back to this Court, the plaintiffs were barred from asserting their claims in federal court.

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Defendants' assertion that "Plaintiffs wrongly split these state law claims from their overtime claims pursued in federal court under the Fair labor Standards Act ("FLSA"), 29 U.S.C. § 207, for the sole purpose of avoiding federal jurisdiction"[4] ignores the fact that ***this action was the first filed action*** and the federal court remanded this action back to this Court.[5] The remedial nature of Nevada's wage and hour laws vests this Court with the duty to make a determination on the legality of the Defendant employer GSR's practices and policies; indeed, it is the only forum left open to these minimum wage employees.

Because GSR conveniently disregards clear precedent set by the Court of Appeals for the Ninth Circuit, ***and*** fails to meet the claim preclusion test set forth by the Supreme Court of Nevada in Five Star/Weddell as further analyzed herein, GSR's Motion for Summary Judgment on all claims asserted by three of the four Named Plaintiffs must be denied.

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.

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 employees have

[4] See Motion at p. 2:11-13, hereinafter "Motion" or "Mot.".

[5] Defendants' "claim splitting" argument should have been brought in the later filed action in federal court before Judge Hicks but they declined to do so.

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a private right of action to bring statutory wage claims pursuant to NRS 608.140, 608.016, 608.018, and 608.020-.050).[6] 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' January 2017 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 has been fully briefed by the Parties and was submitted on March 18, 2019.

Plaintiffs field their Supplemental Authority attaching the Honorable Judge Hick's Orders dismissing the Benson, Corral, S. Reader, T. Reader, and Ramirez actions.

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[6] Plaintiffs have previously explained in their Opposition to Defendants' Motion to Dismiss that the federal court in Sargent, dismissed the Sargent plaintiffs' Nevada state law wage and hour claims on an erroneous reasoning that employee plaintiffs do not have a private right of action to sue their employers for violations of Nevada wage and hour laws. See Plaintiffs' Opposition to Defendants' Motion to Dismiss Plaintiffs' First Amended Complaint, filed 2/28/19 at § A, attaching as Exhibit 1, Docket No. 172, CASE No. 3:13-cv-00453-LRH-WGC (January 12, 2016)). 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.

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Defendants filed their Motion for Summary Judgment on all claims asserted by three of the four named plaintiffs, Plaintiffs Martel, Capilla, and Vaughan on March 23, 2019. Plaintiffs Oppose here.

III. LEGAL ARGUMENT

A. Claim preclusion does not apply because there has been no final judgement in a *previous* action, the instant action is not based on the same claims or any part of them that were or could have been brought in a *first* action, and the parties or their privies are not the same.

In Five Star Capital Corp. v. Ruby, the Nevada Supreme Court explained that 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, 713–14 (2008) (emphasis added). After providing a detailed history of the doctrines of issue and claim preclusion in Nevada, the Five Star Court set forth the test for claim preclusion in Nevada, which was modified by Weddell v. Sharp, Weddell v. Sharp, 131 Nev. Adv. Op. 28, 350 P.3d 80, 81 (2015) *holding modifying only the privity requirement for nonmutual claim preclusion*. In Weddell v. Sharp, the Court revised the privity requirement established in Five Star Capital Corp. v. Ruby, to incorporate the principles of nonmutual claim preclusion, meaning that for claim preclusion to apply, a defendant must demonstrate: (1) there has been a valid, final judgment in a ***previous*** action; (2) the subsequent action is based on the same claims or any part of them that were or could have been brought in the ***first*** action; ***and*** (3) the parties or their privies are the same in the instant lawsuit as they were in the ***previous*** lawsuit. Weddell v. Sharp, 131 Nev. Adv. Op. 28, 350 P.3d 80, 81 (2015). The Five Star/Weddell test is conjunctive and thus all three prongs must be met for Defendants to succeed. Here, Defendant cannot meet even one prong because the Martel action was filed before the Benson, Corral, S. Reader, and T. Reader lawsuits and the federal district court remanded the Martel action back to this Court after the Ramirez action was filed.

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1. There has been no valid, final judgement in a *previous* action specific to any employee-plaintiffs Nevada wage and hour law allegations.

As an initial matter, there is no ***previous*** action to the Martel action, which alleges the four Nevada wage and hour violations. Benson, Corral, S. Reader, and T. Reader were all filed after the Martel action. See footnote 3. And Defendants filed their petition for removal of this action on July 25, 2016 to consolidate with the federal actions but the federal court remanded to this Court on December 6, 2016 on the grounds that there was no jurisdiction. See Exhibit 6, 12/06/16 Jones Order. Thus, the Martel action is the first action not the subsequent action and claim preclusion cannot apply simply because the second filed action concluded prior to the first filed action. Moreover, none of the employee plaintiffs could have filed their Nevada law claims in federal court in the Benson, Corral, S. Reader, T. Reader, and Ramirez actions because Judge Hicks had previously ruled that employee plaintiffs were not entitled to sue their employers in court in the Sargent decision. A ruling that would be overturned by Neville in December 2017, a year and a half ***after*** the Martel, Benson, Corral, S. Reader, T. Reader, and Ramirez actions had been filed.

Nevertheless, Defendants remarkably still argue that the dismissal with prejudice of the single FLSA overtime claim alleged in the Benson, Corral, S. Reader, T. Reader, and Ramirez actions have some preclusive effect on the four Nevada wage and hour claims alleged in the instant case by relying on the federal district court's Orders, even though the federal court specifically held that the Plaintiffs here are not precluded from bringing their state law claims. Defendants cite to clarification Orders (Exhibits 4 – 6 attached to their Motion) while completely ignoring the actual Orders containing the legal analysis and Ninth Circuit precedence relied on by Judge Hicks. In those Orders, Judge Hicks ruled that "federal Fair Labor Standards Act ("FLSA") claims shall be dismissed with prejudice," ***but that*** the Orders are "without prejudice as to plaintiffs' state law causes of action in state court, even though the court acknowledges that the alleged conduct is the same. This ruling is in accordance with Smith v. Lenches, 263 F.3d 972,

976, n. 6 (9th Cir. 2001)." See Orders attached to Plaintiffs' Supplemental Authority filed April 3, 2019 at p. 2:1-5.

While the underlying employer conduct may have been the same, the legal requirements for a violation of the FLSA and NRS 608 claims are drastically different. Defendants' argument that the FLSA claims are identical to the Nevada wage claims, is incorrect. Nevada wage hour law is distinct from the FLSA in many respects and exceeds the FLSA in numerous respects as more fully analyzed in Plaintiffs' Opposition to Defendants' Motion to Dismiss the FAC. Briefly, and specifically 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; (4) Nevada law provides for waiting time penalties (see NRS 608.020-.050) but the FLSA does not; (5) the statues of limitations for Nevada law and the FLSA are also distinct with the FLSA limitations period running for three years based on a willfulness determination (see 29 U.S.C. § 255(a)), where Nevada makes no such willfulness requirement, instead basing the limitations period on the underlying statutory claim. 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 Judge Hicks, nor could they have been ruled on in Benson, Corral, S. Reader, T. Reader, or Ramirez, because questions of Nevada law were never before the court.

The only claim that has been dismissed with prejudice is the single federal overtime claim pursuant to 29 U.S.C. § 207. Indeed, all the plaintiff employees in Benson, Corral, S. Reader, T. Reader, and Ramirez still have the right to assert Nevada wage and hour claims pursuant to the Ninth Circuit's ruling in Smith v. Lenches; see also

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Skeen Farms, Inc. v. Nyssa Co-Op Supply, 2009 WL 10693513, *2 (D. Or. Jan. 14, 2009) (dismissing plaintiff's voluntary dismissal of federal claims with prejudice and without prejudice to plaintiff's state law claims). The Smith v. Lenches court explained that a defendant in a class action suffered no legal prejudice as the result of a voluntary dismissal of federal claims with prejudice, even though plaintiffs first-filed state-court action was based on the same facts and remained pending. Smith, 263 F. 3d at 975-76. The court further explained that the plaintiffs were entitled to abandon the federal action after deciding that state litigation was preferable for class interests. Id. This is the exact fact pattern here. The dismissal of the federal FLSA claims has no bearing on the ultimate questions before this Court. There has been no judgment on the merits based on the undeniable fact that there has been no analysis, by any court whatsoever, on whether or not GSR's policies and practices of failure to pay its minimum-wage employees for compensable pre- and post-shift work, rounding, and off-the-clock work runs afoul of Nevada's wage and hour laws.

a. Defendants citations actually support Plaintiffs' position.

Notwithstanding the defective citations to the Corral, Reader, and Ramirez Orders (Mot. at p. 5:1-4), Defendants' citation to Willerton v. Bassham actually supports Plaintiffs' arguments.[7]

In Willerton v. Bassham, the questions was whether a stipulated judgment in a paternity suit prevented later judicial modification of the support adjudication. Willerton v. Bassham, 111 Nev. 10, 889 P.2d 823 (1995). Although the Court held that "consent judgments do have res judicata effect on the parties to a consent judgement, barring a later suit on the same claims or causes of action as those asserted in a prior proceeding," the Court noted an "exception to according res judicata effect to a prior judgment when

[7] Defendants also cite to Clark c. Hass Grp., Inc., a 1992 10th Circuit case, and Astron Indus. Assocs., Inc., a 1968 5th Circuit case that are not binding on this court nor do they have any persuasive effect because the law of the Ninth Circuit as set forth in Smith V. Lenches, clearly supports the ability of employee plaintiffs to assert their state law claims in this Court. See Smith, 263 F.3d at 976 n. 6.

to accord preclusive effect would contravene an important public policy, particularly when the judgement was entered after stipulation or settlement." Id. at 18-19. First, there was no stipulation or settlement of the Benson, Corral, S. Reader, T. Reader, and Ramirez claims; those plaintiffs sought voluntary dismissal which was granted and cannot be held valid, final, or by consent under the law specific to the employees' Nevada law wage and hour claims. Indeed, the plaintiffs in the federal action specifically conditioned their voluntary dismissal on the survivability of their state law wage claims.

Second, in rejecting the argument that the finality of stipulated judgments made the agreed-upon support obligations nonmodifiable, the Willerton court relied on the state's "compelling interest in seeing that any provisions for the support of a child incorporated in ... settlement agreements are modifiable." *Id.* at 24, 889 P.2d at 832. The court's characterization of NRS Chapter 125B's modification provisions as "protections" that cannot be waived or avoided by agreement (id. at 26, 889 P.2d at 833) are analogous to NRS Chapter 608's edict 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.").[8] Accordingly, Willerton is not analogous and actually supports a denial of claim preclusion.

[8] See also, Terry v. Sapphire Gentlemen's Club, 130 Nev. Adv. Op. 87 (2014). As such, NRS Chapter 608 must be liberally construed in order to effectuate the purpose of the legislation. Int'l Game Tech., Inc. v. Second Judicial Dist. Court ex rel. Cnty. of Washoe, 124 Nev. 193, 201, 179 P.3d 556, 560-61 (2008) ("[R]emedial statutes . . . should be liberally construed to effectuate the intended benefit."); Eddington v. Eddington, 119 Nev. 577, 80 P.3d 1282, 1287 (2003) ("[S]tatutes with a protective purpose should be liberally construed in order to effectuate the benefits intended to be obtained."); Colello v. Administrator, Real Est. Div., 100 Nev. 344, 347, 683 P.2d 15, 17 (1984) (recognizing that "[s]tatutes with a protective purpose should be liberally

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2. The instant action is not based on the same claims or any part of them that were or could have been brought in the ***first*** action.

As noted in the first paragraph of section 1, above, this action, the Martel action is the first action and thus claims preclusion cannot apply.

Moreover, Defendants' arguments that Plaintiffs here are attempting to "wrongly split these state law wage claims from their overtime claims … for the sole purpose of avoiding federal jurisdiction" has been rejected by two Nevada federal district courts. First Judge Jones remanded this action back to this Court and second Judge Hicks' Orders in Benson, Corral, S. Reader, T. Reader, and Ramirez specifically provides for the employee plaintiffs to seek redress for their state law claims in this Court.

Furthermore, Defendants' citation to Landers v. Quality Commc'ns, Inc., does not stand for the proposition that the employee-plaintiffs here were required to bring their Nevada wage and hour causes of action in any other forum other than this one. The Court in Landers explained, "[u]nder federal claim preclusion law, *unless the court in its order for dismissal otherwise specifies,* a dismissal ... other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party under [FRCP] 19, operates as an adjudication upon the merits." Landers v. Quality Commc'ns, Inc., No. 62181, 2014 WL 3784254, at *2 (Nev. July 30, 2014) (emphasis added). Here, the federal court in Benson, Corral, S. Reader, T. Reader, and Ramirez did specify otherwise: the Order "is without prejudice as to plaintiffs' state law causes of action in state court, even though the court acknowledges that the alleged conduct is the same. This ruling is in accordance with Smith v. Lenches, 263 F.3d 972, 976, n. 6 (9th Cir. 2001)." See Orders attached to Plaintiffs' Supplemental Authority filed April 3, 2019 at p. 2:1-5.

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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).

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3. The parties or their privies are not the same as they were in the previous action.

As noted in the first paragraph of section 1, above, this action, the Martel action is the first action and thus claims preclusion cannot apply because there is no previous action.

Furthermore, Section 16(b) of the FLSA provides that "[n]o employee shall be a party plaintiff to any such action 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." See 29 U.S.C. § 216(b). Moreover, a collective action is only deemed commenced for the named plaintiffs when he or she has filed ***both*** a complaint and a "consent" to become a party plaintiff. See e.g., 29 U.S.C. § 216(b); 256(a); Real v. Driscoll Strawberry Assoc., Inc., 603 F. 2d 748, 756 n. 19 (9th Cir. 1979) (modifying order on summary judgment dismissing claims of named plaintiffs for failure to file consent forms to dismissal without prejudice and directing that plaintiffs will have to file consent forms when case is remanded in order to remain party plaintiffs); Cancilla v. Ecolab, Inc., 2013 WL 1365939, at *2-3 (N.D. Cal. Apr. 3, 2013) (dismissing named plaintiffs' claims as time barred where he did not file consent to join lawsuit until several months after he filed lawsuit); Kaiser v. At. The Beach, Inc., 2009 WL 4506152 (N.D. Okla. Nov. 24, 2009) (holding that named plaintiffs must file consents in order to remain plaintiffs in the event the that the case proceeds as a collective action). Indeed, Defendants vigorously argued this fact in its own motion and replies in support of their motions for summary judgment in the Benson, Corral, S. Reader, T. Reader, and Ramirez, acknowledging that "Each Plaintiff failed to file the consent required to become a party to this FLSA collective action, as mandated by 29, U.S.X. §216(b)."[9] In that sense, Defendants are correct; no consents were field with the federal court in Benson, Corral, S. Reader, T. Reader, or Ramirez. Accordingly, none of the employees were parties to the federal actions.

[9] See e.g., Benson et al. v. HG Staffing LLC, MEI-GSR Holdings, LLC, dba Grand Sierra Resort, Case No. 3:16-cv-00388-LRH-WGC, ECF No. 74, attached as Exhibit 7, at p. 2:6-7. Defendants argument was identical for Corral, S. Reader, T. Reader, and Ramirez, which are not attached.

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And, in foreclosing Defendants' arguments that counsel for Plaintiffs here have "wrongly split these state law claims from their overtime claims … for the sole purpose of avoiding federal jurisdiction" (*see* Mot. at p. 2:11-13) the Supreme Court in the analogous case of Smith v. Bayer Corp. held:

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

Smith v. Bayer, 564 U.S. 299, 131 S. Ct. 2368, 2370, 180 L. Ed. 2d 341 (2011).[10]

Accordingly, all three factors for claim preclusion cannot be met and Defendants' Motion must be denied.

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[10] 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.

IV. CONCLUSION

For the reasons expressed above, Plaintiffs respectfully request that Defendants' Motion for Summary Judgment on all Claims by Plaintiffs Martel, Capilla, and Vaughan be denied in its entirety.

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: June 3, 2019

Respectfully Submitted,

THIERMAN BUCK LLP

/s/ *Mark R. Thierman*
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Index of Exhibits

1. Benson et al. v. HG Staffing LLC, MEI-GSR Holdings, LLC, dba Grand Sierra Resort, Case No. 3:16-cv-00388-HDM-WGC, filed 6/28/16

2. Corral et al. v. HG Staffing LLC, MEI-GSR Holdings, LLC, dba Grand Sierra Resort, Case No. 3:16-cv-00386-HDM-WGC, filed 6/28/16

3. S. Reader et al. v. HG Staffing LLC, MEI-GSR Holdings, LLC, dba Grand Sierra Resort, Case No. 3:16-cv-00387-HDM-WGC, filed 6/28/16

4. T. Reader et al. v. HG Staffing LLC, MEI-GSR Holdings, LLC, dba Grand Sierra Resort, Case No. 3:16-cv-00392-LRH-WGC, filed 6/29/16

5. Ramirez et al. v. HG Staffing LLC, MEI-GSR Holdings, LLC, dba Grand Sierra Resort, Case No. 3:16-cv-00318-LRH-WGC, filed 6/10/16

6. Order Granting Motion for Remand

7. GSR's Motion for Partial Summary Judgment

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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 June 3, 2019, at Reno, Nevada.

/s/Tamara Toles
Tamara Toles

EXHIBIT 1

Benson et al. v. HG Staffing LLC, MEI-GSR Holdings, LLC, dba Grand Sierra Resort, Case No. 3:16-cv-00388-HDM-WGC

EXHIBIT 1

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

CATHY BENSON, SAMANTHA AGUILAR, DINORA BACA, PRICILLA CALVERT, JOSE CANO, PHUNG CAO, DINH CAO-TRUONG, MARIA CARRILLO, MARIA CASTELLANOS, MAY CHAN, MARIA CHAVARIN, MARIA CHAVEZ-TRUJILLO, WU CHEN, GING CHUNG, ISMAELA CRUZ, KAREN D'AGOSTINO, TERESA DAVIS, ANJANETTE DAY, ROSALBA DIAZ, MYRINA DRUMMER, DIANA ELLISON, SIU FONG, JACQUELINE FORSTER, LUZVIMINADA GALINDO, BEN GALLARDO, LETICIA GARCIA, MARIXA GARCIA, AURORA GARCIA DE JACINTO, MARIA GARCIA-LEON, FLOYD GLOVER, MARIA GONZALEZ, XIU XIA HUANG, QUAN HUANG, CHIU HUI, MANUELA HURTADO, EVANGELINE JUAREZ, MARICELA JUAREZ, CRISTINA KIRK, CUI KUANG, JIAN KUANG, FONG LAM, YUE LEE, ZHONG LI, XIU LI, TU LONG, MARIA MARQUEZ, MARIA MARTINEZ, MANUEL MEJIA, ROSALBA MENDEZ, SARA MONTOYA, DENISE, NAVARRO, MARIA OLIVA, DOMITRINI ORDOVEZA, ANA ORNELAS, ROSA PADILLA,

Case No.:

COLLECTIVE ACTION COMPLAINT

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

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

JURY TRIAL DEMANDED

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CECILIA PALACIOS, ANA PALOMINO-DIAZ, CARRI PEARSON, MARGARITA PELAEZ, MARIA RAMIREZ, MARISSA RAMOS, TERESA RAMOS, MARIA RUIZ, MARYBEL RUIZ-CASTILLO, ESTELA SALDANA, KATRINA SCAUBATO, IMEDA SOLORZANO-YANES, AYLA SQUARTSOFF, ELODIA TORRES-DE ARELLANO, DO TRAN, BERNARDA TRUJILLO MARICELA URBINA, DELIA VELIZ-CLAVEL, SHU WANT, FU WEI, BETTYE WILLIAMS, JIN XIAO, YI XU, JUAN ZHEN, XUELAN ZHONG, and BOQUAN ZHU 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.

COME NOW Plaintiff CATHY BENSON, SAMANTHA AGUILAR, DINORA BACA, PRICILLA CALVERT, JOSE CANO, PHUNG CAO, DINH CAO-TRUONG, MARIA CARRILLO, MARIA CASTELLANOS, MAY CHAN, MARIA CHAVARIN, MARIA CHAVEZ-TRUJILLO, WU CHEN, GING CHUNG, ISMAELA CRUZ, KAREN D'AGOSTINO, TERESA DAVIS, ANJANETTE DAY, ROSALBA DIAZ, MYRINA DRUMMER, DIANA ELLISON, SIU FONG, JACQUELINE FORSTER, LUZVIMINADA GALINDO, BEN GALLARDO, LETICIA GARCIA, MARIXA GARCIA, AURORA GARCIA DE JACINTO, MARIA GARCIA-LEON, FLOYD GLOVER, MARIA GONZALEZ, XIU XIA HUANG, QUAN HUANG, CHIU HUI, MANUELA HURTADO, EVANGELINE JUAREZ, MARICELA JUAREZ, CRISTINA KIRK, CUI KUANG, JIAN KUANG, FONG LAM, YUE LEE, ZHONG LI, XIU LI, TU LONG, MARIA MARQUEZ, MARIA MARTINEZ, MANUEL MEJIA, ROSALBA MENDEZ, SARA MONTOYA,

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DENISE, NAVARRO, MARIA OLIVA, DOMITRINI ORDOVEZA, ANA ORNELAS, ROSA PADILLA, CECILIA PALACIOS, ANA PALOMINO-DIAZ, CARRI PEARSON, MARGARITA PELAEZ, MARIA RAMIREZ, MARISSA RAMOS, TERESA RAMOS, MARIA RUIZ, MARYBEL RUIZ-CASTILLO, ESTELA SALDANA, KATRINA SCAUBATO, IMEDA SOLORZANO-YANES, AYLA SQUARTSOFF, ELODIA TORRES-DE ARELLANO, DO TRAN, BERNARDA TRUJILLO MARICELA URBINA, DELIA VELIZ-CLAVEL, SHU WANT, FU WEI, BETTYE WILLIAMS, JIN XIAO, YI XU, JUAN ZHEN, XUELAN ZHONG, BOQUAN ZHU ("Plaintiffs"), on behalf of themselves and all others similarly situated, and hereby alleges as follows:

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

JURISDICTION AND VENUE

1. This Court has original jurisdiction over the federal claims alleged herein pursuant to the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 216(b).

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

PARTIES

3. Lead named Plaintiff CATHY BENSON is natural person who is and was a resident of the State of Nevada at all times relevant herein and was employed as a room attendant by Defendants from on or about July 2006 through on or about August 2015.

4. All other Plaintiffs are natural persons who were employed as room attendants by Defendants throughout all times relevant herein.

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

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

7. Defendants, and each of them, are employers under the FLSA and are engaged in commerce for the purposes of the FLSA, 29 U.S.C.§ 201 *et. seq*. For labor relations purposes, Defendants each and together constitute the employer and/or joint employer of Plaintiffs and all Plaintiff class members (hereinafter referred to as "Class Members").

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

FACTUAL ALLEGATIONS

9. Plaintiffs were employed by Defendants as non-exempt hourly employees.

10. Lead named Plaintiff Benson and all other named Plaintiffs were employed by Defendants as room attendants and were scheduled for, and regularly worked, five (5) shifts per week, at least eight (8) hours per shift, and forty (40) hours per workweek, worked hours over eight (8) in a day and/or over forty (40) in a workweek. Upon information and belief, all other room attendants were scheduled for and regularly worked the same or similar schedules.

11. Defendants required all employees who worked as a room attendant/housekeeper to engage in pre-shift work activities off the clock and without compensation. Room attendants were required to arrive 20 minutes or more prior to their regularly scheduled start time to present themselves to their shift supervisors for room/floor assignments, a uniform inspection, and to retrieve tools necessary to complete their work tasks, including but not limited their caddies filled with room amenities, and their cleaning carts. These tasks were completed off the clock and without compensation.

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12. Lead named Plaintiff Benson and all other room attendants were required to complete these work tasks each and every shift worked and were not paid their minimum or overtime wages. Based on Plaintiffs' knowledge and belief all employees who were similarly employed as room attendants/housekeepers followed the same policy and procedure as mandated by Defendants.

13. Extracting unpaid work from Lead named Plaintiff Benson and all other Plaintiffs was achieved by either rounding hours so that employees who were technically "on the clock" did not receive pay for all their recorded hours worked or by having employees perform work without being logged in to the timekeeping system. Indeed, Defendants maintain an unlawful rounding policy whereby it rounds the time recorded and worked by all hourly employees to the nearest 15 minutes for purposes of calculating payment of wages owed. Such rounding favors the employer and deprives the employees of pay for time they actually perform work activities.

PLAINTIFFS' OPT-IN STATUS

14. Lead named Plaintiff Benson and all other Plaintiffs alleged herein previously opted-in to the case of Tiffany Sargent, et. al. v. HG Staffing, LLC, Case No. 3:13-cv-453-LRH-WGC ("Sargent Action"). Accordingly, the statute of limitations involved in this case is tolled from the date in which lead named Plaintiff Benson and all other plaintiffs opted-in to the Sargent Action.

COLLECTIVE ACTION ALLEGATIONS

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

16. Plaintiffs seek to represent the following class of employees in Defendants' employ during the relevant time period: **All current and former non-exempt employees who were employed by Defendants as room attendants and were required to perform pre-shift work activities without compensation at any time during the relevant time period alleged herein.**

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

A. Defendants employed Plaintiffs as hourly employees who did not receive pay for all hours that Defendants suffered or permitted them to work, and did not receive overtime premium pay of one and one half times their regular rate of pay for all hours worked over forty (40) hours in a workweek.

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

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

D. Upon information and belief, Defendants employ, and has employed, in excess of 328 Class Members within the applicable statute of limitations.

E. Plaintiffs have already filed or will file their consents to sue with the Court.

FIRST CAUSE OF ACTION

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

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

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

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

16. 29 U.S.C. § 206(a)(l) states that "Every employer shall pay to each of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, wages at the following rates: (1) except as otherwise provided in this section, not less than (A) $5.85 an hour beginning on the 60th day after the enactment of the Fair Minimum Wage Act of 2007; (B) $6.55 an hour, beginning 12 months after that 60th day; and C) $7.25 an hour, beginning 24 months after that 60th day."

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

18. By failing to compensate Plaintiffs and Class Members for the time spent engaging in pre-shift activities identified above without compensation, Defendants failed to pay Plaintiffs and the Class Members for all hours worked.

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

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

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SECOND CAUSE OF ACTION

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

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

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

22. 29 U.S.C. Section 207(a)(1) provides as follows: "Except as otherwise provided in this section, no employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed."

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

24. By failing to compensate Plaintiffs and Class Members for the time spent engaging in the pre-shift activities identified above without compensation, Defendants failed to pay Plaintiffs and Class Members overtime for all hours worked in excess of forty (40) hours in a week in violation of 29 U.S.C. Section 207(a)(1).

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

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

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JURY TRIAL DEMANDED

Plaintiffs hereby demand a jury trial pursuant to Federal Rule of Civil Procedure 38.

PRAYER FOR RELIEF

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

1. For an order conditionally certifying this action under the FLSA and providing notice to all members of the Class so they may participate in this lawsuit;
2. For an order appointing Plaintiffs as the Representatives of the Class and their counsel as Class Counsel;
3. For damages according to proof for minimum rate of pay under federal law for all hours worked;
4. For damages according to proof for overtime compensation at the applicable rate under federal law for all hours worked over 40 per week;
5. For liquidated damages pursuant to 29 U.S. C. § 216(b);
6. For interest as provided by law at the maximum legal rate;
7. For reasonable attorneys' fees authorized by statute;
8. For costs of suit incurred herein;
9. For pre-judgment and post-judgment interest, as provided by law, and
10. For such other and further relief as the Court may deem just and proper.

DATED: June 28, 2016

Respectfully Submitted,

THIERMAN BUCK LLP

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

EXHIBIT 2

Corral et al. v. HG Staffing LLC, MEI-GSR Holdings, LLC, dba Grand Sierra Resort, Case No. 3:16-cv-00386-HDM-WGC

EXHIBIT 2

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

SHENNA CORRAL (formerly MEENDERINK), WHITNEY VAUGHAN, BRANDI SMITH, JUSTINE BRADLEY, TIFFANY CARRERA, and ROXANNE PRIMUS 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.:

COLLECTIVE ACTION COMPLAINT

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

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

JURY TRIAL DEMANDED

COME NOW Plaintiffs SHENNA CORRAL (formerly MEENDERINK), WHITNEY VAUGHAN, BRANDI SMITH, JUSTINE BRADLEY, TIFFANY CARRERA, AND ROXANNE PRIMUS ("Plaintiffs"), on behalf of themselves and all others similarly situated, and hereby alleges as follows:

All allegations in this Complaint are based upon information and belief except for those allegations that pertain to the Plaintiffs named herein and their counsel. Each allegation in this

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Complaint either has evidentiary support or is likely to have evidentiary support after a reasonable opportunity for further investigation and discovery.

JURISDICTION AND VENUE

1. This Court has original jurisdiction over the federal claims alleged herein pursuant to the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 216(b).

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

PARTIES

3. Lead named Plaintiff SHENNA CORRAL (formerly MEENDERINK) is natural person who is and was a resident of the State of Nevada at all times relevant herein and was employed as a cocktail waitress and ServerTainer by Defendants from on or about September 2103 through on or about February 2016.

4. All other Plaintiffs named herein are natural persons who were employed by Defendants at all relevant times herein.

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

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

7. Defendants, and each of them, are employers under the FLSA and are engaged in commerce for the purposes of the FLSA, 29 U.S.C.§ 201 *et. seq.* For labor relations purposes, Defendants each and together constitute the employer and/or joint employer of Plaintiffs and all Plaintiff class members (hereinafter referred to as "Class Members").

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

FACTUAL ALLEGATIONS

9. Plaintiffs were employed by Defendants as non-exempt hourly employees.

10. Lead named Plaintiff SHENNA CORRAL (formerly MEENDERINK) was occasionally scheduled for and did work, five (5) shifts per week, at least eight (8) hours per shift, and forty (40) hours per workweek especially during special events and busy periods such as, but not limited to, concerts, Burning Man, Hot August Nights, and Street Vibrations. Upon information and belief, all other ServerTainers and dancing dealers were scheduled for and regularly worked the same or similar schedules.

11. ServerTainers are part cocktail waitresses and part go-go dancers. When not serving they are required to perform choreographed dance moves.

12. Dancing dealers are part table games dealers and part go-go dancers. When not dealing they are required to perform choreographed dance moves.

13. At all times relevant herein, Defendants maintained the following policies, practices, and procedures of requiring ServerTainers and dancing dealers to perform work activities without compensation by having employees perform work without being logged in to the timekeeping system. When named Plaintiff Corral was a ServerTainer she was required to attend dance classes of an hour or more, two to four times a week for which she was not paid her minimum, regular rate, or overtime wages. If the employee did not attend dance classes, they would be taken off the schedule and written up for misconduct. *See* Exhibit A, page 1, attached, "GSR F&B Standard Operating Procedure – GSR ServerTainer Expectations," hereinafter, GSR ServerTainer Expectations.

a) The GSR ServerTainer Expectations states at No. 2, "As a ServerTainer, you are required to attend 1 paid rehearsal each week when not learning

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new steps. When new steps are implemented, you are required to attend 2 rehearsals (which again will be paid). With that said, if you are not up to the GSR ServerTainer standards, you will need to attend more classes on your own time."

b) GSR ServerTainer Expectations No. 3 states, "ServerTainers who are not attending their required classes will not be allowed to work. No dance, no work, no exceptions."

14. Upon information and belief, all other GSR employees who were similarly employed as ServerTainers and dancing dealers were not compensated for the time in which they attended mandatory dance classes.

PLAINTIFFS' OPT-IN STATUS

15. Lead named Plaintiff Corral and all other plaintiffs alleged herein previously opted-in to the case of Tiffany Sargent, et. al. v. HG Staffing, LLC, Case No. 3:13-cv-453-LRH-WGC ("Sargent Action"). Accordingly, the statute of limitations involved in this case is tolled from the date in which lead named Plaintiff Corral and all other plaintiffs opted-in to the Sargent Action.

COLLECTIVE ACTION ALLEGATIONS

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

17. Plaintiffs seek to represent the following class of employees in Defendants' employ during the relevant time period: **All current and former non-exempt employees, employed by Defendants who were required to attend dance classes without compensation at any time during the relevant time period alleged herein.**

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

A. Defendants employed Plaintiffs as hourly employees who did not receive pay for all hours that Defendants suffered or permitted them to work, and did not receive

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overtime premium pay of one and one half times their regular rate of pay for all hours worked over forty (40) hours in a workweek.

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

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

D. Upon information and belief, Defendants employ, and has employed, in excess of 55 Class Members within the applicable statute of limitations.

E. Plaintiffs have already filed or will file their consents to sue with the Court.

FIRST CAUSE OF ACTION

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

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

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

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

21. 29 U.S.C. § 206(a)(l) states that "Every employer shall pay to each of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods

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for commerce, wages at the following rates: (1) except as otherwise provided in this section, not less than (A) $5.85 an hour beginning on the 60th day after the enactment of the Fair Minimum Wage Act of 2007; (B) $6.55 an hour, beginning 12 months after that 60th day; and C) $7.25 an hour, beginning 24 months after that 60th day."

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

23. By failing to compensate Plaintiffs and Class Members for the time spent engaging in the required dance classes identified above without compensation, Defendants failed to pay Plaintiffs and the Class Members for all hours worked.

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

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

SECOND CAUSE OF ACTION

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

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

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

27. 29 U.S.C. Section 207(a)(1) provides as follows: "Except as otherwise provided in this section, no employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours unless such employee receives compensation for his employment in

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excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed."

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

29. By failing to compensate Plaintiffs and Class Members for the time spent engaging in the dance classes identified above without compensation, Defendants failed to pay Plaintiffs and Class Members overtime for all hours worked in excess of forty (40) hours in a week in violation of 29 U.S.C. Section 207(a)(1).

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

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

JURY TRIAL DEMANDED

Plaintiffs hereby demand a jury trial pursuant to Federal Rule of Civil Procedure 38.

PRAYER FOR RELIEF

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

1. For an order conditionally certifying this action under the FLSA and providing notice to all members of the Class so they may participate in this lawsuit;

2. For an order appointing Plaintiffs as the Representatives of the Class and their counsel as Class Counsel;

3. For damages according to proof for minimum rate of pay under federal law for all hours worked;

4. For damages according to proof for overtime compensation at the applicable rate under federal law for all hours worked over 40 per week;

5. For liquidated damages pursuant to 29 U.S. C. § 216(b);

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

7. For reasonable attorneys' fees authorized by statute;

8. For costs of suit incurred herein;

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

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

DATED: June 28, 2016

Respectfully Submitted,

THIERMAN BUCK LLP

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

A. "GSR F&B Standard Operating Procedure – GSR ServerTainer Expectations,"

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EXHIBIT 3

S. Reader et al. v. HG Staffing LLC, MEI-GSR Holdings, LLC, dba Grand Sierra Resort, Case No. 3:16-cv-00387-HDM-WGC

EXHIBIT 3

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

SARA READER (formerly LARSON), PAUL ALLEN, WENDY BASALLO, JUSTINE BRADLEY, ALEXIS BRYANT, TIFFANY CARRERA, SHENNA CORRAL, KATHERINE DOWLING, SHELLEY FAUST, CAITLIN GUNN, LIZ HEERAN, BRIDGETTE HINES, IMOGEN HOLT, STEPHANIE KNAUSS, JUSTINE LANG, MARK LARSON, GEORGE LOPES II, SANDRA MARTINEZ, MALCOLM MCCASKILL, JOSEPH MCKEE, MARIA MCKENZIE, CALLIE MIANO, TONY MORAN, JENNIFER NICHOLS, KAROLINA OLECH, NATALIE ORDAS, ARLENE OSORMAN, KATHRYN OWEN, STEVE PIERCE, ROXANNE PRIMUS, LAWRENCE RIORDAN SR., GAY ROBERTS, MELISSA ROSINA, MISTY SHELBY, BRANDI SMITH, KRYSTA STEIGLER, DELLENA THOMPSON, and ROBERT TRANCHIDA,
on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

HG STAFFING, LLC, MEI-GSR

Case No.:

COLLECTIVE ACTION COMPLAINT

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

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

JURY TRIAL DEMANDED

HOLDINGS LLC d/b/a GRAND SIERRA RESORT, and DOES 1 through 50, inclusive,

Defendants.

COME NOW Plaintiffs SARA READER (formerly LARSON), PAUL ALLEN, WENDY BASALLO, JUSTINE BRADLEY, ALEXIS BRYANT, TIFFANY CARRERA, SHENNA CORRAL, KATHERINE DOWLING, SHELLEY FAUST, CAITLIN GUNN, LIZ HEERAN, BRIDGETTE HINES, IMOGEN HOLT, STEPHANIE KNAUSS, JUSTINE LANG, MARK LARSON, GEORGE LOPES II, SANDRA MARTINEZ, MALCOLM MCCASKILL, JOSEPH MCKEE, MARIA MCKENZIE, CALLIE MIANO, TONY MORAN, JENNIFER NICHOLS, KAROLINA OLECH, NATALIE ORDAS, ARLENE OSORMAN, KATHRYN OWEN, STEVE PIERCE, ROXANNE PRIMUS, LAWRENCE RIORDAN SR., GAY ROBERTS, MELISSA ROSINA, MISTY SHELBY, BRANDI SMITH, KRYSTA STEIGLER, DELLENA THOMPSON, AND ROBERT TRANCHIDA ("Plaintiffs"), on behalf of themselves and all others similarly situated, and hereby alleges as follows:

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

JURISDICTION AND VENUE

1. This Court has original jurisdiction over the federal claims alleged herein pursuant to the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 216(b).

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

PARTIES

3. Lead named Plaintiff SARA READER (formerly SARA LARSON) is natural person who is and was a resident of the State of Nevada at all times relevant herein and was

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employed as a cocktail waitress and food/attendant/barista by Defendants from on or about 2010 through on or about February 2013.

4. All other Plaintiffs named herein are natural persons who were employed by Defendants at all relevant times herein.

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

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

7. Defendants, and each of them, are employers under the FLSA and are engaged in commerce for the purposes of the FLSA, 29 U.S.C.§ 201 *et. seq*. For labor relations purposes, Defendants each and together constitute the employer and/or joint employer of Plaintiffs and all Plaintiff class members (hereinafter referred to as "Class Members").

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

FACTUAL ALLEGATIONS

9. Plaintiffs were employed by Defendants as non-exempt hourly employees.

10. Lead named Plaintiff S. Reader was scheduled for, and regularly worked, five (5) shifts per week, at least eight (8) hours per shift, and forty (40) hours per workweek. Upon information and belief, all other cocktail servers and baristas were scheduled for and regularly worked the same or similar schedules.

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11. Defendants required lead named Plaintiff S. Reader and all employees who worked as cocktail servers and baristas to change into and out of their uniforms on the GSR premises and without compensation for such changing activities.

12. Extracting unpaid work from Lead named Plaintiff S. Reader and all other Plaintiffs was achieved by either rounding hours so that employees who were technically "on the clock" did not receive pay for all their recorded hours worked or by having employees perform work without being logged in to the timekeeping system. Indeed, Defendants maintain an unlawful rounding policy whereby it rounds the time recorded and worked by all hourly employees to the nearest 15 minutes for purposes of calculating payment of wages owed. Such rounding favors the employer and deprives the employees of pay for time they actually perform work activities.

13. Lead named Plaintiff S. Reader was required to change into and out of her uniform on the GSR premises without compensation and for which she was not paid her minimum, regular rate, or overtime wages. Changing into and out of uniforms could take 15 minutes or more and employees either changed off the clock and/or were changing during the period of time that was improperly rounded off of employees' time cards.

14. Based on Plaintiff S. Reader's knowledge and belief all employees who were similarly employed as cocktail waitresses and baristas followed the same policy and procedure mandated by Defendants.

PLAINTIFFS' OPT-IN STATUS

15. Lead named Plaintiff S. Reader and all other Plaintiffs alleged herein previously opted-in to the case of Tiffany Sargent, et. al. v. HG Staffing, LLC, Case No. 3:13-cv-453-LRH-WGC ("Sargent Action"). Accordingly, the statute of limitations involved in this case is tolled from the date in which lead named Plaintiff S. Reader and all other Plaintiffs opted-in to the Sargent Action.

COLLECTIVE ACTION ALLEGATIONS

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

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17. Plaintiffs seek to represent the following class of employees in Defendants' employ during the relevant time period: **All current and former non-exempt employees employed by Defendants who were required to change into and out of uniforms on GSR premises without compensation at any time during the relevant time period alleged herein.**

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

A. Defendants employed Plaintiffs as hourly employees who did not receive pay for all hours that Defendants suffered or permitted them to work, and did not receive overtime premium pay of one and one half times their regular rate of pay for all hours worked over forty (40) hours in a workweek.

B. Plaintiffs' situation is similar to those they seek to represent because Defendants failed to pay Plaintiffs and all other Class Members for all time they were required to change into and out of uniforms but with the knowledge acquiescence and/or approval (tacit as well as expressed) of Defendants' managers and agents.

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

D. Upon information and belief, Defendants employ, and has employed, in excess of 321 Class Members within the applicable statute of limitations.

E. Plaintiffs have already filed or will file their consents to sue with the Court.

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FIRST CAUSE OF ACTION

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

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

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

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

21. 29 U.S.C. § 206(a)(l) states that "Every employer shall pay to each of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, wages at the following rates: (1) except as otherwise provided in this section, not less than (A) $5.85 an hour beginning on the 60th day after the enactment of the Fair Minimum Wage Act of 2007; (B) $6.55 an hour, beginning 12 months after that 60th day; and C) $7.25 an hour, beginning 24 months after that 60th day."

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

23. By failing to compensate Plaintiffs and Class Members for the time spent engaging in uniform changing activities identified above without compensation, Defendants failed to pay Plaintiffs and the Class Members for all hours worked.

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

25. Wherefore, Plaintiffs demand for themselves and for all others similarly situated, that Defendants pay Plaintiffs and all other members of the Class their minimum hourly wage rate or their regular rate of pay, whichever is greater, for all hours worked during

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the relevant time period alleged herein together with liquidated damages, attorneys' fees, costs, and interest as provided by law.

SECOND CAUSE OF ACTION

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

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

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

27. 29 U.S.C. Section 207(a)(1) provides as follows: "Except as otherwise provided in this section, no employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed."

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

29. By failing to compensate Plaintiffs and Class Members for the time spent engaging in the uniform changing activities identified above without compensation, Defendants failed to pay Plaintiffs and Class Members overtime for all hours worked in excess of forty (40) hours in a week in violation of 29 U.S.C. Section 207(a)(1).

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

31. Wherefore, Plaintiffs demand for themselves and for all others similarly situated, that Defendants pay Plaintiffs and all members of the Class one and one half times their regular hourly rate of pay for all hours worked in excess of forty (40) hours a week during

the relevant time period alleged herein together with liquidated damages, attorneys' fees, costs, and interest as provided by law.

JURY TRIAL DEMANDED

Plaintiffs hereby demand a jury trial pursuant to Federal Rule of Civil Procedure 38.

PRAYER FOR RELIEF

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

1. For an order conditionally certifying this action under the FLSA and providing notice to all members of the Class so they may participate in this lawsuit;
2. For an order appointing Plaintiffs as the Representatives of the Class and their counsel as Class Counsel;
3. For damages according to proof for minimum rate of pay under federal law for all hours worked;
4. For damages according to proof for overtime compensation at the applicable rate under federal law for all hours worked over 40 per week;
5. For liquidated damages pursuant to 29 U.S. C. § 216(b);
6. For interest as provided by law at the maximum legal rate;
7. For reasonable attorneys' fees authorized by statute;
8. For costs of suit incurred herein;
9. For pre-judgment and post-judgment interest, as provided by law, and
10. For such other and further relief as the Court may deem just and proper.

DATED: June 28, 2016

Respectfully Submitted,

THIERMAN BUCK LLP

/s/ *Joshua D. Buck*
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EXHIBIT 4

T. Reader et al. v. HG Staffing LLC, MEI-GSR Holdings, LLC, dba Grand Sierra Resort, Case No. 3:16-cv-00392-LRH-WGC

EXHIBIT 4

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

THOMAS READER, JOANNE ALEXANDER, MICHAEL ALMARAZ, CAITLIN ATCHLEY, RICHARD AURIERO, SANDRA AURELI, JOHN BAHURKA, WENDY BASSO, SHARON BENUM, JUSTINE BRADLEY, ALEXIS BRYANT, DENA BUCHANAN, MICHAEL BUTLER, MICHAEL CAIN, KATRINA CALLAN, MARY ANNE CAPILLA, TIFFANY CARRERA, TIFFANY CARTER, RICHARD CATLIN, III, DEAN COMOLETTI, ROCIO CORIA, JAMES CUSICK, KIMBERLY DIXON, MARQUEZ DONALDSON, KATHERINE DOWLING, NATHAN ERHART, GAVINO EVANGELISTA, SHELLEY FAUST, CLEVELAND GRIFFIN, CAITLIN GUNN, LESLIE HALL, KATHLEEN HALLMARK, BOO HAN, RUSSELL HARRINGTON, MANUEL HARRIS, ROBERT HASTINGS, PATRICK HEERAN, LIZ HEERAN, NATALYA HELD, BRIDGETTE HINES, IMOGEN HOLT, SARAH JONES, NIGEL JONES, THERESA KELLY-MONTGOMERY, STEPHANIE KNAUSS, JUSTINE LANG, YULIA LARSON, JUSTIN LEE, SCOTT LINDSAY, CHRIS

Case No.:

COLLECTIVE ACTION COMPLAINT

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

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

JURY TRIAL DEMANDED

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Plaintiffs,

vs.

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

Defendants.

COME NOW Plaintiffs THOMAS READER, JOANNE ALEXANDER, MICHAEL ALMARAZ, CAITLIN ATCHLEY, RICHARD AURIERO, SANDRA AURELI, JOHN BAHURKA, WENDY BASSO, SHARON BENUM, JUSTINE BRADLEY, ALEXIS BRYANT, DENA BUCHANAN, MICHAEL BUTLER, MICHAEL CAIN, KATRINA

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

JURISDICTION AND VENUE

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1. This Court has original jurisdiction over the federal claims alleged herein pursuant to the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 216(b).

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

PARTIES

3. Lead named Plaintiff THOMAS READER is natural person who is and was a resident of the State of Nevada at all times relevant herein and was employed as a security guard and was required to attend pre-shift meetings by Defendants from on or about May 2008 through on or about June 2013.

4. All other Plaintiffs named herein are natural persons who were employed by Defendants throughout all times relevant herein.

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

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

7. Defendants, and each of them, are employers under the FLSA and are engaged in commerce for the purposes of the FLSA, 29 U.S.C.§ 201 *et. seq.* For labor relations purposes, Defendants each and together constitute the employer and/or joint employer of Plaintiffs and all Plaintiff class members (hereinafter referred to as "Class Members").

8. The identity of DOES 1-50 is unknown at this time and this Complaint will be amended at such time when the identities are known to Plaintiffs. Plaintiffs are informed and believe that each of Defendants sued herein as DOE is responsible in some manner for the acts,

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omissions, or representations alleged herein and any reference to "Defendant," "Defendants," or "GSR" herein shall mean "Defendants and each of them."

FACTUAL ALLEGATIONS

9. Plaintiffs were employed by Defendants as non-exempt hourly employees.

10. Lead named Plaintiff T. Reader was scheduled for, and regularly worked, five (5) shifts per week, at least eight (8) hours per shift, and forty (40) hours per workweek. Upon information and belief, all other similarly situated employees were scheduled for and regularly worked the same or similar schedules.

11. Defendants required all employees who worked as dealers, cocktail waitresses, bartenders, security guards, technicians, construction workers, and retail attendants to attend a pre-shift meeting without compensation. The pre-shift meetings were held in order to instruct employees on job duties, special events in the area and at the GSR, occupancy, and other job related information. Pre-shift meetings could take 10 minutes or more and were either held off the clock or during the period of time that was improperly rounded off of employees' time cards.

12. Named Plaintiff T. Reader was required to attend these pre-shift meetings without compensation and for which he was not paid his minimum, regular rate, or overtime wages. Based on his knowledge and belief all employees who were similarly employed as dealers, cocktail waitresses, baristas, security guards, bartenders, and retail attendants followed the same policy and procedure as mandated by Defendant

13. Extracting unpaid work from Lead named Plaintiff T. Reader and all other Plaintiffs was achieved by either rounding hours so that employees who were technically "on the clock" did not receive pay for all their recorded hours worked or by having employees perform work without being logged in to the timekeeping system. Indeed, Defendants maintain an unlawful rounding policy whereby it rounds the time recorded and worked by all hourly employees to the nearest 15 minutes for purposes of calculating payment of wages owed. Such rounding favors the employer and deprives the employees of pay for time they actually perform work activities.

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PLAINTIFFS' OPT-IN STATUS

14. Lead named Plaintiff T. Reader and all other Plaintiffs alleged herein previously opted-in to the case of Tiffany Sargent, et. al. v. HG Staffing, LLC, Case No. 3:13-cv-453-LRH-WGC ("Sargent Action"). Accordingly, the statute of limitations involved in this case is tolled from the date in which lead named Plaintiff T. Reader and all other Plaintiffs opted-in to the Sargent Action.

CLASS ACTION ALLEGATIONS

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

16. Plaintiffs seek to represent the following class of employees in Defendants' employ during the relevant time period: **All current and former non-exempt employees employed by Defendants who were required to attend a pre-shift meeting without compensation at any time during the relevant time period alleged herein.**

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

A. Defendants employed Plaintiffs as hourly employees who did not receive pay for all hours that Defendants suffered or permitted them to work, and did not receive overtime premium pay of one and one half times their regular rate of pay for all hours worked over forty (40) hours in a workweek.

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

C. Common questions exist as to whether the time spent by Plaintiffs and all other Class Members engaging in pre-shift activities "off the clock" is compensable under federal law; whether Defendants failed to pay Plaintiffs and Class Members for all

hours worked; and whether Defendants failed to pay Plaintiffs and Class Members overtime at one and one half times their regular rate of pay for all hours worked in excess of 40 hours a week.

D. Upon information and belief, Defendants employ, and has employed, in excess of 1,377 Class Members within the applicable statute of limitations.

E. Plaintiffs have already filed or will file their consents to sue with the Court.

FIRST CAUSE OF ACTION

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

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

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

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

20. 29 U.S.C. § 206(a)(l) states that "Every employer shall pay to each of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, wages at the following rates: (1) except as otherwise provided in this section, not less than (A) $5.85 an hour beginning on the 60th day after the enactment of the Fair Minimum Wage Act of 2007; (B) $6.55 an hour, beginning 12 months after that 60th day; and C) $7.25 an hour, beginning 24 months after that 60th day."

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

22. By failing to compensate Plaintiffs and Class Members for the time spent engaging in pre-shift activities identified above without compensation, Defendants failed to pay Plaintiffs and the Class Members for all hours worked.

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

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

SECOND CAUSE OF ACTION

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

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

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

26. 29 U.S.C. Section 207(a)(1) provides as follows: "Except as otherwise provided in this section, no employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed."

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

28. By failing to compensate Plaintiffs and Class Members for the time spent engaging in the pre-shift activities identified above without compensation, Defendants failed to pay Plaintiffs and Class Members overtime for all hours worked in excess of forty (40) hours in a week in violation of 29 U.S.C. Section 207(a)(1).

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

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

JURY TRIAL DEMANDED

Plaintiffs hereby demand a jury trial pursuant to Federal Rule of Civil Procedure 38.

PRAYER FOR RELIEF

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

1. For an order conditionally certifying this action under the FLSA and providing notice to all members of the Class so they may participate in this lawsuit;
2. For an order appointing Plaintiffs as the Representatives of the Class and their counsel as Class Counsel;
3. For damages according to proof for minimum rate of pay under federal law for all hours worked;
4. For damages according to proof for overtime compensation at the applicable rate under federal law for all hours worked over 40 per week;
5. For liquidated damages pursuant to 29 U.S. C. § 216(b);
6. For interest as provided by law at the maximum legal rate;
7. For reasonable attorneys' fees authorized by statute;
8. For costs of suit incurred herein;
9. For pre-judgment and post-judgment interest, as provided by law, and

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

DATED: June 29, 2016

Respectfully Submitted,

THIERMAN BUCK LLP

/s/ *Joshua D. Buck*
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EXHIBIT 5

Ramirez et al. v. HG Staffing LLC, MEI-GSR Holdings, LLC, dba Grand Sierra Resort, Case No. 3:16-cv-00318-LRH-WGC

EXHIBIT 5

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ANTONIO RAMIREZ, HILLARY BAKER, RADD BATES, CLAIRE BERRY, BRIGITTE BLISS, FRANCES BOLIN, ESPERANZA BUEHRLE, PATRICK BUKOWSKI, LIZETH CARDENAS-RAMOS, TODD CARNS, TIFFANY CARTER, JESSICA CLAY, JACKLYN CURRY, MARIA DUCKER, DAVID DURAN, MELVIN ENGLISH, JAY EYER, LEVI FEUERHERM, DIANA FLORES, FERNANDO GARCIA, MATTHEW GEIS, NICOLE GILDEA, ANDREW GNAGY, ALFRED GORANSON, KEANU GOVAN, STACI GREESON, MARILYN HALL, BRETT HENDERSON, EBONY HOLMES, PATRICIA HUGHES, ASHLIE JONES, SARAH JONES, GERALD LARSON III, CHRISTOPHER LOMBARDO, KEVIN LONG, TERRY MARHANKA, MARY MARSHALL, EDDY MARTEL-RODRIGUEZ, CHRISTINA MARTIN, BONNIE MASSA, CHRISTINA MCCOY, FRANCES MEAGER, KIEL MOORE, ROBERT MORGAN, LOUISE NDOLO-HERMANN, MELISSA NEHRBASS, INEZ NIEGEMANN, STACEY ORNELAS, NANCY PALLAS, DAVID PAPALEO, SEAN PARK, JAYNE PARTON, MARIA PELAEZ-ROJAS, ARTURO PINEDA,

Case No.:

COLLECTIVE ACTION COMPLAINT

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

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

JURY TRIAL DEMANDED

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BEVERLY POWERS, HEATHER RAMIREZ, JOA RECORDS, ADAM REIGLE, CRYSTELLE RIFE, GLORIA ROBOTHAM, MARLENE SANCHEZ, JACQUELINE SANCHEZ (PROVENCIO), BRANDON SCHULTZ, PAUL SCHULTZ, NICOLE SEUFFERT, TRENA SMITH, MICHAEL STEVENS, DARLENE VANCE, EMILY VANDRIELEN, ESPERANZA VASQUEZ, CELENE VASQUEZ, MARIA VESLAZQUEZ-DESED, MICHAEL WALLS, ANDREW WERTH, KARLA WOOLLEY, and MELVIN XITUMUL, 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.

COME NOW Plaintiffs ANTONIO RAMIREZ, HILLARY BAKER, RADD BATES, CLAIRE BERRY, BRIGITTE BLISS, FRANCES BOLIN, ESPERANZA BUEHRLE, PATRICK BUKOWSKI, LIZETH CARDENAS-RAMOS, TODD CARNS, TIFFANY CARTER, JESSICA CLAY, JACKLYN CURRY, MARIA DUCKER, DAVID DURAN, MELVIN ENGLISH, JAY EYER, LEVI FEUERHERM, DIANA FLORES, FERNANDO GARCIA, MATTHEW GEIS, NICOLE GILDEA, ANDREW GNAGY, ALFRED GORANSON, KEANU GOVAN, STACI GREESON, MARILYN HALL, BRETT HENDERSON, EBONY HOLMES, PATRICIA HUGHES, ASHLIE JONES, SARAH JONES, GERALD LARSON III, CHRISTOPHER LOMBARDO, KEVIN LONG, TERRY MARHANKA, MARY MARSHALL, EDDY MARTEL-RODRIGUEZ, CHRISTINA MARTIN, BONNIE MASSA, CHRISTINA MCCOY, FRANCES MEAGER, KIEL MOORE, ROBERT MORGAN, LOUISE NDOLO-HERMANN, MELISSA NEHRBASS, INEZ

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

JURISDICTION AND VENUE

1. This Court has original jurisdiction over the federal claims alleged herein pursuant to the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 216(b).

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

PARTIES

3. Lead named Plaintiff ANTONIO RAMIREZ is natural person who is and was a resident of the State of Nevada at all times relevant herein and was required to carry a cash bank to complete his job duties by Defendants from on or about summer of 2004 through on or about August 2013.

4. All other Plaintiffs named herein are natural persons who were employed by Defendants at all times relevant herein.

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

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

7. Defendants, and each of them, are employers under the FLSA and are engaged in commerce for the purposes of the FLSA, 29 U.S.C.§ 201 *et. seq*. For labor relations purposes, Defendants each and together constitute the employer and/or joint employer of Plaintiffs and all Plaintiff class members (hereinafter referred to as "Class Members").

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

FACTUAL ALLEGATIONS

9. Plaintiffs were employed by Defendants as non-exempt hourly employees.

10. Lead named Plaintiff Antonio Ramirez was scheduled for, and regularly worked, five (5) shifts per week, at least eight (8) hours per shift, and forty (40) hours per workweek. Upon information and belief, all other employees who were required to carry a cash bank in completing their job duties were scheduled for and regularly worked the same or similar schedules.

11. Defendants required all employees who handle monetary transactions in the regular course of their employment to use or "carry" a cash bank. For example, the following job positions are some of those employees who were required to carry a cash bank: cashiers,

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bartenders, change persons, slot attendants, retail attendants, arcade attendants, and front desk agents.

12. Defendants required all employees who carry a cash bank to retrieve and deposit their respective cash bank both before and after the employees' regularly scheduled shifts without compensation. As an example of this policy, lead named Plaintiff Ramirez was required to collect his bank of money at the dispatch cage prior to proceeding to his workstation and without compensation. Similarly, at the end of his regularly scheduled shifts, lead named Plaintiff Ramirez was required to reconcile and deposit his cash bank to the same dispatch cage without compensation. Upon information and belief, all employees who were required to carry a cash bank had to retrieve their cash bank from the same dispatch cage pre- and post-shift and without compensation.

13. Lead named Plaintiff Ramirez estimate it took him approximately 15 minutes each and every work day to perform his banking activities for which he was not paid his minimum, regular rate, or overtime wages. Upon information and belief, all other GSR employees who carry a cash bank are similarly not compensated for the time in which they spend performing their banking activities.

14. Extracting unpaid work from lead named Plaintiff Ramirez and all other Plaintiffs was achieved by either rounding hours so that employees who were technically "on the clock" did not receive pay for all their recorded hours worked or by having employees perform work without being logged in to the timekeeping system. Indeed, Defendants maintain an unlawful rounding policy whereby it rounds the time recorded and worked by all hourly employees to the nearest 15 minutes for purposes of calculating payment of wages owed. Such rounding favors the employer and deprives the employees of pay for time they actually perform work activities.

PLAINTIFFS' OPT-IN STATUS

15. Lead named Plaintiff Ramirez and all other Plaintiffs alleged herein previously opted-in to the case of *Tiffany Sargent, et. al. v. HG Staffing, LLC*, Case No. 3:13-cv-453-LRH-WGC ("Sargent Action"). Accordingly, the statute of limitations involved in this case is tolled

from the date in which lead named Plaintiff Ramirez and all other Plaintiffs opted-in to the Sargent Action.

COLLECTIVE ACTION ALLEGATIONS

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

17. Plaintiffs seek to represent the following class of employees in Defendants' employ during the relevant time period: **All current and former non-exempt employees employed by Defendants who were required to perform banking activities without compensation at any time during the relevant time period alleged herein.**

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

A. Defendants employed Plaintiffs as hourly employees who did not receive pay for all hours that Defendants suffered or permitted them to work, and did not receive overtime premium pay of one and one half times their regular rate of pay for all hours worked over forty (40) hours in a workweek.

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

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

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D. Upon information and belief, Defendants employ, and has employed, in excess of 717 Class Members within the applicable statute of limitations.

E. Plaintiffs have already filed or will file their consents to sue with the Court.

FIRST CAUSE OF ACTION

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

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

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

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

21. 29 U.S.C. § 206(a)(l) states that "Every employer shall pay to each of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, wages at the following rates: (1) except as otherwise provided in this section, not less than (A) $5.85 an hour beginning on the 60th day after the enactment of the Fair Minimum Wage Act of 2007; (B) $6.55 an hour, beginning 12 months after that 60th day; and C) $7.25 an hour, beginning 24 months after that 60th day."

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

23. By failing to compensate Plaintiffs and Class Members for the time spent engaging in the banking activities identified above without compensation, Defendants failed to pay Plaintiffs and the Class Members for all hours worked.

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

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

SECOND CAUSE OF ACTION

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

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

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

27. 29 U.S.C. Section 207(a)(1) provides as follows: "Except as otherwise provided in this section, no employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed."

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

29. By failing to compensate Plaintiffs and Class Members for the time spent engaging in the banking activities identified above without compensation, Defendants failed to pay Plaintiffs and Class Members overtime for all hours worked in excess of forty (40) hours in a week in violation of 29 U.S.C. Section 207(a)(1).

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

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

JURY TRIAL DEMANDED

Plaintiffs hereby demand a jury trial pursuant to Federal Rule of Civil Procedure 38.

PRAYER FOR RELIEF

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

1. For an order conditionally certifying this action under the FLSA and providing notice to all members of the Class so they may participate in this lawsuit;
2. For an order appointing Plaintiffs as the Representatives of the Class and their counsel as Class Counsel;
3. For damages according to proof for minimum rate of pay under federal law for all hours worked;
4. For damages according to proof for overtime compensation at the applicable rate under federal law for all hours worked over 40 per week;
5. For liquidated damages pursuant to 29 U.S. C. § 216(b);
6. For interest as provided by law at the maximum legal rate;
7. For reasonable attorneys' fees authorized by statute;
8. For costs of suit incurred herein;
9. For pre-judgment and post-judgment interest, as provided by law, and

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

DATED: June 10, 2016

Respectfully Submitted,

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EXHIBIT 6

12/6/16 Jones Order Granting Motion for Remand

EXHIBIT 6

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.

/ / /

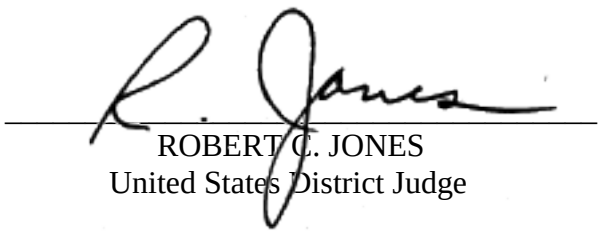
CONCLUSION

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 7

Defendants' Motion for Partial Summary Judgment

EXHIBIT 7

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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

CATHY BENSON, et. al, on behalf of themselves and all others similarly situated, Plaintiffs, v. HG STAFFING, LLC, MEI-GSR HOLDINGS, LLC d/b/a GRAND SIERRA RESORT, and DOES 1 through 50, inclusive, Defendants.	Case No.: 3:16−cv−00388−LRH−WGC **DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT**

Defendants HG STAFFING LLC, and MEI-GSR HOLDINGS, LLC d/b/a GRAND SIERRA RESORT (collectively "GSR"), by and through their counsel of record, hereby move pursuant to Fed. R. Civ. P. 56 for summary judgment as to forty-one (41) Plaintiffs whose claims are barred as untimely under the FLSA statute of limitation found in 29 U.S.C. § 255. This motion is based on the pleadings and papers on file, the attached exhibits, the following Points

and Authorities, the Declaration of Christy Wheeler, and any and all argument which may be permitted on a hearing of this matter.

POINTS AND AUTHORITIES

I. INTRODUCTION

Forty-one (41) Plaintiffs' claims are barred by the FLSA's two (2) year statute of limitations. Each Plaintiff failed to file the consent required to become a party to this FLSA collective action, as mandated by 29 U.S.C. § 216(b). Because a written consent must be filed before that Plaintiff's FLSA action is deemed to have "commenced," the two (2) year statute of limitation continues to run. As more than two (2) years has passed since those Plaintiffs ended employment with GSR, their claims are untimely and GSR is entitled to summary judgment on their claims. Even if tolling applies based on consents that Plaintiffs filed in *Sargent*, such tolling ended on March 22, 2016, when the Court issued its order decertifying the FLSA collective action in *Sargent*. Accordingly, the statute of limitations began running again upon decertification, and has continued to run for more than two (2) years. Because forty-two (42) Plaintiffs ended employment with the GSR more than two years ago, their claims are time-barred. Further, the Court should dismiss without prejudice the remaining thirty-nine (39) Plaintiffs who were employed after March 22, 2016 if they do not file a consent, and should bar their claims with respect to those that are not within two years of the date of such consent.

II. FACTS

This case stems from *Sargent et. al. v. HG Staffing, et. al.*, Case No. 3:13-cv-00453-LRH-WGC ("*Sargent"*). Between June 23, 2014 and August 21, 2014, Plaintiffs filed consent to join *Sargent*, thus becoming parties to *Sargent* and giving consent for the named plaintiffs in *Sargent* to act as representatives on their behalf. *See Sargent*, Docs. 48-51, 53-54, 57-59, 62-64. In an Order dated March 22, 2016, this Court granted GSR's Motion to Decertify FLSA Collective Action in *Sargent* because the plaintiffs were not "similarly situated" as required by the FLSA. 171 F. Supp. 3d 1063 (D. Nev. 2016).

On June 28, 2016, Plaintiffs filed a "Collective Action Complaint" alleging (1) Failure to Pay for All Hours Worked in Violation of 29 U.S.C. §201, et. seq; and (2) Failure to Pay

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Overtime in Violation of 29 U.S.C. § 207. Doc. 1. On August 12, 2016, Plaintiffs filed a "First Amended Collective Action Complaint," alleging only a claim for Failure to Pay Overtime in Violation of 29 U.S.C. § 207 ("the Complaint"). Doc. 14. The Complaint provides that:

- "Lead named Plaintiff Benson and all other Plaintiffs herein" previously opted-in to *Sargent"* but wrongly states "[a]ccordingly, the statute of limitations involved in this case is tolled form the date in which lead named Plaintiff Benson and all other plaintiffs opted-in to the Sargent Action." Complaint, Doc. 14, ¶16.
- Plaintiffs also allege "Collective Action Allegations" and seek to represent a class of employees consisting of: "All current and former non-exempt employees who were employed by Defendants as room attendants, who worked more than forty (40) hours in any workweek, and who were required to pre-shift work activities without compensation at any time during the relevant time period alleged herein." *Id.*, ¶ 18.
- Plaintiffs wrongly allege are similarly situated to the employees that seek to represent, and common questions exist. *Id.*, ¶ 19.
- Plaintiffs misrepresent that they "have already filed or will file their consents to sue with the Court." *Id.*, ¶19(E).
- In their "Prayer for Relief," Plaintiffs seek an "order conditionally certifying the action under the FLSA and providing notice to all members of the Class," an order appointing Plaintiffs as the Representatives of the Class and their counsel as Class Counsel and seek damages, interest, and attorneys' fees. *Id.*, Prayer.

On March 2, 2016, the Court issued an order dismissing with prejudice Plaintiff Cathy Benson. Doc. 20. Thus, eighty-one (81) named Plaintiffs remain.

Rather than seeking to proceed as a true collective action in which the named plaintiffs represent plaintiffs who file written consents to join the action as plaintiffs after receiving notice of the action, on March 27, 2017, Plaintiffs filed a Motion for FLSA Class Certification, Discovery and Trial on a Representative Basis. Doc. 26. GSR filed an Opposition to the Motion. Docs. 39-41. On October 23, 2017, this Court issued an order denying Plaintiffs'

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Motion without prejudice, holding: "This is an independent action from *Sargent*. So even if the plaintiffs in *Sargent* sought conditional certification and joined with opt-in plaintiffs as required by the FLSA, the plaintiffs herein must satisfy the FLSA requirements in this case independently." Doc. 45, p. 4.

On November 9, 2017, Plaintiffs filed a Motion for Circulation of Notice Pursuant to 29 U.S.C. §216(b). Doc. 46. On December 1, 2017, GSR filed an Opposition to the Motion, and on December 14, 2017, Plaintiffs filed a Reply. Doc. No. 49-50, 57. Plaintiffs Motion' for Circulation of Notice Pursuant to 29 U.S.C. §216(b) is pending.

On January 4, 2018, Plaintiffs filed a Motion to Stay, with tolling. Doc. 66. On January 31, 2018, GSR filed an Opposition, and on February 14, 2018 Plaintiff's filed a Reply. Doc. No. 69, 72. On April 17, 2018, Plaintiffs' Motion to Stay was denied with prejudice. Doc. 72.

B. Factual Background

The employment of forty-one (41) Plaintiffs ended more than two years ago. Declaration of Christy Wheeler ("Wheeler Dec."), ¶2. Next to the name of each Plaintiff, the chart below sets forth the Plaintiff's date of hire and termination date:

LAST NAME	FIRST NAME	DATE OF HIRE	TERMINATION DATE
AGUILAR	SAMANTHA	3/15/2014	4/4/2014
BACA	DINORA	9/11/2009	4/30/2012
CALVERT	PRISCILLA	1/12/2011	2/22/2011
CANO	JOSE	5/5/2011	5/22/2013
CAO	PHUNG	6/21/1980	
CAO-TRUONG	DINH	6/21/1980	3/3/2015
CARRILLO	MARIA	7/28/2004	
CASTELLANOS	MARIA	7/23/1990	9/12/2016
CHAN	MAY	9/12/1989	
CHAVARIN	MARIA	4/3/1991	
CHAVEZ TRUJILLO	MARIA	11/15/2010	8/19/2014
CHEN	WU	5/4/2005	4/22/2015
CHUNG	GING	6/23/2001	7/5/2011
CRUZ	ISMAELA	7/30/1990	1/8/2014
D'AGOSTINO	KAREN	4/25/2012	5/23/2012
DAVIS	TERESA	2/19/2014	6/30/2014
DAY	ANJANETTE	5/16/2012	10/10/2012
DIAZ	ROSALBA	1/12/2011	

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DRUMMER	MYRINA	3/19/2012	5/14/2012
ELLISON	DIANA	2/9/2011	1/5/2016
FONG	SIU	7/12/2001	
FORSTER	JACQUELINE	11/30/2011	12/16/2011
GALINDO	LUZVIMINDA	8/28/1993	
GALLARDO	BEN	8/27/2008	
GARCIA	LETICIA	8/20/1987	1/4/2016
GARCIA	MARIXA	10/8/1997	
GARCIA DE JACINTO	AURORA	9/27/1989	
GARCIA-LEON	MARIA	1/30/2008	
GLOVER	FLOYD	2/6/2008	1/17/2017
GONZALEZ	MARIA	7/1/2009	
HUANG	QUAN	8/4/2004	
HUANG	XIU XIA	3/2/2011	
HUI	CHIU	8/25/1987	7/6/2015
HURTADO	MANUELA	6/25/1990	3/21/2015
JUAREZ	EVANGELINE	6/8/1984	12/23/2016
JUAREZ	MARICELA	6/18/1999	7/19/2013
KIRK	CRISTINA	1/26/2002	12/29/2014
KUANG	CUI	8/10/2005	
KUANG	JIAN	11/23/2005	
LAM	FONG	6/11/2004	10/31/2016
LEE	YUE	6/26/1993	
LI	XIU	8/17/2005	
LI	ZHONG	2/4/2004	7/19/2016
LONG	TU	12/26/1981	
MARQUEZ	MARIA	9/28/2011	4/7/2015
MARTINEZ	MARIA	9/20/1995	
MEJIA	MANUEL	9/28/1987	2/21/2013
MENDEZ	ROSALBA	3/4/1991	
MONTOYA	SARA	3/15/2014	5/1/2014
NAVARRO	DENISE	2/23/2012	3/22/2012
OLIVA	MARIA	8/6/2008	10/17/2013
ORDOVEZA	DOMITRINI	2/16/2011	
ORNELAS	ANA	5/16/1988	
PADILLA	ROSA	3/8/1989	2/3/2017
PALACIOS	CECILIA	6/16/1993	6/6/2016
PALOMINO-DIAZ	ANA	3/19/2003	
PEARSON	CARRI	3/26/2014	5/7/2014
PELAEZ	MARGARITA	4/18/2002	12/12/2012
RAMIREZ	MARIA	3/19/1982	1/12/2012

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RAMOS	MARISSA	4/8/2009	6/15/2015
RAMOS	TERESA	6/6/2012	7/1/2012
RUIZ	MARIA	2/25/2004	2/23/2016
SALDANA	ESTELA	6/25/1984	8/22/2011
SCAUBATO	KATRINA	8/3/2012	2/4/2013
SOLORZANO-YANES	IMELDA	4/1/1998	
SQUARTSOFF	AYLA	4/16/2014	7/11/2014
TORRES DE ARELLANO	ELODIA	10/23/2013	10/19/2015
TRAN	DO	5/24/1983	1/2/2015
TRUJILLO	BERNARDA	7/30/2008	3/18/2011
URBINA	MARICELA	5/6/1991	
VELIZ-CLAVEL	DELIA	2/23/2000	6/2/2017
WANG	ZHU	7/7/2009	9/24/2015
WEI	FU	9/24/2008	3/21/2013
WILLIAMS	BETTYE	5/23/2013	6/25/2013
XIAO	JIN	4/5/2006	9/26/2016
XU	YI	8/17/2005	12/6/2014
ZHEN	JUAN	7/19/2006	
ZHU	BOQUAN	12/5/2000	10/6/2016
ZHONG	XUELAN	8/9/2006	

III. ARGUMENT

A. Standard for Summary Judgment

In *Devereaux v. Abbey*, 263 F.3d 1070, 1076 (9th Cir. 2001), the Ninth Circuit explained that the "party moving for summary judgment bears the initial burden of demonstrating the absence of a genuine issue of fact for trial." *Id*. To meet this burden when "the nonmoving party has the burden of proof at trial, the moving party need only point out [by argument] that there is an absence of evidence to support the nonmoving party's case." *Id*. Once the moving party makes this showing, "the adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but must provide affidavits or other sources of evidence that set forth specific facts showing that there is a genuine issue for trial." *Id*. "To survive a motion for summary judgment, plaintiffs must produce sufficient evidence to establish the existence of every essential element of their case on which they will bear the burden of proof at trial." *River City Markets, Inc. v. Fleming Foods West, Inc*., 960 F.2d 1458, 1462 (9th Cir. 1992). "If the nonmoving party fails to make such a showing, summary judgment will be granted because 'a complete failure of proof concerning an essential element of the nonmoving party's case

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necessarily renders all other facts immaterial.'" *In re Brazier Forest Products, Inc*., 921 F.2d 221, 223 (9th Cir. 1990) *quoting Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

B. Forty-One Plaintiffs' Claims Are Barred as a Matter of Law Based on the Statute of Limitations.

1. Each Plaintiff Failed to File the Written Consent Required to Commence an FLSA Action for that Plaintiff, and The Claims of Forty-One Plaintiffs Are Now Time-Barred.

The Fair Labor Standards Act ("FLSA") requires an employee to give his or her written consent to become a plaintiff in a collective action, stating :

> No employee shall be a party plaintiff to any such action unless he has given his consent in writing to become such a party and such consent is filed in the court in which such action is brought.

29 U.S.C. §216(b). In determining when an action is commenced, the FLSA states:

> [I]t shall be considered to be commenced in the case of any individual claimant –
> (a) on the date when the complaint is filed, if he is specifically named as a party plaintiff in the complaint *and* his written consent to become a party plaintiff is filed on such date in the court in which the action is brought; or
> (b) If such written consent was not so filed or if his name did not so appear – on the subsequent date on which such written consent is filed in the court in which the action was commenced.

29 U.S.C. §256 (emphasis added).

In *Harkins v. Riverboat Servs., Inc*., 385 F.3d 1099, 1101 (7th Cir. 2004), the Second Circuit held when " a named plaintiff sues in behalf of himself and other employees similarly situated," under the FLSA, the district court properly dismissed the FLSA claims "because no written consents by them to join in this suit had been filed with the court before the statute of limitations expired," as required by 29 U.S.C. § 216(b). The court reasoned that 29 U.S.C. § 216(b) "is unambiguous: if you haven't given your written consent to join the suit, or if you have but it hasn't been filed with the court, you're not a party" and it "makes no difference that you are named in the complaint, for you might have been named without your consent." *Id*. Other Circuits have reached the same conclusion. *See Acosta v. Tyson Foods, Inc.*, 800 F.3d 468, 472 (8th Cir. 2015) (holding that when the complaint pleads a collective action under the FLSA, the FLSA claims must be dismissed when the named plaintiff fails to "file a written consent within

the statute of limitations" as required by 29 U.S.C. § 216(b)); *Frye v. Baptist Mem'l Hosp., Inc.*, 495 Fed. App'x 669, 675-77 (6th Cir. 2012) (holding the district court properly dismissed named plaintiff's FLSA claims when he asserted his claims as a collective action and "did not file a written consent" within the FLSA's statute of limitations" because 29 U.S.C. § 216(b) "require[s] a named plaintiff in a collective action to file a written consent to join the collective action").

Similarly, in *Bonilla v. Las Vegas Cigar Company*, 61 F. Supp. 2d 1129 (D. Nev. 1999), this Court considered the employer's motion for summary judgment based on the statute of limitations in an FLSA collective action. Citing the text of 29 U.S.C. §256, the Court held:

> The statutory language is clear. When plaintiffs have filed a 'collective action,' under §216(b), all plaintiffs, including named plaintiffs, must file a consent to the suit with the court in which the action is brought. Although the consents may be filed after the complaint, the action is not deemed commenced with respect to each individual plaintiff until his or her consent has been filed.

61 F. Supp. 2d at 1132-1133. The Court granted summary judgment with respect to two plaintiffs who had not filed consent to suit forms with the Court, and whose employment had ended more than two years before the filing of the collective action. *Id.* at 1139-40. The Court dismissed without prejudice a plaintiff who had failed to file a consent to suit but who was not time-barred, noting that the plaintiff could still opt into the suit by filing a consent to suit form within ten days of the Order, or could "proceed individually by filing a separate complaint," but "his claims will be barred with respect to those claims which are not within two years of the date he files a consent or complaint." *Id.* at 1140.

In *McLaughlin v. Richland Shoe Co.*, 486 U.S. 128, 135 (1988), the United States Supreme Court held that "[o]rdinary violations of the FLSA are subject to the general 2-year statute of limitations." Since the employment of forty-one (41) Plaintiffs ended more than two years ago and they have not filed the consents required by 29 U.S.C. § 216(b), the FLSA statute of limitation has continued to run and those Plaintiffs' claims are barred as untimely.

For the Plaintiffs whose claims are not time-barred, the Court should dismiss such Plaintiffs without prejudice if they do not file a consent opting this case within ten days, or proceed individually by filing a separate complaint, but their claims should be barred with

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respect to those which are not within two years of the date of filing of a consent or complaint. *See Bonilla*, 61 F. Supp. 2d at 1140.

2. Tolling Ended On March 22, 2016 When The Court Issued Its Order Decertifying The FLSA Collective Action In *Sargent*.

Plaintiffs allege they are entitled to tolling of the statute of limitations "from the date in which lead named Plaintiff Benson and all other Plaintiffs opted-in to the Sargent Action." Complaint, Doc. 14, ¶16. This assertion is without merit. Tolling applies only from the date that each Plaintiff filed a consent to sue in *Sargent* up until March 22, 2016, when Court issued its order in *Sargent* decertifying the FLSA collective action. *See Orduna v. Champion Drywall, Inc*., Case No. 2:12-CV-1144-LDG-VCF, 2013 WL 1249586, at *1-*2 (D. Nev. Mar. 26, 2013) (statute of limitations for plaintiff in FLSA collective action "will be tolled only after the plaintiff has filed a consent to opt in to the collective action. . . however, the statute of limitations for opt-in plaintiffs will begin to run again if the court later decertifies the collective action") (*citing* 7B Charles Alan Wright and Arthur Miller, Federal Practice and Procedure § 1807 (3d ed. 2012)); *Bonilla v. Las Vegas Cigar Co*., 61 F. Supp. 2d 1129, 1136-37 (D. Nev. 1999) ("the only tolling which makes sense with respect to § 216(b) is to toll the statute of limitations between the time each individual plaintiff consents to the suit, and the time the court dismisses the plaintiff if the court determines that the plaintiff is not 'similarly situated,' and must pursue their claim individually"). Clearly, as of March 22, 2016, the statute of limitations began running again, and for it to stop Plaintiffs need to file consents in *this* case. Because the employment of forty-one (41) Plaintiffs ended more than two years after tolling ended, those Plaintiffs are barred from proceeding with their claims.

III. CONCLUSION

Based on the foregoing, the Court should grant Defendants' motion for summary judgment for the forty-one (41) Plaintiffs listed below based on the statute of limitations, as all Plaintiffs whose employment ended more than two years ago are time barred even if they now file consents to sue, and even if tolling applies based on them having filed consents in *Sargent:*

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LAST NAME	FIRST NAME	DATE OF HIRE	TERMINATION DATE
AGUILAR	SAMANTHA	3/15/2014	4/4/2014
BACA	DINORA	9/11/2009	4/30/2012
CALVERT	PRISCILLA	1/12/2011	2/22/2011
CANO	JOSE	5/5/2011	5/22/2013
CAO-TRUONG	DINH	6/21/1980	3/3/2015
CHAVEZ TRUJILLO	MARIA	11/15/2010	8/19/2014
CHEN	WU	5/4/2005	4/22/2015
CHUNG	GING	6/23/2001	7/5/2011
CRUZ	ISMAELA	7/30/1990	1/8/2014
D'AGOSTINO	KAREN	4/25/2012	5/23/2012
DAVIS	TERESA	2/19/2014	6/30/2014
DAY	ANJANETTE	5/16/2012	10/10/2012
DRUMMER	MYRINA	3/19/2012	5/14/2012
ELLISON	DIANA	2/9/2011	1/5/2016
FORSTER	JACQUELINE	11/30/2011	12/16/2011
GARCIA	LETICIA	8/20/1987	1/4/2016
HUI	CHIU	8/25/1987	7/6/2015
HURTADO	MANUELA	6/25/1990	3/21/2015
JUAREZ	MARICELA	6/18/1999	7/19/2013
KIRK	CRISTINA	1/26/2002	12/29/2014
MARQUEZ	MARIA	9/28/2011	4/7/2015
MEJIA	MANUEL	9/28/1987	2/21/2013
MONTOYA	SARA	3/15/2014	5/1/2014
NAVARRO	DENISE	2/23/2012	3/22/2012
OLIVA	MARIA	8/6/2008	10/17/2013
PEARSON	CARRI	3/26/2014	5/7/2014
PELAEZ	MARGARITA	4/18/2002	12/12/2012
RAMIREZ	MARIA	3/19/1982	1/12/2012
RAMOS	MARISSA	4/8/2009	6/15/2015
RAMOS	TERESA	6/6/2012	7/1/2012
RUIZ	MARIA	2/25/2004	2/23/2016
SALDANA	ESTELA	6/25/1984	8/22/2011
SCAUBATO	KATRINA	8/3/2012	2/4/2013
SQUARTSOFF	AYLA	4/16/2014	7/11/2014
TORRES DE ARELLANO	ELODIA	10/23/2013	10/19/2015
TRAN	DO	5/24/1983	1/2/2015
TRUJILLO	BERNARDA	7/30/2008	3/18/2011
WANG	ZHU	7/7/2009	9/24/2015
WEI	FU	9/24/2008	3/21/2013
WILLIAMS	BETTYE	5/23/2013	6/25/2013
XU	YI	8/17/2005	12/6/2014

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Finally, the Court should dismiss the remaining Plaintiffs if they do not file written consents to this suit, and should bar their claims with respect to those that are not within two years of the date each one files a consent.

Dated this 17th day of May, 2018

By: */s/ Susan Heaney Hilden*
Susan Heaney Hilden, Esq.
Nevada Bar No. 5358

H. Stan Johnson, Esq.
Nevada Bar No. 265

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PROOF OF SERVICE

CASE NAME: BENSON *v. HG STAFFING, LLC*
Court: UNITED STATES DISTRICT COURT, DISTRICT OF NEVADA
Case No.: 3:16−cv−00388−LRH−WGC

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

DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT

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

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

DATED the 17th day of May, 2018.

/s/ Sarah Gondek
An employee of Cohen Johnson Parker Edwards

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Jacqueline Bryant
Clerk of the Court
Transaction # 7310764

CODE NO. 3370

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

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

Plaintiffs,

vs.

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

Defendants.
_____/

Case No. CV16-01264

Dept. No. 6

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

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

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

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

I. FACTUAL AND PROCEDURAL HISTORY

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

On October 9, 2018, this Court entered its *Order After Hearing Granting Defendants' Motion to Dismiss* ("*Order*"). The Court found Plaintiffs failed to provide sufficient information to support its claims, and therefore granted GSR's *Motion to Dismiss*. Thereafter, Plaintiffs filed *Plaintiffs' Motion for Reconsideration of the Court's Order Granting Defendant's Motion to Dismiss or in the Alternative Leave to File an Amended Complaint* ("*Motion for Reconsideration*") requesting the Court reconsider its *Order* pursuant to NRCP

Rule 60(b). *Motion for Reconsideration*, p. 2. This Court entered its *Order Re Motion for Reconsideration* denying Plaintiffs request on the grounds they failed to state a claim but granting Plaintiffs leave to amend their *Complaint*.

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

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

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

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

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

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

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

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

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

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

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

Second, Plaintiffs assert they meet the pleading standard because they alleged specific work activities for which they are 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. *Opposition*, p. 9.

Third, Plaintiffs maintain their claims are not barred by issue or claim preclusion because their Nevada wage claims were not certified in the Sargant action. *Opposition*, p. 13. Specifically, the federal court never reached determination of 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. *Opposition*, p. 13.

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

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

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

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

II. STANDARD OF REVIEW; LAW AND ANALYSIS

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

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

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

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

The Minimum Wage Act (MWA) guarantees employees payment of a specified minimum wage and gives an employee whose employer violates the MWA the right to bring an action against his or her employer in Nevada. Perry v. Terrible Herbst, Inc., 383 P.3d 257, 258 (Nev. 2016). A two-year statute of limitation applies to actions for failure to pay the minimum wage in violation of the Nevada constitution. Id. at 262. This two-year statute of limitation period applies to NRS 608 statutory wage claims that are analogous to a cause of action for failure to pay an employee the lawful minimum wage. Id. Accordingly, a two-year statute of limitation applies to: Plaintiffs' First Cause of Action for Failure to Pay Wages for All Hours Worked in Violation of NRS 608.140 and 608.016; Second Cause of Action for Failure to Pay Minimum Wages in Violation of the Nevada Constitution; Third Cause of Action for Failure to Pay Overtime Wages in Violation of NRS 608.140 and 608.018; and, Fourth Cause of Action for Failure to Timely Pay All Wages Due and Owing Upon Termination Pursuant to NRS 608.140 and 608.020-.050.

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2. Cross Jurisdictional Tolling Does Not Apply

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

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

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

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

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

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

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

Here, Plaintiffs filed their *Complaint* on June 14, 2016. As such, all claims accruing before June 14, 2014 are barred unless cross-jurisdictional tolling applies. Under the

unique facts of this case, the Court finds cross-jurisdictional tolling does not apply. The Court looks to the history of this litigation. Specifically, Plaintiffs in this case previously brought a substantially similar action in the Second Judicial District Court for the State of Nevada. The case was removed to federal court where class certification was denied and the case dismissed. Plaintiffs again seek recourse in the Second Judicial District Court and assert their claims were tolled by the federal action.

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

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

B. Remaining Claims

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

The Court addresses each argument in turn.

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

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

2. Issue and Claim Preclusion Does not Apply

In Five Star Capital Corp. v. Ruby, the Nevada Supreme Court set forth a three-part test for determining whether claim preclusion applies to a later action: (1) [T]he parties or their privies 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. 124 Nev. at 1054. In Five Star Capital Corp., the Court reasoned, claim preclusion applies to preclude an entire second suit that is based on the same set of facts and circumstances as the first suit. Id.

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

> (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.

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

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

3. Standing to Represent Union Employees

Pursuant to 29 U.S.C. § 159(a),

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

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

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

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

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

4. Failure to State a Claim

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

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

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

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

III. ORDER.

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

Based on the foregoing, and good cause appearing thereto,

IT IS HEREBY ORDERED Defendants' *Motion to Dismiss* is GRANTED, in part, and DENIED, in part.

Dated this 7th day of June, 2019.

DISTRICT JUDGE

CERTIFICATE OF SERVICE

I certify that I am an employee of THE SECOND JUDICIAL DISTRICT COURT; that on the 11th day of June, 2019, I electronically filed the foregoing with the Clerk of the Court system which will send a notice of electronic filing to the following:

MARK THIERMAN, ESQ.

SUSAN HILDEN, ESQ.

H. JOHNSON, ESQ.

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

Audra Bre

CV16-01264

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IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

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

Plaintiffs,

v.

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

Defendants.

Case No.: CV16-01264

REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT ON ALL CLAIMS ASSERTED BY PLAINTIFF MARTEL

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POINTS AND AUTHORITIES

I. INTRODUCTION

The state law wage claims, alleged in the First Amended Class Action Complaint ("Complaint") by Plaintiffs Eddy Martel, are all barred by claim preclusion.[1] Plaintiffs wrongly split these state law wage claims from their overtime claims pursued in federal court under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 207, for the sole purpose of avoiding federal jurisdiction. Plaintiffs do not dispute that the United State District Court has now dismissed the Plaintiff Martel's federal complaint, alleging his FLSA claim, with prejudice. Because Plaintiffs provide no legitimate justification for refusing to raise in the federal action, the state law wage claims brought in in this action, the doctrine of claim preclusion bars Plaintiff Martel's Complaint in this action. Accordingly, this Court should grant GSR's motion for summary judgment on all claims asserted by Plaintiff Martel.

II. ARGUMENT

Plaintiffs do not dispute that the three-part test, found in *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 194 P.3d 709 (2008), provides the requirement for establishing claim preclusion in this case. *See* 124 Nev. at 1054, 194 P.3d at 713 (adopting "three-part test for determining whether claim preclusion should apply: (1) the parties or their privies 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"); *see also* Op. at 6:8-26. Plaintiffs, however, attempt to contort the language in this test to add additional requirements never adopted by the Nevada Supreme Court.

A. Plaintiff Martel Was a Named Party in the Federal Wage Claim Complaint.

Plaintiffs do not dispute that Martel was named as a plaintiff in the Federal Wage Complaint. *See* Motion Exhibit 1, Martel Cash Bank Complaint at 1:22-23 (naming "EDDY

[1] The motion originally applied to Plaintiffs Eddy Martel ("Martel"), Mary Anne Capilla ("Capilla"), and Whitney Vaughn ("Vaughn"). As this Court has dismissed the claims of Plaintiffs Capilla and Vaughn, only the claims of Martel remain. This reply, however would equally apply to Capilla and Vaughn if they were deemed to have any remaining claims.

MARTEL-RODRIGUEZ as a Plaintiff), 2:17 ("COME NOW Plaintiffs . . . EDDY MARTEL-RODRIGUEZ"); *see also Rockford Mut. Ins. Co. v. Amerisure Ins. Co.*, 925 F.2d 193, 197 (7th Cir. 1991) (holding "parties" for purposes of res judicata include those who have an "active role in conducting that litigation"). Plaintiffs, however, wrongly argue that Martel was not a party to the federal action because he and the other named plaintiffs allegedly failed to file consents to the FLSA collective action. *See* Op. at 12:5-25. The absurdity of this argument is self-evident. If Martel and the other named Plaintiffs were not parties to the Complaint, who was the party that filed the Complaint and who were the parties that moved for voluntary dismissal?

To support this absurdity, Plaintiffs selectively quote from Section 16(b) of the FLSA as providing: "No employee shall be a party plaintiff to any ***such action*** 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." 29 U.S.C §216(b); *see also* Op. at 12:5-8. Plaintiffs admit, however, that this provision only applies to "collective actions," and not to individual FLSA actions. *See* Op. at 12:8-10. In *Rangel v. PLS Check Cashers of California*, Inc., 899 F.3d 1106, 1109 (9th Cir. 2018), the Ninth Circuit held that the named plaintiffs' individual FLSA claims were "present" when consent forms were not filed in "the original named plaintiff's case." The court reasoned that the individual FLSA claims remained because "[n]o plaintiffs joined [the named plaintiffs'] putative collective action before it was dismissed, so no collective was ever formed." *Id.*; *see also Allen v. Atl. Richfield Co.*, 724 F.2d 1131, 1134-35 (5th Cir. 1984) (holding "parties to the suit were named plaintiffs," even though the named plaintiffs never filed written consents, because "a plaintiff does not need to file a written consent if an individual action is maintained" and because "the action never evolved into a collective or class action since no unnamed plaintiff ever came forward and filed a written consent to the suit").

Here, Martel was not only seeking to pursue a collective action on behalf of others, he was asserting an individual FLSA claim on behalf of himself. *See* Motion Exhibit 1, Martel Cash Bank Complaint at 5:22-25, ¶ 15 (indicating that "Plaintiffs have attached Exhibit A to this Complaint which contains a table of the calculation of one week of overtime owed to each additional named Plaintiff herein based on their regular rate of pay"), 8:6-10, ¶ 26 ("***Plaintiffs***

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demand for themselves and for all others similarly situated, that Defendants pay Plaintiffs and all members of the Class one and one half times their regular hourly rate of pay for all hours worked in excess of forty (40) hours a week during the relevant time period"). Because Martel was a party plaintiff to this individual FLSA claim, the dismissal of that claim precludes his wage claims in this case.[2]

C. The Federal District Court's Order Dismissing Plaintiff Martel Federal Wage Complaint with Prejudice Is a Valid Order Entitled to Preclusive Effect Even If the Federal Action Was Filed Second.

Plaintiffs admit that the federal district court dismissed Martel's federal complaint, asserting a wage claim under the FLSA, with prejudice. *See* Op. at 7:24-27, 8:25-26. Plaintiff wrongly argues, however, that to be a valid order the case must have been filed previous to this action. *See* Op. at 7:3-11. Plaintiffs mistakenly assume that references in *Five Star*, and other similar cases, to "first suit," "second suit" and "previous suit" were imposing requirements as to the order in which the suits had to filed. Nothing in these cases, however, indicates that terms "first," "second," or "previous" relate to anything other than a short hand method of distinguishing between the two actions with respect to claim preclusion. Contrary to Plaintiffs' argument, courts have repeatedly held that claim preclusion ***can*** apply when the second filed action concluded prior to the first action. *Compare* Op. 7:8-11.

In *Kirsch v. Traber*, 414 P.3d 818, 821 (Nev. 2018), the Nevada Supreme Court affirmed its "long-standing reliance on the Restatement (Second) of Judgments in the issue and claim preclusion context." The Restatement (Second) of Judgments § 14 (1982) states: "For purposes of res judicata, the effective date of a final judgment is the date of its rendition, without regard to

[2] Even if this Court accepted Plaintiffs' nonsensical proffer that Martel was not a party to his own federal wage complaint, claim preclusion does not apply merely to "parties," but also to those in privity with them. In *Mendenhall v. Tassinari*, 403 P.3d 364, 369 (Nev. 2017), the Nevada Supreme Court "broadly construed the concept of privity, far beyond its literal and historic meaning, to include any situation in which the relationship between the parties is sufficiently close to supply preclusion." If the person that allegedly brought the complaint cannot be deemed to be in privity with the party, then no one can. *See i*d. (applying claim preclusion to non-party "where the record demonstrates a substantial identity" with the parties).

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the date of commencement of the action in which it is rendered or the action in which it is to be given effect." Comment a, to section 14, provides:

> In order that a final judgment shall be given res judicata effect in a pending action, it is not required that the judgment shall have been rendered before that action was commenced. Nor is a judgment, otherwise entitled to res judicata effect in a pending action, to be deprived of such effect by the fact that the action in which it was rendered was commenced later than the pending action. It is merely required that rendition of the final judgment shall antedate its application as res judicata in the pending action. Thus when two actions are pending which are based on the same claim, or which involve the same issue, it is the final judgment first rendered in one of the actions which becomes conclusive in the other action (assuming any further prerequisites are met), regardless of which action was first brought.

See also Lee v. Spoden, 776 S.E.2d 798, 805 (Va. 2015) (holding the "timing principle" found in the Restatement (Second) of Judgments § 14, "is nearly universal among courts."); *Touris v. Flathead Cty.*, 258 P.3d 1, 4 (Mont. 2011) (relying on the Restatement (Second) of Judgments § 14 to hold that the "date of rendition of the judgment is controlling for purposes of res judicata, not the dates of commencement of the action creating the bar or the action to be affected by the bar"); *United States. ex rel. Barajas v. Northrop Cor*p., 147 F.3d 905, 909 (9th Cir. 1998) (same); *Matter of Hansler*, 988 F.2d 35, 38 (5th Cir. 1993) (same).

Accordingly, because final judgment dismissing Martel's federal wage action was entered first, that order is to be given preclusive effect regardless of the commencement of this action and Martel's federal wage action.

D. The Federal District Court Did *NOT* Limit the Preclusive Effect of Its Order Dismissing Plaintiff Martel's Federal Wage Complaint with Prejudice.

Plaintiffs misrepresent that the federal district court "specifically held that the Plaintiffs are not precluded from bringing their state law claim." Op. at 7:21-23. The federal court did no such thing. Instead, at the Plaintiffs' request for clarification (although none was needed), the federal district court explained that its order was "without prejudice as to plaintiffs' state law causes of action, even though the court acknowledges that the alleged conduct is the same, . . .in accordance with *Smith v. Lenches*, 263 F.3d 972, 976 n.6 (9th Cir. 2001)." *See* Exhibit 10, *Ramirez v. HG Staffing, LLC*, Case No. 3:16-cv-00318-LRH-WGC, Order - Doc. 99 (D. Nev.

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03/27/19). A review of the entire footnote 6 in *Smith*, however, demonstrates that the federal court was making no ruling on the impact of its orders on this Court.

Footnote 6 states:

> EFI also argues that the district court erred in reciting in its order that the dismissal of the federal claims was "without prejudice to plaintiffs' asserting their state law causes of action in the state court case, even though based upon the same conduct alleged in this federal action." On the basis of this language, EFI argues that this was error because the district court had no jurisdiction to rule on Smith's state law causes of action. However, ***we do not read the district court's order as making any decision of state law.*** The district court's order simply dismissed these claims without prejudice to show that the federal district court was not adjudicating anything regarding the state claims. ***Whether or not the dismissal of the federal claims here has any implications for assertion of state law claims pending in state court is a question to be decided by the state court.***

Smith, 263 F.3d at 976 n.6. (9th Cir. 2001) (emphasis added). *Smith*, therefore, clearly holds that statements indicating that dismissal of federal claims before the federal court was "without prejudice" as to state law claims before a state court should not be construed as a "decision of state law" because "[w]hether or not the dismissal of the federal claims here has any implications for assertion of state law claims pending in state court ***is a question to be decided by the state court***," and therefore could not be decided by the federal court.

After further request for clarification from Defendants, the federal district court quoted the entire footnote 6 from *Smith*, and concluded "it is clear that whether or not the dismissal of the federal claim here has any implications for the state law claims based upon similar alleged conduct is for the state court to decide." *See* Motion Exhibit 7, *Ramirez v. HG Staffing, LLC*, Case No. 3:16-cv-00318-LRH-WGC, Order - Doc. 101, at 1:16 - 2:3 (D. Nev. 04/01/19). Plaintiffs' assertion that the federal district court's order in any way limits this Court's authority to decide the preclusive effect of the federal district court order is nothing less than misleading. As the federal court has not and could not limit that authority, and all of the factors required for claim preclusion have been met, this Court should dismiss Martel's claims with prejudice as barred by claim preclusion.

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E. Plaintiffs Martel Complaint Is Barred because His State Law Wage Claims Could Have Been Brought in the Federal Wage Complaint that Was Admittedly Dismissed with Prejudice.

Plaintiffs appear to argue that the federal court order cannot not have preclusive effect upon this Nevada State law wage action because Martel did not raise his state law wage claims in the federal action. *See* Op. at 8:3 – 9:14. Such an argument, however, completely ignores the "well-established principle," in *Five Star*, "that claim preclusion applies to all grounds of recovery that were or could have been brought in the first case" where judgment was entered. *Five Star*, 124 Nev.at 1054–55, 194 P.3d at 713. As explained by the Nevada Supreme Court in *Boca Park Martketplace Syndications Grp., LLC v. Higco, Inc*., 407 P.3d 761, 763 (Nev. 2017), claim preclusion "is a policy-driven doctrine, designed to promote finality of judgments and judicial efficiency by requiring a party to bring all related claims against its adversary in a single suit, on penalty of forfeiture." Accordingly, claim preclusion does not require that the exact same claims be raised in both suits, but only that those cases be related.

In *Landers v. Quality Commc'ns, Inc*., Case No. 62181, 2014 WL 3784254, at *1 -*3 (Nev. July 30, 2014), the Nevada Supreme Court expressly found that an employee "could have asserted his NRS Chapter 608 claims in the original federal complaint" asserting FLSA wage claims, and therefore the federal court's order of dismissing the federal wage claims "maintains its preclusive effect." Plaintiffs wrongfully split their federal wage claims from their state law wage claims to avoid federal jurisdiction. *See Clark*, 953 F.2d at 1238–40 (holding that the employee was precluded from bringing any employment related claims after employee voluntarily dismissed FLSA wage claims because "the doctrine of res judicata precludes parties from relitigating issues that were or could have been raised," and "parties cannot defeat its application by simply alleging new legal theories," as this is "precisely the sort of piecemeal litigation, unnecessary expense, and waste of judicial resources that the doctrine of res judicata is designed to prevent"). Plaintiffs, however, were required to bring these claims in the same court. *See Corral v. HG Staffing, LLC*, Case No. 3:16-cv-00386-LRH-WGC, 2017 WL 843172, at *4 (D. Nev. Mar. 2, 2017) (holding that judgment in action alleging "failure to pay overtime in violation of Nevada law" barred FLSA complaint "based in part on the same employer conduct"

because "[c]laim preclusion bars a plaintiff from re-litigating the same case based solely on a different legal theory" which "is especially pronounced" when employee's "legal theories are merely state and federal-law duplicates of one another"). Plaintiffs' wrongful attempt to avoid judgment by the federal district court, however, is not permitted. As each and every factor for claim preclusion has been met, claim preclusion applies and this Court should grant summary judgment in favor of GSR on all claims brought in this action by Plaintiff Martel.

F. No Public Policy Exception Prevents the Application of Claim Preclusion in this Case.

Plaintiffs wrongly argue that a public policy exception prevents the application of claim preclusion in wages cases involving NRS Chapter 608. *See* Op. at 10:7-22. In *Five Star*, the Nevada Supreme Court expressly refused to expand the "public policy exception to claim preclusion in cases involving a determination of paternity" to other cases, "in the light of the maxim that the interest of the state requires that there be an end to litigation—a maxim which comports with common sense as well as public policy." 124 Nev. at 1058-59, 194 P.3d at 715-16. In fact, in *Bradley S. v. Sherry N.*, Case No. 64237, 2015 WL 7356409, at *3 (Nev. Nov. 17, 2015), the Nevada Supreme Court refused to expand the exception to include child support cases.

Plaintiffs provide absolutely no justification why federal wage claims and Nevada state law wage claims should not be pursued in the same action. To the contrary, as already set forth in *Landers*, the Nevada Supreme Court specifically endorsed raising NRS Chapter 608 wage claims in federal complaints. *See* 2014 WL 3784254, at *3 (relying upon 18 Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice and Procedure*, § 4412, at 289 n. 19 (2d ed.2002) which "summarize[ed] cases concluding that if a plaintiff who files a federal complaint is unsure whether the federal court will exercise supplemental jurisdiction over state law claims, the plaintiff should nonetheless invoke the federal court's supplemental jurisdiction and assert the state law-based causes of action to escape claim preclusion if the federal claims fail"). As no public policy exception applies and all of the elements of claim preclusion have been met, this Court should this Court should grant summary judgment in favor of GSR on all claim brought in this action by Plaintiff Martel.

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III. CONCLUSION

Pursuant to the foregoing, this Court should grant GSR's motion for summary judgment and dismiss the First Amended Class Action Complaint of Plaintiff Martel with prejudice.

AFFIRMATION

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

Dated this 10th day of June 2019

COHEN|JOHNSON|PARKER|EDWARDS

By: */s/ H. Stan Johnson*
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PROOF OF SERVICE

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

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

REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT ON ALL CLAIMS ASSERTED BY PLAINTIFF MARTEL

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

Mark R. Thierman, Esq.
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Attorney for Plaintiffs

DATED the 10th day of June 2019.

/s/ Sarah Gondek
An employee of
COHEN|JOHNSON|PARKER|EDWARDS

EXHIBIT INDEX

Exhibit	Description	Pages
10	Ramirez v. HG Staffing, LLC, Case No. 3:16-cv-00318-LRH-WGC, Order - Doc. 99 (D. Nev. 03/27/19)	2

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Exhibit 10

Exhibit 10

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * *

ANTONIO RAMIREZ, *et al.*, Plaintiffs, v. HG STAFFING, LLC; MEI-GSR HOLDINGS LLC d/b/a GRAND SIERRA RESORT; and Does 1 through 50, inclusive, Defendants.	Case No. 3:16-cv-00318-LRH-WGC ORDER

Before the court is plaintiffs' motion for clarification of the court's prior order granting plaintiffs' motion for voluntary dismissal on the condition that it be with prejudice (ECF No. 97). ECF No. 98. Plaintiffs also motion this court for an extension of time to consent to the prior order. *Id.*

As the court previously stated, and as plaintiffs represented to this court, plaintiffs wish to abandon their federal claims in favor of the more encompassing state law claims currently pending in Nevada State Court. The court sees no reason to deny plaintiffs that request or to force them to litigate in federal court. However, given the considerable time and money defendants have spent engaging in discovery and generally litigating this case over the past 5 years, it would be improper to allow plaintiffs to fully litigate their claims in state court, and then if unsuccessful, return to federal court and attempt to relitigate their federal claims. It is for that reason the court ruled that plaintiffs' motion for voluntary dismissal be with prejudice—plaintiffs will be precluded from again raising the Fair Labor Standards Act claim in this court.

As the term "with prejudice" can have various meanings, the court clarifies that its prior Order is with prejudice in that it precludes plaintiffs from subsequently reasserting this cause of action in federal court. However, it is without prejudice as to plaintiffs' state law causes of action in state court, even though the court acknowledges that the alleged conduct is the same. This ruling is in accordance with *Smith v. Lenches*, 263 F.3d 972, 976 n.6 (9th Cir. 2001).

IT IS FURTHER ORDERED that plaintiffs have 30 days from the date of this Order to withdraw their motion or consent to the dismissal despite the condition. A failure to respond within the 30-day window shall constitute a consent to dismissal with prejudice.

IT IS SO ORDERED.

DATED this 27 day of March, 2019.

LARRY R. HICKS
UNITED STATES DISTRICT JUDGE

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IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

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

Plaintiffs,

v.

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

Defendants.

Case No.: CV16-01264

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

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

AFFIRMATION

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

Dated this 28th day of June 2019

COHEN|JOHNSON|PARKER|EDWARDS

By: */s/ H. Stan Johnson*
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PROOF OF SERVICE

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

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

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

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

Mark R. Thierman, Esq.
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Attorney for Plaintiffs

DATED the 28th day of June 2019.

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

FILED
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2019-06-07 03:56:28 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7347963

CODE NO. 3370

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

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

Plaintiffs,

vs.

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

Defendants.
_____/

Case No. CV16-01264

Dept. No. 6

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

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

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

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

I. FACTUAL AND PROCEDURAL HISTORY

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

On October 9, 2018, this Court entered its *Order After Hearing Granting Defendants' Motion to Dismiss* ("*Order*"). The Court found Plaintiffs failed to provide sufficient information to support its claims, and therefore granted GSR's *Motion to Dismiss*. Thereafter, Plaintiffs filed *Plaintiffs' Motion for Reconsideration of the Court's Order Granting Defendant's Motion to Dismiss or in the Alternative Leave to File an Amended Complaint* ("*Motion for Reconsideration*") requesting the Court reconsider its *Order* pursuant to NRCP

Rule 60(b). *Motion for Reconsideration*, p. 2. This Court entered its *Order Re Motion for Reconsideration* denying Plaintiffs request on the grounds they failed to state a claim but granting Plaintiffs leave to amend their *Complaint*.

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

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

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

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

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

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

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

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

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

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

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

Second, Plaintiffs assert they meet the pleading standard because they alleged specific work activities for which they are 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. *Opposition*, p. 9.

Third, Plaintiffs maintain their claims are not barred by issue or claim preclusion because their Nevada wage claims were not certified in the Sargant action. *Opposition*, p. 13. Specifically, the federal court never reached determination of 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. *Opposition*, p. 13.

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

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

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

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

II. STANDARD OF REVIEW; LAW AND ANALYSIS

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

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

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

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

The Minimum Wage Act (MWA) guarantees employees payment of a specified minimum wage and gives an employee whose employer violates the MWA the right to bring an action against his or her employer in Nevada. Perry v. Terrible Herbst, Inc., 383 P.3d 257, 258 (Nev. 2016). A two-year statute of limitation applies to actions for failure to pay the minimum wage in violation of the Nevada constitution. Id. at 262. This two-year statute of limitation period applies to NRS 608 statutory wage claims that are analogous to a cause of action for failure to pay an employee the lawful minimum wage. Id. Accordingly, a two-year statute of limitation applies to: Plaintiffs' First Cause of Action for Failure to Pay Wages for All Hours Worked in Violation of NRS 608.140 and 608.016; Second Cause of Action for Failure to Pay Minimum Wages in Violation of the Nevada Constitution; Third Cause of Action for Failure to Pay Overtime Wages in Violation of NRS 608.140 and 608.018; and, Fourth Cause of Action for Failure to Timely Pay All Wages Due and Owing Upon Termination Pursuant to NRS 608.140 and 608.020-.050.

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2. Cross Jurisdictional Tolling Does Not Apply

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

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

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

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

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

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

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

Here, Plaintiffs filed their *Complaint* on June 14, 2016. As such, all claims accruing before June 14, 2014 are barred unless cross-jurisdictional tolling applies. Under the

unique facts of this case, the Court finds cross-jurisdictional tolling does not apply. The Court looks to the history of this litigation. Specifically, Plaintiffs in this case previously brought a substantially similar action in the Second Judicial District Court for the State of Nevada. The case was removed to federal court where class certification was denied and the case dismissed. Plaintiffs again seek recourse in the Second Judicial District Court and assert their claims were tolled by the federal action.

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

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

B. Remaining Claims

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

The Court addresses each argument in turn.

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

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

2. Issue and Claim Preclusion Does not Apply

In Five Star Capital Corp. v. Ruby, the Nevada Supreme Court set forth a three-part test for determining whether claim preclusion applies to a later action: (1) [T]he parties or their privies 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. 124 Nev. at 1054. In Five Star Capital Corp., the Court reasoned, claim preclusion applies to preclude an entire second suit that is based on the same set of facts and circumstances as the first suit. Id.

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

> (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.

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

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

3. Standing to Represent Union Employees

Pursuant to 29 U.S.C. § 159(a),

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

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

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

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

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

4. Failure to State a Claim

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

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

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

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

III. ORDER.

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

Based on the foregoing, and good cause appearing thereto,

IT IS HEREBY ORDERED Defendants' *Motion to Dismiss* is GRANTED, in part, and DENIED, in part.

Dated this 7th day of June, 2019.

DISTRICT JUDGE

CERTIFICATE OF SERVICE

I certify that I am an employee of THE SECOND JUDICIAL DISTRICT COURT; that on the 11th day of June, 2019, I electronically filed the foregoing with the Clerk of the Court system which will send a notice of electronic filing to the following:

MARK THIERMAN, ESQ.

SUSAN HILDEN, ESQ.

H. JOHNSON, ESQ.

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

Audra Bre

CV16-01264

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IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

EDDY MARTEL (also known as MARTEL-RORIGUEZ), MARY ANNE CAPILLA, JANICE JACKSON-WILLIAMS and WHITNEY VAUGHN on behalf of themselves and all others similarly situated, Plaintiffs, v. HG STAFFING, LLC, MEI-GSR HOLDINGS, LLC d/b/a GRAND SIERRA RESORT, and DOES 1 through 50, inclusive, Defendants.	Case No.: CV16-01264 **ANSWER TO FIRST AMENDED CLASS ACTION COMPLAINT**

Defendants HG STAFFING, LLC, MEI-GSR HOLDINGS, LLC d/b/a GRAND SIERRA RESORT. by and through their counsel of record, hereby answers Plaintiffs' First Amended Class Action Complaint ("Complaint") as follows:

COHEN | JOHNSON | PARKER | EDWARDS
375 E. Warm Springs Road, Ste. 104
Las Vegas, Nevada 89119
(702) 823-3500 FAX: (702) 823-3400

JURISDICTION AND VENUE

1. Defendants deny each and every allegation found in Paragraphs 1 and 2 of the Complaint.

2. Defendants admit the allegations found in Paragraph 3 of the Complaint.

PARTIES

3. In answering Paragraph 4 of the Complaint, Defendants admit that Plaintiff Martel is a natural person who was employed by Defendants. Defendants are without sufficient knowledge to form a belief as to the truth or falsity of the remaining allegations set forth in Paragraph 4 and therefore, deny the same.

4. In answering Paragraph 5 of the Complaint, Defendants admit that Plaintiff Capilla is a natural person who was employed by Defendants. Defendants are without sufficient knowledge to form a belief as to the truth or falsity of the remaining allegations set forth in Paragraph 5, and therefore deny the same.

5. In answering Paragraph 6 of the Complaint, Defendants admit that Plaintiff Williams is a natural person who was employed by Defendants. Defendants are without sufficient knowledge to form a belief as to the truth or falsity of the remaining allegations set forth in Paragraph 6, and therefore deny the same.

6. In answering Paragraph 7 of the Complaint, Defendants admit that Plaintiff Vaughan is a natural person who was employed by Defendants. Defendants are without sufficient knowledge to form a belief as to the truth or falsity of the remaining allegations set forth in Paragraph 7, and therefore deny the same.

7. Defendants admit the allegations found in Paragraphs 8 and 9 of the Complaint.

8. In answering Paragraph 10 of the Complaint, Defendants admit that they are employers. Defendants deny each and every remaining allegation found in Paragraph 10 of the Complaint.

9. Defendants are without sufficient knowledge to form a belief as to the truth or falsity of the allegations set forth in Paragraph 11 of the Complaint and therefore, deny the same.

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FACTUAL ALLEGATIONS

10. Defendants admit the allegations found in Paragraph 12 of the Complaint.

11. Defendants deny each and every allegation found in Paragraphs 13, 14, 15 and 16 of the Complaint.

12. Defendants admit the allegations found in Paragraph 17 of the Complaint.

13. Defendants deny each and every allegation found in Paragraphs 18, 19, 20 and 21 of the Complaint.

14. In answering Paragraph 22 of the Complaint, Defendants admit that they maintain and possess employment records. Defendants deny each and every remaining allegation found in Paragraph 22 of the Complaint.

15. Defendants deny each and every allegation found in Paragraphs 23, 24, 25 and 26 of the Complaint.

16. In answering Paragraph 27 of the Complaint, Defendants admit that they maintain and possess employment records. Defendants deny each and every remaining allegation found in Paragraph 27 of the Complaint.

17. Defendants deny each and every allegation found in Paragraphs 28, 29 and 30 of the Complaint.

18. In answering Paragraph 31 of the Complaint, Defendants admit that they maintain and possess employment records. Defendants deny each and every remaining allegation found in Paragraph 31 of the Complaint.

19. Defendants deny each and every allegation found in Paragraphs 32, 33, 34 and 35 of the Complaint.

20. In answering Paragraph 36 of the Complaint, Defendants admit that they maintain and possess employment records. Defendants deny each and every remaining allegation found in Paragraph 36 of the Complaint.

21. Defendants deny each and every allegation found in Paragraphs 37, 38, 39 and 40 of the Complaint.

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22. In answering Paragraph 41 of the Complaint, Defendants admit that they maintain and possess employment records. Defendants deny each and every remaining allegation found in Paragraph 41 of the Complaint.

23. Defendants deny each and every allegation found in Paragraph 42 of the Complaint.

24. Paragraphs 43 and 44 of the Complaint set forth legal conclusions and questions of law to which no response is required. To the extent a response is required, Defendants deny each and every allegation found in Paragraphs 43 and 44 of the Complaint.

25. Defendants are without sufficient knowledge to form a belief as to the truth or falsity of the allegations set forth in Paragraph 45 of the Complaint and therefore, deny the same.

26. Paragraph 46 of the Complaint set forth legal conclusions and questions of law to which no response is required. To the extent a response is required, Defendants deny each and every allegation found in Paragraph 46 of the Complaint.

27. Defendants deny each and every allegation found in Paragraphs 47, 48, 49, 50 and 51 of the Complaint

28. In answering Paragraph 52 of the Complaint, Defendants admit that they maintain and possess employment records. Defendants deny each and every remaining allegation found in Paragraph 52 of the Complaint.

CLASS ACTION ALLEGATIONS

29. In answering Paragraph 53 of the Complaint, Defendants reassert each and every answer to Paragraphs 1 – 52 of the Complaint as though fully set forth herein.

30. Defendants deny each and every allegation found in Paragraphs 54, 54A, 54B, 54C, 54D, 54E, 54F, 55, 55A, 55B, 55C, 55D and 55E of the Complaint.

FIRST CAUSE OF ACTION

31. In answering Paragraph 40 of the First Cause of Action in the Complaint, Defendants reassert each and every answer to Paragraphs 1 – 55E of the Complaint as though fully set forth herein.

32. Paragraphs 41 and 42 of the First Cause of Action in the Complaint set forth legal conclusions and questions of law to which no response is required. To the extent a response is required, Defendants deny each and every allegation found in Paragraphs 41 and 42.

33. Defendants deny each and every allegation found in Paragraphs 43, 44 and 45 of the First Cause of Action in the Complaint.

SECOND CAUSE OF ACTION

34. In answering Paragraph 46 of the Second Cause of Action in the Complaint, Defendants reassert each and every answer to Paragraphs 1 – 55E of the Complaint and Paragraphs 40 – 45 of the First Cause of Action in the Complaint as though fully set forth herein.

35. Paragraph 47 of the Second Cause of Action in the Complaint set forth legal conclusions and questions of law to which no response is required. To the extent a response is required, Defendants deny each and every allegation found in Paragraph 47.

36. Defendants deny each and every allegation found in Paragraphs 48 and 49 of the Second Cause of Action in the Complaint.

37. Defendants are without sufficient knowledge to form a belief as to the truth or falsity of the allegations set forth in Paragraph 50 of the Second Cause of Action in Complaint, and therefore deny the same.

THIRD CAUSE OF ACTION

38. In answering Paragraph 51 of the Third Cause of Action in the Complaint, Defendants reassert each and every answer to Paragraphs 1 – 55E of the Complaint, Paragraphs 40 – 45 of the First Cause of Action, and Paragraphs 46 – 50 of the Second Cause of Action in the Complaint as though fully set forth herein.

39. Paragraphs 52, 53 and 54 of the Third Cause of Action in the Complaint set forth legal conclusions and questions of law to which no response is required. To the extent a

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response is required, Defendants deny each and every allegation found in Paragraph 52, 53 and 54.

40. Defendants deny each and every allegation found in Paragraphs 55 and 56 of the Third Cause of Action in the Complaint.

41. Defendants are without sufficient knowledge to form a belief as to the truth or falsity of the allegations set forth in Paragraph 57 of the Third Cause of Action in Complaint, and therefore deny the same.

FOURTH CAUSE OF ACTION

42. In answering Paragraph 58 of the Fourth Cause of Action in the Complaint, Defendants reassert each and every answer to Paragraphs 1 – 55E of the Complaint, Paragraphs 40 – 45 of the First Cause of Action, Paragraphs 46 – 50 of the Second Cause of Action, and Paragraphs 51– 57 of the Third Cause of Action in the Complaint as though fully set forth herein.

43. Paragraphs 59, 60, 61 and 62 of the Fourth Cause of Action in the Complaint set forth legal conclusions and questions of law to which no response is required. To the extent a response is required, Defendants deny each and every allegation found in Paragraph 59, 60, 61 and 62.

44. Defendants deny each and every allegation found in Paragraphs 63 and 64 of the Fourth Cause of Action in the Complaint.

45. Defendants are without sufficient knowledge to form a belief as to the truth or falsity of the allegations set forth in Paragraph 65 of the Fourth Cause of Action in Complaint, and therefore deny the same.

46. Defendants deny that Plaintiff is entitled to judgment as set forth in Paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11 in Plaintiff's Prayer for Relief.

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47. Each and every allegation in the Complaint not specifically admitted is hereby denied.

AFFIRMATIVE DEFENSES

1. Plaintiffs have failed to state claims upon which relief can be granted.

2. Plaintiffs' claims are barred, in whole or in part, by the doctrine of unclean hands.

3. Plaintiffs' claims are barred, in whole or in part, by the doctrine of laches.

4. Plaintiffs' claims are barred, in whole or in part, by the applicable statute of limitations.

5. Plaintiffs' claims are barred due to Plaintiffs failure exhaust administrative remedies, the applicable grievance procedures, and/or any applicable contractual remedies.

6. Plaintiffs' claims are barred due to improper joinder.

7. Plaintiffs' claims fail, in whole or in part, because Defendants acted in good faith with respect to the conduct at issue.

8. Plaintiffs' claims are barred, all or in part, due to Plaintiffs' bad faith.

9. Plaintiffs' claims are barred, in whole or in part, by the doctrines of waiver, ratification, acquiescence, and/or estoppel.

10. Plaintiffs' claims are barred, in whole or in part, due to the failure of a condition precedent.

11. Plaintiffs' claims are barred, in whole or in part, by the doctrine of accord and satisfaction.

12. Plaintiffs' claims are barred, in whole or in part, by the doctrines res judicata, collateral estoppel, and/or improper claim splitting.

13. Plaintiffs' claims are barred, in whole or in part, by the failure to mitigate damages.

14. Plaintiffs' claims are barred, in whole or in part, by the doctrine of substantial compliance.

15. Plaintiffs' claims are barred, in whole or in part, by the doctrine of unjust enrichment.

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16. Plaintiffs' claims are barred, in whole or in part, by the doctrine of recoupment.

17. Plaintiffs' claims are barred, in whole or in part, because their claims are de minimis.

18. Plaintiffs' claims are barred, all or in part, based on by Plaintiffs' course of conduct.

19. Plaintiff's claims are bared, all or in part, due to a lack of subject matter jurisdiction.

20. Plaintiff's claims are bared, all or in part, due to Defendants full performance of the underlying obligations.

21. Plaintiff's claims are bared, all or in part, because Plaintiff's damages, if any, are speculative.

22. Plaintiff's claims are barred, all or in part, due to a failure to satisfy a condition precedent.

23. Defendants presently have insufficient knowledge or information upon which to form a belief as to whether it may have other, as yet unstated, defenses available. In the event further investigation or discovery reveals the applicability of any additional defenses, including but not limited to those affirmative defenses identified in Rule 8 of the Nevada Rules of Civil Procedure, Defendants reserve the right to amend this Answer to specifically assert such additional affirmative.

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AFFIRMATION

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

Dated this 28th day of June 2019

COHEN|JOHNSON|PARKER|EDWARDS

By: */s/ H. Stan Johnson*
H. Stan Johnson, Esq.
Nevada Bar No. 00265
Chris Davis, Esq.
Nevada Bar No. 06616
375 E. Warm Spring Road, Suite 104
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Attorneys for Defendants

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PROOF OF SERVICE

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

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

ANSWER TO FIRST AMENDED CLASS ACTION COMPLAINT

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

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

DATED the 28th day of June 2019.

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

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