

**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.

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District Court Case No. 01264

**JOINT APPENDIX VOLUME 16 OF 16**

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**ORDERS ON APPEAL**

<b>DATE</b>	<b>DESCRIPTION</b>	<b>VOLUME</b>	<b>PAGES</b>
6/7/2019	Order Granting in Part and Denying in Part Respondents' Motion to Dismiss First Amended Complaint	10	2013 - 2027
11/3/2020	Order Granting Respondents' Motion for Summary Judgment	15	2942 - 2964
6/21/2021	Order Granting Motion for Clarification of November 3, 2020 Order; Order Clarifying Prior Order	16	3125 - 3131

**ALPHABETICAL INDEX**

<b>DATE</b>	<b>DESCRIPTION</b>	<b>VOLUME</b>	<b>PAGES</b>
5/5/2021	Appellants' Motion for Clarification of November 3, 2020 Order Granting Summary Judgment in Favor of Defendants	16	3038 - 3124
6/3/2019	Appellants' Response in Opposition to Respondents' Motion for Summary Judgment on All Claims Asserted by Plaintiffs Martel, Capilla and Vaughan	10	1919 - 2012
7/1/2020	Appellants' Response in Opposition to Respondents' Motion for Summary Judgment/Summary Adjudication	14	2680 - 2830
2/5/2018	Appellants' Response in Opposition to Respondents' Motion to Dismiss	3	540 - 631

2/28/2019	Appellants' Response in Opposition to Respondents' Motion to Dismiss Appellants' First Amended Complaint	8	1476 - 1644
6/29/2018	Appellants' Supplement to Appellants' Opposition to Respondents' Motion to Dismiss	4	776 - 809
4/3/2019	Appellants' Supplemental Authority in Support of Appellants' Opposition to Respondents' Motion to Dismiss	9	1790 - 1865
6/14/2016	Class Action Complaint	1	1 - 109
1/29/2019	First Amended Complaint	5	906 - 1060
6/15/2016	Jury Demand	1	110 - 111
11/25/2020	Notice of Appeal to Nevada Supreme Court	15	2994 - 3037
6/28/2019	Notice of Entry of Order Granting in Part and Denying in Part Respondents' Motion to Dismiss First Amended Complaint	10	2042 - 2059
8/10/2021	Notice of Entry of Order Granting Motion for Clarification of November 3, 2020 Order; Order Clarifying Prior Order	16	3132 - 3142
11/6/2020	Notice of Entry of Order Granting Respondents' Motion for Summary Judgment	15	2968 - 2993
5/7/2020	Order Denying Respondents' Petition	12	2375 - 2376

6/7/2019	Order Granting in Part and Denying in Part Respondents' Motion to Dismiss First Amended Complaint	10	2013 – 2027
6/21/2021	Order Granting Motion for Clarification of November 3, 2020 Order; Order Clarifying Prior Order	16	3125 - 3131
11/3/2020	Order Granting Respondents' Motion for Summary Judgment	15	2945 - 2967
10/9/2018	Order Granting Respondents' Motion to Dismiss	5	884 - 894
12/27/2017	Order Lifting Stay	1	129
1/9/2019	Order RE: Motion for Reconsideration	5	895 - 905
7/20/2018	Order RE: Motion to Dismiss	4	881 – 883
8/1/2017	Order RE: Stipulation to Stay All Proceedings	1	128
7/17/2019	Order RE: Stipulation to Stay All Proceedings and Toll of the Five-Year Rule	12	2372 – 2374
7/18/2016	Proof of Service on Counsel of Record for HG Staffing, LLC	1	124 - 127
7/18/2016	Proof of Service on Counsel of Record for MEI-GSR Holdings, LLC dba Grand Sierra Resort	1	120 - 123
7/18/2016	Proof of Service on HG Staffing, LLC	1	116 - 119
7/18/2016	Proof of Service on MEI-GSR Holdings, LLC dba Grand Sierra Resort	1	112 - 115

6/28/2019	Respondents' Answer to First Amended Class Action Complaint	10	2060 - 2069
5/23/2019	Respondents' Motion for Summary Judgment on All Claims Asserted by Plaintiffs Martel, Capilla, and Vaughn	10	1866 - 1918
6/9/2020	Respondents' Motion for Summary Judgment, or in the Alternative, Summary Adjudication – Part 1	12	2377 - 2549
6/9/2020	Respondents' Motion for Summary Judgment, or in the Alternative, Summary Adjudication – Part 2	13	2550 - 2679
1/22/2018	Respondents' Motion to Dismiss – Part 1	1	130 - 240
1/22/2018	Respondents' Motion to Dismiss – Part 2	2	241 - 480
1/22/2018	Respondents' Motion to Dismiss – Part 3	3	481 - 539
2/15/2019	Respondents' Motion to Dismiss Appellants' First Amended Complaint with Prejudice – Part 1	5	1061 - 1123
2/15/2019	Respondents' Motion to Dismiss Appellants' First Amended Complaint with Prejudice – Part 2	6	1124 - 1363
2/15/2019	Respondents' Motion to Dismiss Appellants' First Amended Complaint with Prejudice – Part 3	7	1364 - 1475
6/10/2019	Respondents' Reply in Support of Motion for Summary Judgment on All Claims Asserted by Plaintiff Martel	10	2028 - 2041

2/22/2018	Respondents' Reply in Support of Motion to Dismiss	3	632 - 652
3/11/2019	Respondents' Reply in Support of Motion to Dismiss Amended Complaint	9	1645 - 1789
7/16/2020	Respondents' Reply in Support of Respondents' Motion for Summary Judgment, or in the Alternative Summary Adjudication	15	2831 - 2944
7/8/2019	Respondents' Second Motion for Summary Judgment as to Plaintiff Martel; Motion for Summary Adjudication on Plaintiffs' Lack of Standing to Represent Union Employees; and Motion for Summary Judgment as to Plaintiff Jackson-Williams – Part 1	11	2070 - 2309
7/8/2019	Respondents' Second Motion for Summary Judgment as to Plaintiff Martel; Motion for Summary Adjudication on Plaintiffs' Lack of Standing to Represent Union Employees; and Motion for Summary Judgment as to Plaintiff Jackson-Williams – Part 2	12	2310 - 2371
6/29/2018	Respondents' Supplement in Support of Motion to Dismiss	4	653 - 775
7/19/2018	Transcript from 7/19/2018 Hearing on Motion to Dismiss	4	810 - 880

## CHRONOLOGICAL INDEX

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6/14/2016	Class Action Complaint	1	1 - 109
6/15/2016	Jury Demand	1	110 - 111
7/18/2016	Proof of Service on MEI-GSR Holdings, LLC dba Grand Sierra Resort	1	112 - 115
7/18/2016	Proof of Service on HG Staffing, LLC	1	116 - 119
7/18/2016	Proof of Service on Counsel of Record for MEI-GSR Holdings, LLC dba Grand Sierra Resort	1	120 - 123
7/18/2016	Proof of Service on Counsel of Record for HG Staffing, LLC	1	124 - 127
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12/27/2017	Order Lifting Stay	1	129
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	Adjudication on Plaintiffs' Lack of Standing to Represent Union Employees; and Motion for Summary Judgment as to Plaintiff Jackson-Williams – Part 2		
7/17/2019	Order RE: Stipulation to Stay All Proceedings and Toll of the Five-Year Rule	12	2372 – 2374
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7/16/2020	Respondents' Reply in Support of Respondents' Motion for Summary Judgment, or in the Alternative Summary Adjudication	15	2831 - 2944
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9 **IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA IN AND**  
10 **FOR THE COUNTY OF WASHOE**

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

16 Plaintiffs,

17 vs.

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

21 Defendants.

Case No.: 16-cv-01264

Dept. No.: XIV

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

22  
23 Plaintiffs EDDY MARTEL (also known as MARTEL-RODRIGUEZ, MARY ANNE  
24 CAPILLA, JANICE JACKSON-WILLIAMS, and WHITNEY VAUGHAN, on behalf of  
25 themselves and all others similarly situated hereby request clarification of the November  
26 23, 2020 Order granting Summary Judgment in favor of Defendants HG STAFFING LLC,  
27 and MEI-GSR HOLDINGS, LLC d/b/a GRAND SIERRA RESORT ("GSR" or  
28

1 “Defendants”).

2 **MEMORANDUM OF POINTS AND AUTHORITIES**

3 **A. INTRODUCTION**

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

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

10  
11 See November 3, 2020 Order at Section IV, p. 22:15-19, hereinafter “11/3/20 Order”  
12 attached as Exhibit 1 to the Declaration of Leah L. Jones, hereinafter “Jones Dec. at ¶4.

13 This Motion seeks two forms of relief. First, this Motion seeks clarification from  
14 the Court on whether the Court’s 11/3/20 Order intended to fully and finally adjudicate  
15 all of Plaintiffs’ claims. Specifically, because the language states, “summary judgement  
16 is entered ... against Plaintiffs,” and the word plaintiffs being plural, in comparison to the  
17 conclusions contained within the analysis of the Order specific to Plaintiff Jackson-  
18 Williams, there is ambiguity as to whether Ms. Jackson-Williams claims are still pending  
19 before this Court. Specifically, the Court recognized in its analysis that Jackson-Williams  
20 has 18 months remaining on her claim, and therefore, as a result the 11/3/20 Order only  
21 entered summary judgment against Plaintiff Jackson-Williams on her overtime claim and  
22 did not enter judgment against her remaining wage claims for failure to compensate for  
23 all hours worked in violation of NRS 608.140 and 608.016 (first cause of action), failure  
24 to pay minimum wages in violation of the Nevada Constitutional (second cause of action),  
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1 and the derivative failure to pay all wages due and owing in violation of NRS 608.020-  
2 050 (fourth cause of action).

3 Second, should this Court clarify that the 11/3/20 Order did not fully and finally  
4 adjudicate all of Plaintiffs' claims, Plaintiffs request that this Court enter final judgment  
5 pursuant to NRCP 54(b) on three of the Court's holdings. Specifically: (1) Plaintiffs' NRS  
6 608.016, 608.018, and 608.020-.050 claims carry a two-year statute of limitation as  
7 opposed to the general 3-year limitation period pursuant to NRS 11.190(3)(a); (2)  
8 Plaintiffs NRS 608.020-.050 continuation claims begin to run on the last day an employee  
9 works as opposed to 30-days after the employment relations ends; and (3) Plaintiffs'  
10 claims for overtime pursuant to NRS 608.140 and 608.018 are barred because a  
11 collective bargaining agreement ("CBA") "provides otherwise for overtime."  
12

13  
14 **II. PROCEDURAL HISTORY**

15 On June 14, 2016, four named Plaintiffs—Mr. Martel, Ms. Capilla, Ms. Jackson-  
16 Williams, and Ms. Vaughan—originally filed a class action complaint against Defendants  
17 in the Second Judicial District for the State of Nevada for alleged unpaid wages on behalf  
18 of themselves and all similarly situated individuals, asserting four Nevada state law wage  
19 and hour violations: (1) Failure to Pay Wages for All Hours Worked in Violation of NRS  
20 608.140 and 608.016; (2) Failure to Pay Minimum Wages in Violation of the Nevada  
21 Constitution; (3) Failure to Pay Overtime Wages in Violation of NRS 608.140 and  
22 608.018; and, (4) Failure to Timely Pay All Wages Due and Owing Upon Termination  
23 Pursuant to NRS 608.140 and 608.020-.050.  
24

25  
26 On October 9, 2018, this Court entered its Order Granting Defendants' Motion to  
27 Dismiss. This Court held Plaintiffs failed to provide sufficient information to support their  
28

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

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

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

19  
20 During the period while Defendants’ Motion to Dismiss the FAC was being briefed,  
21 and on May 23, 2019, Defendants filed a Motion for Summary Judgment on all Claims  
22 Asserted by Plaintiffs Martel, Capilla, and Vaughan, arguing Appellants’ claims were  
23 barred by claim preclusion, hereinafter “First MSJ”. Plaintiffs opposed on June 3, 2019,  
24 and Respondents replied in support on June 10, 2019.<sup>1</sup>

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

1 Next, Defendants filed their Answer to Appellants FAC on June 28, 2019. Shortly  
2 thereafter, on July 8, 2019, Defendants filed a Second Motion for Summary Judgment  
3 as to Plaintiff Martel; Motion for Summary Adjudication on Plaintiffs’ Lack of Standing to  
4 Represent Union Employees; and Motion for Summary Judgment as to Plaintiff Jackson-  
5 Williams, hereinafter “Second MSJ”.

6  
7 However, on July 9, 2019, before Plaintiffs opposed and before this Court  
8 rendered its decision on the First MSJ, Defendants filed a Notice of Filing Petition for  
9 Writ of Mandamus and/or Prohibition (“Petition”) with the Supreme Court of Nevada. In  
10 the Petition, Defendants argued the dismissal of Plaintiffs’ first, third, and fourth claims  
11 for relief was mandatory on the grounds that Plaintiffs failed to exhaust administrative  
12 remedies as required by NRS Chapter 607; legislatively mandated remedies must be  
13 exhausted despite an implied private right of action; and NRS 607.215 requires  
14 employee-plaintiffs to exhaust administrative remedies before pursuing wage claims  
15 under NRS 608.005 to 608.195 in court. This Court granted the Parties’ request to stay  
16 all proceedings pending the Supreme Court of Nevada’s decision and withdrew both of  
17 Defendants’ pending motions for summary judgment from submission, without prejudice,  
18 allowing renewal upon the Supreme Court of Nevada’s decision.  
19  
20

21 On May 7, 2020, the Supreme Court of Nevada issued its decision affirming the  
22 District Court, stating, “[i]n *Neville v. Eighth Judicial Dist. Court in & for Cty. of Clark*, 406  
23 P.3d 499. 504 (Nev. 2017), we held, by necessary implication, that exhaustion of  
24 administrative remedies is not required before filing an unpaid-wage claim in district  
25 court.” *HG Staffing, LLC; and MEI-GSR Holdings, LLC, D/B/A Grand Sierra Resort v.*  
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1 *Second Judicial Dist. Court in & for Cty. of Washoe*, No. 79118 (Nev. May 7, 2020). (JA  
2 at Vol. 12, pp. 2375-2376).

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

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

21 Plaintiffs timely opposed on July 1, 2020, and Defendants replied in support on July 16,  
22 2019. On November 3, 2020, this Court granted Defendants’ Second MSJ, “in favor of  
23 GSR and against the Plaintiffs.” See 11/3/20 Order.

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

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

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

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

10  
11 **B. Clarification Of Jurisdiction Of The District Court And The Timeliness  
12 Of Plaintiffs' Appeal**

13 Plaintiffs filed a Notice of Appeal on November 25, 2020. See Jones Dec. at ¶¶6.  
14 A briefing schedule was set with Plaintiffs/Appellants opening brief due on April 21, 2021.  
15 Id. at ¶7. Upon review of this Court's Order and in preparing Plaintiffs'/Appellants'  
16 opening brief, Plaintiffs believe that this Court's 11/3/20 Order did not fully and finally  
17 adjudicate all of the Parties claims. Id. at ¶8. If Plaintiffs are correct, pursuant to NRAP  
18 3A(b)(1)<sup>2</sup> the Supreme Court of Nevada does not have jurisdiction on Plaintiff Jackson-  
19 Williams' first, second, and fourth causes of action because they remain pending before  
20 this Court; specifically: (1) Jackson-Williams', individual claim for failure to compensate  
21 for all hours worked in violation of NRS 608.140 and 608.016, (2) Jackson-Williams'  
22 individual claims for failure to pay minimum wages in violation of the Nevada  
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27 <sup>2</sup> NRAP 3A(b)(1) states that an appeal may be taken from a judgment and order  
28 of a district court in a civil cause of action if final judgment is an action or proceeding  
commenced in the court in which judgment is entered.

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

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

11  
12 Accordingly, because there is ambiguity between the Parties as to whether or not  
13 this Court still has jurisdiction over Plaintiff Jackson-Williams’ claims, Plaintiffs seek  
14 clarification from the Court.  
15

16  
17 **III. ARGUMENT**

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

19 This Court has original jurisdiction over the state law claims alleged herein  
20 because Plaintiffs’ complaint was filed as a putative class action, alleged the amount in  
21 controversy exceeded \$15,000, and a party seeking to recover unpaid wages has a  
22 private right of action pursuant to the Nevada Constitution, Article 15 Section 16, and  
23 Nevada Revised Statute (“NRS”) Chapter 608. See First Amended Complaint, at ¶1,  
24 citing Neville v. Eighth Judicial Dist. Court, Terrible Herbst, Inc., 133 Nev. Adv. Op. 95,  
25 406 P.3d 499 (Dec. 7, 2017).  
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1 Nevada Rules of Civil Procedure (“NRCP”) 54(a) defines “Judgment” as “a decree  
2 and any order from which an appeal lies.” Nevada Rules of Appellate Procedure  
3 (“NRAP”) 3A(b) provides for standing to appeal and appealable determinations in civil  
4 actions. “Pursuant to NRAP 3A(b)(1), an appeal may be taken from a final judgment in  
5 an action or proceeding.” See Lee v. GNLV Corp., 116 Nev. 424, 426–27, 996 P.2d 416,  
6 417 (2000) (internal quotations marks omitted). “Judgment, as the term is used in the  
7 Nevada Rules of Civil Procedure, includes any *order* from which an appeal lies.” Id. at  
8 427, citing NRCP 54(a) (emphasis in original). “Accordingly, this court has customarily  
9 adopted the view that the finality of a district court’s order depends not so much on its  
10 label as an ‘order’ or a ‘judgment,’ but on what the ‘order’ or ‘judgment’ substantively  
11 accomplishes.” Id.

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13  
14 Additionally, NRCP 54(b) - Judgment on Multiple Claims or Involving Multiple  
15 Parties states:

16  
17 When an action presents more than one claim for relief —  
18 whether as a claim, counterclaim, crossclaim, or third-party  
19 claim — or when multiple parties are involved, the court may  
20 direct entry of a final judgment as to one or more, but fewer  
21 than all, claims or parties only if the court expressly  
22 determines that there is no just reason for delay. Otherwise,  
23 any order or other decision, however designated, that  
24 adjudicates fewer than all the claims or the rights and  
25 liabilities of fewer than all the parties does not end the action  
26 as to any of the claims or parties and may be revised at any  
27 time before the entry of a judgment adjudicating all the claims  
28 and all the parties’ rights and liabilities.

29 See NRCP 54(b).

30 **B. The November 3, 2020 Order Granting Summary Judgment**

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

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

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

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

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

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

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

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

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

1 Nevada Constitution.” See 11/3/20 Order at pp. 19-20, ¶33. This Court cited to  
2 Albertsons’ Inc. v. United Food & Safety Commercial Workers Union for the proposition  
3 that “in filing a lawsuit under [a statute], an employee asserts independent statutory rights  
4 ... The distinctly separate nature of these contractual and statutory rights is not vitiated  
5 merely because both were violated as a result of the same factual occurrence.” Id. at p.  
6 20:4-8 citing Albertsons’ Inc. v. United Food & Safety Commercial Workers Union, ALF-  
7 CIO & CLC, 157 F.3d 758, 761-62 (9th Cir. 1998).

8  
9 Thus, Ms. Jackson-Williams’ individual claims for: (1) failure to compensate for all  
10 hours worked in violation of NRS 608.140 and 608.016, (2) failure to pay minimum wages  
11 in violation of the Nevada Constitution, and (3) failure to receive all wages due and owing  
12 in violation of NRS 608.140 and 608.020.050 remain pending before this Court and are  
13 not ripe for appeal. Accordingly, Plaintiffs seeks clarification.

14  
15 **C. Plaintiffs’ Request For An Order Of Final Judgment Pursuant To**  
16 **NRCP 54(b)**

17 Pursuant to NRCP 54(b), a court may direct entry of a final judgment as to one or  
18 more, but fewer than all, claims or parties only if the court expressly determines that  
19 there is no just reason for delay. Should this Court hold that the 11/3/20 Order did not  
20 fully and finally adjudicate all of Plaintiffs’ claims, Plaintiffs request that the Court enter  
21 final judgment pursuant to NRCP 54(b) on three of this Court’s holdings. Specifically:  
22 (1) Plaintiffs’ NRS 608.016, 608.018, and 608.020-.050 carry a two-year statute of  
23 limitation as opposed to the general 3-year limitation period pursuant to NRS  
24 11.190(3)(a); (2) Plaintiffs NRS 608.020-.050 continuation claims begin to run on the last  
25 day an employee works as opposed to 30-days after the employment relations ends; and  
26  
27  
28

1 (3) Plaintiffs’ claims for overtime pursuant to NRS 608.140 and 608.018 are barred  
2 because a CBA “provides otherwise for overtime.”

3 **1. The Court’s decision that NRS 608.016, 608.018, and 608.020-**  
4 **.050 carry a two-year statute of limitation.**

5 In the 11/3/20 Order at Sec. IV.A, “Conclusion of Law” p. 12, ¶2, this Court held  
6 “[a] two-year statute of limitations applies to actions for failure to pay minimum wages in  
7 violation of the Nevada constitution.” This holding is a final determination of all of the  
8 Parties claims pursuant to Nevada Constitution Minimum Wage Amendment, regardless  
9 of the outcome of Ms. Jackson-Williams individual claims for relief. Because Plaintiffs’  
10 action presented more than one claim for relief and was brought as an NRCP 23 class  
11 action, NRCP 54(b) provides this Court with the authority to direct entry of a final  
12 judgment as to one or more, but fewer than all, claims or parties.

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

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



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

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

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

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

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

4                           **3. The Court’s decision that a CBA “provides otherwise of**  
5                           **overtime” such that Plaintiffs NRS 608.104 and 608.018**  
6                           **overtime claims are barred.**

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

18           Here, Plaintiffs’ appeal is pending in the Supreme Court of Nevada, subject to an  
19 Order to Show Cause why the appeal should not be dismissed. See Jones Dec, at ¶ 12.  
20 The Parties have already participated in NRAP 16(d) settlement discussions through the  
21 Supreme Courts’ settlement program, but efforts were unsuccessful. Id. at ¶7. Plaintiffs’  
22 filed their amended docketing statement on April 30, 2021, and the Opening Brief and  
23 Joint Appendix are ready to be filed pending the Order to Show Cause. Id. at ¶ 12. Thus,  
24 there is no just reason for delay on decision of this particular legal question.  
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1 Accordingly, should this Court clarify that the 11/3/20 Order was not a final  
2 judgment on all parties and claims, Plaintiffs respectfully request that this Court enter  
3 final judgment as to the CBA providing otherwise for overtime such that Plaintiffs' NRS  
4 608.140 and 608.018 claims are barred.

5 **IV. CONCLUSION**

6 Because there is disagreement between the parties as to whether this Court's  
7 11/3/20 Order fully and finally adjudicated all of the Parties claims and for the reasons  
8 set forth above, Plaintiffs seek clarification of this Court's 11/3/20 Order. In addition,  
9 should the Court clarify that there are claims still pending before this Court on behalf of  
10 Plaintiff Jackson-Williams, Plaintiffs seek an Order from the Court pursuant to NRCP  
11 54(b) on three questions of law that are ripe for appeal.

12 DATED: May 5, 2021

Respectfully Submitted,

**THIERMAN BUCK LLP**

*/s/ Leah L. Jones*

Mark R. Thierman

Joshua D. Buck

Leah L. Jones

Joshua R. Hendrickson

*Attorneys for Plaintiffs*

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20 **AFFIRMATION**

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

24 DATED: May 5, 2021

Respectfully Submitted,

**THIERMAN BUCK LLP**

*/s/ Leah L. Jones*

Leah L. Jones

*Attorney for Plaintiffs*

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**INDEX OF EXHIBITS**

- Exhibit 1: November 3, 2020 Order
- Exhibit 2: June 7, 2019 Order
- Exhibit 3: Plaintiffs' Supreme Court of Nevada Notice of Appeal
- Exhibit 4: April 29, 2021, Supreme Court of Nevada Order Granting Motion to Amend Docketing Statement and Order to Show Cause

**CERTIFICATE OF SERVICE BY E-FILING**

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

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

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

*/s/ Jennifer Edison-Strekal*

1520  
1 Mark R. Thierman, Nev. Bar No. 8285  
mark@thiermanbuck.com  
2 Joshua D. Buck, Nev. Bar No. 12187  
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8 *Attorneys for Plaintiffs*

9 **IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA IN AND**  
10 **FOR THE COUNTY OF WASHOE**

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

16 Plaintiffs,

17 vs.

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

21 Defendants.  
22

Case No.: 16-cv-01264

Dept. No.: XIV

**DECLARATION OF LEAH L. JONES IN  
SUPPORT OF PLAINTIFFS' MOTION  
FOR CLARIFICATION OF NOVEMBER  
3, 2020 ORDER GRANTING SUMMARY  
JUDGMENT AND REQUEST FOR  
EXPEDITED DECISION**

23  
24 I, Leah L. Jones, hereby declare and state as follows:

25 1. The following declaration is based upon my own personal observation  
26 and knowledge, and if called upon to testify to the things contained herein, I could  
27 competently so testify.  
28

1           2.       I am an associate attorney with Thierman Buck, LLP, and I am admitted  
2 to practice law in the states of California and Nevada. I am also admitted to the United  
3 States District Court District of Nevada, the United States District Court Eastern  
4 District of California, and the Supreme Court of the United States.

5           3.       I am one of the attorneys of record for Plaintiffs EDDY MARTEL (also  
6 known as MARTEL-RODRIGUEZ), MARY ANNE CAPILLA, JANICE JACKSON-  
7 WILLIAMS, and WHITNEY VAUGHAN (“Plaintiffs”), in this action against Defendants  
8 HG STAFFING, LLC, MEI-GSR HOLDINGS LLC d/b/a GRAND SIERRA RESORT.  
9 Mark R. Thierman, Joshua D. Buck, and Joshua R. Hendrickson are also attorneys of  
10 record in this case.

11           4.       In this Court’s November 3, 2020 Order granting Defendants’ Motion for  
12 Summary Judgment at Section V Conclusion and Order, the Court held: “Based on the  
13 foregoing findings of fact and conclusions of law and good cause appearing therefore,  
14 IT IS HEREBY ORDERED summary judgment is entered in favor of GSR and against  
15 Plaintiffs.” Attached as Exhibit 1 is a true and correct copy of the November 3, 2020  
16 Order, hereinafter, “11/3/20 Order.”

17           5.       This Court had previously entered its Order Granting, in Part, and  
18 Denying, in Part, Defendants’ Motion to Dismiss on June 7, 2019. Attached as Exhibit  
19 2 is a true and correct copy of the June 7, 2019 Order, hereinafter “6/7/19 Order.”

20           6.       Plaintiffs filed a Notice of Appeal on November 25, 2020. Attached as  
21 Exhibit 3 is a true and correct copy of Plaintiffs Notice of Appeal, hereinafter “11/25/20  
22 Notice of Appeal.”

23           7.       A briefing schedule was set with Plaintiffs/Appellants opening brief due  
24  
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1 on April 21, 2021, Supreme Court of Nevada Case No. 82161. An NRAP 16(d)  
2 mediation/settlement conference briefing was provided to Settlement Judge Jonathan  
3 L. Andrews, but after conversations with both Parties, it was determined settlement  
4 was not possible.

5 8. Upon review of this Court's Order and in preparing Plaintiffs'/Appellants'  
6 opening brief, Plaintiffs believe that this Court's 11/3/20 Order did not fully and finally  
7 adjudicate all of the Parties claims.  
8

9 9. On April 22, 2021, I telephoned Defendants' Counsel, Ms. Susan  
10 Heaney Hilden, at her office to discuss Plaintiffs' position.  
11

12 10. Defendants' Counsel, Ms. Hilden, stated that it was Defendants' position  
13 that all of Plaintiffs' claims had been fully and finally adjudicated as indicated by this  
14 Court's language that, "...summary judgment is entered in favor of GSR and against  
15 the Plaintiffs."  
16

17 11. I asked if Defendants would be willing to file a joint motion for clarification,  
18 but Counsel Hilden said, "It is not in the best interest of my client" and that Plaintiff  
19 should "do what you have to do."  
20

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12. On April 23, 2021 Plaintiffs sought leave from the Supreme Court of Nevada to file an Amended Docketing Statement which was granted by the Supreme Court on April 29, 2021. The Court also entered an Order to Show Cause why the appeal should not be dismissed for lack of jurisdiction, which is due on May 28, 2021. A true and correct copy of the Supreme Court of Nevada's Order Granting Motion and To Show Cause is attached as Exhibit 4, hereinafter "4/29/21 OSC."

I declare under penalty of perjury, under the laws of the state of Nevada, that the foregoing is true and correct.

**AFFIRMATION**

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

DATED: May 5, 2021

THIERMAN BUCK, LLP

/s/Leah L. Jones  
Leah L. Jones



# **EXHIBIT 1**

November 3, 2020 Order

# **EXHIBIT 1**

1 CODE NO. 3370  
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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF WASHOE  
8

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

Case No. CV16-01264

Dept. No. 6

13 Plaintiffs,

14 vs.

15  
16 HG STAFFING, LLC, MEI-GSR HOLDINGS,  
17 LLC d/b/a GRAND SIERRA RESORT, and  
DOES 1 through 50, inclusive,

18 Defendants.  
19 \_\_\_\_\_/

20 **ORDER GRANTING MOTION FOR SUMMARY JUDGMENT**  
21

22 Before this Court is the *Defendants' Motion for Summary Judgment, or in the*  
23 *Alternative, Summary Adjudication ("Motion")* filed by Defendants HG STAFFING, LLC and  
24 MEI-GSR HOLDINGS, LLC d/b/a GRAND SIERRA RESORT (collectively, "GSR" unless  
25 individually referenced), by and through their counsel, Cohen|Johnson|Parker|Edwards.  
26

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28 //

1 Plaintiffs EDDY MARTEL (also known as MARTEL-RODRIGUEZ) (“Mr. Martel”),  
2 MARY ANNE CAPILLA (“Ms. Capilla”), JANICE JACKSON-WILLIAMS (“Ms. Jackson-  
3 Williams”), and WHITNEY VAUGHAN (“Ms. Vaughan”) (collectively, “Plaintiffs”), on behalf of  
4 themselves and all others similarly situated, filed *Plaintiffs’ Response to Defendants’ Motion*  
5 *for Summary Judgment/Summary Adjudication* (“*Response*”) by and through their counsel,  
6 Thierman Buck, LLP. GSR filed its *Reply in Support of Defendants’ Motion for Summary*  
7 *Judgment, or in the Alternative, Summary Adjudication* (“*Reply*”) and submitted the matter  
8 for decision thereafter.  
9

10  
11 **I. FACTUAL AND PROCEDURAL HISTORY.**

12 This action arises out of an employment dispute between Plaintiffs, employees, and  
13 GSR, employer, regarding wages paid by GSR to Plaintiffs and similarly situated  
14 employees. Mr. Martel was employed as an attendant in the Bowling Center. Ms. Capilla  
15 was employed as a dealer. Ms. Jackson-Williams was employed as a room attendant. And,  
16 Ms. Vaughan was employed as a dancing dealer (part cards dealer, part go-go dancer).  
17 See *Class Action Complaint* (“*Complaint*”) and *First Amended Class Action Complaint*  
18 (*“FAC”*), generally. On June 14, 2016, Plaintiffs filed their *Complaint* alleging GSR  
19 maintained the following policies, practices, and procedures which required various  
20 employees to perform work activities without compensation:  
21

- 22 (1) GSR’s Cash Bank Policy;
- 23 (2) Dance Class Policy;
- 24 (3) Room Attendant Pre-Shift Policy;
- 25 (4) Pre-Shift Meeting Policy;
- 26
- 27

28 //

1 (5) Uniform Policy; and,

2 (6) Shift Jamming Policy.

3 *Complaint*, pp. 4-8. As a result of said policies, Plaintiffs assert four (4) claims for relief  
4 against GSR:

5  
6 (1) Failure to Pay Wages for All Hours Worked in Violation of NRS 608.140 and  
7 608.016;

8 (2) Failure to Pay Minimum Wages in Violation of the Nevada Constitution;

9 (3) Failure to Pay Overtime Wages in Violation of NRS 608.140 and 608.018; and,

10 (4) Failure to Timely Pay All Wages Due and Owing Upon Termination Pursuant  
11 to NRS 608.140 and 608.020-.050.  
12

13 Id., pp. 11-15.

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

26 //

27 //

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

12 On May 23, 2019, GSR filed its *Motion for Summary Judgment on all Claims*  
13 *Asserted by Plaintiffs Martel, Capilla and Vaugh (sic)* (“*First MSJ*”) and argued Plaintiffs  
14 claims are barred by claim preclusion. *First MSJ*, p. 4.

16 On June 28, 2019, GSR filed its *Answer to First Amended Class Action Complaint*  
17 (“*Answer*”). In addition to admissions and denials to Plaintiffs’ allegations in the *FAC*, GSR  
18 asserted, among other affirmative defenses: failure to state a claim; claims are barred, in  
19 whole or in part, by the applicable statute of limitations; and, claims are barred due to GSR’s  
20 full performance of underlying obligations. *Answer*, generally.

22 On July 8, 2019, GSR filed *Defendants’ Second Motion for Summary Judgment as to*  
23 *Plaintiff Martel; Motion for Summary Adjudication on Plaintiffs’ Lack of Standing to*  
24 *Represent Union Employees; and Motion for Summary Judgment as to Plaintiff Jackson-*  
25 *Williams* (“*Second MSJ*”). GSR made the following arguments: (1) Mr. Martel’s claims are  
26 time-barred; (2) Plaintiffs lack standing to represent union employees who are exclusively  
27 represented by their unions; (3) Ms. Jackson-Williams’ claims are barred for failing to  
28

1 exhaust grievance procedures of the Culinary Collective Bargaining Agreement (“CBA”)  
2 and/or based on federal preemption; and, (4) Ms. Jackson-Williams’ claim for overtime is  
3 barred pursuant to NRS 608.018 because the CBA provides otherwise for overtime. See  
4 *Second MSJ*, generally.  
5

6 On July 9, 2019, before this Court rendered its decision on the *First MSJ* and *Second*  
7 *MSJ*, GSR filed its *Notice of Filing Petition for Writ of Mandamus and/or Prohibition*  
8 (*Petition*) with the Supreme Court of Nevada. In the *Petition*, GSR argued the dismissal of  
9 Plaintiffs’ first, third, and fourth claims for relief is mandatory on the grounds: Plaintiffs failed  
10 to exhaust administrative remedies as required by NRS Chapter 607; legislative mandated  
11 remedies must be exhausted despite an implied private right of action; and, NRS 607.215  
12 requires Plaintiffs exhaust administrative remedies before pursuing wage claims under NRS  
13 608.005 to 608.195. See *Petition*, generally.  
14

15 This Court entered its *Order Re Stipulation to Stay All Proceedings and Toll of the*  
16 *Five Year Rule* (“*Stipulation*”) on July 17, 2019 and withdrew GSR’s pending motions for  
17 summary judgment from submission, without prejudice, allowing renewal upon the Supreme  
18 Court of Nevada’s decision. *Stipulation*, p. 9.  
19

20 On May 7, 2020, the Supreme Court of Nevada entered its *Order Denying Petition*.  
21 The Supreme Court of Nevada reasoned Neville v. Eighth Judicial Dist. Court held, by  
22 necessary implication, exhaustion of administrative remedies is not required before filing an  
23 unpaid-wage claim in district court. 133 Nev. 77, 406 P.3d 499 (2017).  
24

25 On June 9, 2020, GSR filed the instant *Motion* and renewed the claims presented in  
26 the *Second MSJ* filed on May 23, 2019. GSR asserts Mr. Martel’s claims are time-barred  
27 because the Court’s June 7, 2019, *Order Granting, in Part, and Denying, in Part, Motion to*  
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1 *Dismiss* found a two-year statute of limitations applies, barring claims accruing prior to June  
2 14, 2014. Mr. Martel worked his last shift on June 12, 2014. *Motion*, p. 3. GSR argues Ms.  
3 Jackson-Williams' claims are barred for failing to exhaust grievance procedures of the  
4 Culinary CBA and/or based on federal preemption because state law rights that can be  
5 altered by CBAs are preempted by CBAs and employees must make use of the grievance  
6 procedures in the CBAs or the claims will be dismissed as preempted by federal law.  
7 *Motion*, p. 4; citing Allis-Chalmers Corp. v. Lueck, 471 U.S. 202, 210-20 (1985); MGM  
8 Grand Hotel-Reno, Inc. v. Insley, 102 Nev. 513, 517, 728 P.2d 821, 824 (1986). GSR  
9 contends Ms. Jackson-Williams' claim for overtime is barred because Article 9.01 of the  
10 CBA entitled, "WORK, SHIFTS, WORKWEEK, AND OVERTIME," "provides otherwise" for  
11 overtime, therefore exempting Ms. Jackson-Williams from the overtime provisions in  
12 Sections 1 and 2 of NRS 608.018. *Motion*, pp. 5-6. GSR argues the Plaintiffs lack standing  
13 to represent union employees who are exclusively represented by their respective unions.  
14 This is so, GSR maintains, because they are not in the same unions and the bargaining  
15 representatives of each union have not been given the opportunity to be present. *Motion*, p.  
16 7; citing 29 U.S.C. § 159(a); Vaca v. Sipes, 386 U.S. 171, 186 (1967).

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20 In the *Response*, Plaintiffs argue Mr. Martel's claim is not time-barred because an  
21 employee's claim for unpaid wages accrues thirty (30) days after the employment  
22 relationship ends. *Response*, p. 2; citing NRS 608.040-.050. Additionally, Plaintiffs argue  
23 GSR admitted it violated overtime requirements when it sent Mr. Martel and hundreds of  
24 other current and former employees checks for the unpaid overtime but did not pay  
25 continuation wages as mandated by NRS 608.040 and 608.050. *Id.* Plaintiffs assert, based  
26 on what they contend is black letter law, purported union employees are not required to  
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1 exhaust internal union grievance procedures before filing suit. *Response*, p. 12; citing NRS  
2 608.140 and 608.050. Plaintiffs next argue courts consistently find union and non-union  
3 employees can sue for and on behalf of each other when all allege they are victims of  
4 unlawful pay practices. *Response*, p. 13. Plaintiffs state Ms. Jackson-Williams is entitled to  
5 statutory overtime protections because the Culinary CBA is not a valid and operable CBA  
6 since it is an unsigned draft, and even if operable, the CBA does not provide overtime  
7 benefits beyond those conferred by NRS 608.018. *Response*, pp. 17-18. Plaintiffs request  
8 the opportunity to conduct further discovery on whether the Culinary Union and the CBA are  
9 operational if the Court is inclined to hold the CBA is valid. *Response*, p. 17.

12 In its *Reply*, GSR argues Mr. Martel conceded his underlying wage claims are barred  
13 by the applicable statute of limitation, and his derivative waiting time penalty claims under  
14 NRS 608.040 and 608.050 fail because they are contrary to accrual of claims case law and  
15 statutory language. *Reply*, p. 1. GSR argues Courts have repeatedly rejected assertions  
16 similar to Plaintiffs' assertion the Culinary CBA is invalid due to lack of execution. *Reply*, p.  
17 2. GSR further maintains the Culinary CBA has affirmed the validity of the CBA. *Id.* GSR  
18 contends during the entire term of her GSR employment Ms. Jackson-Williams was subject  
19 to the CBA, and the CBA "provides otherwise" for overtime, disqualifying Ms. Jackson-  
20 Williams from receiving overtime compensation. *Reply*, p. 9-10. GSR argues Ms. Jackson-  
21 Williams' claims for overtime are barred both because she did not exhaust the valid and  
22 binding CBA grievance procedures. *Reply*, pp. 12-13. GSR states, pursuant to 29 U.S.C. §  
25 159(a), the Culinary Union is the exclusive representative of the employees and Plaintiffs  
26 have not alleged a breach of the duty of fair representation, thereby conceding Plaintiffs  
27 cannot represent the employees. *Reply*, p. 16. Finally, GSR argues Plaintiffs are not  
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1 entitled to further discovery under NRCP 56(d) because Plaintiffs failed to provide the  
2 requisite affidavit. *Reply*, p. 17; citing Choy v. Ameristar Casinos, Inc., 127 Nev. 870, 872,  
3 265 P.3d 698, 700 (2011) and Bakerink v. Orthopaedic Assocs., Ltd., 94 Nev. 428, 431, 581  
4 P.2d 9, 11 (1978).

5  
6 **II. STANDARD OF REVIEW; APPLICABLE LAW AND ANALYSIS**

7 Summary judgment is appropriate under Rule 56 of the Nevada Rules of Civil  
8 Procedure "when the pleadings, depositions, answers to interrogatories, admissions, and  
9 affidavits, if any, that are properly before the court demonstrate that no genuine issue of  
10 material fact exists, and the moving party is entitled to judgment as a matter of law." Cuzze v.  
11 Univ. & Cmty. Coll. Sys. of Nevada, 123 Nev. 598, 602, 172 P.3d 131, 134 (2007). A factual  
12 dispute is genuine when the evidence is such that a rational trier of fact could return a verdict  
13 for the nonmoving party. Wood v. Safeway, Inc., 121 Nev. 724, 731, 121 P.3d 1026, 1031  
14 (2005). Further, a fact is material if the fact "might affect the outcome of the suit under the  
15 governing law." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S.Ct. 2505, 2510  
16 (1986). The pleadings and other proof "must be construed in a light most favorable to the  
17 nonmoving party," who bears the burden to "do more than simply show that there is some  
18 metaphysical doubt as to the operative facts in order to avoid summary judgment" in favor of  
19 the moving party. Id., 121 Nev. at 732, 121 P.3d at 1031. The substantive law controls which  
20 factual disputes are material and will preclude summary judgment; other factual disputes are  
21 irrelevant. Id., 121 Nev. at 731, 121 P.3d at 1031.

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25 The manner in which each party may satisfy its burden of production depends on  
26 which party will bear the burden of persuasion on the challenged claim at trial. Cuzze, 123  
27 Nev. at 602, 172 P.3d at 134. If the moving party will bear the burden of persuasion, that  
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1 party must present evidence that would entitle it to a judgment as a matter of law in the  
2 absence of contrary evidence. Id. If the nonmoving party will bear the burden of persuasion  
3 at trial, the party moving for summary judgment may satisfy the burden of production in two  
4 ways: (1) the moving party may submit evidence which negates an essential element of the  
5 nonmoving party's claim, or (2) the moving party may merely point out the absence of  
6 evidence to support the nonmoving party's case. Id. Therefore, in such instances, in order to  
7 defeat summary judgment, the nonmoving party must transcend the pleadings and, by  
8 affidavit or other admissible evidence, **introduce specific facts** that show a genuine issue of  
9 material fact. Id. "The non-moving party must not simply rely on the pleadings and must do  
10 more than make 'conclusory allegations [in] an affidavit.'" Choi v. 8<sup>th</sup> Bridge Capital, 2020  
11 WL1446700, Slip Copy, March 25, 2020 (C.D. Cal.), citing, Lujan v. Nat'l Wildlife Fed'n, 497  
12 U.S. 871, 888, 110 S.Ct. 3177, 3188 (1990); see also, Celotex Corp. v. Catrett, 477 U.S. 317,  
13 324, 106 S.Ct. 2548, 2553 (1986). "Summary judgment must be granted for the moving  
14 party if the nonmoving party 'fails to make showing sufficient to establish an element essential  
15 to that party's case, and on which that party bears the burden of proof at trial.'" Choi v. 8<sup>th</sup>  
16 Bridge Capital, 2020 WL1446700, Slip Copy, March 25, 2020 (citing same).

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20 In this case, GSR is the moving party that may submit evidence negating an essential  
21 element of Plaintiffs' claims, point out the absence of evidence, or establish the elements of  
22 a defense. Plaintiffs are the nonmoving party who must introduce specific facts that show a  
23 genuine issue of material fact exists.  
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1 Pursuant to NRCP 56, even if the undisputed factual matters are established, a party  
2 must still establish the party is entitled to judgment as a matter of law. Kuptz-Blinkinsop v.  
3 Blinkinsop, 136 Nev. \_\_\_\_, \_\_\_\_, 466 P.3d 1271, 1273 (2020) (citing Wood v. Safeway, Inc.,  
4 121 Nev. at 729, 121 P.3d at 1029 (2005)).

6 **III. FINDINGS OF UNDISPUTED MATERIAL FACT.**

7 The Court finds the following material facts are undisputed:

- 8 1. The *Complaint* was filed in this matter on June 14, 2016.
- 9 2. GSR is an employer. *FAC*, ¶ 10; *Answer*, ¶ 8.
- 10 3. Mr. Martel was employed from on or about January 25, 2012 through June  
11 13, 2014. *FAC*, ¶ 20, 34, 49; *Motion*, p. 2; *Response*, p. 6.
- 12 4. Mr. Martel was employed as an arcade attendant and was not covered by a  
13 union or a collective bargaining agreement. *Response*, p. 7.
- 14 5. Mr. Martel voluntarily resigned from his employment with GSR on June 14,  
15 2014. Decl. of Eddy Martel-Rodriguez, ¶ 4; *Reply*, p. 3, n.1.
- 16 6. Mr. Martel's timeclock indicates he clocked into his final shift at GSR at 6:10  
17 p.m. on June 12, 2014. Mr. Martel clocked out on June 13, 2014 at 12:26 a.m. *Motion*, p.  
18 2, Ex. 1, Decl. of Eric Candela; *Response*, p. 6.
- 19 7. Mr. Martel was paid every two weeks and last paycheck was paid on June 16,  
20 2014. *Reply*, Ex. 1, Decl. of Cynthia Williams, ¶ 3.
- 21 8. Ms. Jackson-Williams was employed as a guest attendant from April 2014,  
22 through December, 2015. *FAC*, ¶ 6; *Motion*, p. 2; *Response*, p. 7.
- 23 9. The Culinary CBA is unsigned. *Motion*, p. 7, n.1; *Response*, p. 16; Decl. of  
24 Susan Heaney Hilden, ¶ 2.

1           10.     Article 9.01 of the Culinary CBA provides:

2           The workweek pay period shall be from Friday through Thursday. For  
3           purposes of computing overtime, for an employee scheduled to work five (5)  
4           days in one (1) workweek, any hours in excess of eight (8) hours in a day or  
5           forty (40) hours in a week shall constitute overtime. For an employee  
6           scheduled to work four (4) days in one (1) workweek, any hours worked in  
7           excess of ten (10) hours in a day or forty (40) hours in a week shall constitute  
8           overtime. . . . Employees absent for personal reasons on one (1) or more of  
9           their first five (5) scheduled days of work in their workweek shall work at the  
10          Employee's request on a scheduled day off in the same workweek at straight  
11          time.

12          *Motion*, p. 6; *Motion*, Ex. 2, Decl. of Susan Hilden, Ex. 1; *Response*, pp. 18-19.

13           11.     Pursuant to the Operating Engineers CBA, GSR recognizes the International  
14          Union of Operating Engineers Stationary Local No. 39 AFL-CIO as "the exclusive bargaining  
15          representative for . . . all draftsmen, carpenters, engineers, locksmiths, painters, upholsters,  
16          certified pool operators and engineering department laborers." *Motion*, Ex. 2, Decl. of  
17          Susan Hilden, ¶ 11; *Response*, p. 6.

18           12.     Pursuant to the IATSE CBA, GSR recognizes the International Alliance of  
19          Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the  
20          United States, its Territories and Canada, AFL-CIO, CLC LOCAL Union No. 362 ("IATSE")  
21          as "the Exclusive collective bargaining representative for . . . all entertainment department  
22          employees performing carpentry, electrical, electronic, sound and property work, including  
23          stage hands, stage technicians, stage laborers, lounge technicians, convention technicians,  
24          spotlight operators and technicians, stage electricians, sound personnel, projectionists,  
25          operators of all audio-visual equipment used in connection with the Employer's  
26          entertainment and convention operations and all wardrobe personnel . . ." *Motion*, Ex. 2,  
27          Decl. of Susan Hilden, ¶12; *Response*, p. 6.

28           //

1           13.    The Culinary Union has filed grievances under the Culinary CBA, and  
2 arbitrations have taken place. *Motion*, Ex. 2, Decl. of Susan Heaney Hilden, ¶¶ 3-7; Ex. 3,  
3 Decl. of Larry Montrose, ¶ 5.

4  
5           14.    To the extent any of the following conclusions of law include, or may be  
6 construed to include, findings of fact, they are incorporated here.

7 **IV.    CONCLUSIONS OF LAW.**

8           To the extent any of the foregoing findings of fact constitute, or may be construed  
9 to constitute, conclusions of law they are incorporated here:

10  
11 **A.    STATUTE OF LIMITATION.**

12           1.    The Minimum Wage Act (MWA) guarantees employees payment of a specified  
13 minimum wage and gives an employee whose employer violates the MWA the right to bring  
14 an action against his or her employer in Nevada. Perry v. Terrible Herbst, Inc., 383 P.3d  
15 257, 258 (2016).

16  
17           2.    A two-year statute of limitation applies to actions for failure to pay the  
18 minimum wage in violation of the Nevada constitution. Id. at 262.

19           3.    The two-year statute of limitation period applies to NRS 608 statutory wage  
20 claims that are analogous to a cause of action for failure to pay an employee the lawful  
21 minimum wage. Id.

22           4.    NRS 608.040 provides:

23  
24           1.    If an employer fails to pay:

25               (a) Within 3 days after the wages or compensation of a discharged  
26 employee becomes due; or

27               (b) On the day the wages or compensation is due to an employee who  
28 resigns or quits, the wages or compensation of the employee continues at the  
same rate from the day the employee resigned, quit or was discharged until  
paid or for 30 days, whichever is less.

              2.    Any employee who secretes or absents himself or herself to avoid  
payment of his or her wages or compensation, or refuses to accept them when

1 fully tendered to him or her, is not entitled to receive the payment thereof for  
2 the time he or she secretes or absents himself or herself to avoid payment.

3 NRS 608.040.

4 5. NRS 608.050 provides:

5 1. Whenever an employer of labor shall discharge or lay off employees  
6 without first paying them the amount of any wages or salary then due them, in  
7 cash and lawful money of the United States, or its equivalent, or shall fail, or  
8 refuse on demand, to pay them in like money, or its equivalent, the amount of  
9 any wages or salary at the time the same becomes due and owing to them  
10 under their contract of employment, whether employed by the hour, day, week  
11 or month, each of the employees may charge and collect wages in the sum  
12 agreed upon in the contract of employment for each day the employer is in  
13 default, until the employee is paid in full, without rendering any service  
14 therefor; but the employee shall cease to draw such wages or salary 30 days  
15 after such default.

16 2. Every employee shall have a lien as provided in NRS 108.221 to  
17 108.246, inclusive, and all other rights and remedies for the protection and  
18 enforcement of such salary or wages as the employee would have been  
19 entitled to had the employee rendered services therefor in the manner as last  
20 employed.

21 NRS 608.050.

22 6. When a derivative claim is dependent on the success of an underlying claim  
23 and the underlying "claim having not been established," then the derivative claim "must fail  
24 as well." Turner v. Mandalay Sports Entm't, LLC, 124 Nev. 213, 222 n.31, 180 P.3d 1172,  
25 1178 n.31 (2008).

26 7. A two-year statute of limitation applies to the claims in this action. Claims  
27 which accrued prior to June 14, 2014 are therefore barred by the statute of limitation. See  
28 *Order Granting, in Part, and Denying, in Part, Motion to Dismiss* pp. 7-11.

8. Mr. Martel maintains his fourth cause of action for waiting time penalties under  
NRS 608.040 and 608.050 is timely because his cause of action did not accrue until thirty  
(30) days after his last day of work.

1           9.       Based on its plain language, NRS 608.050 is inapplicable to Mr. Martel.  
2 Section 608.050 applies to employees who are discharged or laid off by their employer.  
3 See NRS 608.050(1). Mr. Martel resigned from his job.  
4

5           10.      Section 608.040 of the Nevada Revised Statutes does not apply to wages that  
6 are not accrued during the final pay period of the employee.

7           11.      No shift jamming, no off-the-clock banking, and no pre-shift meetings occurred  
8 during Mr. Martel's final pay period. Mr. Martel's last shift ended on June 13, 2014.  
9

10          12.      Therefore, the two-year statute of limitation applies to Mr. Martel's claims.  
11 The *Complaint* was filed on June 14, 2016.

12          13.      NRS 608.040 does not save Mr. Martel's claims. "[W]hen a statute 'is clear on  
13 its face, a court cannot go beyond the statute in determining legislative intent.'" State v.  
14 Lucero, 249 P.3d 1226, 1228 (2011) (citing Robert E. v. Justice Court, 99 Nev. 443, 445  
15 (1983)). The Court finds NRS 608.040 is clear on its face that it does not apply to all wages,  
16 but rather wages due for the pay period before the employee is discharged or quits.  
17 Nothing in the statute indicates the rule applies to previously unpaid wages or exists to  
18 create a cause of action for those wages.  
19

20          14.      The two-year statute of limitation applies to: Plaintiffs' First Cause of Action for  
21 Failure to Pay Wages for All Hours Worked in Violation of NRS 608.140 and 608.016;  
22 Second Cause of Action for Failure to Pay Minimum Wages in Violation of the Nevada  
23 Constitution; Third Cause of Action for Failure to Pay Overtime Wages in Violation of NRS  
24 608.140 and 608.018; and, Fourth Cause of Action for Failure to Timely Pay All Wages Due  
25 and Owing Upon Termination Pursuant to NRS 608.140 and 608.020-.050.  
26  
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1           15. Defendants met their burden and established their statute of limitation defense  
2 to Plaintiffs' claims as a matter of law.

3           16. Summary judgment should be entered on each of Mr. Martel's claims as they  
4 are time-barred.

5           17. After application of the two-year statute of limitation, Ms. Jackson-Williams'  
6 claims remain for an eighteen-month period only.

7  
8           **B. CBA VALIDITY AND ABILITY TO PROVIDE OTHERWISE FOR OVERTIME**

9           **1. Validity of the CBA**

10           18. The CBA purportedly expired by its own terms on or about May 1, 2011. The  
11 CBA has not been extended by signature, however, GSR contends the CBA has been  
12 extended by ratification.

13           19. Unsigned CBAs have been found valid and operative when an employer has  
14 continued to treat the CBA as binding and effective and employee could not point to  
15 evidence to the contrary. Bloom v. Universal City Studios, 933 F.2d 1013, 1991 WL 80602  
16 at \*1 (9th Cir. 1991) (unpublished); See Retail Clerks Int'l Ass'n v. Lion Dry Goods, Inc., 369  
17 U.S. 17, 24 n. 6 (1962) (finding CBA valid even when parties did not negotiate directly and  
18 did not consolidate signatures on one document).

19           20. A union will generally be held defunct if it has ceased to exist as an effective  
20 labor organization and is no long fulfilling responsibilities in administering the contract.  
21 Hershey Chocolate Corp., 121 NLRB 901, 911, 42 LRRM 1460 (1958); see also Pioneer Inn  
22 Associates v. N.L.R.B., 578 F.2d 835, 839-40 (1978) (explaining inactivity, failure to monitor  
23 contract provisions, and failure to pursue grievances may indicate a failure to administer the  
24 contract).



1           21.     Signatures on collective bargaining agreements are “not a prerequisite to  
2 finding an employer bound to that agreement.” Line Const. Ben. Fund v. Allied Elec.  
3 Contractors, Inc., 591 F.3d 576, 580 (7th Cir. 2010); N.L.R.B. v. Electra-Food Mach. Inc.,  
4 621 F.2d 956, 958 (9th Cir. 1980) (holding oral agreements are sufficient to create binding  
5 collective bargaining agreements even when written agreement is unsigned); N.L.R.B. v.  
6 Haberman Const. Co., 641 F.2d 351, 356 (5th Cir. 1981) (en banc) (“[A] union and  
7 employer’s adoption of a labor contract is not dependent on the reduction to writing of their  
8 intention to be bound”).  
9

10  
11           22.     If the union and the employer continue to operate as if the CBA is operative,  
12 the CBA is binding. Here, the union and GSR engaged in arbitration and negotiation when  
13 mandated by the CBA. GSR continued to negotiate and arbitrate with the union on multiple  
14 occasions. For example, Mr. Montrose confirmed he interacts with the Culinary Union  
15 Representative Nicolaza De La Puente weekly and he was notified of at least two different  
16 grievances in 2015. *Motion*, Decl. of Larry Montrose, Ex B., Ex. C. The CBA was “ratified  
17 by the Union on November 17, 2011, and it was in effect through March 10, 2018, when a  
18 subsequent Culinary CBA was ratified.” *Motion*, Decl. of Susan Heaney Hilden, ¶ 2. An  
19 arbitration was held on August 25, 2016, in which the parties introduced the CBA as Joint  
20 Exhibit 1. *Motion*, Decl. of Susan Heaney Hilden, ¶ 2. Following the August 25, 2016,  
21 arbitration, the Culinary Union submitted a Post-Hearing Brief dated October 24, 2016 in  
22 which the Union states, “Local 226 has been party to three successive collective-bargaining  
23 agreements at the hotel casino that is now known as the Grand Sierra Resort.” *Id.* Plaintiffs  
24 contend the CBA expired in May of 2011 but provide the Court with no evidence to dispute  
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1 that the union and the GSR continued to treat the CBA as binding. Undisputed evidence  
2 confirms the CBA was valid and operative.

3 **2. The CBA “provides otherwise” for overtime**

4  
5 23. NRS 608.018(1)-(2) governs compensation for overtime and reads:

6 1. An employer shall pay 1 1/2 times an employee's regular wage rate  
7 whenever an employee who receives compensation for employment at a rate  
8 less than 1 1/2 times the minimum rate set forth in NRS 608.250 works:

9 (a) More than 40 hours in any scheduled week of work; or

10 (b) More than 8 hours in any workday unless by mutual agreement the  
11 employee works a scheduled 10 hours per day for 4 calendar days within any  
12 scheduled week of work.

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

17 NRS 608.018(1)-(2).

18 24. Section 608.018(3) of the Nevada Revised Statutes provides, “[t]he provisions  
19 of subsections 1 and 2 do not apply to . . . (e) Employees covered by collective bargaining  
20 agreements which provide otherwise for overtime . . .” NRS 608.018(3) (emphasis added).

21 25. The CBA provides:

22 The workweek pay period shall be from Friday through Thursday. For the  
23 purposes of computing overtime, for an employee scheduled to work five (5)  
24 days in one (1) workweek, any hours in excess of eight (8) hours in a day or  
25 forty (40) hours in a week shall constitute overtime. For an employee  
26 scheduled to work four (4) days in one (1) workweek, any hours worked in  
27 excess of ten (10) hours in a day or forty (40) hours in a week shall constitute  
28 overtime. Overtime shall be effective and paid only after the total number of  
hours not worked due to early ours is first subtracted from the total number of  
hours actually worked per shift, per workweek. Overtime shall not be paid  
under this Section for more than one (1) reason for the same hours worked.  
Employees absent for personal reasons on one (1) or more of their first five (5)  
scheduled days of work in their workweek shall work at the Employer’s request  
on a scheduled day off in the same workweek at straight time. If the employer  
anticipates such scheduling, the Employer provide five (5) days’ advance  
notice.

1 This provision will remain in effect for the duration of this Agreement.  
2 However, at the expiration of the Agreement, the Employer shall have the  
3 right to compute and pay overtime in accordance with the provisions of  
4 existing federal and state law, and Union employees shall not have the right  
to overtime pay above and beyond the applicable federal and state law  
requirements.

5 See Motion, Ex. 2A, p. 15.

6 26. CBAs “provide otherwise” for overtime payments when the CBA “contains a  
7 negotiated provision on the same subject but different from the statutory provision.”  
8 Firestone v. Southern California Gas Co., 219 F.3d 1063, 1067, 164 L.R.R.M. 2897, 2897  
9 (9th Cir. 2000); Jacobs v. Mandalay Corp., 378 F. App’x 685, 687 (9th Cir. 2010) (“[S]ection  
10 608.018 exempts from coverage those employees ‘covered by collective bargaining  
11 agreements which provide otherwise for overtime.’”).  
12

13 27. The instant CBA “provides otherwise” for overtime. The CBA provides  
14 otherwise for overtime because there are differences in both the practical effects of the  
15 overtime provisions in NRS 608.018 and in the CBA’s overtime provisions, as well as the  
16 textual provisions. For example, NRS 608.018(1) provides that an employer shall pay 1 1/2  
17 times the employee’s regular wage when the employee works more than 40 hours in a week  
18 or more than 8 hours in a day. The CBA does not specify what the pay rate shall be.  
19 Additionally, the CBA provides for overtime regardless of the employee’s wage, while NRS  
20 608.018 only mandates overtime for employees making more than 1 1/2 the minimum wage.  
21 NRS 608.018 provides overtime regardless of how many days are worked in a week, while  
22 the CBA allows overtime only when employees work five days in one workweek. NRS  
23 608.018 does not limit overtime if an employee misses a scheduled day and works an  
24 alternate day, however, the CBA does. Accordingly, the CBA “provides otherwise” for  
25 overtime.  
26  
27  
28

1           28.    The CBA “provides otherwise” for Ms. Jackson-Williams’ claim for overtime  
2 and NRS 608.018 does not provide a legal basis for her claim.

3           **3.       Grievance Procedures of the Culinary CBA**

4           29.    Section 301 of the Labor Management Relations Act states:

5           Suits for violation of contracts between an employer and a labor organization  
6 representing employees in an industry affecting commerce ... may be brought  
7 in any district court of the United States having jurisdiction of the parties....

8 Labor Management Relations Act of 1947 § 301(a), 29 U.S.C. § 185(a) (1982).

9           30.    Employees may pursue claims for unpaid wages through a private cause of  
10 action and without enforcing the claim through the Labor Commissioner. Neville v. Eighth  
11 Judicial Dist. Court in & for Cty. of Clark, 133 Nev. 777, 782, 406 P.3d 499, 504 (2017).

12           31.    State law rights and obligations that do not exist independently of private  
13 agreements can be waived or altered by agreement as a result and are pre-empted by  
14 those agreements. MGM Grand Hotel-Reno, Inc. v. Insley, 102 Nev. 513, 517, 728 P.2d  
15 821, 824 (1986) (citing Allis Chalmers v. Lueck, 471 U.S. 202, 105 S.Ct. 1904 (1985)).

16           32.    Workers do not have to submit to arbitration procedures when redressing  
17 grievances because a CBA provides contractual rights, but workers may have an  
18 independent statutory right to enforce individual rights. Albertson’s, Inc. v. United Food &  
19 Commercial Workers Union, ALF-CIO & CLC, 157 F.3d 758, 762 (9th Cir.).

20           33.    Whether Ms. Jackson-Williams must follow the grievance procedures  
21 contained in the CBA depends on whether she has an independent statutory right to enforce  
22 her claims for wages and overtime outside of the CBA. Ms. Jackson-Williams brought  
23 claims for Failure to Pay Wages for All Hours Worked in Violation of NRS 608.140 and  
24 608.016, Failure to Pay Overtime Wages in Violation of the Nevada Constitution, Failure to  
25 Pay Minimum Wages in Violation of NRS 608.140 and 608.018, and Failure to Pay All

1 Wages Due and Owing Upon Termination Pursuant to NRS 608.140 and 608-040-050. The  
2 State of Nevada provides independent statutory rights to each of Ms. Jackson-Williams'  
3 claims through the Nevada Revised Statutes and the Nevada Constitution. Albertson's Inc.  
4 explains, "in filing a lawsuit under [a statute], an employee asserts independent statutory  
5 rights . . . The distinctly separate nature of these contractual and statutory rights is not  
6 vitiated merely because both were violated as a result of the same factual occurrence." 157  
7 F.3d at 761. Since there are state-law rights at issue, Ms. Jackson-Williams' claims are not  
8 preempted, and the claims are not mandated to proceed through the grievance procedure of  
9 the CBA.  
10  
11

12 **4. Lack of Standing to Represent Union Employees**

13 34. Section 159(a) of the United States Code states:

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

19 29 U.S.C. § 159(a).

20 35. Baristas, bartenders, and cocktail servers are represented by the Culinary  
21 CBA; construction workers are covered by the Operating Engineers CBA; and, technicians  
22 are represented by the AFL-CIO Local Union. Plaintiffs, as members of the "shift jamming  
23 class" attempt to represent union members from other sub-classes.

24 36. Employees may bring an action against an employer without exhausting  
25 contractual remedies, but the employees must "prove that the union as bargaining agent  
26 breached its duty of fair representation in its handling of the employee's grievance." Vaca v.  
27 Sipes, 386 U.S. 171, 186, 87 S.Ct. 903, 914 (1967).  
28

1           37.     When employees sue to vindicate “uniquely personal rights” as opposed to  
2 rights reserved to unions like picketing, renegotiating a contract, or protesting relocation, the  
3 employees have standing to sue on their own behalf and on behalf of other union members.  
4  
5 Lucas v. Bechtel Corp., 633 F.2d 757, 759 (9th Cir. 1980) (citing Hines v. Anchor Motor  
6 Freight, Inc., 424 U.S. 554, 562, 96 S.Ct. 1048, 1055 (1976)).

7           38.     In Baker v. IBP, Inc., 357 F.3d 685, 690 (7th Cir. 2004), the Seventh Circuit  
8 held that where a “suit is at its core about the adequacy of the wages [the employer] pays,”  
9 individual employees may not represent union workers in a class action when the union has  
10 not breached its duty of fair representation.” The court reasoned union workers “have a  
11 representative—one that under the NLRA is supposed to be ‘exclusive’ with respect to  
12 wages” and therefore “Plaintiffs’ request to proceed on behalf of a class of all workers  
13 shows that they seek to usurp the union’s role.” Id. at 686, 690.

14           39.     Plaintiffs do not assert the Union has breached its duty of fair representation.  
15 The CBA is valid and operative. Plaintiffs cannot represent those other union members who  
16 are represented by separate unions without asserting those union representatives breached  
17 their duty of fair representation.  
18  
19

20           **C.     PLAINTIFFS’ REQUEST FOR ADDITIONAL DISCOVERY**  
21           **PURSUANT TO NRCP 56.**

22           40.     Nevada Rules of Civil Procedure Rule 56 provides:

- 23           (d) When Facts Are Unavailable to the Nonmovant. If a nonmovant  
24 shows by affidavit or declaration that, for specified reasons, it cannot  
25 present facts essential to justify its opposition, the court may:  
26           (1) defer considering the motion or deny it;  
27           (2) allow time to obtain affidavits or declarations or to take discovery; or  
28           (3) issue any other appropriate order.

NRCP 56(d).

1           41.    A party opposing summary judgment pursuant to NRCP 56(d) has the burden  
2 of affirmatively demonstrating by a good-faith affidavit (1) the identification of the specific  
3 facts that further discovery would reveal; (2) the specific reasons why such evidence is  
4 presently unavailable; and (3) how those facts would preclude summary judgment. Family  
5 Home & Fin. Ctr., Inc. v. Fed. Home Loan Mortgage Corp., 525 F.3d 822, 827 (9th Cir.  
6 2008); Collins v. Union Fed. Sav. & Loan Ass'n, 99 Nev. 657, 669-70, 262 P.3d 705, 714  
7 (2011).

8  
9           42.    Plaintiffs request additional discovery to ascertain whether the CBA is valid or  
10 not. Plaintiffs have not provided an affidavit, have not articulated the specific reasons why  
11 the evidence they need is unavailable to them, and have not stated how those facts would  
12 preclude summary judgment.  
13

14 **V.    CONCLUSION AND ORDER.**

15           Based on the foregoing findings of fact and conclusions of law and good cause  
16 appearing therefore,  
17

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

20           DATED this 2nd day of November, 2020.

21  
22   
23 DISTRICT JUDGE  
24  
25  
26  
27  
28





# **EXHIBIT 2**

June 7, 2019 Order

# **EXHIBIT 2**

1 CODE NO. 3370  
2  
3  
4  
5

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF WASHOE  
8

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

14 Plaintiffs,

15 vs.

16 HG STAFFING, LLC, MEI-GSR HOLDINGS,  
17 LLC d/b/a GRAND SIERRA RESORT, and  
18 DOES 1 through 50, inclusive,  
19

20 Defendants.  
21 \_\_\_\_\_ /

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

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

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

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

6 **I. FACTUAL AND PROCEDURAL HISTORY**

7 This action arises out of an employment dispute between Plaintiffs and GSR  
8 regarding wages paid by GSR to Plaintiffs and similarly situated employees. On June 14,  
9 2016, Plaintiffs filed a *Class Action Complaint* ("Complaint") alleging GSR maintained the  
10 following policies, practices, and procedures which required various employees to perform  
11 work activities without compensation: (1) GSR's Cash Bank Policy, (2) Dance Class Policy,  
12 (3) Room Attendant Pre-Shift Policy, (4) Pre-Shift Meeting Policy, (5) Uniform Policy, and (6)  
13 Shift Jamming Policy. *Complaint*, pp. 4-8. As a result of said policies, Plaintiffs allege four  
14 causes of action against GSR: (1) Failure to Pay Wages for All Hours Worked in Violation of  
15 NRS 608.140 and 608.016, (2) Failure to Pay Minimum Wages in Violation of the Nevada  
16 Constitution, (3) Failure to Pay Overtime Wages in Violation of NRS 608.140 and 608.018,  
17 and (4) Failure to Timely Pay All Wages Due and Owing Upon Termination Pursuant to NRS  
18 608.140 and 608.020-.050. *Id.*, pp. 11-15.

19 On October 9, 2018, this Court entered its *Order After Hearing Granting Defendants'*  
20 *Motion to Dismiss* ("Order"). The Court found Plaintiffs failed to provide sufficient  
21 information to support its claims, and therefore granted GSR's *Motion to Dismiss*.  
22 Thereafter, Plaintiffs filed *Plaintiffs' Motion for Reconsideration of the Court's Order Granting*  
23 *Defendant's Motion to Dismiss or in the Alternative Leave to File an Amended Complaint*  
24 ("Motion for Reconsideration") requesting the Court reconsider its *Order* pursuant to NRCP  
25  
26  
27  
28

1 Rule 60(b). *Motion for Reconsideration*, p. 2. This Court entered its *Order Re Motion for*  
2 *Reconsideration* denying Plaintiffs request on the grounds they failed to state a claim but  
3 granting Plaintiffs leave to amend their *Complaint*.  
4

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

9 First, GSR contends all of Plaintiffs’ claims asserted after June 14, 2014 are barred  
10 by the two-year statute of limitations pursuant to NRS 608.260. *Motion*, p. 5. GSR asserts  
11 the Nevada Supreme Court held claims made under the Minimum Wage Amendment  
12 (“MWA”) are governed by a two-year statute of limitations. *Motion*, p. 5; citing Perry v.  
13 Terrible Herbst, Inc., 132 Nev. Adv. Op. 75, 383 P.3d 257, 260-62 (2016). GSR further  
14 asserts, all individual and class claims brought prior to June 14, 2014 are not tolled pursuant  
15 to Archon Corp. v. Eighth Judicial Dist. Court in & for Cty. of Clark, 407 P.3d 702 (Nev.  
16 2017) and China Agritech, Inc. v. Resh, 138 S. Ct. 1800, 1804 (2018). *Motion*, p. 9.

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

23 Third, GSR argues Plaintiffs First, Third, and Fourth Claims for Relief should be  
24 dismissed for failing to make good faith attempt to collect their wages before filing their claim  
25  
26  
27  
28

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

2 Fourth, GSR asserts Plaintiffs lack standing to represent union employees because  
3 they are exclusively represented by their respective unions pursuant to 29 U.S.C.A Section  
4 159(a). *Motion*, p. 14.

5  
6 Fifth, GSR contends Plaintiffs have again failed to state a claim for wages, including  
7 minimum wages. *Motion*, p. 15. GSR argues Plaintiff do no allege any facts which would  
8 show that any plaintiff was paid less than the minimum wage and do not allege how much  
9 they were paid in any week. *Motion*, p. 16. GSR asserts Plaintiffs failure to claim how much  
10 they worked in a week results in mere speculation as to whether Plaintiffs were underpaid.  
11 *Motion*, p. 16.

12  
13 Sixth, GSR maintains Ms. Jackson-Williams' claims for wages and overtime are  
14 barred for failing to exhaust grievance procedures of the collective bargaining agreement.  
15 *Motion*, p. 17. GSR argues Ms. Jackson-Williams is subject to a collective bargaining  
16 agreement and, therefore, her statutory claims for wages or overtime are dependent upon  
17 finding a breach of that agreement to maintain those claims. *Motion*, p. 18. Moreover, GSR  
18 asserts Ms. Jackson-Williams is not entitled to overtime pursuant to NRS 608.018 because  
19 the collective bargaining agreement provides otherwise. *Motion*, p. 19.

20  
21 Seventh, GSR contends Plaintiffs' claims are barred by claim and issue preclusion.  
22 *Motion*, p. 20. GSR maintains United States District Judge Hicks already determined  
23 Plaintiffs' wage claims cannot proceed in a class action; and, they are therefore barred from  
24 re-litigating the federal district court's judgment denying class certification. *Motion*, p. 2;  
25 citing Five Star Capital Corp. v. Ruby, 124 Nev. 1048, 1054, 194 P.3d 709, 713 (2008).  
26  
27 Lastly, GSR argues Plaintiffs should not be able to re-litigate the federal action on principles  
28

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

2 In their *Opposition*, Plaintiffs first maintain they are not required to exhaust  
3 administrative remedies with the Office of the Labor Commissioner prior to filing suit.  
4 *Opposition*, p. 7; citing Neville v. Terrible Herbst, Inc., 133 Nev. Adv. Op. 95, 406 P.3d 499,  
5 504 (Dec. 7 2017).  
6

7 Second, Plaintiffs assert they meet the pleading standard because they alleged  
8 specific work activities for which they are not paid their minimum wage, provided estimated  
9 damages owed to Plaintiffs and the putative classes, and provided documentary evidence in  
10 their possession and control specifying hours, dates, and times worked without pay.  
11 *Opposition*, p. 9.  
12

13 Third, Plaintiffs maintain their claims are not barred by issue or claim preclusion  
14 because their Nevada wage claims were not certified in the Sargant action. *Opposition*, p.  
15 13. Specifically, the federal court never reached determination of the state law claims  
16 because it dismissed them on the “incorrect premise” that Nevada employees do not have a  
17 private right of action for wage claims, at summary judgment, and prior to the court’s  
18 decertification order. *Opposition*, p. 13.  
19

20 Fourth, Plaintiffs contend its claims are not barred by any statutes of limitation.  
21 *Opposition*, p. 22. Plaintiffs contend NRS 11.190(3)(a)’s three-year statute of limitation for  
22 “an action upon liability created by statute, other than a penalty or forfeiture” applies to this  
23 action because NRS Chapter 608 lacks an express limitation period and NRS 11.190  
24 provides the three-year statute of limitation applies “unless further limited by specific statute.  
25 . . .” *Opposition*, p. 22; citing NRS 11.190.  
26

27 //

1 Plaintiffs further contend Defendants reliance on Perry is impermissibly broad  
2 because the Court did not hold a two-year statute of limitation period applicable to the  
3 Minimum Wage Amendment, extended to NRS 608 private causes of action claims.  
4  
5 *Opposition*, p. 23.

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

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

14  
15  
16 **II. STANDARD OF REVIEW; LAW AND ANALYSIS**

17 A complaint should be dismissed under NRCP 12(b)(5) “only if it appears beyond a  
18 doubt” that the plaintiff is entitled to no relief under any set of facts that could be proved in  
19 support of the claim. Buzz Stew, LLC v. City of North Las Vegas, 124 Nev. 224, 228, 181  
20 P.3d 670, 672 (2008); Blackjack Bonding v. City of Las Vegas Mun. Court, 116 Nev. 1213,  
21 1217, 14 P.3d 1275, 1278 (2000). When analyzing the merits of a 12(b)(5) motion to  
22 dismiss, the court recognizes all of the factual allegations in the plaintiff’s complaint as true,  
23 and draws all inferences in favor of the non-moving party. *Id.* Dismissal is appropriate  
24 “where the allegations are insufficient to establish the elements of a claim for relief.”  
25 Stockmeier v. Nevada Dept. of Corr. Psychological Review Panel, 124 Nev. 313, 316, 183  
26 P.3d 133, 135 (2008); see also Torres v. Nev. Direct Ins. Co., 131 Nev. Adv. Op. 54, 353  
27  
28

1 P.3d 1203, 1210 (2015) (same). Nevada is a notice-pleading jurisdiction, therefore, "[t]he  
2 test for determining whether the allegations of a cause of action are sufficient to assert a  
3 claim for relief is whether the allegations give fair notice of the nature and basis of the claim  
4 and the relief requested." Ravera v. City of Reno, 100 Nev. 68, 70, 675 P.2d 407, 408  
5 (1984); W. States Const., Inc. v. Michoff, 108 Nev. 931, 936, 840 P.2d 1220, 1223 (1992);  
6 NRCP 8.  
7

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

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

11 The Minimum Wage Act (MWA) guarantees employees payment of a specified  
12 minimum wage and gives an employee whose employer violates the MWA the right to bring  
13 an action against his or her employer in Nevada. Perry v. Terrible Herbst, Inc., 383 P.3d  
14 257, 258 (Nev. 2016). A two-year statute of limitation applies to actions for failure to pay the  
15 minimum wage in violation of the Nevada constitution. Id. at 262. This two-year statute of  
16 limitation period applies to NRS 608 statutory wage claims that are analogous to a cause of  
17 action for failure to pay an employee the lawful minimum wage. Id. Accordingly, a two-year  
18 statute of limitation applies to: Plaintiffs' First Cause of Action for Failure to Pay Wages for  
19 All Hours Worked in Violation of NRS 608.140 and 608.016; Second Cause of Action for  
20 Failure to Pay Minimum Wages in Violation of the Nevada Constitution; Third Cause of  
21 Action for Failure to Pay Overtime Wages in Violation of NRS 608.140 and 608.018; and,  
22 Fourth Cause of Action for Failure to Timely Pay All Wages Due and Owing Upon  
23 Termination Pursuant to NRS 608.140 and 608.020-.050.  
24  
25

26 //

27 //



1           **2. Cross Jurisdictional Tolling Does Not Apply**

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

8  
9           The United States Supreme Court in American Pipe held the timely filing of a class  
10 action tolls the applicable statutes of limitation for all persons encompassed by the class  
11 complaint. The Court further ruled that, where class action status has been denied,  
12 members of the failed class could timely intervene as individual plaintiffs in the still-pending  
13 action, shorn of its class character.

14  
15           Recently, however, the United State Supreme Court declined to apply American Pipe  
16 tolling to successive class action claims, holding the maintenance of a follow-on class action  
17 past the expiration of the statute of limitations is not permitted. China Agritech, Inc. v. Resh,  
18 138 S. Ct. 1800, 1803, 201 L. Ed. 2d 123 (2018). The Court explained that allowing tolling  
19 for successive class actions would allow the statute of limitation to be extended time and  
20 again; as each class is denied certification, a new named plaintiff could file a class  
21 complaint that resuscitates the litigation. Id.

22  
23  
24           Whether cross-jurisdictional tolling applies to a case like the present case is an issue  
25 that has not yet been decided by the Nevada Supreme Court. See Archon Corp. v. Eighth  
26 Judicial Dist. Court in & for Cty. of Clark, 407 P.3d 702 (Nev. 2017). In Achron Corp, the  
27 Court declined to consider the issue, finding an advisory mandamus was not warranted  
28 because the issue was not raised in the district court. Id. Nevertheless, the case presented

1 compelling grounds to refrain from recognizing cross-jurisdictional tolling. Specifically,  
2 cross-jurisdictional class-action tolling would allow the federal judiciary's actions to  
3 indefinitely extend the statutes of limitation beyond a five-year period of repose under NRS  
4 11.500. Id. Moreover, Achron Corp was considered before the United States Supreme  
5 Court's decision in China Agritech, Inc.

6 This issue has been similarly addressed in regards to individual actions. In Clemens  
7 v. Daimler Chrysler Corp., 534 F.3d 1017, 1025 (9th Cir. 2008), the Ninth Circuit held  
8 American Pipe does not "mandate cross-jurisdictional tolling as a matter of state procedure."  
9 The Illinois Supreme Court addressed this issue in Portwood v. Ford Motor Co., 701 N.E.2d  
10 1102, 1103-05 (Ill. 1998), holding a state "statute of limitations is not tolled during the  
11 pendency of a class action in federal court," even though the court had previously "adopted  
12 the American Pipe rule for class actions filed in Illinois state court." The Court reasoned  
13 such cross-jurisdictional tolling of a state statute of limitation would "increase the burden on  
14 that state's court system" because it would expose the state court system to the evils of  
15 "forum shopping." Id. at 1104. The court further found that because "state courts have no  
16 control over the work of the federal judiciary, . . . [s]tate courts should not be required to  
17 entertain stale claims simply because the controlling statute of limitations expired while a  
18 federal court considered whether to certify a class action." Id. at 1104.

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

23 Here, Plaintiffs filed their *Complaint* on June 14, 2016. As such, all claims accruing  
24 before June 14, 2014 are barred unless cross-jurisdictional tolling applies. Under the  
25  
26  
27  
28

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

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

13 Plaintiffs' *Complaint* alleges that Plaintiff Capilla was employed by GSR from "March  
14 2011" to "September 2013;" Plaintiff Vaughan was employed by GSR from "August 2012"  
15 through "June 2013;" Plaintiff Martel was employed by GSR from "January 2012" to "July  
16 2014;" and Plaintiff Williams was employed by GSR from "April 2014" to "December 2015."  
17 See Complaint at 3, ¶¶ 5 - 8. Accordingly, all of Ms. Capilla and Ms. Vaughan's claims, all  
18 but one (1) month of Mr. Martel's claims, and all but eighteen (18) months of Ms. Jackson-  
19 Williams' claims are dismissed.

## 22 B. Remaining Claims

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

1 The Court addresses each argument in turn.

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

4 Where an administrative agency has exclusive jurisdiction over statutory claims, the  
5 failure to exhaust administrative remedies before proceeding in district court renders the  
6 matter unripe for district court review. Allstate Ins. Co. v. Thorpe, 123 Nev. 565, 571, 170  
7 P.3d 989, 993 (2007). A private cause of action generally cannot be implied when an  
8 administrative official is expressly charged with enforcing a section of laws. Baldonado v.  
9 Wynn Las Vegas, LLC, 124 Nev. 951, 194 P.3d 96 (2008). However, the Nevada Supreme  
10 Court has determined an employee has a private right to pursue claims for unpaid wages  
11 pursuant to NRS 608.140. Neville v. Eighth Judicial Dist. Court in & for Cty. of Clark, 406  
12 P.3d 499, 504 (Nev. 2017). As such, the Labor Commissioner does not have exclusive  
13 jurisdiction over statutory claims. Therefore, Plaintiffs were not required to exhaust  
14 administrative remedies before proceeding to district court.  
15

16  
17 **2. Issue and Claim Preclusion Does not Apply**

18 In Five Star Capital Corp. v. Ruby, the Nevada Supreme Court set forth a three-part  
19 test for determining whether claim preclusion applies to a later action: (1) [T]he parties or  
20 their privies are the same, (2) the final judgment is valid, and (3) the subsequent action is  
21 based on the same claims or any part of them that were or could have been brought in the  
22 first case. 124 Nev. at 1054. In Five Star Capital Corp., the Court reasoned, claim  
23 preclusion applies to preclude an entire second suit that is based on the same set of facts  
24 and circumstances as the first suit. Id.  
25

26  
27 The Court also set forth a four-part test for determining whether issue preclusion  
28 applies to a later action:

1 (1) the issue decided in the prior litigation must be identical to the issue  
2 presented in the current action; (2) **the initial ruling must have been on the**  
3 **merits and have become final**; ... (3) the party against whom the judgment is  
4 asserted must have been a party or in privity with a party to the prior litigation”;  
5 and (4) the issue was actually and necessarily litigated.

6 124 Nev. 1048, 1055, 194 P.3d 709, 713 (2008) (citations omitted) (emphasis added).

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

### 13 3. Standing to Represent Union Employees

14 Pursuant to 29 U.S.C. § 159(a),

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

20 29 U.S.C. § 159(a). In Baker v. IBP, Inc., 357 F.3d 685, 690 (7th Cir. 2004), the Seventh  
21 Circuit held that where a “suit is at its core about the adequacy of the wages [the employer]  
22 pays,” individual employees may not represent union workers in a class action when the  
23 Union has not breached its duty of fair representation.

24 The court reasoned that union workers “have a representative—one that under the  
25 NLRA is supposed to be ‘exclusive’ with respect to wages” and therefore “Plaintiffs’ request  
26 to proceed on behalf of a class of all workers shows that they seek to usurp the union’s  
27 role.” Id. at 686, 690. Moreover, state law rights and obligations that do not exist  
28

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

4 Plaintiffs do not dispute that they may not pursue class actions on behalf of union  
5 employees because they are not union representatives, who have the exclusive right to  
6 represent members of the union with respect wage. However, Plaintiffs dispute that an  
7 enforceable collective bargaining agreement was in place. Specifically, Plaintiffs argue that:  
8 (1) the CBA is not valid and has expired by its own terms on or about May 1, 2011 (over  
9 seven years ago); (2) because it has expired and no subsequent CBA has been ratified or  
10 signed, Plaintiffs may sue in this Court for unpaid wages, overtime wages, and penalties  
11 due; and, (3) even if the CBA was valid it does not provide otherwise for overtime wages  
12 and Plaintiffs may bring their claims in this Court. See Opposition, generally. The Court  
13 declines to consider evidence, such as the collective bargaining agreement, outside the  
14 pleadings at this time.<sup>1</sup> Considering the claims in Plaintiffs' *Complaint* as true, and drawing  
15 all conclusions in favor of the Plaintiffs, dismissal is not appropriate on these grounds.  
16  
17  
18

#### 19 4. Failure to State a Claim

20 As stated dismissal is appropriate pursuant to NRCP 12(b)(5) "where the allegations  
21 are insufficient to establish the elements of a claim for relief." Stockmeier v. Nevada Dept.  
22 of Corr. Psychological Review Panel, 124 Nev. 313, 316, 183 P.3d 133, 135 (2008); see  
23 also Torres v. Nev. Direct Ins. Co., 131 Nev. Adv. Op. 54, 353 P.3d 1203, 1210 (2015)  
24 (same). Nevada is a notice-pleading jurisdiction, therefore, "[t]he test for determining  
25 whether the allegations of a cause of action are sufficient to assert a claim for relief is  
26 whether the allegations give fair notice of the nature and basis of the claim and the relief  
27  
28

---

<sup>1</sup> The Court notes this issue may be more appropriate for a motion for summary judgment.

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

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

8 **III. ORDER.**

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

14 Based on the foregoing, and good cause appearing thereto,

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

17 Dated this 7<sup>th</sup> day of June, 2019.

19  
20   
21 DISTRICT JUDGE





# **EXHIBIT 3**

Plaintiffs' Supreme Court of Nevada  
Notice of Appeal

# **EXHIBIT 3**

1 \$2515  
Mark R. Thierman, Nev. Bar No. 8285  
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2 Joshua D. Buck, Nev. Bar No. 12187  
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3 Leah L. Jones, Nev. Bar No. 13161  
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5 **THIERMAN BUCK LLP**  
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7 Fax. (775) 703-5027

8 *Attorneys for Plaintiffs-Petitioners*

9  
10 **IN THE SECOND JUDICIAL DISTRICT COURT OF  
THE STATE OF NEVADA IN AND FOR THE  
COUNTY OF WASHOE**

11  
12 EDDY MARTEL (also known as MARTEL-  
RODRIGUEZ), MARY ANNE CAPILLA,  
13 JANICE JACKSON-WILLIAMS, and  
14 WHITNEY VAUGHAN on behalf of  
themselves and all others similarly situated,

15 Plaintiffs-Appellants,

16  
17 HG STAFFING, LLC, MEI-GSR HOLDINGS  
18 LLC d/b/a GRAND SIERRA RESORT

19 Defendants-Respondents

Case No.: 16-cv-01264

**PLAINTIFFS'-PETITIONERS' NOTICE  
OF APPEAL PURSUANT TO NRP  
3(c)**

20  
21 **NOTICE OF APPEAL**

22 NOTICE IS HEREBY GIVEN THAT Plaintiffs-Petitioners EDDY MARTEL (also  
23 known as MARTEL-RODRIGUEZ), MARY ANNE CAPILLA, JANICE JACKSON-  
24 WILLIAMS, and WHITNEY VAUGHAN ("Plaintiffs-Petitioners") on behalf of themselves  
25 and all others similarly situated, hereby appeal to the Supreme Court of Nevada from  
26 the Second Judicial District Court's November 2, 2020 Order and the Second Judicial  
27 District Court's June 7, 2019 Order.

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1. A copy of the 11/2/20 Order Granting Motion for Summary Judgment is attached as Exhibit 1.
2. A copy of the 6/7/19 Order Granting in Part and Denying in Part Defendants' Motion to Dismiss is as Exhibit 2.

**AFFIRMATION**

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

DATED: November 25, 2020

Respectfully Submitted,

THIERMAN BUCK LLP

/s/Leah L. Jones

Mark R. Thierman

Joshua D. Buck

Leah L. Jones

Joshua R. Hendrickson

*Attorneys for Plaintiffs-Petitioners*

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**INDEX OF EXHIBITS**

Exhibit No.	Description	Pages
1.	November 2, 2020 Order Granting Motion for Summary Judgment	24
2.	June 7, 2019 Order Granting in Part and Denying in Part Defendants' Motion to Dismiss	16

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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I hereby certify that on this date I electronically filed the foregoing **PLAINTIFFS'-PETITIONERS' NOTICE OF APPEAL PURSUANT TO NRAP 3(c)** with the Clerk of the Court by using the e-Flex filing system which will send a notice of electronic filing to the following:

H. JOHNSON, ESQ. for HG STAFFING, LLC, et al  
SUSAN HILDEN, ESQ. for HG STAFFING, LLC, et al

Pursuant to NRCP 5(b), I hereby further certify that service of the foregoing was also made by depositing a true and correct copy of the same for mailing, first class mail, postage prepaid thereon, at Reno, Nevada to the following:

Chris Davis, Esq.  
2500 East Second Street  
Reno, NV 89595  
*Attorney for Defendants*

DATED this 25<sup>th</sup> day of November, 2020

/s/ Brittany Manning  
An Employee of Thierman Buck LLP

# **EXHIBIT 4**

4/29/2021 Supreme Court of Nevada  
Order to Show Cause

# **EXHIBIT 4**

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDDY MARTEL, A/K/A MARTEL-RODRIGUEZ; MARY ANNE CAPILLA; JANICE JACKSON-WILLIAMS; AND WHITNEY VAUGHAN, ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED,

Appellants,

vs.

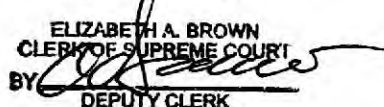
HG STAFFING, LLC; AND MEI-GSR HOLDINGS, LLC, D/B/A GRAND SIERRA RESORT,

Respondents.

No. 82161

**FILED**

APR 29 2021

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER GRANTING MOTION AND TO SHOW CAUSE*

Appellants' motion for leave to file an amended docketing statement is granted to the following extent. Appellants shall have 7 days from the date of this order to file and serve an amended docketing statement.

In their motion, appellants state that the docketing statement they filed with this court on December 17, 2020, is inaccurate. In that docketing statement, appellants asserted that the order challenged on appeal adjudicated all claims below and the rights and liabilities of all the parties below. Appellants now assert that certain claims of appellant Janice Jackson-Williams remain pending below. Thus, it appears that the challenged order is not appealable as a final judgement under NRAP 3A(b)(1) as indicated by appellants in their docketing statement. *See Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000) (defining a final judgment). And no other statute or court rule appears to allow an appeal from the challenged order. *See Brown v. MHC Stagecoach, LLC*, 129 Nev.

343 ,345, 301 P.3d 850, 851 (2013) (“We may only consider appeals authorized by statute or court rule.”).

Accordingly, appellants shall have 30 days from the date of this order to show cause why this appeal should not be dismissed for lack of jurisdiction. In responding to this order, in addition to points and authorities, appellants should provide this court with a copy of any written, file-stamped district court order finally resolving the claims against the remaining parties or certifying the challenged order as final under NRCP 54(b). Respondents may file any reply within 14 days of service of appellants’ response. Failure to demonstrate that this court has jurisdiction may result in the dismissal of this appeal.

The briefing schedule in this appeal is suspended pending further order of this court.

It is so ORDERED.

1. Sardeshy, C.J.

cc: Thierman Buck LLP  
Chris Davis  
Susan Heaney Hilden



**EXHIBIT 1**

[PROPOSED] Order on Motion to  
Shorten Time

**EXHIBIT 1**

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3370

**IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA**  
**IN AND FOR THE COUNTY OF WASHOE**

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

Plaintiffs,

vs.

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

Defendants.

Case No.: CV16-01264

Dept. No.: 6

**[PLAINTIFFS' PROPOSED]**  
**ORDER TO SHORTEN TIME**

**ORDER TO SHORTEN TIME**

This matter concerns Plaintiffs EDDY MARTEL (also known as MARTEL-RODRIGUEZ, MARY ANNE CAPILLA, JANICE JACKSON-WILLIAMS, and WHITNEY VAUGHAN, on behalf of themselves and all others similarly situated Motion for Clarification of the November 3, 2020 Order granting Defendants' Motion to Dismiss Department XI of the Second Judicial District Court of the Washoe County, Nevada, Honorable Lynne K. Simons presiding.

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

**I. PERTINENT PROCEDURAL HISTORY**

This action arises out of an employment dispute between Plaintiffs and their employer, Defendants HG STAFFING, LLC, MEI-GSR HOLDINGS LLC d/b/a GRAND SIERRA RESORT ("GSR") regarding alleged unpaid wages to Plaintiffs and all other similarly situated employees. Plaintiffs filed their original class action complaint

1 (“*Complaint*”) on June 14, 2016 in the Second Judicial District Court of the State of  
2 Nevada in and for the County of Washoe. Plaintiffs filed their jury demand the next  
3 day. Plaintiffs allege various causes of action for unpaid wages on behalf of  
4 themselves and all similarly situated individuals for failure to: (1) compensate for all  
5 hours worked in violation of NRS 608.140 and 608.016; (2) pay minimum wages in  
6 violation of the Nevada Constitution; (3) pay overtime in violation of NRS 608.140 and  
7 608.018; and (4) failure to timely pay all wages due and owing in violation of NRS  
8 608.140 and 608.020-050.

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

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

20 On June 7, 2019, the Court entered its Order Granting, in Part, and Denying, in  
21 Part, Motion to Dismiss. See June 7, 2019 Order. The Court held that a two-year  
22 statute of limitation applies to Appellants’ statutory NRS 608.016, 608.018, and  
23 608.020-.050 wage claims. As such, the Court dismissed all of Ms. Capilla’s and Ms.  
24 Vaughan’s claims, all but one (1) month of Mr. Martel’s claims, and all but eighteen  
25 (18) months of Ms. Jackson-Williams’ claims.

26 Defendants filed their Answer to Appellants FAC on June 28, 2019.  
27  
28

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

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

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

10 **II. LEGAL STANDARD**

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

16 **III. Plaintiffs' Have Made A Satisfactory Showing to Shorten Time**

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

22 Through declaration, Plaintiffs' Counsel, Ms. Leah L. Jones asserts she met and  
23 conferred with Defendants' Counsel, Ms. Susan Heaney Hilden on April 22, 2021 to  
24 discuss Plaintiffs' position on needed clarification of the 11/3/20 Order. Defendants'  
25  
26  
27  
28

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Counsel, Ms. Hilden stated that it was Defendants’ position that all of Plaintiffs’ claims had been fully and finally adjudicated as indicated by this Court’s language that, “...summary judgment is entered in favor of GSR and against the Plaintiffs.” Plaintiffs’ Counsel Jones asked if Defendants would be willing to file a joint motion for clarification, but Counsel Hilden stated, “It is not in the best interest of my client” and that Plaintiff should “do what you have to do.”

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

**VII. Conclusion And Order**

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

Accordingly, and based on the foregoing,  
IT IS ORDERED: Plaintiffs’ Motion to Shorten Time is GRANTED.  
IT IS SO ORDERED  
Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2021

\_\_\_\_\_  
LYNNE K. SIMONS  
DISTRICT JUDGE

## **EXHIBIT 2**

Declaration of Leah L. Jones

## **EXHIBIT 2**

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8 *Attorneys for Plaintiffs*

9 **IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA IN AND**  
10 **FOR THE COUNTY OF WASHOE**

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

16 Plaintiffs,

17 vs.

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

21 Defendants.  
22

Case No.: 16-cv-01264

Dept. No.: XIV

**DECLARATION OF LEAH L. JONES IN  
SUPPORT OF PLAINTIFFS' MOTION  
FOR CLARIFICATION OF NOVEMBER  
3, 2020 ORDER GRANTING SUMMARY  
JUDGMENT and REQUEST FOR  
EXPEDITED DECISION**

23  
24 I, Leah L. Jones, hereby declare and state as follows:

25 1. The following declaration is based upon my own personal observation  
26 and knowledge, and if called upon to testify to the things contained herein, I could  
27 competently so testify.  
28

1           2.       I am an associate attorney with Thierman Buck, LLP, and I am admitted  
2 to practice law in the states of California and Nevada. I am also admitted to the United  
3 States District Court District of Nevada, the United States District Court Eastern  
4 District of California, and the Supreme Court of the United States.

5           3.       I am one of the attorneys of record for Plaintiffs EDDY MARTEL (also  
6 known as MARTEL-RODRIGUEZ), MARY ANNE CAPILLA, JANICE JACKSON-  
7 WILLIAMS, and WHITNEY VAUGHAN (“Plaintiffs”), in this action against Defendants  
8 HG STAFFING, LLC, MEI-GSR HOLDINGS LLC d/b/a GRAND SIERRA RESORT.  
9 Mark R. Thierman, Joshua D. Buck, and Joshua R. Hendrickson are also attorneys of  
10 record in this case.

11           4.       In this Court’s November 3, 2020 Order granting Defendants’ Motion for  
12 Summary Judgment at Section V Conclusion and Order, the Court held: “Based on the  
13 foregoing findings of fact and conclusions of law and good cause appearing therefore,  
14 IT IS HEREBY ORDERED summary judgment is entered in favor of GSR and against  
15 Plaintiffs.” Attached as Exhibit 1 is a true and correct copy of the November 3, 2020  
16 Order, hereinafter, “11/3/20 Order.”

17           5.       This Court had previously entered its Order Granting, in Part, and  
18 Denying, in Part, Defendants’ Motion to Dismiss on June 7, 2019. Attached as Exhibit  
19 2 is a true and correct copy of the June 7, 2019 Order, hereinafter “6/7/19 Order.”

20           6.       Plaintiffs filed a Notice of Appeal on November 25, 2020. Attached as  
21 Exhibit 3 is a true and correct copy of Plaintiffs Notice of Appeal, hereinafter “11/25/20  
22 Notice of Appeal.”

23           7.       A briefing schedule was set with Plaintiffs/Appellants opening brief due  
24  
25  
26  
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28



1 on April 21, 2021, Supreme Court of Nevada Case No. 82161. An NRAP 16(d)  
2 mediation/settlement conference briefing was provided to Settlement Judge Jonathan  
3 L. Andrews, but after conversations with both Parties, it was determined settlement  
4 was not possible.

5 8. Upon review of this Court's Order and in preparing Plaintiffs'/Appellants'  
6 opening brief, Plaintiffs believe that this Court's 11/3/20 Order did not fully and finally  
7 adjudicate all of the Parties claims.  
8

9 9. On April 22, 2021, I telephoned Defendants' Counsel, Ms. Susan  
10 Heaney Hilden, at her office to discuss Plaintiffs' position.  
11

12 10. Defendants' Counsel, Ms. Hilden, stated that it was Defendants' position  
13 that all of Plaintiffs' claims had been fully and finally adjudicated as indicated by this  
14 Court's language that, "...summary judgment is entered in favor of GSR and against  
15 the Plaintiffs."  
16

17 11. I asked if Defendants would be willing to file a joint motion for clarification,  
18 but Counsel Hilden said, "It is not in the best interest of my client" and that Plaintiff  
19 should "do what you have to do."  
20

21 ///

22 ///

23 ///

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12. On April 23, 2021 Plaintiffs sought leave from the Supreme Court of Nevada to file an Amended Docketing Statement which was granted by the Supreme Court on April 29, 2021. The Court also entered an Order to Show Cause why the appeal should not be dismissed for lack of jurisdiction, which is due on May 28, 2021. A true and correct copy of the Supreme Court of Nevada's Order Granting Motion and To Show Cause is attached as Exhibit 4, hereinafter "4/29/21 OSC."

I declare under penalty of perjury, under the laws of the state of Nevada, that the foregoing is true and correct.

**AFFIRMATION**

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

DATED: May 5, 2021

THIERMAN BUCK, LLP

/s/Leah L. Jones  
Leah L. Jones

FILED  
Electronically  
CV16-01264  
2021-05-05 02:44:53 PM  
Alicia L. Lerud  
Clerk of the Court  
Transaction # 842978

## **EXHIBIT 3**

### Plaintiffs' Supreme Court of Nevada Notice of Appeal

## **EXHIBIT 3**

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8 *Attorneys for Plaintiffs-Petitioners*

9 **IN THE SECOND JUDICIAL DISTRICT COURT OF**  
10 **THE STATE OF NEVADA IN AND FOR THE**  
11 **COUNTY OF WASHOE**

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

15 Plaintiffs-Appellants,

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

19 Defendants-Respondents

Case No.: 16-cv-01264

**PLAINTIFFS'-PETITIONERS' NOTICE  
OF APPEAL PURSUANT TO NRP  
3(c)**

20 **NOTICE OF APPEAL**

21 NOTICE IS HEREBY GIVEN THAT Plaintiffs-Petitioners EDDY MARTEL (also  
22 known as MARTEL-RODRIGUEZ), MARY ANNE CAPILLA, JANICE JACKSON-  
23 WILLIAMS, and WHITNEY VAUGHAN ("Plaintiffs-Petitioners") on behalf of themselves  
24 and all others similarly situated, hereby appeal to the Supreme Court of Nevada from  
25 the Second Judicial District Court's November 2, 2020 Order and the Second Judicial  
26 District Court's June 7, 2019 Order.  
27  
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1. A copy of the 11/2/20 Order Granting Motion for Summary Judgment is attached as Exhibit 1.
2. A copy of the 6/7/19 Order Granting in Part and Denying in Part Defendants' Motion to Dismiss is as Exhibit 2.

**AFFIRMATION**

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

DATED: November 25, 2020

Respectfully Submitted,

THIERMAN BUCK LLP

/s/Leah L. Jones

Mark R. Thierman

Joshua D. Buck

Leah L. Jones

Joshua R. Hendrickson

*Attorneys for Plaintiffs-Petitioners*

**THERMAN BUCK LLP**  
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**INDEX OF EXHIBITS**

Exhibit No.	Description	Pages
1.	November 2, 2020 Order Granting Motion for Summary Judgment	24
2.	June 7, 2019 Order Granting in Part and Denying in Part Defendants' Motion to Dismiss	16

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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I hereby certify that on this date I electronically filed the foregoing **PLAINTIFFS'-PETITIONERS' NOTICE OF APPEAL PURSUANT TO NRAP 3(c)** with the Clerk of the Court by using the e-Flex filing system which will send a notice of electronic filing to the following:

H. JOHNSON, ESQ. for HG STAFFING, LLC, et al  
SUSAN HILDEN, ESQ. for HG STAFFING, LLC, et al

Pursuant to NRCP 5(b), I hereby further certify that service of the foregoing was also made by depositing a true and correct copy of the same for mailing, first class mail, postage prepaid thereon, at Reno, Nevada to the following:

Chris Davis, Esq.  
2500 East Second Street  
Reno, NV 89595  
*Attorney for Defendants*

DATED this 25<sup>th</sup> day of November, 2020

/s/ Brittany Manning  
An Employee of Thierman Buck LLP

# EXHIBIT 4

4/29/2021 Supreme Court of Nevada  
Order to Show Cause

# EXHIBIT 4



IN THE SUPREME COURT OF THE STATE OF NEVADA

EDDY MARTEL, A/K/A MARTEL-RODRIGUEZ; MARY ANNE CAPILLA; JANICE JACKSON-WILLIAMS; AND WHITNEY VAUGHAN, ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED,

Appellants,

vs.

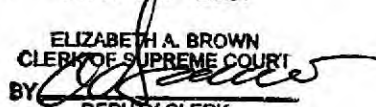
HG STAFFING, LLC; AND MEI-GSR HOLDINGS, LLC, D/B/A GRAND SIERRA RESORT,

Respondents.

No. 82161

**FILED**

APR 29 2021

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER GRANTING MOTION AND TO SHOW CAUSE*

Appellants' motion for leave to file an amended docketing statement is granted to the following extent. Appellants shall have 7 days from the date of this order to file and serve an amended docketing statement.

In their motion, appellants state that the docketing statement they filed with this court on December 17, 2020, is inaccurate. In that docketing statement, appellants asserted that the order challenged on appeal adjudicated all claims below and the rights and liabilities of all the parties below. Appellants now assert that certain claims of appellant Janice Jackson-Williams remain pending below. Thus, it appears that the challenged order is not appealable as a final judgement under NRAP 3A(b)(1) as indicated by appellants in their docketing statement. *See Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000) (defining a final judgment). And no other statute or court rule appears to allow an appeal from the challenged order. *See Brown v. MHC Stagecoach, LLC*, 129 Nev.

343 ,345, 301 P.3d 850, 851 (2013) (“We may only consider appeals authorized by statute or court rule.”).

Accordingly, appellants shall have 30 days from the date of this order to show cause why this appeal should not be dismissed for lack of jurisdiction. In responding to this order, in addition to points and authorities, appellants should provide this court with a copy of any written, file-stamped district court order finally resolving the claims against the remaining parties or certifying the challenged order as final under NRCP 54(b). Respondents may file any reply within 14 days of service of appellants’ response. Failure to demonstrate that this court has jurisdiction may result in the dismissal of this appeal.

The briefing schedule in this appeal is suspended pending further order of this court.

It is so ORDERED.

1. Sardeshy, C.J.

cc: Thierman Buck LLP  
Chris Davis  
Susan Heaney Hilden

1 CODE NO. 3370  
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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF WASHOE  
8

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

Case No. CV16-01264

Dept. No. 6

14 Plaintiffs,

15 vs.

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

19 Defendants.  
20 \_\_\_\_\_/

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

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

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

6 **I. FACTUAL AND PROCEDURAL HISTORY**

7 This action arises out of an employment dispute between Plaintiffs and GSR  
8 regarding wages paid by GSR to Plaintiffs and similarly situated employees. On June 14,  
9 2016, Plaintiffs filed a *Class Action Complaint* ("Complaint") alleging GSR maintained the  
10 following policies, practices, and procedures which required various employees to perform  
11 work activities without compensation: (1) GSR's Cash Bank Policy, (2) Dance Class Policy,  
12 (3) Room Attendant Pre-Shift Policy, (4) Pre-Shift Meeting Policy, (5) Uniform Policy, and (6)  
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14 causes of action against GSR: (1) Failure to Pay Wages for All Hours Worked in Violation of  
15 NRS 608.140 and 608.016, (2) Failure to Pay Minimum Wages in Violation of the Nevada  
16 Constitution, (3) Failure to Pay Overtime Wages in Violation of NRS 608.140 and 608.018,  
17 and (4) Failure to Timely Pay All Wages Due and Owing Upon Termination Pursuant to NRS  
18 608.140 and 608.020-.050. *Id.*, pp. 11-15.

19 On October 9, 2018, this Court entered its *Order After Hearing Granting Defendants'*  
20 *Motion to Dismiss* ("Order"). The Court found Plaintiffs failed to provide sufficient  
21 information to support their claims, and therefore granted GSR's *Motion to Dismiss*. *Order*,  
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23 *Order Granting Defendant's Motion to Dismiss or in the Alternative Leave to File an*  
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1 Order pursuant to NRCPC Rule 60(b). *Motion for Reconsideration*, p. 2. This Court entered  
2 its *Order Re Motion for Reconsideration* on January 9, 2019, and denied Plaintiff's request  
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6 On January 29, 2019, Plaintiffs filed their *First Amended Complaint* ("FAC") asserting  
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12 *Order*") concluding that a two-year statute of limitation applies to this case. *MTD Order*, p.  
13 7. As such, the Court dismissed all of Ms. Capilla and Ms. Vaughan's claims, all but one (1)  
14 month of Mr. Martel's claims, and all but eighteen (18) months of Ms. Jackson-Williams'  
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22 *Summary Adjudication on Plaintiffs' Lack of Standing to Represent Union Employees; and*  
23 *Motion for Summary Judgment as to Plaintiff Jackson-Williams* ("*Second MSJ*"). GSR made  
24 the following arguments: (1) Plaintiff Martel's claims are time-barred; (2) Plaintiffs lack  
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26 Plaintiff Jackson-Williams' claims are barred for failing to exhaust grievance procedures of  
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1 the Culinary Collective Bargaining Agreement (“CBA”) and/or based on federal preemption;  
2 and (4) Plaintiff Jackson-Williams’ claim for overtime is barred pursuant to NRS 608.018  
3 because the CBA provides otherwise for overtime. See *Second MSJ*, generally.  
4

5 Before this Court could render a decision on the *First MSJ* and *Second MSJ*, GSR  
6 filed the *Notice of Filing Petition for Writ of Mandamus and/or Prohibition* (“*Petition*”) with the  
7 Supreme Court of Nevada on July 9, 2019. In the *Petition*, GSR argued the dismissal of  
8 Plaintiff’s first, third, and fourth claims for relief are mandatory because Plaintiff failed to  
9 exhaust administrative remedies as required by NRS Chapter 607, legislative mandated  
10 remedies must be exhausted despite an implied private right of action, and NRS 607.215  
11 requires plaintiffs to exhaust administrative remedies before plaintiffs pursue wage claims  
12 under NRS 608.005 to 608.195. See *Petition*, generally. The Court subsequently entered  
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14 (“*Stipulation*”) on July 17, 2019, and withdrew GSR’s pending motions for summary  
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20 The Supreme Court of Nevada reasoned that Neville v. Eighth Judicial Dist. Court held, by  
21 necessary implication, that exhaustion of administrative remedies is not required before  
22 filing an unpaid-wage claim in district court. 133 Nev. 77, 406 P.3d 499 (2017).  
23

24 On June 9, 2020, GSR filed the *Defendants Motion for Summary Judgment, or in the*  
25 *Alternative, Summary Adjudication* (“*Third MSJ*”) and renewed the claims presented in the  
26 *Second MSJ* filed on May 23, 2019. On November 3, 2020, the Court entered the *Order*  
27 *Granting Motion for Summary Judgment* (“*November Order*”). Plaintiffs filed the *Plaintiffs’-*  
28

1 *Petitioners' Notice of Appeal Pursuant to NRAP 3(c)* on November 25, 2020.

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

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

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

19 The Court grants Plaintiffs’ request and clarifies its intent to enter summary judgment  
20 in favor of Defendants regarding each of Ms. Jackson-Williams’ claims. The Court  
21 acknowledges eighteen (18) months of Ms. Jackson-Williams’ claims were not time-barred.  
22 *November Order*, p. 15, ¶ 17. However, Ms. Jackson-Williams claims for Failure to Pay  
23 Overtime Wages in Violation of NRS 608.140 and 608.018 are barred because the Court  
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1 found the CBA provided otherwise for overtime and wages. *November Order*, p. 19, ¶ 28.  
2 While the Court did find Ms. Jackson-Williams' could proceed without undertaking the  
3 grievance procedure of the CBA, the Court nevertheless found Ms. Jackson-Williams did not  
4 have standing to bring her claims because Plaintiffs did not prove the union as a bargaining  
5 agent breached its duty of fair representation in its representation of the employees, barring  
6 her claims. *November Order*, p. 21, ¶ 39. Accordingly, the Court found summary judgment  
7 appropriate in favor of Defendants and against each of Ms. Jackson-Williams' claims.  
8

9 **II. ORDER.**

10 Based on the foregoing, and good cause appearing thereto,

11 **IT IS HEREBY ORDERED** *Plaintiffs' Motion for Clarification of November 3, 2020*  
12 *Order Granting Summary Judgment in Favor of Defendants* is GRANTED.  
13

14 **IT IS FURTHER ORDERED** the *November Order* is clarified as set forth herein and  
15 summary judgment is entered in favor of GSR and on each of Plaintiff Jackson-Williams'  
16 remaining claims.  
17

18 Dated this 21st day of June, 2021.

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21 DISTRICT JUDGE  
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1 **2540**  
2 Mark R. Thierman, Nev. Bar No. 8285  
3 mark@thiermanbuck.com  
4 Joshua D. Buck, Nev. Bar No. 12187  
5 josh@thiermanbuck.com  
6 Leah L. Jones, Nev. Bar No. 13161  
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8 Josh Hendrickson, Nev. Bar No. 12225  
9 joshh@thiermanbuck.com  
10 THIERMAN BUCK LLP  
11 7287 Lakeside Drive  
12 Reno, Nevada 89511  
13 Tel. (775) 284-1500  
14 Fax. (775) 703-5027

15 *Attorneys for Plaintiffs*

16 **IN THE SECOND JUDICIAL DISTRICT COURT OF**

17 **THE STATE OF NEVADA IN AND FOR THE COUNTY OF WASHOE**

18 EDDY MARTEL (also known as  
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20 CAPILLA, JANICE JACKSON-  
21 WILLIAMS, and WHITNEY VAUGHN  
22 on behalf of themselves and all others  
23 similarly situated,

24 Plaintiffs

25 v.

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

Defendants

Case No.: CV16-01264

Dept. No.: 6

**NOTICE OF ENTRY OF ORDER**

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**PLEASE TAKE NOTICE** that an Order Granting Motion for Clarification of November 3, 2020 Order; Order Clarifying Prior Order was entered in the above-captioned matter on June 21, 2021. A true and correct copy is attached hereto as Exhibit 1.

**AFFIRMATION**

*The undersigned do 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: August 10, 2021

THIERMAN BUCK, LLP

/s/ Leah L. Jones

Mark R. Thierman, Bar No. 8285  
Joshua D. Buck, Bar No. 12187  
Leah L. Jones, Bar No. 13161  
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**CERTIFICATE OF SERVICE**

I hereby certify that on August 10, 2021, I electronically filed the foregoing **NOTICE OF ENTRY OF ORDER** with the Clerk of the Court by using the electronic filing system which will send a notice of electronic filing to the following:

SUSAN HILDEN, ESQ. for MEI-GSR HOLDINGS LLC DBA GRAND SIERRA RESORT AND CASINO et al

H. JOHNSON, ESQ. for MEI-GSR HOLDINGS LLC DBA GRAND SIERRA RESORT AND CASINO et al

DATED: August 10, 2021

/s/ Brittany Manning  
An Employee of Thierman Buck LLP

FILED  
Electronically  
CV16-01264  
2021-08-10 11:43:33 AM  
Alicia L. Lerud  
Clerk of the Court  
Transaction # 8987454

# **EXHIBIT 1**

## **Order Granting Motion for Clarification of November 3, 2020 Order; Order Clarifying Prior Order**

# **EXHIBIT 1**

1 CODE NO. 3370  
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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
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2 and (4) Plaintiff Jackson-Williams’ claim for overtime is barred pursuant to NRS 608.018  
3 because the CBA provides otherwise for overtime. See *Second MSJ*, generally.  
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5 Before this Court could render a decision on the *First MSJ* and *Second MSJ*, GSR  
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5 clarification of the *November Order* is necessary for Plaintiffs’ appeal to proceed. *OST*  
6 *Motion*, p. 2. Plaintiffs state the Supreme Court of Nevada has given Plaintiffs until May 28,  
7 2021, to show cause why the appeal should not be dismissed, thus creating good cause for  
8 an order shortening time to brief the *Motion*. *OST Motion*, p. 4.

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

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

19 The Court grants Plaintiffs’ request and clarifies its intent to enter summary judgment  
20 in favor of Defendants regarding each of Ms. Jackson-Williams’ claims. The Court  
21 acknowledges eighteen (18) months of Ms. Jackson-Williams’ claims were not time-barred.  
22 *November Order*, p. 15, ¶ 17. However, Ms. Jackson-Williams claims for Failure to Pay  
23 Overtime Wages in Violation of NRS 608.140 and 608.018 are barred because the Court  
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1 found the CBA provided otherwise for overtime and wages. *November Order*, p. 19, ¶ 28.  
2 While the Court did find Ms. Jackson-Williams' could proceed without undertaking the  
3 grievance procedure of the CBA, the Court nevertheless found Ms. Jackson-Williams did not  
4 have standing to bring her claims because Plaintiffs did not prove the union as a bargaining  
5 agent breached its duty of fair representation in its representation of the employees, barring  
6 her claims. *November Order*, p. 21, ¶ 39. Accordingly, the Court found summary judgment  
7 appropriate in favor of Defendants and against each of Ms. Jackson-Williams' claims.  
8

9 **II. ORDER.**

10 Based on the foregoing, and good cause appearing thereto,

11 **IT IS HEREBY ORDERED** *Plaintiffs' Motion for Clarification of November 3, 2020*  
12 *Order Granting Summary Judgment in Favor of Defendants* is GRANTED.  
13

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

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21 DISTRICT JUDGE  
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