

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Plaintiffs-Appellants,

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

Defendants-Respondents.

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Elizabeth A. Brown
Clerk of Supreme Court

District Court Case No.: CV16-01264

**APPELLANTS' MOTION TO
EXCEED TYPE-VOLUME
LIMIT FOR APPELLANTS'
REPLY BRIEF**

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**MOTION TO EXCEED TYPE-VOLUME LIMIT FOR REPLY IN
SUPPORT OF APPELLANTS' OPENING BRIEF**

I. ARGUMENT

Appellants EDDY MARTEL (also known as MARTEL-RODRIGUEZ), MARY ANNE CAPILLA, JANICE JACKSON-WILLIAMS, and WHITNEY VAUGHAN on behalf of themselves and all others similarly situated (“Appellants”), by and through their attorneys of records, Thierman Buck, LLP hereby move this Court pursuant to Nevada Rule of Appellate Procedure (NRAP) 32(a)(7) to exceed the type-volume limit for their reply in support of Appellants’ opening brief, which is submitted concurrently with this motion.

NRAP 32(a)(7)(A)(i) provides that an opening brief shall not exceed 30 pages, and a reply brief shall not exceed 15 pages, unless the briefs comply with the type-volume limitations in NRAP 32(a)(7)(A)(ii). NRAP 32(a)(7)(A)(ii) limits opening briefs to a type-volume of no more than 14,000 words and no more than 1,300 lines of text, and limits reply briefs to no more than half of this type-volume. However, NRAP 32(a)(7)(D)(i) allows a party to exceed these page or type-volume limitations by permission of the Court under certain circumstances. Although the Court looks with disfavor on motions to exceed the applicable page or type-volume limitations pursuant to NRAP 32(a)(7)(D)(i), the Court will grant a motion to exceed page or type-volume limitations “only upon a showing of diligence and

good cause.” *Id.* Good cause exists to allow Appellants to file an enlarged reply brief so as to assist this Court in resolving numerous novel questions of law, some of which were raised for the first time in this litigation by Respondents in their Answering Brief.

Appellants’ Reply contains 10,557 words and 950 lines of text, which is 3,557 words and 300 lines more than allowed pursuant to NRAP 32(a)(7)(A)(ii). Appellants attach hereto as Exhibit A, the Declaration of Joshua D. Buck stating in detail the reasons for the motion and the number of additional words and lines of text as outlined directly below and pursuant to NRAP 32(a)(7)(D)(ii). Appellants submit that they should be permitted to file an enlarged brief for the following two (2) reasons.¹

(1) Respondents, for the first time in their Opposition to Appellants’ Opening Brief, argue two (2) novel issues of law that were not considered by the District Court below nor were they raised in the litigation during the proceedings in the District Court. These novel issues of law and new arguments are: (a) the unsigned and undated redlined draft collective-bargaining agreement excepts Respondents from the payment of minimum wages pursuant to the collective

¹ Indeed, permitting Appellants to file this enlarged brief will greatly assist this Court in addressing the relevant novel questions before the Court and potentially remanding many of the issues raised following a more fully developed factual record after a trial by jury.

bargaining exception contained in the Nevada Constitutional Minimum Wage Amendment, and (b) NRS 608.016's requirement that Nevada employees be compensated for all the hours they work is limited to just those employees who work on a "trial" or "break-in" basis. Appellants' reply to these new arguments consists of ten (10) pages, 2,521 words, and 221 lines of text. Appellants never had an opportunity to address these issues in their Opening Brief because these arguments had never previously been raised in this litigation.

(2) Appellants' appeal encompasses seven (7) issues presented for this Court to consider pursuant to NRAP 17(a)(12) because Appellants' appeal involves questions of first impression and matters raising as principal questions of statewide importance to private employees and employers in Nevada. Moreover, there are numerous novel issues of law that this Court has not previously considered such as: (a) the statute of limitations applicable to statutory wage claims, (b) when NRS 608.020-.050 continuation claims begin to run/accrue, and (c) whether an NRS 508.020-.050 continuation claim must occur in the last pay period before the employees' separation from employment.

II. CONCLUSION

Accordingly, in order to respond to the novel arguments contained in Respondents' Opposition, to fully respond and analyze the seven (7) issues contained in Appellants' appeal, and to provide this Court with supporting

legislative history, well-reasoned analysis of Nevada state wage and hour law, and fully address these important issues of first impression, the Appellants need additional type-volume space.

Therefore, for diligence and good cause shown, and according to NRAP 32(a)(7)(D)(i), this Court should allow the Appellants to file their reply in support of their opening brief consisting of 10,557 words and 950 lines of text.

Dated: November 24, 2021 Respectfully Submitted,

THIERMAN BUCK LLP

/s/ Joshua D. Buck

Mark R. Thierman, Bar No. 8285

Joshua D. Buck, Bar No. 12187

Leah L. Jones, Bar No. 13161

Joshua R. Hendrickson, Bar No. 12225

Attorneys for Appellants

CERTIFICATE OF COMPLIANCE

I hereby certify that this motion complies with the formatting requirements of NRAP 27(d)(1), and the page limitations of NRAP 27(d)(2) because:

- This motion has been prepared in a proportionally spaced typeface using Microsoft Word 10 in 14-point font size and Times New Roman.
- This motion contains less than 10 pages.

I hereby certify that I have read the **Appellants' Motion to Exceed Type-Volume Limit for Appellants' Reply Brief**, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this motion complies with all applicable Nevada Rules of Appellate Procedure.

I understand that I may be subject to sanctions in the event that the accompanying motion is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated: November 24, 2021

THIERMAN BUCK LLP

/s/ Joshua D. Buck

Mark R. Thierman, Bar No. 8285

Joshua D. Buck, Bar No. 12187

Leah L. Jones, Bar No. 13161

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7287 Lakeside Drive

Reno, Nevada 89511

Attorneys for Appellants-Plaintiffs

CERTIFICATE OF SERVICE

I am a resident of the State of Nevada, over the age of eighteen years, and not a party to the within action. My business address is 7287 Lakeside Drive, Reno, Nevada 89511. On November 24, 2021, the **Appellants' Motion to Exceed Type-Volume Limit for Appellants' Reply Brief** was served on the following by using the Supreme Court's eFlex System:

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I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 24, 2021 at Reno, Nevada.

/s/ Brittany Manning
An Employee of Thierman Buck LLP

EXHIBIT A

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Plaintiffs-Appellants,

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

Defendants-Respondents.

Case No. 82161

District Court Case No.: CV16-01264

DECLARATION OF JOSHUA D. BUCK IN SUPPORT OF APPELLANTS' MOTION TO EXCEED TYPE-VOLUME LIMIT FOR APPELLANTS' REPLY BRIEF

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Attorneys Plaintiffs-Appellants

I, Joshua D. Buck, hereby declare and state:

1) I am an attorney at law and partner with Thierman Buck, LLP, and I am admitted to practice law in the states of California and Nevada, and the United States District Court District of Nevada, Northern District of California, Southern District of California, Central District of California, the Sixth Circuit Court of Appeals, the Ninth Circuit Court of Appeals, the Eleventh Circuit Court of Appeals, and the United States Supreme Court.

2) I am one of the attorneys' of record for appellants Eddy Martel (also known as Martel-Rodriguez), Mary Anne Capilla, Janice Jackson-Williams, and Whitney Vaughan on behalf of themselves and all others similarly situated ("Appellants").

3) Good cause exists to allow Appellants to file an enlarged reply brief so as to assist this Court in resolving numerous novel questions of law, some of which were raised for the first time in this litigation by Respondents in their Answering Brief.

4) Respondents, for the first time in their Opposition to Appellants' Opening Brief, argue two (2) novel issues of law that were not considered by the District Court below nor were they raised in the litigation during the proceedings in the District Court. These novel issues of law and new arguments are: (a) the unsigned and undated redlined draft collective-bargaining agreement excepts

Respondents from the payment of minimum wages pursuant to the collective bargaining exception contained in the Nevada Constitutional Minimum Wage Amendment, and (b) NRS 608.016's requirement that Nevada employees be compensated for all the hours they work is limited to just those employees who work on a "trial" or "break-in" basis. Appellants' reply to these new arguments consists of ten (10) pages, 2,521 words, and 221 lines of text. Appellants never had an opportunity to address these issues in their Opening Brief because these arguments had never previously been raised in this litigation.

5) Appellants' appeal encompasses seven (7) issues presented for this Court to consider pursuant to NRAP 17(a)(12) because Appellants' appeal involves questions of first impression and matters raising as principal questions of statewide importance to private employees and employers in Nevada. Moreover, there are numerous novel issues of law that this Court has not previously considered such as: (a) the statute of limitations applicable to statutory wage claims, (b) when NRS 608.020-.050 continuation claims begin to run/accrue, and (c) whether an NRS 508.020-.050 continuation claim must occur in the last pay period before the employees' separation from employment.

6) Accordingly, in order to respond to the novel arguments contained in Respondents' Opposition, to fully respond and analyze the seven (7) issues contained in Appellants' appeal, and to provide this Court with supporting

legislative history, well-reasoned analysis of Nevada state wage and hour law, and fully address these important issues of first impression, the Appellants need additional type-volume space.

I have read the foregoing declaration and declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

Dated: November 24, 2021 Respectfully Submitted,

THIERMAN BUCK LLP

/s/ Joshua D. Buck

Mark R. Thierman, Bar No. 8285

Joshua D. Buck, Bar No. 12187

Leah L. Jones, Bar No. 13161

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Attorneys for Appellants