

**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,

Appellants,

v.

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

Respondents.

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Case No. 82161 Elizabeth A. Brown  
Clerk of Supreme Court  
District Court Case No. CV16-  
01264

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

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Respondents HG Staffing, LLC and MEI-GSR Holdings LLC d/b/a Grand Sierra Resort (collectively “Respondents”) hereby submit their Opposition to Appellants’ Motion to Exceed Type-Volume For Appellants’ Reply Brief.

**I. APPELLANTS FAILED TO PROVIDE DETAIL OR SHOW GOOD CAUSE AND DILIGENCE AS REQUIRED BY NRAP 32(a)(7)(D)**

NRAP 32 (a)(7)(A) requires an Opening or Answering Brief in a noncapital case not exceed 30 pages or contain no more than 14,000 words. NRAP 32 (a)(7)(A)(ii) limits Reply Briefs to no more than half the type-volume specified for an opening or answering brief. In other words, Reply Briefs should contain no more than 7,000 words or 15 pages. Here, Appellants seek to file a Reply Brief that contains 10,557 words and 42 pages.

Permission to file an enlarged Reply Brief may be obtained pursuant to NRAP 32(a)(7)(D). NRAP 32(a)(7)(D)(i) states:

The **court looks with disfavor** on motions to exceed the applicable page limit or type-volume limitation, and therefore, permission to exceed the page limit or type-volume limitation will not be routinely granted. A motion to file a brief that exceeds the applicable page limit or type-volume limitation will be granted **only upon a showing of diligence and good cause**. The court will not consider the cost of preparing and revising the brief in ruling on the motion.

(emphasis added).

Appellants must attach a declaration to the motion to exceed type-volume limitations listing “**in detail the reasons for the motion** and the number of additional pages, words, or lines of text requested.” NRAP

32(a)(7)(D)(ii) (emphasis added). As discussed more fully below, Appellants' motion should be denied for failure to follow the requirements of NRAP 32.

**A. No Diligence Shown**

First, Appellants provided no detail explaining the diligence they used to follow the rules or list any examples of how they tried but were unable to comply with the page limits or type-volume limitations. *See Blandino v. Eighth Jud. Dist. Ct. in & for Cty. of Clark*, 466 P.3d 539 (Nev. 2020) (concluding petitioner did not demonstrate diligence and denying motion to exceed the page/word limit); *see also Hernandez v. State*, 117 Nev. 463, 467, 24 P.3d 767, 770 (2001) (“Page limits . . . are ordinary practices employed by the courts to assist in the efficient management of the cases before them”) (quoting *Cunningham v. Becker*, 96 F. Supp. 2d 369, 374 (D. Del. 2000)). Rather than detailing the diligence as required under NRAP(a)(7)(D), Appellants' counsel cited to his own conclusions as to why they did not comply with the Court's page and type-volume limitations. Appellants' arguments regarding additional case law and legislative history for collective bargaining agreements and NRS 608.016 does not transform those issues into “numerous novel” questions of law as the District Court's underlying rulings concerned the applicability of collective bargaining agreements and NRS 608.016 to the claims at issue. Moreover, Appellants fail to explain to the

Court why their Reply Brief cites to 18 new cases not cited to in their Opening Brief<sup>1</sup> – the vast majority of which are not dealing with the payment of minimum wages pursuant to a collective bargaining agreement and NRS 608.016. As such, the Court was given insufficient facts to allow for an evaluation of diligence and Appellants’ motion must be denied for this reason alone.

**B. No Good Cause Established**

Second, Appellants have failed to show good cause for needing 3,557 words, **50% more words** than what NRAP 32 (a)(7)(A)(ii) allows for Reply Briefs. Appellants’ motion makes clear that they only used 2,521 words to respond to “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.” *See* Motion at pages 3-4. Appellants cannot use the alleged “new” arguments in the Responding Brief as a way to circumvent this Court’s type-volume limitations and use more words to respond to the other arguments raised in this appeal. Indeed, both Appellants and Respondents complied with the type-volume limitations for the Opening and Answering Briefs. Respondents had to make strategic choices to stay within the confines

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<sup>1</sup> A review of Appellants’ Table of Authorities demonstrates that Appellants’ Reply Brief only cites to three of the same cases from their Opening Brief.

of its 14,000-word limit after considering NRAP 32(a)(7)(D)(i)'s disfavor of motions to exceed and the normal length of Appellants' Opening Brief. Under NRAP 32(a)(7)(A)(ii), the Reply Brief is limited to half this length and the good cause standard should be used to strongly dissuade routine extensions that would otherwise encourage Respondents to request motions to exceed or sur-replies as a matter of course. Accordingly, Appellants' unjustified reliance on alleged "novel" arguments does not explain why they needed an additional 1,000 words on the other arguments addressed in the Opening Brief.

Additionally, Appellants' contention that the appeal involves questions of first impression and matters raising as principal questions of statewide importance does not establish good cause. NRAP 32(a)(7)(D)(i) models Ninth Circuit Rule 32-2 in making clear that motions to exceed type-volume limits are disfavored. The Comment to Ninth Circuit Rule 32-2 notes that "In almost all cases, the limits provided suffice even for multiple or complex issues. Most overlength briefs could be shorter and unnecessarily burden the Court." As is the case here. Appellants' Reply Brief can be shorter and should not unnecessarily burden the Court as the Court frequently addresses issues first impression and statewide importance. Moreover, Respondents would be prejudiced by allowing Appellants 50%

more words in their Reply than the normal limit when Respondents' Brief complied with the type-volume limitations. Appellants' failure to establish good cause is fatal to their motion and the motion should be denied.

## II. CONCLUSION

Based on the above, Respondents respectfully request that this Court to deny Appellants' motion requesting to file a Reply Brief consisting of 10,557 words and 42 pages and require Appellants to comply with the word and page limitations established in NRAP 32 as Respondents did in their Answering Brief.

Dated: November 30, 2021

*/s/ Diana G. Dickinson, Esq.*

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**PROOF 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 3960 Howard Hughes Parkway, Suite 300, Las Vegas, Nevada 89169. On November 30, 2021, I served the within document(s):

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

- By **Electronic Service**- Served through the Nevada 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 30, 2021, in Las Vegas, Nevada.

*/s/ Erin J. Melwak*  
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Erin J. Melwak