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8
9 **UNITED STATES DISTRICT COURT**

10 **DISTRICT OF NEVADA**

11
12 TIFFANY SARGENT, BAILEY
13 CRYDERMAN, SAMANTHA L. IGNACIO,
14 VINCENT M. IGNACIO, HUONG
15 (“ROSIE”) BOGGS, and JACQULYN
WIEDERHOLT, on behalf of themselves and
all others similarly situated,

16 Plaintiffs,

17 v.

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

21 Defendant(s).

Case No.: 3:13-CV-453-LRH-WGC

**SECOND AMENDED COLLECTIVE
AND CLASS ACTION COMPLAINT**

- 1) Failure to Pay Wages for All Hours Worked in Violation of 29 U.S.C. § 201, et. seq;
- 2) Failure to Pay Overtime in Violation of 29 U.S.C. § 207;
- 3) Failure to Pay Overtime at the Correct Rate, 29 U.S.C. § 207
- 4) Failure to Compensate for All Hours Worked in Violation of NRS 608.140 and 608.016;
- 5) Failure to Pay Minimum Wages in Violation of the Nevada Constitution and NRS 608.250;
- 6) Failure to Pay Overtime in Violation of NRS 608.140 and 608.018;
- 7) Failure to Timely Pay All Wages Due and Owing in Violation of NRS 608.140 and 608.020-050; and
- 8) Unlawful Chargebacks in Violation of NRS 608.140 and 608.100.

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INDIVIDUAL COMPLAINT FOR:

9) Age Discrimination Violation of 29 U.S.C. § 621 and NRS 613.330.

JURY TRIAL DEMANDED

COME NOW Plaintiffs TIFFANY SARGENT, BAILEY CRYDERMAN, SAMANTHA L. IGNACIO (formerly SCHNEIDER), VINCENT M. IGNACIO, HUONG (“ROSIE”) BOGGS, and JACQULYN WIEDERHOLT (“Plaintiffs”), on behalf of themselves and all others similarly situated, and allege the following:

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

JURISDICTION AND VENUE

1. This Court has original jurisdiction over the federal claims alleged herein pursuant to the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 216(b), the Age Discrimination in Employment Act (“ADEA”), 29 U.S.C. § 631(a), federal question jurisdiction over this action pursuant to 28 U.S.C. § 1331, and supplemental jurisdiction over the state law claims alleged herein pursuant to 28 U.S.C. § 1367. This Court has jurisdiction over the state law claims alleged herein because a party seeking to recover unpaid wages has a private right of action pursuant to Nevada Revised Statute (“NRS”) sections 608.050, 608.250, 608.140, and the Nevada Constitution.

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

3. Pursuant to NRS 608.050(2), this Court has jurisdiction to foreclose the lien for the wages alleged due herein on the place of employment, as provided in NRS 108.221 to

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1 108.246, inclusive. A file stamped copy of this Complaint will be filed in the Offices of the
2 Records for the County of Washoe for the property upon which these employees worked, 200
3 East Second Street, Reno, NV.

4 **PARTIES**

5 4. Plaintiff TIFFANY SARGANT (“Plaintiff” or “SARGANT”) is a natural person
6 who is and was a resident of the State of Nevada and who, within the last three years, has been
7 employed by Defendants as a non-exempt hourly employee at 200 East Second Street, Reno,
8 NV.

9 5. Plaintiff BAILEY CRYDERMAN (“Plaintiff” or “CRYDERMAN”) is a natural
10 person who is and was a resident of the State of Nevada and who, within the last three years, has
11 been employed by Defendants as a non-exempt hourly employee at 200 East Second Street,
12 Reno, NV.

13 6. Plaintiff SAMANTHA L. IGNACIO (formerly SCHNEIDER) (“Plaintiff” or
14 “SCHNEIDER”) is a natural person who is and was a resident of the State of Nevada and who,
15 within the last three years, has been employed by Defendants as a non-exempt hourly employee
16 at 200 East Second Street, Reno, NV.

17 7. Plaintiff VINCENT M. IGNACIO (“Plaintiff” or “IGNACIO”) is a natural
18 person who is and was a resident of the State of Nevada and who, within the last three years, has
19 been employed by Defendants as a non-exempt hourly employee at 200 East Second Street,
20 Reno, NV.

21 8. Plaintiff HUONG (“ROSIE”) BOGGS (“Plaintiff” or “BOGGS”) is a natural
22 person who is and was a resident of the State of Nevada and who, within the last three years, has
23 been employed by Defendants as a non-exempt hourly employee at 200 East Second Street,
24 Reno, NV. Defendant terminated Plaintiff BOGGS’ employment on or about July 2013 because
25 of her age (over 40). Plaintiff BOGGS has filed an administrative complaint with the Nevada
26 Equal Rights Commission (“NERC”) for age discrimination against Defendants.

27 9. Plaintiff JACQULYN WIEDERHOLT (“Plaintiff” or “WIEDERHOLT”) is a
28 natural person who is and was a resident of the State of Nevada and who, within the last three

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1 years, has been employed by Defendants as a non-exempt hourly employee at 200 East Second
2 Street, Reno, NV. Defendants terminated Plaintiff WIEDERHOLT’s employment on or about
3 February 2013 because of her age (over 40). Plaintiff WIEDERHOLT has filed an
4 administrative complaint with NERC for age discrimination against Defendants.

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

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

13 12. Defendants, and each of them, are an employer under the provisions of Nevada
14 Revised Statutes Chapter 608 and are engaged in commerce for the purposes of the Fair Labor
15 Standards Act, 29 U.S.C. § 201 *et. seq.* For labor relations purposes, Defendants are each and
16 together constitute the employer and/or joint employer of Plaintiffs and all Plaintiff class
17 members (hereinafter referred to as “Class Members”).

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

23 **FACTUAL ALLEGATIONS**

24 **DEFENDANTS’ OFF THE CLOCK—NO OVERTIME POLICY**

25 14. At all times relevant herein, Defendants maintained a no overtime rule for all
26 employees of the GSR. The no overtime rule, as enforced, provided that whenever an hourly
27 paid employee was required to work more than 8 hours a day or more than 40 hours a week, the
28 employee was required, suffered or permitted, with the knowledge of the employer, to work

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1 without compensation—i.e., “off the clock.” This was achieved by either rounding hours so
2 that employees who were technically “on the clock” did not receive pay for all their recorded
3 hours worked or by having employees perform work without being logged in to the timekeeping
4 system.

5 15. If an employee had to perform work before and/or after his or her normal 8 hour
6 shift and/or 40 hour workweek, and refused to perform the work at all, the employee was
7 “written up” with a disciplinary note. If the employee worked in excess of his or her normal 8
8 hour shift and/or 40 hour workweek and then recorded his or her overtime hours as hours
9 worked, the employee was written up for working overtime. All employees were on a point
10 system, and if they had too many write ups, they would be terminated. The employees were told
11 to simply clock out and then return to work to continue working off the clock. This rule applied
12 to all hourly employees.

13 16. Employees were required to perform various tasks “off the clock”: Employees
14 were required to retrieve, return, and reconcile a cash bank of money used in carrying out their
15 employment tasks; they were required to attend pre-shift meetings; they were required to
16 complete paper work for the employer; they were required to perform cleaning activities; they
17 were to attend mandatory trainings and classes.

18 17. There is only one employee entrance and exit from the GSR. Every time an
19 employee enters or leaves the building for work purposes, the employee was supposed to swipe
20 his or her employee identification card. Upon information and belief, Defendants maintain
21 computer records of all times the employees swiped their badges when entering or leaving the
22 premises for work.

23 18. Defendants also maintained a time clock for payroll purposes. An employee was
24 assigned to a particular time clock.

25 19. The company also has surveillance footage showing what the employees were
26 doing.

27 20. Upon information and belief, a comparison of these records will confirm that
28 Defendants did not compensate the employees for all the time they worked because they were

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1 required, suffered or permitted to work “off the clock”. A further comparison of the time
2 records between the actual time employees clocked-in/out with the time for which employees
3 were paid, will reveal the amount Defendant rounded off employee time and wages.

4 21. The total amount of time spent “off-the-clock”—measured from the point in time
5 when Plaintiffs and Class Members completed their first principal activity until they actually
6 clocked-in and/or until they started receiving compensation—was approximately 15-30 minutes
7 each and every workday. Similarly, the total amount of time spent “off-the-clock”—measured
8 from the point in time when Plaintiffs and Class Members completed their last principal activity
9 from the point in time when they actually clocked-out and/or stopped receiving compensation—
10 was between 15-60 minutes each and every workday.

11 22. The comparison of the swipe times from when an employee enters and exits the
12 GSR to the time clock-in and out time will provide a “just and reasonable” inference that
13 Plaintiffs and Class Members on average worked approximately 30 minutes to 90 minutes “off-
14 the-clock” and without compensation each and every day they worked at GSR.

15 **DEFENDANTS’ SHIFT JAMMING POLICY**

16 23. In addition to working employees off the clock, Defendants engaged in the
17 unlawful practice known as “shift-jamming.”

18 24. Pursuant to NRS 608.018(1), employees who are paid less than one and one half
19 times the minimum wage must be paid daily overtime if they work more than 8 hours a day (or
20 10 hours in a day if they are on a recognized and agreed upon 4-10 workweek—four days a
21 week at ten hours a day).l

22 25. NRS 608.0126 defines a “Workday” as a period of 24 consecutive hours which
23 begins when the employee begins work.

24 26. Upon information and belief, Defendants did not offer health insurance to qualify
25 for the lower minimum wage for insured employees.

26 27. Thus, hourly employees paid less than \$12.375 who the Defendants required,
27 suffered or permitted to return to work before the expiration of 16 hours between when they last
28 worked for the employer, must be paid at overtime rates until the end of their workday.

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1 28. Defendants routinely required employees who were entitled to daily overtime to
2 return to work sooner than 16 hours from when they last worked, whether it to be their normal
3 job duties or a special event, or mandatory trainings or classes, without paying the proper
4 overtime rate.

5 **DEFENDANTS’ POLICY OF PAYING OVERTIME AT THE INCORRECT RATE**

6 29. Defendants paid Plaintiffs SARGANT and CRYDERMAN and certain other
7 Class Members what it called commissions, piece rates, and/or other non-discretionary
8 payments without including the amount paid for these commissions, piece rates, and/or other
9 non-discretionary payments in the regular rate for purposes of calculation of overtime payment
10 due.

11 **DEFENDANTS’ POLICY OF CHARGE BACKS**

12 30. Defendants required employees to rebate their paycheck to cover the cost of cash
13 shortages and credit card reversals by the Defendants’ customers.

14 **COLLECTIVE AND CLASS ACTION ALLEGATIONS**

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

17 32. Plaintiffs bring this action on behalf of themselves and all other similarly situated
18 and typical employees as both a collective action under the FLSA and a true class action under
19 Nevada law. The Class is defined as follows: **All current and former non-exempt employees**
20 **who were employed by Defendants within three years from the date of filing this**
21 **complaint.**

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

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

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

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

D. Upon information and belief, Defendants employ, and has employed, in excess of 500 Class Members within the applicable statute of limitations.

E. Plaintiffs have already filed or will file their consents to sue with the Court. Consent to sue are not required for state law claims under FRCP 23.

34. Class treatment is appropriate in this case for the following reasons:

A. The Class is Sufficiently Numerous: Upon information and belief, Defendants employ, and have employed, in excess of 500 Class Members within the applicable statute of limitations.

B. Plaintiffs’ Claims are Typical to Those of Fellow Class Members: Each Class Member is and was subject to the same practices, plans, or policies as Plaintiffs— Defendants required Plaintiffs to work “off the clock” and without compensation; Defendants’ engaged in improper shift jamming; Defendants failed to compensate Plaintiffs at the legally correct overtime rate; and Defendants engaged in improper charge backs.

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C. Common Questions of Law and Fact Exist: Common questions of law and fact exist and predominate as to Plaintiffs and the Class, including, without limitation: Whether the time spent by Plaintiff and Class Members engaging in the alleged “off-the-clock” work is compensable under Nevada law; whether Defendants’ engaged in improper shift jamming; whether Defendants included non-discretionary bonuses, commissions or other types of remuneration into the regular rate for overtime pay calculations; and whether Defendants engaged in improper charge backs.

D. Plaintiffs are Adequate Representatives of the Class: Plaintiffs will fairly and adequately represent the interests of the Class because Plaintiffs are members of the Class, they have issues of law and fact in common with all members of the Class, and they do not have interests that are antagonistic to Class Members.

E. A Class Action is Superior: A class action is superior to other available means for the fair and efficient adjudication of this controversy, since individual joinder of all members of the Class is impractical. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without unnecessary duplication of effort and expense. Furthermore, the expenses and burden of individualized litigation would make it difficult or impossible for individual members of the Class to redress the wrongs done to them, while an important public interest will be served by addressing the matter as a class action. Individualized litigation would also present the potential for inconsistent or contradictory judgments.

FIRST CAUSE OF ACTION

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

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

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

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1 36. Pursuant to the FLSA, 29 U.S.C. § 201, *et seq.*, Plaintiffs and Class Members are
2 entitled to compensation at their regular rate of pay or minimum wage rate, whichever is higher,
3 for all hours actually worked.

4 37. 29 U.S.C. § 206(a)(1) states that “Every employer shall pay to each of his
5 employees who in any workweek is engaged in commerce or in the production of goods for
6 commerce, or is employed in an enterprise engaged in commerce or in the production of goods
7 for commerce, wages at the following rates: (1) except as otherwise provided in this section, not
8 less than (A) \$5.85 an hour beginning on the 60th day after the enactment of the Fair Minimum
9 Wage Act of 2007; (B) \$6.55 an hour, beginning 12 months after that 60th day; and C) \$7.25 an
10 hour, beginning 24 months after that 60th day.”

11 38. Once the work day has begun, all time suffered or permitted by the employer to
12 be worked by the employee is compensable at the employee’s regular rate of pay, whether
13 scheduled or not.

14 39. By failing to compensate Plaintiffs and Class Members for the time spent
15 engaging in off-the-clock activities identified above, Defendants failed to pay Plaintiffs and the
16 Class Members for all hours worked.

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

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

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SECOND CAUSE OF ACTION

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

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

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

43. 29 U.S.C. Section 207(a)(1) provides as follows: “Except as otherwise provided in this section, no employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.”

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

45. By failing to compensate Plaintiffs and Class Members for the time spent engaging in off-the-clock activities identified above, Defendants failed to pay Plaintiffs and Class Members overtime for all hours worked in excess of forty (40) hours in a week in violation of 29 U.S.C. Section 207(a)(1).

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

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

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THIRD CAUSE OF ACTION

Failure to Pay Overtime Wages at the Correct Rate in Violation of the FLSA, 29 U.S.C. § 207
(On Behalf of Plaintiffs SARGANT and CRYDERMAN and Class Members
Against All Defendants)

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

49. 29 U.S.C. Section 207(e) defines the regular rate “at which an employee is employed shall be deemed to include all remuneration for employment paid to, or on behalf of, the employee” (with certain exceptions not relevant here) divided by the hours worked.

50. By failing to include “commissions” and other non-discretionary payments in the total sum earned before dividing by hours worked, Defendants failed to pay the correct hourly rate for overtime hours worked.

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

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

FOURTH CAUSE OF ACTION

Failure to Pay Wages for All Hours Worked in Violation of NRS 608.140 and 608.016
(On Behalf of All Plaintiffs and Class Members Against All Defendants)

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

54. NRS 608.140 provides that an employee has a private right of action for unpaid wages.

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1 55. NRS 608.016 states that “An employer shall pay to the employee wages for each
2 hour the employee works.” Hours worked means anytime the employer exercises “control or
3 custody” over an employee. See NRS 608.011 (defining an “employer” as “every person
4 having control or custody . . . of any employee.”). Pursuant to the Nevada Administrative Code,
5 hours worked includes “all time worked by the employee at the direction of the employer,
6 including time worked by the employee that is outside the scheduled hours of work of the
7 employee.” NAC 608.115(1).

8 56. By failing to compensate Plaintiffs and Class Members for the time spent
9 engaging in off-the-clock activities identified above, Defendants failed to pay Plaintiffs and
10 Class Members for all hours worked in violation of NRS 608.140 and 608.016.

11 57. Although the statute of limitations for minimum wage violations is two years,
12 there is no express statute of limitations for violations of NRS 608.140 and 608.016 and,
13 therefore, the three-year statute contained in NRS 11.190(3) for statutory violations applies.

14 58. Wherefore, Plaintiffs demand for themselves and for all Class Members payment
15 by Defendants at the regular hourly rate of pay for all hours worked during the during the
16 relevant time period alleged herein together with attorneys’ fees, costs, and interest as provided
17 by law.

18 **FIFTH CAUSE OF ACTION**

19 Failure to Pay Minimum Wages in Violation of the Nevada Constitution and NRS 608.250

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

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

23 60. Article 15 Section 16 of the Nevada Constitution sets forth the requirements the
24 minimum wage requirements in the State of Nevada and further provides that “[t]he provisions
25 of this section may not be waived by agreement between an individual employee and an
26 employer. . . . An employee claiming violation of this section may bring an action against his
27 or her employer in the courts of this State to enforce the provisions of this section and shall be
28 entitled to all remedies available under the law or in equity appropriate to remedy any violation

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1 of this section, including but not limited to back pay, damages, reinstatement or injunctive
2 relief. An employee who prevails in any action to enforce this section shall be awarded his or
3 her reasonable attorney’s fees and costs.”

4 61. NRS 608.250 (1) provides that “Except as otherwise provided in this section, the
5 Labor Commissioner shall, in accordance with federal law, establish by regulation the minimum
6 wage which may be paid to employees in private employment within the State. The Labor
7 Commissioner shall prescribe increases in the minimum wage in accordance with those
8 prescribed by federal law, unless the Labor Commissioner determines that those increases are
9 contrary to the public interest.”

10 62. NRS 608.260 states “If any employer pays any employee a lesser amount than
11 the minimum wage prescribed by regulation of the Labor Commissioner pursuant to the
12 provisions of NRS 608.250, the employee may, at any time within 2 years, bring a civil action
13 to recover the difference between the amount paid to the employee and the amount of the
14 minimum wage. A contract between the employer and the employee or any acceptance of a
15 lesser wage by the employee is not a bar to the action.”

16 63. By failing to compensate Plaintiffs and Class Members for the time spent
17 engaging in off-the-clock activities identified above, Defendants failed to pay Plaintiffs and
18 Class Members for all hours worked in violation of the Nevada Constitution and NRS 608.250.

19 64. Wherefore, Plaintiffs demand for themselves and for all Class Members payment
20 by Defendants at their regular hourly rate of pay or the minimum wage rate, whichever is
21 higher, for all hours worked during the relevant time period alleged herein together with
22 attorneys’ fees, costs, and interest as provided by law.

23 **SIXTH CAUSE OF ACTION**

24 Failure to Pay Overtime Wages in Violation of NRS 608.140 and 608.018

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

26 65. Plaintiffs reallege and incorporate by this reference all the paragraphs above in
27 this Complaint as though fully set forth herein.
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66. NRS 608.140 provides that an employee has a private right of action for unpaid wages.

67. NRS 608.018(1) provides as follows:

An employer shall pay 1 1/2 times an employee’s regular wage rate whenever an employee who receives compensation for employment at a rate less than 1 1/2 times the minimum rate prescribed pursuant to NRS 608.250 works: (a) More than 40 hours in any scheduled week of work; or (b) More than 8 hours in any workday unless by mutual agreement the employee works a scheduled 10 hours per day for 4 calendar days within any scheduled week of work.

68. NRS 608.018(2) provides as follows:

An employer shall pay 1 1/2 times an employee’s regular wage rate whenever an employee who receives compensation for employment at a rate not less than 1 1/2 times the minimum rate prescribed pursuant to NRS 608.250 works more than 40 hours in any scheduled week of work.

69. By failing to compensate Plaintiffs and Class Members for the time spent engaging in off-the-clock activities identified above, Defendants failed to pay Plaintiffs and Class Members daily overtime premium pay for all hours worked over eight (8) hours in a workday to those Class Members who were paid a regular rate of less than one and one half times the minimum wage premium pay and, failed to pay a weekly premium overtime rate of time and one half their regular rate for all members of the Class who worked in excess of forty (40) hours in a week in violation of NRS 608.140 and 608.018.

70. Although the statute of limitations for minimum wage violations is two years, there is no express statute of limitations for violations for failure to pay overtime rates of pay pursuant to NRS 608.140 and 608.018 and, therefore, the three-year statute contained in NRS 11.190(3) for statutory violations applies.

71. Wherefore, Plaintiffs demand for themselves and for Class Members that Defendants pay Plaintiffs and Class Members one and one half times their “regular rate” of pay for all hours worked in excess of eight (8) hours in a workday and in excess of forty (40) hours a workweek during the relevant time period alleged herein together with attorneys’ fees, costs, and interest as provided by law.

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SEVENTH CAUSE OF ACTION

Failure to Timely Pay All Wages Due and Owing Upon Termination Pursuant to NRS
608.140 and 608.020-.050

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

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

73. NRS 608.140 provides that an employee has a private right of action for unpaid wages.

74. NRS 608.020 provides that “[w]henver an employer discharges an employee, the wages and compensation earned and unpaid at the time of such discharge shall become due and payable immediately.”

75. NRS 608.040(1)(a-b), in relevant part, imposes a penalty on an employer who fails to pay a discharged or quitting employee: “Within 3 days after the wages or compensation of a discharged employee becomes due; or on the day the wages or compensation is due to an employee who resigns or quits, the wages or compensation of the employee continues at the same rate from the day the employee resigned, quit, or was discharged until paid for 30-days, whichever is less.”

76. NRS 608.050 grants an “employee lien” to each discharged or laid-off employee for the purpose of collecting the wages or compensation owed to them “in the sum agreed upon in the contract of employment for each day the employer is in default, until the employee is paid in full, without rendering any service therefor; but the employee shall cease to draw such wages or salary 30 days after such default.”

77. By failing to pay Plaintiffs and Class Members who are former employees of Defendants for all hours worked in violation of the federal and state laws identified herein, Defendants have failed to timely remit all wages due and owing to Plaintiffs and Class Members who are former employees.

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1 78. Despite demand, Defendants willfully refuse and continue to refuse to pay
2 Plaintiffs and Class Members who are former employees all the wages that were due and owing
3 upon the termination of their employment.

4 79. Wherefore, Plaintiffs demand thirty (30) days wages under NRS 608.140 and
5 608.040, and an additional thirty (30) days wages under NRS 608.140 and 608.050, for all Class
6 Members who have terminated employment from Defendants during the relevant time period
7 alleged herein together with attorneys’ fees, costs, and interest as provided by law.

8 **EIGHTH CAUSE OF ACTION**

9 Unlawful Chargebacks in Violation of NRS 608.100

10 (On Behalf of Plaintiffs SARGANT and CRYDERMAN and Class Members

11 Against All Defendants)

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

14 81. NRS 608.140 provides that an employee has a private right of action for unpaid
15 wages.

16 82. NRS 608.100 provides that “It is unlawful for any employer to require an
17 employee to rebate, refund or return any part of the wage, salary or compensation earned by and
18 paid to the employee.”

19 83. By engaging in the conduct described above, Defendants unlawfully rebated
20 Plaintiffs and Class Members’ paychecks to cover the costs of cash shortages and credit card
21 reversals. By doing so, Defendants unlawfully retained Plaintiffs’ and Class Members’ wages
22 that, to this day, remain unpaid and owing.

23 84. Wherefore, Plaintiffs demand restitution for all rebated wages during the relevant
24 time period alleged herein together with attorneys’ fees, costs, and interest as provided by law.

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NINTH CAUSE OF ACTION

Age Discrimination in Violation of NRS 613.330 and 29 USC Sections 621-634

(On Behalf of Plaintiffs BOGGS and WIEDERHOLT and Class Members

Against All Defendants)

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

86. Nevada state law and the Age Discrimination in Employment Act of 1967 (ADEA) protect individuals who are 40 years of age or older from employment discrimination based on age.

87. It is unlawful under Nevada’s equal employment opportunity laws, NRS 613.310-613.345 (“EEO Laws”), for an employer to discriminate against an employee based on an employee’s age. Specifically, “it is an unlawful employment practice for an employer: (a) To fail or refuse to hire or to discharge any person, or otherwise to discriminate against any person with respect to the person’s compensation, terms, conditions or privileges of employment, because of his or her . . . age . . . ; or (b) To limit, segregate or classify an employee in a way which would deprive or tend to deprive the employee of employment opportunities or otherwise adversely affect his or her status as an employee, because of his or her . . . age” NRS 613.330.

88. It is similarly unlawful for an employer to discriminate against an employee based on the employee’s age under federal law. 29 USC Sections 621 provides that it is “unlawful for an employer--(1) to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s age; (2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's age; or (3) to reduce the wage rate of any employee in order to comply with this chapter.”

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1 89. Defendants terminated Plaintiff BOGGS’ employment on or about July 2013
2 because of her age (over 40).

3 90. Defendants terminated Plaintiff WIEDERHOLT’s employment on or about
4 February 2013 because of her age (over 40).

5 91. Defendants’ conduct was willful.

6 92. Defendants violated Nevada’s EEO Laws and the ADEA in committing the
7 above acts in that Defendants discriminated against Plaintiffs because of Plaintiffs’ age.

8 93. Plaintiffs timely filed administrative complaints with the Nevada Equal Rights
9 Commission (“NERC”) for age discrimination against Defendants.

10 94. Plaintiffs timely filed charges with the Equal Employment Opportunity
11 Commission (“EEOC”) for age discrimination against Defendants.

12 95. Plaintiffs have exhausted or will exhaust their administrative remedies with
13 NERC and EEOC.

14 96. The Defendants’ conduct as alleged above constitutes age discrimination in
15 violation of the EEO LAWS and the ADEA. The stated reasons for Defendants’ conduct were
16 not the true reasons, but instead were pretext to hide Defendants’ discriminatory animus.

17 97. Plaintiffs are further informed and believe that Defendants have engaged in
18 systematic age discrimination by maintaining and enforcing a policy of terminating employees
19 over 40 on the basis of age.

20 98. Defendants intentionally, and with malice and oppression, discriminated against
21 Plaintiffs and Class Members because of their age. As a direct and proximate result of this
22 Defendants’ policy, practice and procedure, Plaintiffs and Class Members have sustained
23 significant general and special damages to be proven at trial. Plaintiffs, on behalf of
24 themselves and Class Members, seek all damages and remedies available under law, including,
25 but not necessarily limited to, back pay, compensatory, consequential, and punitive damages,
26 attorneys’ fees, costs, and interest.

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JURY TRIAL DEMANDED

Plaintiffs hereby demand a jury trial pursuant to FRCP 38.

PRAYER FOR RELIEF

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

1. For an order conditionally certifying this action under the FLSA and providing notice to all members of the Class so they may participate in this lawsuit;
2. For an order certifying this action as a traditional class action under Nevada Rule of Civil Procedure Rule 23 on behalf of each of the Class;
3. For an order appointing Plaintiffs as the Representatives of the Class and their counsel as Class Counsel;
4. For damages according to proof for regular rate pay under federal laws for all hours worked;
5. For damages according to proof for minimum rate pay under federal law for all hours worked;
6. For damages according to proof for overtime compensation at the applicable rate under federal law for all hours worked over 40 per week;
7. For liquidated damages pursuant to 29 U.S. C. § 216(b);
8. For damages according to proof for regular rate pay under NRS 608.140 and 608.016 for all hours worked;
9. For damages according to proof for minimum wage rate pay under the Nevada Constitution and NRS 608.250 for all hours worked;
10. For damages according to proof for overtime compensation at the applicable rate under NRS 608.140 and 608.018 for all hours worked for those employees who earned a regular rate of less than one and one half times the minimum wage for hours worked in excess of 8 hours per day and/or for all subclass members for overtime premium pay of one and one half their regular rate for all hours worked in excess of 40 hours per week;

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- 11. For sixty days of waiting time penalties pursuant to NRS 608.140 and 608.040-.050;
- 12. For restitution of unpaid wages pursuant to NRS 608.140 and 608.100;
- 13. For damages according to proof pursuant to Nevada State EEO laws and the ADEA.
- 14. For interest as provided by law at the maximum legal rate;
- 15. For reasonable attorneys' fees authorized by statute;
- 16. For costs of suit incurred herein;
- 17. For pre-judgment and post-judgment interest, as provided by law, and
- 18. For such other and further relief as the Court may deem just and proper.

DATED: June 12, 2014

THIERMAN LAW FIRM, P.C.

/s/ Leah L. Jones

 Mark R. Thierman
 Joshua D. Buck
 Leah L. Jones

Attorneys for Plaintiff