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8
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
13 MARTEL-RODRIGUEZ), MARY ANNE
14 CAPILLA, JANICE JACKSON-
15 WILLIAMS, and WHITNEY VAUGHAN on
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.

Case No.: CV16-01264

Dept. No.: 6

**FIRST AMENDED CLASS ACTION
COMPLAINT**

**(EXEMPT FROM ARBITRATION
PURSUANT TO N.A.R. 5)**

- 1) Failure to Compensate for All Hours Worked in Violation of NRS 608.140 and NRS 608.016;
- 2) Failure to Pay Minimum Wages in Violation of the Nevada Constitution;
- 3) Failure to Pay Overtime in Violation of NRS 608.140 and 608.018; and
- 4) Failure to Timely Pay All Wages Due and Owing in Violation of NRS 608.140 and 608.020-050.

**LIEN REQUESTED PURSUANT TO
NRS 608.050**

JURY TRIAL DEMANDED

22 COME NOW Plaintiffs EDDY MARTEL (also known as MARTEL-RODRIGUEZ),
23 MARY ANNE CAPILLA, JANICE JACKSON-WILLIAMS, and WHITNEY VAUGHAN
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25
26

1 (“Plaintiffs”), on behalf of themselves and all others similarly situated, and hereby alleges
2 as follows:

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

7 **JURISDICTION AND VENUE**

8 1. This Court has original jurisdiction over the state law claims alleged herein
9 because the amount in controversy exceeds \$15,000 and a party seeking to recover
10 unpaid wages has a private right of action pursuant to the Nevada Constitution, Article
11 15 Section 16, and Nevada Revised Statute (“NRS”) Chapter 608. *See Neville v. Eighth*
12 *Judicial Dist. Court, Terrible Herbst, Inc.*, 133 Nev. Adv. Op. 95, 406 P.3d 499 (Dec. 7,
13 2017). Plaintiffs made a proper demand for wages due pursuant to NRS 608.140 on
14 March 6, 2016.

15 2. Pursuant to NRS 608.050(2), the Nevada state district court has jurisdiction
16 to foreclose the lien for the wages alleged due herein on the place of employment, as
17 provided in NRS 108.221 to 108.246, inclusive.

18 3. Venue is proper in the Nevada state district court because one or more of
19 the Defendants named herein maintains its principal place of business, or otherwise is
20 found, in that judicial district, and the acts complained of herein occurred in Washoe
21 County, Nevada.

22 **PARTIES**

23 4. Plaintiff EDDY MARTEL (also known as MARTEL-RODRIGUEZ) is natural
24 person who is and was a resident of the State of Nevada at all times relevant herein and
25 was employed as an attendant in the Bowling Center by Defendants from on or about
26 January 2012 through on or about July 2014. Plaintiff Martel believes his last hourly rate
27 of pay was between \$8.25 and \$8.57. Defendants are the only Party in possession of
28 Plaintiff’s full schedule, pay, time, and employment records.

1 5. Plaintiff MARY ANNE CAPILLA is a natural person who is and was a
2 resident of the State of Nevada at all times relevant herein and was employed as a dealer
3 by Defendants from on or about March 2011 to on or about September 2013. Plaintiff
4 Capilla believes her last hourly rate of pay was \$7.25. Defendants are the only Party in
5 possession of Plaintiff's full schedule, pay, time, and employment records.

6 6. Plaintiff JANICE JACKSON-WILLIAMS is natural person who is and was a
7 resident of the State of Nevada at all times relevant herein and was employed as a room
8 attendant by Defendants from on or about April 2014 through on or about December
9 2015. Plaintiff Jackson-Williams believes her last hourly rate of pay was \$8.25.
10 Defendants are the only Party in possession of Plaintiff's full schedule, pay, time, and
11 employment records.

12 7. Plaintiff WHITNEY VAUGHAN is natural person who is and was a resident
13 of the State of Nevada at all times relevant herein and was employed as a dancing dealer
14 (part cards dealer, part go-go dancer) by Defendants from on or about August 2012
15 through on or about June 2013. Plaintiff Vaughan believes her last hourly rate of pay
16 was \$8.25. Defendants are the only Party in possession of Plaintiff's schedule, pay,
17 time, and employment records.

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

21 9. Defendant MEI-GSR HOLDINGS, LLC is a Nevada Limited Liability
22 Company located at 2500 East Second Street, Reno, NV 89585. Defendants MEI-GSR
23 HOLDINGS, LLC is doing business under the fictitious business name of Grand Sierra
24 Resorts, or "GSR", which is located at 200 East Second Street, Reno, NV 89585.

25 10. Defendants, and each of them, are an employer under the provisions of
26 Nevada Revised Statutes Chapter 608. For labor relations purposes, Defendants are
27 each and together constitute the employer and/or joint employer of Plaintiffs and all
28 Plaintiff class members (hereinafter referred to as "Class Members").

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

7 **FACTUAL ALLEGATIONS**

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

9 13. Plaintiff Jackson-Williams was scheduled for, and regularly worked, five
10 (5) shifts per week, at least eight (8) hours per shift, and forty (40) hours per workweek
11 and worked split shifts with less than 16-hours in between the end of one shift and the
12 beginning of another shift (“jammed shift”) especially during special events and busy
13 periods such as, but not limited to, concerts, Burning Man, Hot August Nights, and Street
14 Vibrations during the relevant time periods alleged herein. Defendants are the only
15 Party in possession of Plaintiff’s schedule, pay, time, and employment records.

16 14. Plaintiffs Martel, and Vaughan worked shifts over eight (8) hours per shift
17 one or more times a week on a regular basis and worked jammed shifts especially during
18 special events and busy periods such as, but not limited to, concerts Burning Man, Hot
19 August Nights, and Street Vibrations during the relevant time periods alleged herein.
20 Specific to Plaintiff Vaughan, because, dance classes were usually held on Saturday
21 mornings and it was not unusual to be scheduled to work a full shift the Friday night into
22 Saturday, then be required to attend dance class that same morning resulting in a
23 jammed shift. Defendants are the only Party in possession of Plaintiffs’ schedule, pay,
24 time, and employment records.

25 15. At all times relevant herein, Defendants maintained the following policies,
26 practices, and procedures of requiring various employees to perform work activities
27 without compensation. This was achieved by either rounding hours so that employees
28 who were technically “on the clock” did not receive pay for all their recorded hours

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

6 16. At all times relevant herein, Defendants have been aware that their
7 policies and practices of failing to fully compensate Plaintiffs and all others similarly
8 situated for all hours worked was willful, oppressive, fraudulent, and illegal. Further,
9 Defendants' practice as set forth herein is anti-competitive in that these illegal practices
10 make one of Defendants' largest cost items, labor, lower than as compared to other
11 casino/resort/hotel operators who comply with the labor laws of the State.

12 **A. DEFENDANTS' CASH BANK POLICY**

13 17. Defendants required employees who handle monetary transactions in the
14 regular course of their employment to use or "carry" a cash bank. For example, the
15 following job positions are some of the job positions that required employees to carry a
16 cash bank: cashiers, bartenders, change persons, slot attendants, retail attendants,
17 arcade attendants, and front desk agents.

18 18. Defendants required all employees who carry a cash bank to retrieve and
19 deposit their respective cash bank both before and after the employees' regularly
20 scheduled shifts without compensation. As an example of this policy, Named Plaintiff
21 Martel was required to collect his bank of money at the dispatch cage prior to proceeding
22 to his workstation and without compensation. Similarly, at the end of his regularly
23 scheduled shifts, Plaintiff Martel was required to reconcile and deposit his cash bank to
24 the same dispatch cage without compensation. Upon information and belief,
25 Defendants required all employees who carry a cash bank in the performance of their
26 work duties to retrieve their cash bank from the same dispatch cage pre- and post-shift
27 without compensation.

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1 19. Named Plaintiff Martel estimates it took him approximately 15 minutes to
2 perform banking activities for which he was not paid the minimum, regular rate, or
3 overtime wages required by law. Upon information and belief, all other GSR employees
4 who carry a cash bank are similarly not compensated for the time in which they spend
5 performing their banking activities.

6 20. As an example, only, Plaintiff Martel was employed from on or about
7 January 25, 2012 through June 12, 2014 for approximately 443 shifts (3.56 shifts per
8 week X 124.3 weeks = 443 shifts). See Exhibit 1 attached to the Toney Report, and
9 attached as Exhibit 1 to this Complaint. One specific date where Plaintiff Martel
10 conducted banking activities prior to clocking in and after clocking out is on May 28,
11 2013. Id. Although his shift was scheduled to start at 4:00 p.m. he picked up his bank
12 at 3:42 p.m. Id. His shift ended at 12:00 a.m. on May 29, 2013 but did not drop off his
13 bank until 12:03 a.m. Id. Because he conducted banking activities off the clock and
14 without pay, he should have been paid for an additional, approximately 15 minutes of
15 work time. Based on the data currently available to Plaintiffs, the additional 15 minutes
16 of cash banking activities multiplied by 443 shifts equates to 110.8 hours of unpaid
17 wages (15 minutes X 443 shifts = 6,645 minutes divided by 60 = 110.8 total pre-shift
18 hours). Id. Based on a weighted overtime rate of \$9.62 (not all pre-shift activities
19 resulted in overtime), Plaintiff Martel is owed \$1,065.90 in unpaid wages. Id. Based on
20 a simple 10% interest rate from the time Plaintiff Martel should have been paid to
21 January 31, 2019, he is owed an additional \$496.28 in interest. Because Plaintiff Martel
22 is no longer employed by Defendants, he is also owed waiting time penalties in the
23 amount of \$3,598.65 (7.27 hours per day X \$8.25 = \$59.98 X 60 = \$3,598.65). Thus,
24 Plaintiff Martel is owed approximately \$5,160.83 for unpaid cash banking activities.

25 21. Upon information and belief, all other GSR employees who were similarly
26 required to carry a cash bank were not compensated for the time in which they
27 conducted banking activities. Based on a class list provided by Defendants for the
28

1 period of June 24, 2010 through April 21, 2014¹ (attached as Exhibit 2, hereto), there
2 are approximately 587 class members. Based on the average weekly shift count and
3 pay rates for Plaintiff Martel, extrapolated for the full class period, the putative Cash
4 Bank Class Members are owed approximately \$700,927.63 in unpaid wages. Id.
5 Additionally, 379 members of the Cash Bank Class are no longer employed as of April
6 21, 2014. Id. Thus, based on the failure to pay 379 class members all wages due and
7 owing at the time of termination, formerly employed class members are owed an
8 additional \$1,363,888.35 in waiting time penalties. Id. If termination rates remain steady
9 for the full class period, it is estimated that the putative Cash Bank Class Members would
10 be owed \$3,494,289.15 in waiting time penalties. Id. The total estimated damage
11 amount due for the Cash Bank Class is \$4,195,216.78. Id.

12 22. Defendants are legally required to maintain the employment records for
13 Plaintiff Martell and all putative Class Members who carried a cash bank. GSR is
14 therefore in possession (or should be in possession) of the necessary scheduling, gate
15 data (swipe in/out of the GSR property), punch data (clock in/out records), and pay data
16 to demonstrate the exact amount of wages that Plaintiff Martell and all putative Class
17 Members are owed and at the correct rate of pay those wages must be paid. Since
18 Plaintiff was never compensated for the pre- and post-shift activities outlined herein,
19 Plaintiff and all putative Cash Bank Class Members are owed compensation at the
20 applicable hourly rate for each and every day they carried a cash bank.

21 **B. DEFENDANTS' DANCE CLASS POLICY**

22 23. Defendants required all employees who worked as a servetainer and/or
23 dancing dealer to learn dance routines and attend rehearsals without compensation. If
24 the employee did not attend dance classes, they would be taken off the schedule and
25 written up for misconduct.

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27 ¹ Although the Class List provided spans the time period of June 24, 2019 through
28 April 21, 2014, the Class period is limited to March 30, 2011 to the present, because the
current owners, HG STAFFING, LLC, MEI-GSR HOLDINGS LLC purchased the property
known as the Grand Sierra Resort ("GSR"), March 31, 2011.

1 24. When named Plaintiff Vaughan was a dancing dealer, she was required
2 to attend dance classes of an hour or more, two to four times a week for which she was
3 not paid her minimum, regular rate, or overtime wages. Additionally, dance classes
4 were usually held on Saturday mornings and it was not unusual to be scheduled to work
5 a full shift the Friday night into Saturday, then be required to attend dance class that
6 same morning.

7 25. As an example, only, Plaintiff Vaughan was employed from on or about
8 August 1, 2012 through June 13, 2013 for 46 weeks. See Exhibit 2 to the Toney Report.
9 Upon information and belief, one specific date where Plaintiff attended dance classes
10 off the clock occurred when Plaintiff Vaughan worked April 26, 2013 from 8:30 p.m. to
11 April, 27, 2013 at 4:00 a.m. (7.5 hours), was required to attend dance class (2 hours),
12 then worked from 8:15 p.m. on April 27, 2013, to 1:00 a.m. on April 28, 2013 (4.75
13 hours). See Exhibit 6. Because she was required to attend dance classes off the clock
14 and without pay, she should have been paid for 2 hours. Based on the data currently
15 available to Plaintiffs, the two hours per week of unpaid dance classes amounts to 92
16 hours (46 X 2 = 92). See Exhibit 2 to Toney Report. Ninety-two hours at Plaintiff
17 Vaughan’s straight-time rate of \$8.25 amounts to \$759.00 of unpaid wages. Id. Based
18 on a simple 10% interest rate from the time Plaintiff Vaughan should have been paid to
19 January 31, 2019, she is owed an additional \$428.08 in interest. Because Ms. Vaughan
20 is no longer employed by Defendants, she is owed waiting time penalties equal to 60
21 days of wages in the amount of \$2,623.50 (average of 5.3 hours per shift, multiplied by
22 \$8.25 = \$43.725 per day X 60 = \$2,623.50). Id. Thus, Plaintiff Vaughan is owed
23 approximately \$3,810.58 for unpaid dance classes.

24 26. Upon information and belief, all other GSR employees who were similarly
25 required to attend dance classes were not compensated for the required dance class
26 time. Based on a class list provided by Defendants for the period of June 24, 2010
27 through April 21, 2014, there are approximately 48 class members. See Exhibit 2.
28 Based on the average weekly shift count and pay rates for Plaintiff Vaughan,

1 extrapolated for the full class period, the putative Dance Class Members are owed
2 approximately \$143,081.40 in unpaid wages. See Exhibit 2 attached to the Toney
3 Report. Additionally, 21 members of the Dance Class are no longer employed as of
4 April 21, 2014. Id. Thus, based on the failure to pay 21 class members all wages due
5 and owing at the time of termination, formerly employed class members are owed an
6 additional \$55,093.50 in waiting time penalties. Id. If termination rates remain steady
7 for the full class period, it is estimated that the putative Dance Class Members would be
8 owed \$139,045.50 in waiting time penalties. Id. The total estimated damage amount
9 due for the Cash Dance Class is \$282,126.90. Id.

10 27. Defendants are legally required to maintain the employment records for
11 Plaintiff Vaughan and all putative Class Members who attended dance classes. GSR is
12 therefore in possession (or should be in possession) of the necessary scheduling, gate
13 data (swipe in/out of the GSR property), punch data (clock in/out records), and pay data
14 to demonstrate the exact amount of wages that Plaintiff Vaughan and all putative Dance
15 Class Members are owed and at the correct rate of pay those wages must be paid. Since
16 Plaintiff was never compensated for the dance classes outlined herein, Plaintiff and all
17 putative Dance Class Members are owed compensation at the applicable hourly rate for
18 each and every dance class they attended.

19 **C. DEFENDANTS' ROOM ATTENDANT PRE-SHIFT POLICY**

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

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1 29. As an example, only, Plaintiff Jackson-Williams² was employed from on or
2 about April 9, 2014 through December 31, 2015 for approximately 90.3 weeks. See
3 Exhibit 3 attached to the Toney Report. She alleges she worked an average of five
4 shifts per week or 452 shifts (90.3 X 5 = 451.5). She also alleges that each and every
5 shift she worked during her 90.3 weeks of employment, she was required to work
6 approximately twenty (20) minutes each and every shift of unpaid pre-shift time
7 amounting to 150.7 hours (452 X 20 minutes = 9,040 minutes, divided by 60 = 150.7
8 hours). One-hundred fifty point seven hours multiplied by the overtime rate of \$12.375
9 (\$8.25 X 1.5 = \$12.375) equates to \$1,864.91 in unpaid wages. Id. Based on a simple
10 10% interest rate from the time Plaintiff Jackson-Williams should have been paid to
11 January 31, 2019, she is owed an additional \$561.34 in interest. Id. Because Ms.
12 Jackson-Williams is no longer employed by Defendants, she is owed waiting time
13 penalties equal to 60 days of wages in the amount of \$3,960.00 (average of 8 hours per
14 shift, multiplied by \$8.25 = \$66.00 per day X 60 = \$3,960.00). Id. Thus, Plaintiff
15 Jackson-Williams is owed \$6,386.25 for unpaid pre-shift activities. Id.

16 30. Named Plaintiff Jackson-Williams was required to complete these work
17 tasks each and every shift worked and was not paid her minimum, regular rate, or
18 overtime wages. Based on her knowledge and belief all employees who were similarly
19 employed as room attendants/housekeepers followed the same policy and procedure
20 as mandated by Defendants. Upon information and belief, all other GSR employees
21 who were similarly employed as room attendants were not compensated for the required
22 ore-shift time. Based on a class list provided by Defendants for the period of June 24,

23 _____
24 ² Plaintiff Jackson-Williams is not in possession, custody or control of any of her
25 schedules, time, or pay data, however she was scheduled to work and did work five
26 shifts per week. Defendants are legally required to maintain the employment records
27 for Plaintiff Jackson-Williams and all putative Room Attendant Class Members. GSR is
28 therefore in possession (or should be in possession) of the necessary scheduling, gate
data (swipe in/out of the GSR property), punch data (clock in/out records), and pay data
to demonstrate the exact amount of wages that Plaintiff Jackson-Williams and all
putative Room Attendant Class Members are owed and at the correct rate of pay those
wages must be paid.

1 2010 through April 21, 2014, there are approximately 217 class members. See Exhibit
2 2. Based on the average weekly shift count and pay rates for Plaintiff Jackson-Williams,
3 extrapolated for the full class period, the putative Room Attendant Class Members who
4 were employed fulltime, are owed approximately \$1,109,860.54 in unpaid wages. See
5 Exhibit 3 attached to the Toney Report. Additionally, 83 members of the Room
6 Attendant Class are no longer employed as of April 21, 2014. Id. Thus, based on the
7 failure to pay 83 class members all wages due and owing at the time of termination,
8 formerly employed class members are owed an additional \$328,680.00 in waiting time
9 penalties. Id. If termination rates remain steady for the full class period, it is estimated
10 that the putative Room Attendant Class Members would be owed \$839,520.00 in waiting
11 time penalties. Id. The total estimated damage amount due for the Room Attendant
12 Class is \$1,949,380.54.³ Id.

13 31. Defendants are legally required to maintain the employment records for
14 Plaintiff Jackson-Williams and all putative Room Attendant Class Members. GSR is
15 therefore in possession (or should be in possession) of the necessary scheduling, gate
16 data (swipe in/out of the GSR property), punch data (clock in/out records), and pay data
17 to demonstrate the exact amount of wages that Plaintiff Jackson-Williams and all
18 putative Room Attendant Class Members are owed and at the correct rate of pay those
19 wages must be paid. Since Plaintiff was never compensated for the pre-shift work
20 activities outlined herein, Plaintiff and all putative Room Attendant Class Members are
21 owed compensation at the applicable hourly rate for each and every shift worked.

22 **D. DEFENDANTS' PRE-SHIFT MEETING POLICY**

23 32. Defendants required all employees who worked as cocktail waitresses,
24 bartenders, dealers, security guards, technicians, construction workers, and retail
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26 ³ This figure is limited to full-time employed room attendants and does not take
27 into account the part-time room attendants who were also required to complete work
28 activities off the clock and without compensation. See Exhibit 3. Part-time employees
for the period of March 30, 2011 through January 31, 2019 have damage ranges from
\$960,347.03 to \$1,037,708.10. Id.

1 attendants to attend a pre-shift meeting without compensation. The pre-shift meetings
2 were held in order to instruct employees on job duties, special events in the area and at
3 the GSR, occupancy, and other job related information. Pre-shift meetings could take
4 10 minutes or more and were either held off the clock or during the period of time that
5 was improperly rounded off of employees' time cards.

6 33. As an example, only, Plaintiff Capilla was employed from on or about
7 March 23, 2011 through September 9, 2013 for approximately 128.9 weeks. See Exhibit
8 4 attached to the Toney Report. Because she was required to attend pre-shift meeting
9 off the clock and without pay, she should have been paid for an additional 10 minutes
10 of compensable work time in addition to her regular work hours. Based on the data
11 currently available to Plaintiffs, she worked an average of 3.82 shifts per week or 493
12 shifts ($3.82 \times 128.9 = 493$). Id. Ten minutes multiplied by 493 shifts equates to 82.2
13 hours of unpaid pre-shift meeting work ($10 \times 493 = 4,930$ divided by $60 = 82.16$ hours).
14 Id. Eighty-two hours multiplied by the weighted rate of \$8.47 (not all hours worked were
15 overtime hours) equates to \$696.23 in unpaid wages due ($\$8.47 \times 82.2 = \696.23).
16 Based on a simple 10% interest rate from the time Plaintiff Jackson-Williams should
17 have been paid to January 31, 2019, she is owed an additional \$375.96 in interest. Id.
18 Because Ms. Capilla is no longer employed by Defendants, she is owed waiting time
19 penalties equal to 60 days of wages in the amount of \$3,001.50 (average of 6.9 hours
20 per shift $\times \$7.25 = \$50.03 \times 60 = \$3,001.50$). Id. Thus, Plaintiff Capilla is owed
21 approximately \$4,073.69 for unpaid pre-shift meetings. Id.

22 34. As an example, only, Plaintiff Martel was employed from on or about
23 January 25, 2012 through June 12, 2014 for approximately 124.3 weeks. See Exhibit 4
24 attached to the Toney Report. Because he was required to attend pre-shift meetings off
25 the clock and without pay, he should have been paid for an additional 10 minutes of
26 compensable work time in addition to his regular hours. Based on the data currently
27 available to Plaintiffs, he worked an average of 3.56 shifts per week or 443 shifts (3.56
28 $\times 124.3 = 443$). Ten minutes multiplied by 443 shifts equates to 73.8 hours of unpaid

1 pre-shift meeting work ($10 \times 443 = 4,430$ divided by $60 = 73.8$ hours). Id. Seventy-three
2 point 8 hours multiplied by the weighted rate of \$9.62 (not all hours worked were
3 overtime hours) equates to \$709.96 in unpaid wages due ($\$9.62 \times 73.8 = \709.96).
4 Based on a simple 10% interest rate from the time Plaintiff Martel should have been paid
5 to January 31, 2019, he is owed an additional \$383.38 in interest. Id. Because Mr.
6 Martel is no longer employed by Defendants, he is owed waiting time penalties equal to
7 60 days of wages in the amount of \$3,598.65 (average of 7.27 hours per shift, multiplied
8 by $\$8.25 = \59.98 per day $\times 60 = \$3,598.65$). Id. Thus, Plaintiff Martel is owed
9 approximately \$4,691.99 for unpaid pre-shift meetings. Id.

10 35. Named Plaintiffs Capilla and Martel were required to attend these pre-shift
11 meetings without compensation and for which they were not paid their minimum, regular
12 rate, or overtime wages. Based on their knowledge and belief all employees who were
13 similarly employed as dealers, cocktail waitresses, baristas, security guards, bartenders,
14 and retail attendants followed the same policy and procedure as mandated by
15 Defendants. Upon information and belief, all other GSR employees who were similarly
16 required to attend pre-shift meetings were not compensated for the required pre-shift
17 time. Based on a class list provided by Defendants for the period of June 24, 2010
18 through April 21, 2014, there are approximately 609 class members. See Exhibit 2.
19 Based on the average weekly shift count and pay rates for Plaintiff Capilla and Plaintiff
20 Martel, extrapolated out for the entire class period, the putative Pre-Shift Meeting Class
21 Members are owed approximately \$571,434.92 in unpaid wages. See Exhibit 4 to the
22 Toney Report. Additionally, 417 members of the Pre-Shift Class are no longer employed
23 as of April 21, 2014. Id. Thus, based on the failure to pay 417 class members all wages
24 due and owing at the time of termination, formerly employed class members are owed
25 an additional \$1,371,396.24 in waiting time penalties. Id. If termination rates remain
26 steady for the full class period, it is estimated that the putative Pre-Shift Class Members
27 would be owed \$3,512,352.96 in waiting time penalties. Id. The total estimated damage
28 amount due for the Cash Bank Class is \$4,083,787.88. Id.

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36. . Defendants are legally required to maintain the employment records for Plaintiffs Capilla and Martel and all putative Pre-Shift Meeting Class Members. GSR is therefore in possession (or should be in possession) of the necessary scheduling, gate data (swipe in/out of the GSR property), punch data (clock in/out records), and pay data to demonstrate the exact amount of wages that Plaintiffs Capilla and Martel and all putative Pre-Shift Meeting Class Members are owed and at the correct rate of pay those wages must be paid. Since Plaintiff was never compensated for the pre-shift work activities outlined herein, Plaintiffs and all putative Pre-Shift Class Members are owed compensation at the applicable hourly rate for each and every shift worked.

E DEFENDANTS’ UNIFORM POLICY

37. Defendants required all employees who worked as dancing dealers, cocktail waitresses, and baristas to change into and out of their uniforms on the GSR premises without compensation.

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

39. As an example, only, Plaintiff Vaughan was employed from on or about August 1, 2012 through June 13, 2013 for 45.3 weeks or approximately 95 shifts (45.3 X 2.1 = 95.13). See Exhibit 5 attached to the Toney Report. Upon information and belief, one specific date where Plaintiff attended dance classes off the clock occurred when Plaintiff Vaughan worked April 26, 2013 from 8:30 p.m. to April, 27, 2013 at 4:00 a.m. (7.5 hours), was required to attend dance class (2 hours), then worked from 8:15 p.m. on April 27, 2013, to 1:00 a.m. on April 28, 2013 (4.75 hours). See Exhibit 6 to Toney Report. Because she was required to engage in uniform changing on premises and off the clock and without pay, she should have been paid for 15 minutes of additional work time. Fifteen minutes per shift of unpaid uniform changing time per shift amounts

1 to 23.8 hours (95 X 15 = 1,425 divided by 60 = 23.75). See Exhibit 5 attached to the
2 Toney Report. Twenty-three point seven-five hours at Plaintiff Vaughan's weighted
3 wage rate of \$8.46 (not all hours were overtime hours) amounts to \$201.35 of unpaid
4 wages (23.75 X \$8.46 = \$201.35). Id. Based on a simple 10% interest rate from the
5 time Plaintiff Martel should have been paid to January 31, 2019, he is owed an additional
6 \$113.76 in interest. Id. Because Ms. Vaughan is no longer employed by Defendants,
7 she is owed waiting time penalties equal to 60 days of wages in the amount of \$2,623.50
8 (average of 5.3 hours per shift, multiplied by \$8.25 = \$43.725 per day X 60 = \$2,623.50).
9 Id. Thus, Plaintiff Vaughan is owed approximately \$2,938.61 for unpaid uniform
10 changing activities. Id.

11 40. Based on Plaintiff Vaughan's knowledge and belief all employees who
12 were similarly employed as dancer dealers, cocktail waitresses, and baristas followed
13 the same policy and procedure mandated by Defendants. Upon information and belief,
14 all other GSR employees who were similarly required to change in to and out of uniforms
15 on the GSR premises were similarly not paid. Based on a class list provided by
16 Defendants for the period of June 24, 2010 through April 21, 2014, there are
17 approximately 240 class members. See Exhibit 2. Based on the average weekly shift
18 count and pay rates for Plaintiff Vaughan, the putative Uniform Class Members are owed
19 approximately \$50,970.65 in unpaid wages. See Exhibit 5 to the Toney Report.
20 Additionally, 157 members of the Uniform Class are no longer employed as of April 21,
21 2014. Id. Thus, based on the failure to pay 157 class members all wages due and
22 owing at the time of termination, formerly employed class members are owed an
23 additional \$411,889.50 in waiting time penalties. Id. If termination rates remain steady
24 for the full class period, it is estimated that the putative Uniform Class Members would
25 be owed \$1,054,647.00 in waiting time penalties. Id. The total estimated damage
26 amount due for the Uniform Class is \$1,197,561.78. Id.

27 41. Defendants are legally required to maintain the employment records for
28 Plaintiff Vaughan and all putative Uniform Members. GSR is therefore in possession (or

1 should be in possession) of the necessary scheduling, gate data (swipe in/out of the
2 GSR property), punch data (clock in/out records), and pay data to demonstrate the exact
3 amount of wages that Plaintiff Vaughan and all putative Uniform Class Members are
4 owed and at the correct rate of pay those wages must be paid. Since Plaintiff was never
5 compensated for the uniform changing activities outlined herein, Plaintiff and all putative
6 Uniform Class Members are owed compensation at the applicable hourly rate for each
7 and every shift worked.

8 **F. DEFENDANTS' SHIFT JAMMING POLICY**

9 42. In addition to requiring employees to perform work activities without
10 compensation, Defendants engaged in the unlawful practice known as "shift-jamming."

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

15 44. NRS 608.0126 defines a "Workday" as a period of 24 consecutive hours,
16 which begins when the employee begins work.

17 45. Upon information and belief, Defendants did not offer health insurance to
18 qualify for the lower minimum wage for insured employees.

19 46. Thus, hourly employees paid less than \$12.375 who the Defendants
20 required, suffered or permitted to return to work before the expiration of 16 hours
21 between when they last worked for the employer and started their next shift, must be
22 paid at overtime rates until the end of that workday.

23 47. Defendants routinely required employees who were entitled to daily
24 overtime to return to work sooner than 16 hours from when they last worked, whether it
25 to be for their normal job duties or a special event, during high occupancy periods such
26 as for concerts, Burning Man, Hot August Nights, and Street Vibrations, or mandatory
27 meetings, without paying the proper overtime rate.

28

1 48. Plaintiffs were scheduled to and did work shifts with less than 16 hours
2 between the end of one shift and the beginning of the next without being paid overtime
3 premium for hours worked over eight in a workday.

4 49. As an example, only, Plaintiff Martel was employed from on or about
5 January 25, 2012 through June 12, 2014. Where KRONOS (time) data is available, he
6 worked approximately 101 weeks. See Exhibit 6 attached to the Toney Report. For
7 instance, Plaintiff Martel worked from 6:45 p.m. on August 10, 2013 to 4:15 a.m. on
8 August 11, 2013 (8.0 hours). Id. He then worked 4:00 p.m. on August 11, 2013 to 12:30
9 a.m. on August 12, 2013 (8.0 hours). Because he was required to return to work before
10 he received 16 hours off between the end of his first shift and the beginning of the next,
11 he worked a jammed shift. The available KRONOS clock time contains 362 shifts. Id.
12 Of the analyzed shifts, a shift jam was observed in 37 shifts or 10% of the time. Id. Of
13 the jammed shifts, 21 or 6% resulted in unpaid overtime premium due. Id. When an
14 overtime impact existed, the average overtime hour amount was 1.52. Id. The total shift
15 jam hours with overtime premium due is 21 shifts, resulting in an underpayment of 31.9
16 hours (21 shifts X 1.52 hours = 31.9 hours). Id. Thus, Plaintiff Martel is due and
17 additional \$138.77 in unpaid overtime premium (31 X \$4.13 (half-time rate) = \$131.75).
18 Id. Based on a simple 10% interest rate from the time Plaintiff Martel should have been
19 paid to January 31, 2019, he is owed an additional \$67.19 in interest. Id. Because Mr.
20 Martel is no longer employed by Defendants, he is owed waiting time penalties equal to
21 60 days of wages in the amount of \$3,598.65 (average of 7.27 hours per shift, multiplied
22 by \$8.25 = \$59.98 per day X 60 = \$3,598.65). Id. Thus, Plaintiff Martel is owed
23 approximately \$3,797.59 for jammed shifts. Id.

24 50. As an example, only, Plaintiff Vaughan was employed from on or about
25 August 1, 2012 through June 13, 2013. Where KRONOS (time) data is available, she
26 worked approximately 45.3 weeks. See Exhibit 6 attached to the Toney Report. Upon
27 information and belief, one specific date where Plaintiff attended dance classes off the
28 clock occurred when Plaintiff Vaughan worked April 26, 2013 from 8:30 p.m. to April 27,

1 2013 at 4:00 a.m. (7.5 hours), was required to attend dance class (2 hours), then worked
2 from 8:15 p.m. on April 27, 2013, to 1:00 a.m. on April 28, 2013 (4.75 hours). Id.
3 Because she was required to change and attend dance classes off the clock and without
4 pay, and did not receive 16 hours off between the end of her first shift and the beginning
5 of the next, she worked a jammed shift. The available KRONOS clock time contains 95
6 shifts. Id. Of the analyzed shifts, a shift jam was observed in 8 shifts or 9% of the time.
7 Id. Of the jammed shifts, 4 resulted in unpaid overtime premium due. Id. When an
8 overtime impact existed, the average overtime hour amount was 1.12. Id. The total shift
9 jam hours with overtime premium due is 8 shifts, resulting in an underpayment of 9.0
10 hours (8 shifts X 1.12 hours = 9.0 hours). Id. Thus, Plaintiff Vaughan is due and
11 additional \$37.17 in unpaid overtime premium (9 X \$4.13 (half-time rate) = \$37.17). Id.
12 Based on a simple 10% interest rate from the time Plaintiff Vaughan should have been
13 paid to January 31, 2019, she is owed an additional \$21.00 in interest. Id. Because Ms.
14 Vaughan is no longer employed by Defendants, she is owed waiting time penalties equal
15 to 60 days of wages in the amount of \$2,623.50 (average of 5.3 hours per shift, multiplied
16 by \$8.25 = \$43.725 per day X 60 = \$2,623.50). Id. Thus, Plaintiff Vaughan is owed
17 approximately \$2,681.67 for jammed shifts. Id.

18 51. Defendants have admitted that they did not pay employees for jammed
19 shifts for the period of time between November 4, 2011 and July 11, 2014 for “certain
20 team members.” See Exhibit 3 attached, hereinafter “Audit Letter.”

21 52. It is not possible for Plaintiff to estimate class damages because
22 Defendants are the sole Party in this action who have access to the relevant schedule,
23 time, and pay data required to conduct further analysis. Defendants are legally required
24 to maintain the employment records for Plaintiffs Martell and Vaughan and all putative
25 Shift Jamming Class Members. GSR is therefore in possession (or should be in
26 possession) of the necessary scheduling, gate data (swipe in/out of the GSR property),
27 punch data (clock in/out records), and pay data to demonstrate whether or not
28 employees were subject to a jammed shift and whether or not these Class Members

1 received proper overtime premium pay. The claim for unpaid overtime wages pursuant
2 to Defendants' shift jamming policy is only brought on behalf of employees who are not
3 covered by a valid and effective collective bargaining agreement.

4 **CLASS ACTION ALLEGATIONS**

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

7 54. Plaintiffs seek to represent the following classes of employees in
8 Defendants' employ during the relevant time period⁴:

9 A. **Cash Bank Class:** All Nevada residents who were employed by
10 Defendants at the time of filing the original complaint in this action and who were
11 required to carry a cash bank and performed banking activities without
12 compensation, including (but not limited to), cashiers, bartenders, slot attendants,
13 retail attendants, change attendants, and front desk agents, at any time from
14 March 31, 2011 to the present⁵;

15 B. **Dance Class:** All Nevada residents who were employed by
16 Defendants at the time of filing the original complaint in this action and who were

17
18 ⁴ On June 21, 2013 Plaintiffs Tiffany Sargent and Bailey Cryderman filed a
19 proposed class action for failure to pay wages due and owing in the Second Judicial
20 District Court of the State of Nevada in and for the County of Washoe. (See CV13
21 01351.) Defendants removed that action to the United States District Court District of
22 Nevada on August 22, 2013. Plaintiffs' claims asserted in the instant Complaint were
23 dismissed prior to being certified as a class action on January 12, 2016. The Nevada
24 Supreme Court grants equitable tolling for all putative class members. Golden Coin,
25 Ltd., 124 Nev. at 34, 176 P.3d at 275 (“[C]lass actions brought under NRCP 23 toll the
26 statute of limitations on all potential unnamed plaintiffs' claims[.]”); see also Allen v. KB
27 Home Nevada, Inc., 2013 WL 8609775 (Nev. Dist. Ct. July 25, 2013) (It is determined
28 that pursuant to Jane Roe Dancer I-VII v. Golden Coin, Ltd., 124 Nev. 28, 176 P.3d 271
(2008), that based on the complaint filed on December 2, 2008, which alleges class
action status as a remedy, the statute of limitations and/or repose is tolled for all putative
class members.” (citations omitted)). Accordingly, pursuant to Golden Coin tolling,
Plaintiffs and putative class members' wage claims go back to June 21, 2010, three
years prior to the original filing of the Sargent action.

⁵ The current owners, HG STAFFING, LLC, MEI-GSR HOLDINGS LLC purchased
the property known as the Grand Sierra Resort (“GSR”), March 31, 2011.

1 required to attend dance classes without compensation at any time from March
2 31, 2011 to the present;

3 C. **Room Attendant Class:** All Nevada residents who were employed
4 by Defendants at the time of filing the original complaint in this action and who
5 were employed as room attendants and were required to perform pre-shift work
6 activities without compensation at any time from March 31, 2011 to the present;

7 D. **Pre-shift Meeting Class:** All Nevada residents who were
8 employed by Defendants at the time of filing the original complaint in this action
9 and who were required to attend pre-shift meetings without compensation,
10 including (but not limited to), cocktail waitresses, bartenders, dealers, security
11 guards, technicians, construction workers, and retail attendants, at any time from
12 March 31, 2011 to the present.

13 E. **Uniform Class:** All Nevada residents who were employed by
14 Defendants at the time of filing the original complaint in this action and who were
15 employed as cocktail waitresses and/or baristas and were required to change
16 into and out of their uniforms on property without compensation at any time from
17 March 31, 2011 to the present.

18 F. **Shift Jamming Class:** All Nevada residents who were employed
19 by Defendants at the time of filing the original complaint in this action and who
20 were employed by Defendants as non-exempt hourly paid employees and were
21 not covered by a valid and effective collective bargaining agreement and who
22 worked subjected to Defendants' shift jamming policy.

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

24 A. The Class is Sufficiently Numerous⁶: Upon information and belief,
25 Defendants employ, and have employed, at least 587 Cash Bank Class Members;
26 at least 48 Dance Class Members; at least 217 Room Attendant Class Members;

27 ⁶ Plaintiffs base the approximate class members on number of employees who
28 hold and/or held the positions encompassed by the subclasses, which were provided as
part of the Master Class List in the *Sargent* case attached as Exhibit 2.

1 at least 609 Pre-Shift Meeting Class Members; at least 240 Uniform Class; and
2 approximately 200 Shift Jamming Class Members.

3 B. Plaintiffs' Claims are Typical to Those of Fellow Class Members:
4 Each Class Member is and was subject to the same practices, plans, or policies
5 as Plaintiffs—Defendants required Plaintiffs to work “off the clock” and without
6 compensation; Defendants’ engaged in improper shift jamming; and Defendants
7 failed to pay wages due and owing at the time of separation of employment.

8 C. Common Questions of Law and Fact Exist: Common questions of
9 law and fact exist and predominate as to Plaintiffs and the Class, including,
10 without limitation: Whether the time spent by Plaintiffs and Class Members
11 engaging in the alleged “off-the-clock” work is compensable under Nevada law;
12 whether Defendants’ engaged in improper shift jamming; and whether Defendants
13 failed to pay wages due and owing at the time of separation of employment.

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

19 E. Predominance/Superiority: Class issues predominate, and a class
20 action is superior to other available means for the fair and efficient adjudication of
21 this controversy, since individual joinder of all members of the Class is impractical.
22 Class action treatment will permit a large number of similarly situated persons to
23 prosecute their common claims in a single forum simultaneously, efficiently, and
24 without unnecessary duplication of effort and expense. Furthermore, the
25 expenses and burden of individualized litigation would make it difficult or
26 impossible for individual members of the Class to redress the wrongs done to
27 them, while an important public interest will be served by addressing the matter
28

1 as a class action. Individualized litigation would also present the potential for
2 inconsistent or contradictory judgments.

3 **FIRST CAUSE OF ACTION**

4 Failure to Pay Wages for All Hours Worked in Violation of NRS 608.140 and 608.016
5 (On Behalf of All Plaintiffs and the Cash Bank, Dance, Room Attendant, Pre-shift
6 Meeting, and Uniform Classes Against All Defendants)

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

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

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

18 43. By failing to compensate Plaintiffs and members of the Cash Bank, Dance,
19 Room Attendant, Pre-shift Meeting and Uniform Classes for the time spent performing
20 the work activities without compensation identified above, Defendants failed to pay
21 Plaintiffs and members of those classes for all hours worked in violation of NRS 608.140
22 and 608.016.

23 44. Despite demand, Defendants willfully refuse and continue to refuse to pay
24 its employees wages for each hour the employee works.

25 45. Wherefore, Plaintiffs demand for themselves and for all members of the
26 Cash Bank, Dance, Room Attendant, Pre-shift Meeting and Uniform Classes payment
27 by Defendants at the regular hourly rate of pay for all hours worked during the during
28

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

3 **SECOND CAUSE OF ACTION**

4 Failure to Pay Minimum Wages in Violation of the Nevada Constitution
5 (On Behalf of All Plaintiffs and the Cash Bank, Dance, Room Attendant, Pre-shift
6 Meeting, and Uniform Classes Against All Defendants)

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

9 47. Article 15 Section 16 of the Nevada Constitution sets forth the
10 requirements the minimum wage requirements in the State of Nevada and further
11 provides that "[t]he provisions of this section may not be waived by agreement between
12 an individual employee and an employer. . . . An employee claiming violation of this
13 section may bring an action against his or her employer in the courts of this State to
14 enforce the provisions of this section and shall be entitled to all remedies available under
15 the law or in equity appropriate to remedy any violation of this section, including but not
16 limited to back pay, damages, reinstatement or injunctive relief. An employee who
17 prevails in any action to enforce this section shall be awarded his or her reasonable
18 attorney's fees and costs."

19 48. By failing to compensate Plaintiffs and members of the Cash Bank, Dance,
20 Room Attendant, Pre-shift Meeting, and Uniform Classes any sort of compensation
21 (zero dollars) for the time spent performing the work activities identified above,
22 Defendants failed to pay Plaintiffs and members of those classes minimum wages for
23 all hours worked in violation of the Nevada Constitution.

24 49. Despite demand, Defendants willfully refuse and continue to refuse to pay
25 its employees minimum wages for each hour the employee works as required by the
26 Nevada Constitution.

27 50. Wherefore, Plaintiffs demand for themselves and for all for all members of
28 the Cash Bank, Dance, Room Attendant, Pre-shift Meeting, and Uniform Classes

1 payment by Defendants at the minimum wage rate for all hours worked during the
2 relevant time period alleged herein together with attorneys' fees, costs, and interest as
3 provided by law.

4 **THIRD CAUSE OF ACTION**

5 Failure to Pay Overtime Wages in Violation of NRS 608.140 and 608.018
6 (On Behalf of All Plaintiffs and the Cash Bank, Dance, Room Attendant, Pre-shift
7 Meeting, Uniform, and Shift Jamming Classes Against All Defendants)

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

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

12 53. NRS 608.018(1) provides as follows:

13 An employer shall pay 1 1/2 times an employee's regular
14 wage rate whenever an employee who receives
15 compensation for employment at a rate less than 1 1/2 times
16 the minimum rate prescribed pursuant to NRS 608.250
17 works: (a) More than 40 hours in any scheduled week of
18 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.

19 54. NRS 608.018(2) provides as follows:

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

24 55. By failing to compensate Plaintiffs and members of the Cash Bank, Dance,
25 Room Attendant, Pre-shift Meeting, Uniform, and Shift Jamming Classes for the time
26 spent performing the work activities without compensation identified above, Defendants
27 failed to pay Plaintiffs and those class members overtime premium pay for all hours
28 worked over eight (8) hours in a workday to those Class Members who were paid a

1 regular rate of less than one and one half times the minimum wage premium pay and,
2 failed to pay a weekly premium overtime rate of time and one half their regular rate for
3 all members of the Class who worked in excess of forty (40) hours in a week in violation
4 of NRS 608.140 and 608.018.

5 56. Despite demand, Defendants willfully refuse and continue to refuse to pay
6 its employees 1 ½ times their regular rate of pay for hours worked over forty (40) in a
7 workweek and/or over eight (8) hours in a workday.

8 57. Wherefore, Plaintiffs demand for themselves and for and members of the
9 Cash Bank, Dance, Room Attendant, Pre-shift Meeting, Uniform, and Shift Jamming
10 Classes that Defendants pay Plaintiffs and those class members one and one half times
11 their “regular rate” of pay for all hours worked in excess of eight (8) hours in a workday
12 and in excess of forty (40) hours a workweek during the relevant time period alleged
13 herein together with attorneys’ fees, costs, and interest as provided by law.

14 **FOURTH CAUSE OF ACTION**

15 Failure to Timely Pay All Wages Due and Owing Upon Termination Pursuant to NRS
16 608.140 and 608.020-.050

17 (On Behalf of All Plaintiffs and former employees of the Cash Bank, Dance, Room
18 Attendant, Pre-shift Meeting, Uniform, and Shift Jamming Classes Against All
19 Defendants)

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

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

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

27 61. NRS 608.040(1)(a-b), in relevant part, imposes a penalty on an employer
28 who fails to pay a discharged or quitting employee: “Within 3 days after the wages or

1 compensation of a discharged employee becomes due; or on the day the wages or
2 compensation is due to an employee who resigns or quits, the wages or compensation
3 of the employee continues at the same rate from the day the employee resigned, quit,
4 or was discharged until paid for 30-days, whichever is less.”

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

10 63. By failing to pay Plaintiffs and former employees of the Cash Bank, Dance,
11 Room Attendant, Pre-shift Meeting, Uniform, and Shift Jamming Classes for all hours
12 worked in violation of the state laws identified herein, Defendants have failed to timely
13 remit all wages due and owing to Plaintiffs and all members of those classes who are
14 former employees.

15 64. Despite demand, Defendants willfully refuse and continue to refuse to pay
16 Plaintiffs and members of the Cash Bank, Dance, Room Attendant, Pre-shift Meeting,
17 Uniform, and Shift Jamming Classes who are former employees all the wages that were
18 due and owing upon the termination of their employment.

19 65. Wherefore, Plaintiffs demand thirty (30) days wages under NRS 608.140
20 and 608.040, and an additional thirty (30) days wages under NRS 608.140 and 608.050,
21 for all members of the Cash Bank, Dance, Room Attendant, Pre-shift Meeting, Uniform,
22 and Shift Jamming Classes who have terminated employment from Defendants during
23 the relevant time period alleged herein together with attorneys’ fees, costs, and interest
24 as provided by law.

25 ///

26 ///

27 ///

28 ///

JURY TRIAL DEMANDED

1
2 Plaintiffs hereby demand a jury trial pursuant to Nevada Rule of Civil Procedure
3 38.

PRAYER FOR RELIEF

4
5 Wherefore Plaintiffs, individually and on behalf of all Members of the Classes
6 alleged herein, pray for relief as follows:

- 7 1. For an order certifying the action as a class action under Nevada Rule of
8 Civil Procedure Rule 23 on behalf of all members of the Classes;
- 9 2. For an order appointing Plaintiffs as the Representative of the Classes and
10 their counsel as Class Counsel for the Classes;
- 11 3. For damages according to proof for regular rate pay under NRS 608.140
12 and 608.016 for all hours worked;
- 13 4. For damages according to proof for minimum wage rate pay under the
14 Nevada Constitution for all hours worked;
- 15 5. For damages according to proof for overtime compensation at the
16 applicable rate under NRS 608.140 and 608.018 for all hours worked for
17 those employees who earned a regular rate of less than one and one half
18 times the minimum wage for hours worked in excess of 8 hours per day
19 and/or for all subclass members for overtime premium pay of one and one
20 half their regular rate for all hours worked in excess of 40 hours per week;
- 21 6. For sixty days of waiting time penalties pursuant to NRS 608.140 and
22 608.040-.050;
- 23 7. For interest as provided by law at the maximum legal rate;
- 24 8. For reasonable attorneys' fees authorized by statute;
- 25 9. For costs of suit incurred herein;
- 26 10. For pre-judgment and post-judgment interest, as provided by law, and
27 11. For such other and further relief as the Court may deem just and proper.
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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: January 29, 2019.

Respectfully Submitted,

THIERMAN BUCK LLP

/s/ Mark R. Thierman

Mark R. Thierman

Joshua D. Buck

Leah L. Jones

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Index of Exhibits

Exhibit 1 – Toney Report

Exhibit 2 – Class List

Exhibit 3 – Audit Letter

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PROOF OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of Thierman Buck, LLP, and that on the 29th day of January, 2019, I electronically filed a true and correct copy of **FIRST AMENDED CLASS ACTION COMPLAINT**, with the Clerk of the Court by using the electronic filing system which will send a notice of electronic filing to the following:

COHEN JOHNSON PARKER EDWARDS H. STAN JOHNSON, ESQ. Nevada Bar No. 00265 sjohnson@cohenjohnson.com 255 E. Warm Springs Road, Suite 100 Las Vegas, Nevada 89119 Telephone: (702) 823-3500 Facsimile: (702) 823-3400 <i>Attorneys for Defendants</i>	SUSAN HEANEY HILDEN, ESQ. Nevada Bar No. 5358 shilden@meruelogroup.com CHRIS DAVIS, ESQ. Nevada Bar No. 6616 chris.davis@sllsvegas.com 2500 East Second Street Reno, NV 89595 Telephone: (775) 789-5362
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I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct. Executed on January 29, 2019 at Reno, Nevada.

/s/Tamara Toles
Tamara Toles