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UNITED STATES DISTRICT COURT

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DISTRICT OF NEVADA

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

* * *

Case No. 3:13-cv-00453-LRH-WGC
ORDER

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Plaintiffs,

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v.

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

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Defendants.

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19 The plaintiffs in this matter move the court to reconsider two of its previous orders. ECF
20 No. 245. The first order resulted in, and the second order confirmed, the dismissal of the
21 plaintiffs’ claims brought under Chapter 608 of the Nevada Revised Statutes (“N.R.S.”). ECF
22 Nos. 172, 204. The defendants opposed the motion for reconsideration, and the plaintiffs filed a
23 reply. ECF Nos. 246, 247. Based on the Nevada Supreme Court’s ruling in *Neville v. Eighth*
24 *Judicial District Court in & for County of Clark*, 406 P.3d 499 (Nev. 2017) (holding N.R.S.
25 § 608.140 recognizes a private right of action for unpaid wages), the court now reverses its two
26 previous orders and reinstates plaintiffs’ fourth, sixth, and seventh claims. But the plaintiffs’
27 eighth claim remains dismissed. Also, because the court reinstates three claims for each plaintiff,
28 the court denies the defendants’ six pending summary judgment motions without prejudice.

1 **I. BACKGROUND**

2 The plaintiffs sue the defendants under the Fair Labor Standards Act, the Nevada
3 Constitution, and provisions of the Nevada Revised Statutes. ECF No. 47. Four of the plaintiffs'
4 claims are relevant to this order: (1) failure to pay wages for all hours worked in violation of
5 N.R.S. § 608.140 and § 608.016 (fourth claim); (2) failure to pay minimum wages in violation of
6 N.R.S. § 608.140 and § 608.018 (sixth claim); (3) failure to pay all wages due and owing upon
7 termination in violation of N.R.S. § 608.140 and § 608.020 to § 608.050 (seventh claim); and
8 (4) unlawful chargebacks in violation of N.R.S. § 608.100 (eighth claim). See *id.*; ECF Nos. 245,
9 246, 247.

10 The court dismissed the four relevant claims in its January 11, 2016 Order (“ECF No.
11 172”), holding that Chapter 608 does not provide for a private right of action. ECF No. 172. The
12 court based its decision solely on statutory grounds. *Id.* In making its decision, the court agreed
13 with the majority of case law from the District of Nevada. *Id.* (citing multiple District of Nevada
14 cases holding no private right of action exists under Chapter 608). The court later reaffirmed its
15 decision, denying the plaintiffs’ earlier motion to reconsider. ECF No. 204.

16 Since the court’s previous orders were issued, the Nevada Supreme Court considered if
17 Chapter 608 allows for a private right of action. See *Neville*, 406 P.3d 499. It concluded that
18 N.R.S. § 608.140 demonstrates the legislature’s intent to create a private right of action for
19 unpaid wages. *Id.* at 504. It then reversed the dismissal of the plaintiff’s claims that were tied to
20 N.R.S. § 608.140 and were brought under Chapter 608—specifically N.R.S. § 608.016,
21 § 608.018, and § 608.020 to 608.050. *Id.* Based on the Nevada Supreme Court’s decision in
22 *Neville*, the plaintiffs move the court to reconsider ECF No. 172 and ECF No. 204. ECF No. 245.

23 Additionally, since the court’s previous orders were issued, the defendants filed six
24 motions for summary judgment. ECF Nos. 218, 220, 222–225. The plaintiffs opposed the
25 motions for summary judgment, and the defendants filed replies. ECF Nos. 228–233, 236–241.
26 Each motion argues for the dismissal of a single plaintiff’s remaining claims, but the motions do
27 not discuss the plaintiffs’ previously dismissed claims. See ECF Nos. 218, 220, 222–225. The
28 summary judgment motions remain pending at the time of this order.

1 **II. LEGAL STANDARD**

2 A party may move for relief from a final judgment or order under Federal Rule of Civil
3 Procedure 60(b). A motion under Rule 60(b) is an “extraordinary remedy, to be used sparingly in
4 the interests of finality and conservation of judicial resources.” *Kona Enters., Inc. v. Estate of*
5 *Bishop*, 229 F.3d 887, 890 (9th Cir. 2000). The Ninth Circuit allows for reconsideration “if the
6 district court (1) is presented with newly discovered evidence, (2) committed clear error or the
7 initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law.”
8 *School Dist. No. 1J, Multnomah Cnty. v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993); Fed.
9 R. Civ. P. 60(b)(1)-(6).

10 **III. DISCUSSION**

11 The plaintiffs move the court to reconsider the dismissal of their claims brought under
12 Chapter 608 based on the Nevada Supreme Court’s decision in *Neville v. Eighth Judicial District*
13 Court in & for County of Clark, 406 P.3d 499 (Nev. 2017). ECF No. 245. The defendants argue
14 that the *Neville* decision does not require reconsideration of the court’s earlier orders, but even if
15 it did, *Neville* would not change the outcome of the court’s earlier orders. ECF No. 246. The
16 court disagrees; the *Neville* decision alters the court’s decision on the issue on which summary
17 judgment was granted.

18 At the time of its order, the court found that Chapter 608 did not provide for a private
19 right of action, agreeing with case law from the District of Nevada. But the court limited its
20 decision to determining if Chapter 608 allowed for a private suit to recover earned wages; the
21 court declined to reach any factual issues. Since issuing its order on the statutory question, the
22 Nevada Supreme Court ruled contrarily in *Neville*, finding that N.R.S. § 608.140 “explicitly
23 recognizes a private cause of action for recovery of unpaid wages.” 406 P.3d at 500. Thus, the
24 Nevada Supreme Court “conclude[d] that NRS Chapter 608 provides a private right of action for
25 unpaid wages.” *Id.* The Nevada Supreme Court therefore instructed the district court to vacate its
26 order dismissing the plaintiff’s claims brought under Chapter 608 and tied to N.R.S. § 608.140.
27 *Id.* at 504. These claims included causes of action brought under N.R.S. § 608.016, § 608.018,
28 and § 608.020 to § 608.050. *Id.* at 504.

1 The plaintiffs seek reconsideration of the order dismissing claims brought under the same
2 provisions of Chapter 608 as the plaintiff's claims in Neville. ECF No. 247. The plaintiffs' fourth
3 claim falls under N.R.S. § 608.016; the plaintiffs' sixth claim falls under N.R.S. § 608.018; the
4 plaintiffs' seventh claim falls under N.R.S. § 608.020 to § 608.050. Further, the plaintiffs tied
5 their fourth, sixth, and seventh claims to N.R.S. § 608.140. Because the claims are brought under
6 Chapter 608 and tied to N.R.S. § 608.140, the Neville holding requires the court to find that a
7 private right of action exists for the claims. The court therefore vacates its earlier orders in part
8 and reinstates the plaintiffs' fourth, sixth, and seventh claims.

9 Additionally, the court dismissed the plaintiffs' eighth claim in ECF No. 172. The
10 plaintiffs brought their eighth claim under N.R.S. § 608.100. Unlike the rest of the claims at
11 issue, the plaintiffs did not tie the claim to N.R.S. § 608.140. But the plaintiffs contend that their
12 complaint properly states a claim for unpaid wages under N.R.S. § 608.100 nevertheless. ECF
13 No. 247 at fn. 2. The court disagrees. The Nevada Supreme Court held that no private right of
14 action exists to enforce N.R.S. § 608.100. *Baldonado v. Wynn Las Vegas, LLC*, 194 P.3d 96, 100
15 (Nev. 2008) (stating the discussion holding no private right of action exists under N.R.S.
16 § 608.160 applies equally to N.R.S. § 608.100). Accordingly, the court neither vacates its
17 previous orders in regards to the plaintiffs' eighth claim nor reinstates the plaintiffs' eighth
18 claim.

19 Based on the foregoing, the court denies the pending motions for summary judgment
20 without prejudice to allow the parties to file motions for summary judgment that address all
21 remaining claims—including those claims reinstated herein.

22 **IV. CONCLUSION**

23 IT IS THEREFORE ORDERED that plaintiffs' motion to reconsider the court's previous
24 orders (ECF No. 245) is **GRANTED**. The court reinstates the plaintiffs' fourth, sixth, and
25 seventh claims. But the court does not reinstate the plaintiffs' eighth claim.

26 IT IS FURTHER ORDERED that defendants HG Staffing, LLC and MEI-GSR Holdings,
27 LLC dba Grand Sierra Resort's motion for summary judgment on all remaining claims asserted
28 by plaintiff Jacqulyn Wiederholt (ECF No. 218) is **DENIED without prejudice**.

1 IT IS FURTHER ORDERED that defendants HG Staffing, LLC and MEI-GSR Holdings,
2 LLC dba Grand Sierra Resort's motion for summary judgment on all remaining claims asserted
3 by plaintiff Huong ("Rosie") Boggs (ECF No. 220) is **DENIED without prejudice**.

4 IT IS FURTHER ORDERED that defendants HG Staffing, LLC and MEI-GSR Holdings,
5 LLC dba Grand Sierra Resort's motion for summary judgment on all remaining claims asserted
6 by plaintiff Tiffany Sargent (ECF No. 222) is **DENIED without prejudice**.

7 IT IS FURTHER ORDERED that defendants HG Staffing, LLC and MEI-GSR Holdings,
8 LLC dba Grand Sierra Resort's motion for summary judgment on all remaining claims asserted
9 by plaintiff Samantha Ignacio (ECF No. 223) is **DENIED without prejudice**.

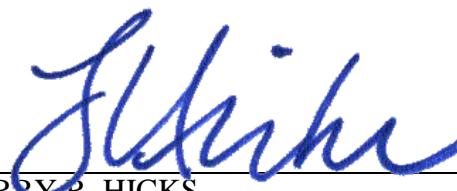
10 IT IS FURTHER ORDERED that defendants HG Staffing, LLC and MEI-GSR Holdings,
11 LLC dba Grand Sierra Resort's motion for summary judgment on all remaining claims asserted
12 by plaintiff Vincent Ignacio (ECF No. 224) is **DENIED without prejudice**.

13 IT IS FURTHER ORDERED that defendants HG Staffing, LLC and MEI-GSR Holdings,
14 LLC dba Grand Sierra Resort's motion for summary judgment on all remaining claims asserted
15 by plaintiff Bailey Cryderman (ECF No. 225) is **DENIED without prejudice**.

16 IT IS FURTHER ORDERED that the defendants shall file complete motions for
17 summary judgment that include briefing on the reinstated claims, if any, within 30 days of the
18 entry of this order.

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20 IT IS SO ORDERED.

21 DATED this 10th day of January, 2018.

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23 LARRY R. HICKS
24 UNITED STATES DISTRICT JUDGE
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