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2014 APR 30 PM 4:17  
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8 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
9 **IN AND FOR CARSON CITY**

11 CODY C. HANCOCK, an individual and  
12 resident of Nevada; KWOK YEN MOY, an  
individual and resident of Nevada,

13 Plaintiffs,

14 vs.

15 NEVADA DEPARTMENT OF BUSINESS &  
16 INDUSTRY; OFFICE OF THE NEVADA  
LABOR COMMISSIONER,

17 Defendants.

Case No.: 1402 00080 1B

Dept. No.: II

**COMPLAINT FOR:**

**1) DECLARATORY RELIEF  
PURSUANT TO N.R.S. 233B.110;**

**2) INJUNCTIVE RELIEF PURSUANT  
TO N.R.S. 33.010; AND**

**3) WRIT OF MANDAMUS PURSUANT  
TO N.R.S. 34.160**

20 CODY C. HANCOCK and KWOK YEN MOY (hereinafter "Plaintiffs"), through  
21 undersigned counsel, complain and allege as follows:

22 **INTRODUCTION**

23 1. This lawsuit seeks declarations of this Court invalidating a number of regulations  
24 promulgated by the Nevada Labor Commissioner purporting to implement Nevada Constitution  
25 Article XV, § 16; injunctive relief ordering the Nevada Labor Commissioner to cease enforcement  
26 of the regulations indicated herein, as written; and further, a writ of mandamus to compel the  
27 Office of the Labor Commissioner to comply with the duties of office and take all necessary  
28 regulatory steps to enforce and to ensure proper compliance with Nev. Const. art. XV, § 16 in

1 order to serve its appropriate textual, remedial, and public policy purposes for the benefit of  
2 Nevada's lowest-paid workers.

3 **PARTIES**

4 **A. Plaintiffs**

5 2. Plaintiff Cody C. Hancock is a resident of the State of Nevada. He is employed as a  
6 minimum wage worker at a national restaurant chain with locations in Nevada. He has, within the  
7 last year, been compensated at \$7.25 per hour for work he has performed for his employer, despite  
8 not having health benefits from his employer at the time, not having qualifying benefits available  
9 to him at the time, and/or currently not having such benefit plan available. The regulations  
10 described herein, or their applications, interfere with or impair, or threaten to interfere with or  
11 impair, his legal rights or privileges. As a current minimum wage worker, he has a direct and  
12 beneficial interest in an appropriate regulatory regime enforcing the guarantees of provisions of  
13 the Nevada Constitution enacted for his benefit.

14 3. Plaintiff Kwok Yen Moy is a resident of the State of Nevada. She was formerly  
15 employed as a minimum wage worker at a national restaurant chain with locations in Nevada. She  
16 has, within the last four years, been compensated at \$7.25 per hour for work she performed for her  
17 employer, despite not having health benefits from her employer at the time, and not having  
18 qualified health insurance benefits available to her at allowable premium cost levels. The  
19 regulations described herein, or their applications, interfered with or impaired her legal rights or  
20 privileges. As a former minimum wage worker with the potential to become one again, she has a  
21 direct and beneficial interest in an appropriate regulatory regime enforcing the guarantees of  
22 provisions of the Nevada Constitution enacted for her benefit.

23 **B. Defendants**

24 4. Defendant the Nevada Department of Business & Industry is an executive agency  
25 of the State of Nevada, which includes the Office of the Nevada Labor Commissioner.

26 5. Defendant the Office of the Nevada Labor Commissioner is charged with enforcing  
27 all labor laws of the State of Nevada.

28

1 JURISDICTION AND VENUE

2 6. This Court has subject matter jurisdiction over this action pursuant to N.R.S.  
3 233B.110(1).

4 7. Venue is proper in this district court pursuant to N.R.S. 233B.110(1).

5 GENERAL ALLEGATIONS

6 **The 2006 Minimum Wage Constitutional Amendment**

7 8. At the 2006 General Election, Nevada voters approved, for the second time, a  
8 constitutional amendment regarding the minimum wage to be paid to all Nevada employees.<sup>1</sup> The  
9 amendment became effective in November, 2006, and was codified as new Art. XV, § 16 of the  
10 Nevada Constitution.

11 9. The 2006 amendment guaranteed to each Nevada employee, with very few  
12 exceptions, a particular hourly wage: “Each employer shall pay a wage to each employee of not  
13 less than the hourly rates set forth in this section. The rate shall be five dollars and fifteen cents  
14 (\$5.15) per hour worked, if the employer provides health benefits as described herein, or six  
15 dollars and fifteen cents (\$6.15) per hour if the employer does not provide such benefits.”

16 10. The amendment contained an index/increase mechanism, such that by 2014 the  
17 Nevada minimum wage level is \$7.25 per hour worked, if the employer provides health benefits or  
18 \$8.25 per hour if the employer does not provide such benefits. Currently, this means employees  
19 earning the lower amount per hour make over 12% less than minimum wage workers paid at the  
20 \$8.25 level.

21 11. Pursuant to the constitutional amendment, employers must qualify for the privilege  
22 of paying their minimum wage workers at the reduced wage level for every hour worked. In order  
23 to qualify to pay employees at the reduced minimum wage rate, health insurance benefit premiums  
24 of the employee and his or her dependents may not exceed “10 percent of the employee’s gross  
25 taxable income from the employer.” Nev. Const. art. XV, § 16(A).

26 12. The public policy underlying the minimum wage amendment was to benefit  
27

28 <sup>1</sup> See **Exhibit 1** here attached, a true and correct copy of the text of Nev. Const. art. XV, § 16.

1 Nevada’s minimum wage employees, and to incentivize the provision of low-cost, comprehensive  
2 health insurance benefits to the state’s lowest-paid workers.

3 **The Nevada Labor Commissioner’s Regulatory Scheme**

4 13. As the state officer charged with enforcing Nevada’s labor laws, the Nevada Labor  
5 Commissioner had two clear duties with regard to Art. XV, § 16: to promulgate regulations that  
6 would protect minimum wage workers from abuse and violation of rights to the minimum wage  
7 under the constitutional amendment, and to construct a regulatory scheme that would ensure  
8 compliance with the amendment’s terms by Nevada employers. In both regards, the Labor  
9 Commissioner has not complied.

10 14. In 2007, the Labor Commissioner enacted permanent regulations intended to  
11 implement Art. XV, § 16. These regulations, found at N.A.C. 608.100 through 608.108, became  
12 effective on October 31, 2007, and have remained unchanged since that time. *See Exhibits 2-6*  
13 here attached, true and accurate copies of the permanent regulations, in their current—and thus far,  
14 static—form.<sup>2</sup>

15 15. The permanent regulations promulgated in 2007, and in force currently,  
16 demonstrate that Labor Commissioner made impermissible policy choices by the Labor  
17 Commissioner in interpreting new Art. XV, § 16, and the regulations themselves are in conflict  
18 with the text, meaning, and/ or public policy of the constitutional amendment.

19 **a) Providing Benefits vs. Offering Benefits**

20 16. An overriding error affecting the entirety of the regulatory regime implementing  
21 Art. XV, § 16, is the Labor Commissioner’s determination that if an employee declined health  
22 insurance coverage, for whatever reason, the employer could pay the employee at the reduced  
23 minimum wage rate. In other words, an employee need not be “provided” with health insurance  
24

25 <sup>2</sup> In November 2006, immediately after the effective date of the amendment approved at the  
26 2006 General Election but before proposing and enacting permanent regulations, the Nevada  
27 Labor Commissioner promulgated emergency regulations intended to implement new Art. XV, §  
28 16. *See Exhibit 7* here attached, a true and accurate copy of these emergency regulations,  
hereinafter the “Emergency Regulations.”

1 benefits in order for an employer to take advantage of the lower wage rate.<sup>3</sup>

2 17. This interpretation, and the regulatory regime that supports it, is in conflict with the  
3 text, meaning, and policy underlying Art. XV, § 16, and is therefore invalid.

4 18. N.A.C. 608.100 states:

5 Minimum wage: Applicability; rates; annual adjustments.

6 1. Except as otherwise provided in subsections 2 and 3, the  
7 minimum wage for an employee in the State of Nevada is the  
8 same whether the employee is a full-time, permanent, part-time,  
9 probationary or temporary employee, and:

10 (a) If an employee is *offered* qualified health insurance, is \$5.15  
11 per hour; or

12 (b) If an employee is not *offered* qualified health insurance, is  
13 \$6.15 per hour.<sup>4</sup> (emphasis supplied).

14 19. This turned the incentives and benefits mandated by Art. XV, § 16 on their heads,  
15 as the greatest fiscal advantage to the employer would be to “offer” but not “provide” employees  
16 the low-premium, comprehensive health insurance benefits mandated under Art. XV, § 16, and the  
17 employee would be left with neither health insurance coverage nor the full, upper-tier minimum  
18 wage per hour.

19 \_\_\_\_\_  
20 <sup>3</sup> The 2006 Emergency Regulations had stated this policy choice by the Labor Commissioner in  
21 stark terms (*see* Exhibit 7):

22 Sec. 6 If an employee declines health coverage under a qualified health  
23 insurance plan offered by the employer, *the employee may be*  
24 *paid in the lower minimum wage tier*, however the employer  
25 must document that the employee has declined coverage and  
26 declining coverage may not be a term or condition of  
27 employment. (emphasis supplied).

28 <sup>4</sup> The 2006 Emergency Regulations, in contrast, had stated (*see* Exhibit 7):

Sec. 2 Nevada has established a two-tiered minimum wage.

A. The first tier, lower tier, is from \$5.15 to \$6.14 per hour for  
employers who *provide* qualified health insurance benefits.

B. The second tier, upper tier, is \$6.15 per hour for employers who  
do not *provide* qualified health benefits. (emphasis supplied).

1           20. Not only is this interpretation contrary to Art. XV, § 16, the difference and  
2 development between the 2006 Emergency Regulations and the 2007 permanent regulations  
3 demonstrates that the Labor Commissioner was aware of the underlying policy decision such a  
4 determination represented and its potential effects upon Nevada’s minimum wage employees. The  
5 current regulatory scheme demonstrates an administrative decision to implement the interpretation  
6 least advantageous to the supposed beneficiaries of the constitutional amendment—minimum  
7 wage workers.

8           21. The Labor Commissioner’s interpretation of Art. XV, § 16 that its terms only  
9 require employers to “offer” or “make available” qualified health insurance benefit plans, rather  
10 than provide them, in order to pay workers at the lower minimum wage rate also forms part of  
11 N.A.C. 608.102(1) & (2), 608.106, and 608.108.

12                           **b) Allowable Costs of Health Insurance Benefit Premiums**

13           22. As noted, Art. XV, § 16 requires provision of health insurance benefits “for the  
14 employee and the employee’s dependents at a total cost to the employee for premiums of not more  
15 than 10 percent of the employee’s gross taxable income *from the employer*,” if the employer elects  
16 to compensate workers at the reduced minimum wage rate. Nev. Const. art. XV, § 16(A)  
17 (emphasis supplied).

18           23. The Labor Commissioner, instead of hewing to the clear and unmistakable  
19 language of Art. XV, § 16 in this regard, created and substituted a new regulatory concept:  
20 employers could qualify to pay a dollar less per hour if premiums amounted to “10 percent of the  
21 gross taxable income of the employee *attributable to the employer under the Internal Revenue*  
22 *Code*.” N.A.C. 608.102(3) (emphasis supplied).<sup>5</sup>

23           24. The Labor Commissioner further determined that “gross taxable income of the  
24 employee attributable to the employer’ means the amount specified on the Form W-2 issued by the  
25

26 <sup>5</sup> The 2006 Emergency Regulations, also unlawfully, had based the 10% cap on premium costs  
27 to covered employees upon “the employee’s gross income as defined under the Internal Revenue  
28 Code.” See Exhibit 7, Emerg. Regs., § 5(B).

1 employer to the *employee and includes, without limitation, tips, bonuses or other compensation* as  
2 required for purposes of federal individual income tax.” N.A.C. 608.104(2) (emphasis supplied).

3 25. For tipped employees like Plaintiffs, much of whose income comes from restaurant  
4 patrons rather than their employer, this regulatory determination by the Labor Commissioner both  
5 raised the amount a minimum wage employee could be made to pay for qualifying health  
6 insurance coverage and rendered employers offering more expensive plans than the constitutional  
7 amendment contemplated eligible to pay their workers at the reduced minimum wage rate.

8 26. Nevada law does not permit a tip credit against minimum wage levels. N.R.S.  
9 608.160(1)(b).<sup>6</sup> The Labor Commissioner, however, through N.A.C. 608.608.104(2), created by  
10 regulation a tip credit for purposes of calculating the allowable premium costs for health insurance  
11 benefit plans in making employers eligible to pay employees at the reduced minimum wage level.

12 27. As a result, current N.A.C. 608.102(3) and 608.104(2) allow employers to pay  
13 employees at the lower minimum wage rate based upon merely having offered health insurance  
14 benefit plans at calculated premium cost levels higher than is permitted by Art. XV, § 16. This is  
15 improper and unlawful on its face, and likely has discouraged acceptance of health insurance  
16 benefit plans due to the inflated allowable premium costs—which in turn has resulted in minimum  
17 wage workers losing a dollar per hour for their work yet not gaining low-cost comprehensive  
18 health insurance as contemplated by the constitutional provision.

19 28. The premium cost calculation method allowed by N.A.C. 608.102(3) and  
20 608.104(2) are in conflict with and are not authorized by Art. XV, § 16, and are therefore invalid.

21 29. Additionally, the Labor Commissioner, in N.A.C. 608.104(1), permitted a further  
22 improper method of determining an employee’s income for purposes health insurance benefit  
23 premium cost limits that conflicts with Art. XV, § 16.

24 30. For four classes of minimum wage employees (employees for whom employers  
25

26 <sup>6</sup> Furthermore, Art. XV, § 16 itself includes the following mandate: “Tips or gratuities received  
27 by employees shall not be credited as being any part of or offset against the wage rates required by  
28 this section.” Nev. Const. art. XV, § 16(A).

1 have issued a W-2 for the previous year; employees for whom four quarters of payroll information  
2 is available but no W-2 has been issued; employees for whom less than one year of payroll is  
3 available; and new employees), N.A.C. 608.104(1) provides the method by which employers may  
4 determine allowable premium costs for purposes of paying employees at the reduced minimum  
5 wage level.

6 31. In the case of each class of employee, and each method of determining allowable  
7 premium cost levels, the Labor Commissioner has not required that premium cost limits reflect  
8 current wages of employees. There is no mechanism in regulation by which current pay forms the  
9 baseline from which the maximum health insurance benefit premium is set.

10 32. N.A.C. 608.104(1) does not require employers to maintain eligibility to pay  
11 workers at the reduced minimum wage level based on current income of their employees. Instead,  
12 N.A.C. 608.104(1) relies upon samples or extrapolations of employee income records for past  
13 periods, which—given the employer’s control of working hours and scheduling—may have no  
14 correlation with pay for any particular pay period.

15 33. Art. XV, § 16 does not contemplate any period during which an employee may be  
16 paid the reduced minimum wage rate without being provided health insurance benefits at a  
17 maximum premium cost for the employee and his or her dependents of 10% of gross income from  
18 the employer. N.A.C. 608.104(1), therefore, is in conflict with constitutional requirements, and is  
19 invalid.

20 **c) Unauthorized 6-Month Grace Period to Pay Reduced Minimum Wage**

21 34. The Labor Commissioner further reduced the effectiveness of Art. XV, § 16’s  
22 benefit to Nevada minimum wage employees by creating a 6-month grace period for employers to  
23 begin paying the upper-tier wage rate.

24 35. N.A.C. 608.108 states:

25 Minimum wage: Requirements for payment at higher  
26 rate; modification of term of waiting period.

27 If an employer does not offer a health insurance plan, *or the health*  
28 *insurance plan is not available or is not provided within 6 months*  
*of employment*, the employee must be paid at least the minimum  
wage set forth in paragraph (b) of subsection 1 of NAC 608.100



1 until such time as the employee becomes eligible for and is offered  
2 coverage under a health insurance plan that meets the requirements  
3 of NAC 608.102 or until such a health insurance plan becomes  
4 effective. The term of the waiting period may be modified in a bona  
fide collective bargaining agreement if the modification is explicitly  
set forth in such agreement in clear and unambiguous terms.  
(emphasis supplied).

5 36. Art. XV, § 16 states “Each employer shall pay a wage to each employee of not less  
6 than the hourly rates set forth in this section.”<sup>7</sup> While Art. XV, § 16 does permit exceptions  
7 regarding summer or trainee workers for a fixed and circumscribed period of time, nowhere does it  
8 authorize a 6-month regulatory abeyance from its mandate regarding minimum wage pay to  
9 employees generally.

10 37. N.A.C. 608.108 allows a period where employees are not paid at the rates set forth  
11 in the constitutional provision, without authorization or justification for such regulation, and is  
12 therefore invalid.

13 **Inadequate Enforcement and Compliance Regime of the Nevada Labor Commissioner**

14 38. The regulatory regime of the Nevada Labor Commissioner is inadequate to the task  
15 of ensuring minimum wage workers their rights under law and enforcing compliance by Nevada  
16 employers of minimum wage standards under Art. XV, § 16.

17 39. The Nevada Labor Commissioner maintains no database or list of employers who  
18 claim eligibility to pay employees at the reduced minimum wage rate.

19 40. The Nevada Labor Commissioner maintains no database and collects no data on  
20 health insurance plans or benefit contracts purportedly provided or offered or maintained by  
21 Nevada employers for the purposes of claiming eligibility to pay employees at the reduced  
22 minimum wage rate.

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23  
24 <sup>7</sup> By contrast, the 2006 Emergency Regulations had stated (*see* Exhibit 7):

25 Sec. 7 If an employer offers qualified health insurance, but for some reason  
26 the employee is not eligible to receive the coverage provided by the  
27 employer or there is a delay before the coverage can become effective,  
28 *the employee must be paid the upper tier wage until such time as the  
employer becomes eligible and is offered coverage or when the insurance  
becomes effective.* (emphasis supplied).

1           41.     The Nevada Labor Commissioner maintains no database or list of employees who  
2 have been or are currently paid at the reduced minimum wage rate.

3           42.     The Nevada Labor Commissioner, over the more than seven years the  
4 constitutional amendment has been effective, has never issued an opinion regarding whether any  
5 specific health benefit plan or contract qualifies an employer to pay employees at the reduced  
6 minimum wage rate.

7           43.     The Nevada Labor Commissioner, over the more than seven years the  
8 constitutional amendment has been effective, has never undertaken an enforcement action against  
9 an employer for paying an employee or employees at the reduced minimum wage rate in violation  
10 of Art. XV, § 16 or its associated regulations, N.A.C. 608.100 – 608.108.

11          44.     The Nevada Labor Commissioner never enacted regulations requiring ongoing  
12 access to comprehensive health insurance benefit plans as a condition for employer eligibility to  
13 pay employees at the reduced minimum wage rate. Therefore, an employee who declined benefits  
14 for any reason in 2008, for example—including because the premium level was unlawfully  
15 inflated by the improper calculation method established by the Labor Commissioner—is not  
16 provided the regulatory benefit of demanding such coverage now from his or her employer, and  
17 the employer continues to pay wages at the reduced minimum level.

18          45.     The Nevada Labor Commissioner never enacted regulations requiring recalculation  
19 of permissible health insurance premium levels for employees whose income from the employer  
20 changes over time due to fluctuations in hours worked.

21          46.     Even under the flawed regulations that have been in place for more than seven  
22 years, effectively there is no enforcement or regulatory regime functioning in any manner to  
23 ensure that employers who are paying workers at the reduced minimum wage rate are doing so  
24 lawfully.

### 25 **The Impact Upon Plaintiffs and Other Nevada Minimum Wage Workers**

26          47.     Upon information and belief, thousands of Nevada employees like Plaintiffs are  
27 being and have been paid at the reduced minimum wage rate, yet have no comprehensive health  
28 insurance benefits provided by their employer, no access to such benefits plans, or only have

1 access to plans that are not within guidelines mandated by Art. XV, § 16.

2 48. For more than seven years, since the approval and effective date of Art. XV, § 16  
3 of the Nevada Constitution, Nevada workers have logged, upon information and belief, hundreds  
4 of thousands of hours at the reduced minimum wage rate, unlawfully, due to regulations  
5 promulgated by the Nevada Labor Commissioner that are in conflict with constitutional mandates  
6 and, therefore, in excess of his proper authority. Plaintiffs themselves have worked many hundreds  
7 of hours at this wage level under such unlawful regulations.

8 49. The Labor Commissioner has not enforced the labor laws of the State of Nevada in  
9 any systematic fashion that would uphold the text and meaning of the 2006 constitutional  
10 amendment. Upon invalidation of the current regulations identified herein, the Court should  
11 exercise its extraordinary powers to direct the Labor Commissioner, via writ of mandamus, to  
12 enforce proper employer compliance with Art. XV, § 16 by all necessary means.

13 **FIRST CLAIM FOR RELIEF**

14 **Declaratory Relief: Invalidity of N.A.C. 608.100**

15 50. Plaintiffs repeat and re-allege each and every paragraph above as though they were  
16 fully set forth at length herein.

17 51. N.A.C. 608.100 does not require Nevada employers to provide qualifying health  
18 benefits in order to compensate workers at the reduced minimum wage rate, in contravention of  
19 Nev. Const. art. XV, § 16.

20 52. N.A.C. 608.100 violates constitutional provisions and/or exceeds the authority of  
21 the Labor Commissioner to promulgate and enforce.

22 53. It is necessary for the Court to determine the legal rights of Plaintiffs and  
23 Defendants regarding promulgation and enforcement of the subject regulations.

24 54. Plaintiffs have been forced to retain the services of an attorney to prosecute this  
25 action, and are entitled to their reasonable attorney fees and costs of the action per order of the  
26 Court.

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28 ///

1 **SECOND CLAIM FOR RELIEF**

2 **Declaratory Relief: Invalidity of N.A.C. 608.104**

3 55. Plaintiffs repeat and re-allege each and every paragraph above as though they were  
4 fully set forth at length herein.

5 56. N.A.C. 608.104 permits calculation of allowable health insurance benefit premium  
6 costs to minimum wage employees at a rate exceeding that permitted by Nev. Const. art. XV, §  
7 16.

8 57. N.A.C. 608.104 also establishes a method for calculation of employee gross income  
9 from the employer for purposes of computing maximum health insurance benefit premium costs  
10 that is in conflict with Nev. Const. art. XV, § 16.

11 58. N.A.C. 608.104 violates constitutional provisions and/or exceeds the authority of  
12 the Labor Commissioner to promulgate and enforce.

13 59. It is necessary for the Court to determine the legal rights of Plaintiffs and  
14 Defendants regarding promulgation and enforcement of the subject regulations.

15 60. Plaintiffs have been forced to retain the services of an attorney to prosecute this  
16 action, and are entitled to their reasonable attorney fees and costs of the action per order of the  
17 Court.

18 **THIRD CLAIM FOR RELIEF**

19 **Declaratory Relief: Invalidity of N.A.C. 608.108**

20 61. Plaintiffs repeat and re-allege each and every paragraph above as though they were  
21 fully set forth at length herein.

22 62. N.A.C. 608.108 permits a grace period of up to 6 months for provision of health  
23 insurance benefits, while permitting payment to employees the reduced minimum wage rate in the  
24 interim, in contravention of Nev. Const. art. XV, § 16.

25 63. N.A.C. 608.108 violates constitutional provisions and/or exceeds the authority of  
26 the Labor Commissioner to promulgate and enforce.

27 64. It is necessary for the Court to determine the legal rights of Plaintiffs and  
28 Defendants regarding promulgation and enforcement of the subject regulations.

1           65.     Plaintiffs have been forced to retain the services of an attorney to prosecute this  
2 action, and are entitled to their reasonable attorney fees and costs of the action per order of the  
3 Court.

4   **FOURTH CLAIM FOR RELIEF**

5   **Injunctive Relief**

6           66.     Plaintiffs repeat and re-allege each and every paragraph above as though they were  
7 fully set forth at length herein.

8           67.     The regulations here the subjects of Plaintiffs’ First through Third Claims for  
9 Relief, if continued to be enforced by the Labor Commissioner or the Nevada Department of  
10 Business & Industry, threaten ongoing violation and damage to Plaintiffs’ rights respecting the  
11 subject of the present action, and would tend to render judgment ineffectual.

12          68.     The Court, therefore, should immediately and permanently enjoin and prohibit  
13 Defendants from enforcing the subject regulations.

14          69.     Plaintiffs have been forced to retain the services of an attorney to prosecute this  
15 action, and are entitled to their reasonable attorney fees and costs of the action per order of the  
16 Court.

17   **FIFTH CLAIM FOR RELIEF**

18   **Extraordinary Relief: Writ of Mandamus**

19          70.     Plaintiffs repeat and re-allege each and every paragraph above as though they were  
20 fully set forth at length herein.

21          71.     Defendant the Nevada Labor Commissioner is compelled as a duty resulting from  
22 office, trust, or station to enforce Nevada’s labor laws.

23          72.     This duty requires that the Labor Commissioner promulgate lawful and appropriate  
24 regulations, and enact compliance safeguards and measures, sufficient to ensure that Nevada’s  
25 minimum wage employees receive the intended benefits of Art. XV, § 16 of the Nevada  
26 Constitution, and that employers comply on an ongoing basis with its mandates.

27          73.     The current regulatory regime implementing Art. XV, § 16 is inadequate and  
28 unlawful, and cannot fulfill the duties of the Labor Commissioner under law.

1 74. Mandamus is necessary to compel the Labor Commissioner to comply with the  
2 duties of office and take all necessary regulatory steps to enforce and to ensure proper compliance  
3 with Nev. Const. art. XV, § 16, per appropriate order of the Court, to effectuate the meaning and  
4 purpose of the Nevada Constitution, including immediate promulgation of appropriate emergency  
5 regulations and maintenance of a purposeful compliance regime.

6 75. Plaintiffs have no plain, speedy, and adequate remedy at law apart from mandamus  
7 to compel performance of Defendants' legal duties.

8 76. Plaintiffs have been forced to retain the services of an attorney to prosecute this  
9 action, and are entitled to their reasonable attorney fees and costs of the action per order of the  
10 Court.

11 **PRAYER FOR RELIEF**

12 **WHEREFORE**, Plaintiffs request that this Court:

- 13 A. Declare and adjudge N.A.C. 608.100, 608.104, and 608.108 invalid insofar as
- 14 indicated herein;
- 15 B. Issue a mandatory injunction against Defendants prohibiting them from enforcing
- 16 said regulations henceforth;
- 17 Issue a writ of mandamus compelling the labor Commissioner to perform the duties
- 18 of the office and take all necessary regulatory steps to enforce and to ensure proper
- 19 compliance with Nev. Const. art. XV, § 16, per appropriate order of the Court, to
- 20 effectuate the meaning and purpose of the Nevada Constitution, including
- 21 immediate promulgation of appropriate emergency regulations and maintenance of
- 22 a purposeful and effective compliance regime;
- 23 C. Grant all other relief of any variety deemed necessary and proper by the Court to
- 24 effectuate its judgment and remedy claims of Plaintiffs; and

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D. Award Plaintiffs their reasonable attorney fees and costs of suit.

DATED this 29th day of April, 2014

**WOLF, RIFKIN, SHAPIRO,  
SCHULMAN & RABKIN, LLP**

By: 

\_\_\_\_\_  
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- Exhibit 1 Nev. Const. art. XV, § 16 – 3 Pages
- Exhibit 2 N.A.C. 608.100 – 1 Page
- Exhibit 3 N.A.C. 608.102 – 1 Page
- Exhibit 4 N.A.C. 608.104 - 1 Page
- Exhibit 5 N.A.C. 608.106 – 1 Page
- Exhibit 6 N.A.C. 608.108 – 1 Page
- Exhibit 7 Proposed Emergency Regulations of the Labor Commissioner – 2 Pages