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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD REGION 32

MEI-GSR HOLDINGS, LLC d/b/a GRAND SIERRA RESORT & CASINO/HG STAFFING, LLC And TIFFANY SARGENT, an individual	Case No.: 32-CA-134057 **CHARGING PARTY, TIFFANY SARGENT'S STATEMENT IN SUPPORT OF THE DECISION OF THE ADMINISTRATIVE LAW JUDGE**

I. INTRODUCTION

Charging Party, Tiffany Sargent (hereinafter "Ms. Sargent') submits this statement in support of Administrative Law Judge Gerald M. Etchingham's, May 4, 2015 decision in the above captioned case. Ms. Sargent also submits this statement in support of Counsel for the General Counsel's Answer to Respondent's Exceptions to the Decision and Recommended Order of the Administrative Law Judge. Specifically, as the Counsel for the General Counsel points out the ALJ correctly based his decision that MEI-GSR Holding, LLC d/b/a Grand Sierra Resort & Casino/HG Staffing, LLC ("Respondent") violated Section 8(a)(1) of the Act because it discriminatorily barred Ms. Sargent from Respondent's premises in retaliation for her

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participation as a named plaintiff in a class action lawsuit on behalf of all similarly situated employees against their employer/Respondent for alleged violations of federal and state wage and hour laws.

II. STATEMENT

The ALJ based his decision on four findings of fact under the National Labor Relations Act ("Act'): (1) Ms. Sargent is an employee protected under the Act, (2) Ms. Sargent's filing of a class action lawsuit is a protected concerted activity under the Act, (3) Respondent barred Ms. Sargent from its premises "in retaliation for" and "for the sole reason" that she is a named plaintiff in a wage and hour lawsuit against Respondent, and (4) the letter barring Ms. Sargent from Respondent's premises independently violated Section 8(a)(1) of the Act. Ms. Sargent supports these findings and the ALJ's analysis as follows.

First, Ms. Sargent is an "employee" protected under the Act. The ALJ pointed out, "[t]he fact that Sargent was no longer employed by the Respondent when it issued the July 25, 2014 letter (barring Ms. Sargent form the GSR premises) does not strip Sargent of her Section 7 rights and protection under the Act." (*See MEI-GSR Holdings, LLC.*, 2015 WL 2063137 * 5 (May 4, 2015).) The ALJ reasoned that Ms. Sargent, as a "member[] of the working class generally" is an "employee" under the Board's "long held" definition and thus is protected under the Act even though she is a former employee of Respondent. (*Id.*) And, because Respondent's stated reason for barring only Ms. Sargent from the premises is because she is and remains a named plaintiff in a class action lawsuit against her former employer, she is protected by the Act.[1] Ms. Sargent is a former employee of Respondent and continues to be a member of the working class; she is thus protected by the Act.

[1] This litigation is ongoing. Ms. Sargent remains the lead named plaintiff in the collective action pursuant to the federal Fair Labor Standards Act ("FLSA") and true class action pursuant to the Federal Rules of Civil Procedure ("FRCP") Rule 23 against Respondent, MEI-GSR Holdings, LLC d/b/a Grand Sierra Resort & Casino/HG Staffing. Plaintiffs lawsuit was filed for alleged failure to pay wages for all hours worked, failure to pay overtime, failure to pay minimum wages pursuant to various federal and state laws, and age discrimination. *See* 3:13-CV-00453-LRH (D. Nev. 2013). Plaintiffs have been granted conditional certification pursuant to the FLSA. The FLSA uses an opt-in mechanism for employees to join the lawsuit, of which, 480 employees have opted-in to the lawsuit by filing consents to sue with the Court. Plaintiffs' Rule 23 certification motion is due before the Court September 4, 2015.

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Second, Ms. Sargent's filing of the class action lawsuit is a protected concerted activity under the Act. Specifically, "[c]oncerted activities include employee efforts to improve working conditions outside the immediate employer-employee relationship by joining together in concerted legal action regarding wages, hours, and working conditions." *MEI_GSR Holdings, LLC.,* 2015 WL 2063137 * 6. As indicated in footnote 1 of this statement, the class action Ms. Sargent is a lead plaintiff for is based on allegedly unlawful wage and hour policies, as well as discriminatory working conditions at Respondent's resort and casino. Thus, Ms. Sargent is engaged in the type of concerted activity—current and former employees joining together in a legal action regarding wages, hours, and to improve working conditions—protected by the Act.

Third, Respondent barred Ms. Sargent from its premises "in retaliation for" and "for the sole reason" that she is a named plaintiff in a wage and hour lawsuit against it. *MEI-GSR Holdings, LLC.,* 2015 WL 2063137 * 7. The ALJ pointed out, "there can be no doubt that Respondent's no-access rule is an unreasonable and discriminatory restriction on the access of Sargent as the only former employee or member of the general public prohibited from entering the facility solely because she participated in a protected concerted activity in the form of filing the Class Action Lawsuit." *Id*. Indeed, Respondent's only reason for barring Ms. Sargent from the premises is contained in a letter issued by Respondent, which states, "[i]n light of the on-going litigation, we think it appropriate that Ms. Sargent be barred from the premises, absent court order." (Jt. Exh. 3.)

Finally, the ALJ found that this letter barring Ms. Sargent from Respondent's premises independently violated Section 8(a)(1) of the Act. The ALJ's reasoning is critical to the spirit of the protections found in Section 8(a)(1) because Respondent's actions "would chill the exercise of other employees' Section 7 rights." *Id.* at 8. The ALJ points out, "[i]t does not take more than surface thinking to understand Respondent's July 25 trespass warning threat was unlawful to other litigants in the Class Action Lawsuit, Sargent herself, or other Respondent employees or former employees who might suffer from respondent's no access rule directed at them if someone filed an employment-related action against Respondent like Sargent." *Id*. Because the underlying litigation that prompted Ms. Sargent's bar from Respondent's premises is ongoing, it

is vitally important that Respondent be prevented from deterring any of its other employees from exercising their Section 7 rights. Upholding the ALJ's decision and requiring Respondent to abide by the Remedies and Order included with the ALJ's decision will help effectuate the purpose of the Act.

III. CONCLUSION

Based on the forgoing statement, Charging Party, Tiffany Sargent supports ALJ's decision in its entirety and respectfully requests that the Board uphold the decision and requires Respondent to comply with the Remedies and Order as set forth in Judge Etchingham's decision immediately.

Dated: July 31, 2015.

Respectfully Submitted,

THIERMAN LAW FIRM

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UNITED STATES OF AMERICA

BEFORE REGION 32 OF THE NATIONAL LABOR RELATIONS BOARD

MEI-GSR HOLDINGS, LLC D/B/A GRAND SIERRA RESORT & CASINO/HG STAFFING, LLC

and Case 32-CA-134057

TIFFANY SARGANT, an Individual

CERTIFICATE OF SERVICE

I certify that I am an employee of THIERMAN BUCK, LLP, and that on July 31, 2015, I caused to be served a true and correct copy of **CHARGING PARTY, TIFFANY SARGENT'S STATEMENT IN SUPPORT OF THE DECISION OF THE ADMINISTRATIVE LAW JUDGE** on all the parties to this action via email to the addressees published below:

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