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12 BEFORE THE OFFICE OF THE NEVADA LABOR COMMISSIONER

13 DANIEL BALDONADO, JOSEPH)
CESARZ, and QUYNGOC TANG,)
14 Individually and on behalf of)
all others similarly)
15 situated,)

16 Complainants,)

17 vs.)

18 WYNN LAS VEGAS, LLC.)

19 Respondent.)

COMPLAINT FOR VIOLATIONS
OF N.R.S. §§ 608.160,
608.100 and 613.120

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21 COMES NOW Complainants, DANIEL BALDONADO, JOSEPH CESARZ and
22 QUYNGOC TANG, Individually and on behalf of all others similarly
23 situated, by and through their attorneys, Leon Greenberg
24 Professional Corporation, The Thierman Law Firm, and Kemp & Kemp,
25 hereby present the following complaint to the Office of the Nevada
26 Labor Commissioner for a determination of such complaint and the
27 granting of the relief requested herein.

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FILED

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NEVADA
LABOR COMMISSIONER-LV

STATEMENT OF FACTS

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2 1. The Complainants are current employees of the Respondent
3 and at all times relevant to their complaint were employed as
4 casino, non-poker room, dealers at the Respondent's casino, known as
5 the Wynn Las Vegas (the "Wynn") and have been so employed
6 continuously since August of 2006.

7 2. There are numerous other persons who are similarly situated
8 to the Complainants in respect to the claims made by the
9 Complainants and presented in this Complaint as the Respondent, upon
10 information and belief, employs approximately 500 other persons as
11 casino, non-poker room, dealers at the Wynn, with all of such other
12 persons being subjected to the same conduct by the Respondent that
13 is complained of herein by the Complainants, such other persons, and
14 the Complainants, having suffered identical injuries (although
15 possibly in differing amounts) from such conduct. In addition, the
16 Complainants have no adverse interests in respect to such similarly
17 situated other persons and their successful prosecution of this
18 Complaint will completely vindicate the interests of such similarly
19 situated other persons and the Complainants.

20 3. The Complainants have retained highly experienced counsel
21 to prosecute this claim on their behalf and on behalf of the
22 interests of the similarly situated persons described in paragraph 2
23 aforesaid.

24 4. Commencing in September of 2006 the Complainants, and the
25 other persons similarly situated to the Complainants, have been
26 subjected to a "tip taking" policy by the Respondent. That policy
27 requires that tips given to the Complainants and all Wynn casino,
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1 non-poker room, dealers be pooled together and a portion of those
2 tips be given to other Wynn employees (also referred to herein as
3 the "Wynn Supervisors") who are not casino, non-poker room, dealers.

4 5. The Wynn Supervisors who are receiving a portion of the
5 tips given to the Complainants and those similarly situated do not
6 traditionally receive tips. It was the policy of the Wynn, prior to
7 September of 2006, to bar such Wynn Supervisors from receiving tips.
8 Such Wynn Supervisors also act in a supervisory capacity over the
9 Complainants and those similarly situated and are responsible for
10 disciplining or initiating discipline against the Complainants and
11 those similarly situated. Such Wynn Supervisors also receive
12 substantial wages, paid by the Respondent, that are in excess of
13 \$60,000 per year and the Respondent only pays the Complainants and
14 those similarly situated the legally required hourly minimum wage or
15 approximately \$1.00 an hour more than the hourly minimum wage or
16 less than 30% of the wages that it pays such Wynn Supervisors.

17 6. There is no interchangeability or overlap in job functions
18 or responsibilities between the Complainants and those similarly
19 situated and the Wynn Supervisors. The Complainants and those
20 similarly situated are responsible for dealing the casino games,
21 handling the customers' bets, determining wins and losses, and
22 serving the Wynn's customers solely in respect to the casino games
23 they are dealing. The Wynn Supervisors do not deal the casino
24 games, their primary function is to observe the play of the casino
25 games and root out cheats, they also make rulings on disputes
26 between players and dealers in respect to the play of the casino's
27 games, and the services that they provide to the casino's customers,

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1 such as obtaining markers or complimentary services from the casino,
2 are not handled by the Complainants and those similarly situated.

3 7. The Respondent instituted the tip taking policy set forth
4 in paragraph 4, aforesaid, because, owing to the generosity of their
5 customers, the Complainants and those similarly situated were
6 earning more from the tips given to them by their customers than the
7 Wynn Supervisors were earning from the wages paid by the Respondent.
8 As a result, the Respondent was encountering difficulty in
9 encouraging applicants to its Wynn Supervisor jobs and rather than
10 increase the wages it paid to the Wynn Supervisors it elected to
11 take a portion of the tips belonging to the Complainants and those
12 similarly situated and give them to the Wynn Supervisors for the
13 benefit of the Respondent.

14 8. There are additional facts upon which Complainants intend
15 to rely which shall be set forth in such further statement(s) as the
16 Office of the Nevada Labor Commissioner shall require or that shall
17 otherwise be presented by the Complainants at the hearing to be held
18 on this Complaint.

19 FIRST CLAIM UNDER N.R.S. § 608.160

20 9. Nevada's statutes, N.R.S. § 608.160(1)(a), provides, in
21 relevant part, that:

22 It is unlawful for any person to:

23 (a) Take all or part of any tips or gratuities bestowed
24 upon his employees.

25 10. That the provisions of N.R.S. § 608.160(1)(a) and its
26 prohibition are subject to a qualification, which is set forth in
27 N.R.S. § 608.160(2) and which states:

28 Nothing contained in this section shall be construed to

1 prevent such employees from entering into an agreement to divide
2 such tips or gratuities among themselves.

3 11. That the tip taking policy instituted by the Respondent
4 in September of 2006 and described, aforesaid, violates N.R.S §
5 608.160(1)(a) and is not subject to the qualification set forth in
6 N.R.S. § 608.160(2).

7 SECOND CLAIM UNDER N.R.S. § 613.120

8 12. Nevada's statutes, N.R.S. § 613.120, provides, in relevant
9 part, that:

10 1. It shall be unlawful for any manager,
11 superintendent, officer, agent, servant, foreman, shift
12 boss or other employee of any person or corporation,
13 charged or entrusted with the employment of any workmen or
14 laborers, or with the continuance of workmen or laborers
15 in employment, to demand or receive, either directly or
indirectly, from any workman or laborer, employed through
his agency or worked or continued in employment under his
direction or control, any fee, commission or gratuity of
any kind or nature as the price or condition of the
employment of any such workman or laborer, or as the price
or condition of his continuance in such employment.

16 2. Any such manager, superintendent, officer, agent,
17 servant, foreman, shift boss or other employee of any
18 person or corporation, charged or entrusted with the
19 employment of laborers or workmen for his principal, or
20 under whose direction or control such workmen and laborers
21 are engaged in work and labor for such principal, who
22 shall demand or receive, either directly or indirectly,
23 any fee, commission or gratuity of any kind or nature from
24 any workman or laborer employed by him or through his
25 agency or worked under his direction and control, either
26 as the price and condition of the employment of such
27 workman or laborer or as the price and condition of the
28 continuance of such workman or laborer in such employment,
shall be guilty of a misdemeanor.

13. That the tip taking policy instituted by the Respondent in
September of 2006 and described, aforesaid, violates N.R.S § 613.120
in that the Wynn Supervisors, as a result of that tip taking policy,
are receiving, directly or indirectly, the sort of payment
prohibited by N.R.S. § 613.120 and/or the Complainants and those

1 similarly situated as being required to make a payment prohibited by
2 such statute.

3 THIRD CLAIM UNDER N.R.S. § 608.100

4 14. Nevada's statutes, N.R.S. § 608.100(2), provides, in
5 relevant part, that:

6 It is unlawful for any employer to require an
7 employee to rebate, refund or return any part of the wage,
8 salary or compensation earned by and paid to the employee.

9 15. That the tip taking policy instituted by the Respondent in
10 September of 2006 and described, aforesaid, violates N.R.S §
11 608.100(2) in that the Respondent is requiring the Complainants and
12 those similarly situated to rebate, refund or return a portion of
13 their compensation to the Respondent in violation of N.R.S.
14 § 608.100(2).

15 REQUEST FOR RELIEF

16 16. Complainants seek the following relief:

17 (a) A determination that the Respondent has violated the
18 aforesaid Nevada labor law statutes;

19 (b) An Order and Judgment directing that the Respondent
20 make restitution to the Complainants and all of those similarly
21 situated of the tips Respondent has illegally taken from them under
22 the tip taking policy alleged herein along with an award of interest
23 on such monies;

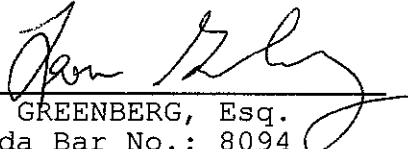
24 (c) An Order granting Complainants' counsel a fee in the
25 form of a portion of the common fund that is recovered on behalf of
26 the Complainants and those similarly situated as a result of the
27 efforts of such counsel in the successful prosecution of this
28 Complaint;

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(d) An award of such costs and attorneys fees against Respondent along with all other relief that is proper, allowable and just.

Dated this 13th day of October, 2008

Leon Greenberg Professional Corporation

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