EXHIBIT "5"

NEOJ
CATHERINE CORTEZ MASTO
Attorney General
DAVID J. POPE
Senior Deputy Attorney General
Nevada Bar No. 008617
BLAKE A. DOERR
Senior Deputy Attorney General
Nevada Bar No. 009001
VIVIENNE RAKOWSKY
Deputy Attorney General
Nevada Bar No. 009160
555 E. Washington Ave., Ste. 3900
Las Vegas, Nevada 89101
P: (702) 486-3095
F: (702) 486-3416
dpope@ag.nv.gov
bdoerr@ag.nv.gov
vrakowsky@ag.nv.gov
Attorneys for Nevada Department of Taxation

DISTRICT COURT

CLARK COUNTY, NEVADA

DÉJÀ VU SHOWGIRLS OF LAS VEGAS, L.L.C., d/b/a Déjà vu Showgirls, LITTLE DARLINGS OF LAS VEGAS, L.L.C., d/b/a Little Darlings, K-KEL, INC. d/b/a Spearmint Rhino Gentlemen's Club, OLYMPUS GARDEN, INC., d/b/a Olympic Garden, SHAC, L.L.C., d/b/a Sapphire, THE POWER COMPANY, INC., d/b/a Crazy Horse Too Gentlemen's Club, D. WESTWOOD, INC., d/b/a Treasures, and D.I. FOOD & BEVERAGE OF LAS VEGAS, L.L.C., d/b/a Scores,

Plaintiffs,

vs.

NEVADA DEPARTMENT OF TAXATION, NEVADA TAX COMMISSION, NEVADA STATE BOARD OF EXAMINERS, and MICHELLE JACOBS, in her official capacity only,

Defendants.

Case No. 06A533273
Dept. No. XI

Coordinated with:

Case No. 08A554970
Dept. No. XI

NOTICE OF ENTRY OF ORDER

...

...

...

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

K-KEL, INC., d/b/a *Spearmint Rhino Gentlemen's Club*; OLYMPUS GARDEN, INC., d/b/a *Olymic Garden*; SHAC, LLC, d/b/a *Sapphire*; THE POWER COMPANY, INC., d/b/a *Crazy Horse Too Gentlemen's Club*; D. WESTWOOD, INC., d/b/a *Treasures*; and D.I. FOOD & BEVERAGE OF LAS VEGAS, LLC, d/b/a *Scores*; Plaintiffs, v. NEVADA DEPARTMENT OF TAXATION; NEVADA TAX COMMISSION; and NEVADA STATE BOARD OF EXAMINERS, Defendants.	Case No. 08A554970 Dept. No. XI **NOTICE OF ENTRY OF ORDER**

PLEASE TAKE NOTICE that an Order was entered on 27th day of October, 2011, and e-filed on the 1st day of November, 2011, a copy of which is attached hereto.

DATED this 2nd day of November, 2011.

Respectfully submitted:

CATHERINE CORTEZ MASTO
Attorney General

By: /S/ BLAKE A. DOERR
DAVID J. POPE
Senior Deputy Attorney General
BLAKE A. DOERR
Senior Deputy Attorney General
VIVIENNE RAKOWSKY
Deputy Attorney General
Attorneys for Defendants

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

CERTIFICATE OF SERVICE

I, hereby certify that on the 2nd day of November, 2011, I served the **NOTICE OF ENTRY OF ORDER**, by causing to be delivered to the Department of General Services for mailing at Las Vegas, Nevada, a true copy thereof, addressed to:

William H. Brown, Esq.
Law Offices of William H. Brown, Ltd.
6029 S. Ft. Apache Rd.
Las Vegas, NV 89148
Attorneys for Plaintiffs

Bradley J. Shafer
Shafer & Associates, P.C.
3800 Capital City Blvd., Ste. 2
Lansing, MI 48906-2110
Attorneys for Plaintiffs

Mark E. Ferrario, Esq.
Greenberg Traurig, LLP
3773 Howard Hughes Pkwy., Ste. 400 N.
Las Vegas, NV 89169
Attorneys for Shac LLC, dba Sapphire (only)

/s/ TRACI PLOTNICK
An employee of Office of Attorney General

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

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CLERK OF THE COURT

ORDR
CATHERINE CORTEZ MASTO
Attorney General
DAVID J. POPE
Senior Deputy Attorney General
Nevada Bar No. 008617
BLAKE A. DOERR
Senior Deputy Attorney General
Nevada Bar No. 009001
VIVIENNE RAKOWSKY
Deputy Attorney General
Nevada Bar No. 009160
555 E. Washington Ave., Ste. 3900
Las Vegas, Nevada 89101
P: (702) 486-3095
F: (702) 486-3416
dpope@ag.nv.gov
bdoerr@ag.nv.gov
vrakowsky@ag.nv.gov
Attorneys for Nevada Department of Taxation

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

DISTRICT COURT

CLARK COUNTY, NEVADA

DÉJÀ VU SHOWGIRLS OF LAS VEGAS, L.L.C., d/b/a Déjà vu Showgirls, LITTLE DARLINGS OF LAS VEGAS, L.L.C., d/b/a Little Darlings, K-KEL, INC. d/b/a Spearmint Rhino Gentlemen's Club, OLYMPUS GARDEN, INC., d/b/a Olympic Garden, SHAC, L.L.C., d/b/a Sapphire, THE POWER COMPANY, INC., d/b/a Crazy Horse Too Gentlemen's Club, D. WESTWOOD, INC., d/b/a Treasures, and D.I. FOOD & BEVERAGE OF LAS VEGAS, L.L.C., d/b/a Scores, Plaintiffs, vs. NEVADA DEPARTMENT OF TAXATION, NEVADA TAX COMMISSION, NEVADA STATE BOARD OF EXAMINERS, and MICHELLE JACOBS, in her official capacity only, Defendants.	Case No. 06A533273 Dept. No. XI *Coordinated with:* Case No. 08A554970 Dept. No. XI **ORDER**

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. . .

. . .

K-KEL, INC., d/b/a *Spearmint Rhino Gentlemen's Club*; OLYMPUS GARDEN, INC., d/b/a *Olymic Garden*; SHAC, LLC, d/b/a *Sapphire*; THE POWER COMPANY, INC., d/b/a *Crazy Horse Too Gentlemen's Club*; D. WESTWOOD, INC., d/b/a *Treasures*; and D.I. FOOD & BEVERAGE OF LAS VEGAS, LLC, d/b/a *Scores*; Plaintiffs, v. NEVADA DEPARTMENT OF TAXATION; NEVADA TAX COMMISSION; and NEVADA STATE BOARD OF EXAMINERS, Defendants.	Case No. 08A554970 Dept. No. XI

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

ORDER

DEFENDANTS' RE-NOTICED MOTION FOR PARTIAL SUMMARY JUDGMENT ON THE PLAINTIFFS' CLAIMS FOR REFUND AND MOTION TO DISMISS THE AS APPLIED CHALLENGE TO THE LIVE ENTERTAINMENT TAX AND THE CLAIMS FOR DAMAGES PURSUANT TO 42 U.S.C. §1983 and DEFENDANTS' MOTION TO COMPEL came on for hearing on August 23, 2011;

David J. Pope, Senior Deputy Attorney General, Blake A. Doerr, Senior Deputy Attorney General, and Vivienne Rakowsky, Deputy Attorney General appeared on behalf of the Defendants; William J. Brown, Esq. and Bradley J. Shafer, Esq. appeared on behalf of the Plaintiffs; Mark E. Ferrario appeared on behalf of Plaintiff SHAC, LLC.

The Court having first requested that Defendants' motion for partial summary judgment and motion to dismiss be re-noticed and having considered the papers and pleadings regarding the re-noticed motion and the motion to compel, as well as the oral argument presented by all parties, hereby orders:

. . .

. . .

. . .

DEFENDANTS' RE-NOTICED MOTION FOR PARTIAL SUMMARY JUDGMENT ON THE PLAINTIFFS' CLAIMS FOR REFUND AND MOTION TO DISMISS THE AS APPLIED CHALLENGE TO THE LIVE ENTERTAINMENT TAX AND THE CLAIMS FOR DAMAGES PURSUANT TO 42 U.S.C. §1983 is granted in part and denied in part.

With regard to Defendants' motion to dismiss and/or motion for partial summary judgment in Case #08A554970 ("Case 2"), this Court finds that the Defendants timely raised the question regarding the procedural posture of the case and based on the Nevada Supreme Court's decision in *Southern California Edison*, 127 Nev.Adv.Op. 22 (2011) all claims are dismissed and Case 2 shall proceed as a petition for judicial review pursuant to Chapter 233B of the NRS. The Court having tolled the statute of limitations for thirty (30) days to allow Plaintiffs thirty (30) days to file a petition for judicial review, Plaintiffs shall have thirty (30) days from August 23, 2011 to file a petition for judicial review pursuant to NRS 233B.130, *et seq.*

With regard to Defendants' motion to dismiss and/or for partial summary judgment in Case #06A533273 ("Case 1"), the motion is granted and all other claims including the "as applied" challenge, the refund claims and the official capacity claim against Michelle Jacobs are dismissed and Case 1 shall proceed as a facial challenge for declaratory relief only. Briefs are to be filed within thirty (30) days.

With regard to Defendants' motion to dismiss and/or for partial summary judgment regarding all 42 U.S.C. §1983 damages claims, the motion is granted and all such damages claims are dismissed from Case 1 and Case 2.

With regard to Plaintiffs motion to remand Case 2 to the Nevada Tax Commission, the motion is denied.

. . .

. . .

. . .

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

With regard to DEFENDANTS' MOTION TO COMPEL, this Court finds that any further discovery would be inappropriate and is hereby ordered cancelled.

IT IS SO ORDERED.

DATED this 27th day of October, 2011.

DISTRICT COURT JUDGE

Respectfully submitted:

CATHERINE CORTEZ MASTO
Attorney General

By: _____
David J. Pope
Senior Deputy Attorney General

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

EXHIBIT "4"

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CLERK OF THE COURT

NEOJ
CATHERINE CORTEZ MASTO
Attorney General
DAVID J. POPE
Senior Deputy Attorney General
Nevada Bar No. 008617
BLAKE A. DOERR
Senior Deputy Attorney General
Nevada Bar No. 009001
VIVIENNE RAKOWSKY
Deputy Attorney General
Nevada Bar No. 009160
555 E. Washington Ave., Ste. 3900
Las Vegas, Nevada 89101
P: (702) 486-3095
F: (702) 486-3416
dpope@ag.nv.gov
bdoerr@ag.nv.gov
vrakowsky@ag.nv.gov
Attorneys for Nevada Department of Taxation

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

DISTRICT COURT

CLARK COUNTY, NEVADA

DÉJÀ VU SHOWGIRLS OF LAS VEGAS, L.L.C., d/b/a Déjà vu Showgirls, LITTLE DARLINGS OF LAS VEGAS, L.L.C., d/b/a Little Darlings, K-KEL, INC. d/b/a Spearmint Rhino Gentlemen's Club, OLYMPUS GARDEN, INC., d/b/a Olympic Garden, SHAC, L.L.C., d/b/a Sapphire, THE POWER COMPANY, INC., d/b/a Crazy Horse Too Gentlemen's Club, D. WESTWOOD, INC., d/b/a Treasures, and D.I. FOOD & BEVERAGE OF LAS VEGAS, L.L.C., d/b/a Scores, Plaintiffs, vs. NEVADA DEPARTMENT OF TAXATION, NEVADA TAX COMMISSION, NEVADA STATE BOARD OF EXAMINERS, and MICHELLE JACOBS, in her official capacity only, Defendants.	Case No. 06A533273 Dept. No. XI *Coordinated with:* Case No. 08A554970 Dept. No. XI **NOTICE OF ENTRY OF ORDER**

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. . .

. . .

K-KEL, INC., d/b/a *Spearmint Rhino Gentlemen's Club*; OLYMPUS GARDEN, INC., d/b/a *Olymic Garden*; SHAC, LLC, d/b/a *Sapphire*; THE POWER COMPANY, INC., d/b/a *Crazy Horse Too Gentlemen's Club*; D. WESTWOOD, INC., d/b/a *Treasures*; and D.I. FOOD & BEVERAGE OF LAS VEGAS, LLC, d/b/a *Scores*; Plaintiffs, v. NEVADA DEPARTMENT OF TAXATION; NEVADA TAX COMMISSION; and NEVADA STATE BOARD OF EXAMINERS, Defendants.	Case No. 08A554970 Dept. No. XI **NOTICE OF ENTRY OF ORDER**

PLEASE TAKE NOTICE that an Order was entered on 19th day of December, 2011, and e-filed on the 19th day of December, 2011, a copy of which is attached hereto as Exhibit "A".

DATED this 20th day of December, 2011.

Respectfully submitted:

CATHERINE CORTEZ MASTO
Attorney General

By: /S/ BLAKE A. DOERR
BLAKE A. DOERR
Senior Deputy Attorney General
Attorneys for Defendants

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

CERTIFICATE OF SERVICE

I, hereby certify that on the 20th day of December, 2011, I served the **NOTICE OF ENTRY OF ORDER**, by causing to be delivered to the Department of General Services for mailing at Las Vegas, Nevada, a true copy thereof, addressed to:

William H. Brown, Esq.
Law Offices of William H. Brown, Ltd.
6029 S. Ft. Apache Rd.
Las Vegas, NV 89148
Attorneys for Plaintiffs

Bradley J. Shafer
Shafer & Associates, P.C.
3800 Capital City Blvd., Ste. 2
Lansing, MI 48906-2110
Attorneys for Plaintiffs

Mark E. Ferrario, Esq.
Greenberg Traurig, LLP
3773 Howard Hughes Pkwy., Ste. 400 N.
Las Vegas, NV 89169
Attorneys for Shac LLC, dba Sapphire (only)

/s/ TRACI PLOTNICK
An employee of Office of Attorney General

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

EXHIBIT "A"

AMOR
CATHERINE CORTEZ MASTO
Attorney General
DAVID J. POPE
Senior Deputy Attorney General
Nevada Bar No. 008617
BLAKE A. DOERR
Senior Deputy Attorney General
Nevada Bar No. 009001
VIVIENNE RAKOWSKY
Deputy Attorney General
Nevada Bar No. 009160
555 E. Washington Ave., Ste. 3900
Las Vegas, Nevada 89101
P: (702) 486-3095
F: (702) 486-3416
dpope@ag.nv.gov
bdoerr@ag.nv.gov
vrakowsky@ag.nv.gov
Attorneys for Nevada Department of Taxation

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CLERK OF THE COURT

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

DISTRICT COURT

CLARK COUNTY, NEVADA

DÉJÀ VU SHOWGIRLS OF LAS VEGAS, L.L.C., d/b/a Déjà vu Showgirls, LITTLE DARLINGS OF LAS VEGAS, L.L.C., d/b/a Little Darlings, K-KEL, INC. d/b/a Spearmint Rhino Gentlemen's Club, OLYMPUS GARDEN, INC., d/b/a Olympic Garden, SHAC, L.L.C., d/b/a Sapphire, THE POWER COMPANY, INC., d/b/a Crazy Horse Too Gentlemen's Club, D. WESTWOOD, INC., d/b/a Treasures, and D.I. FOOD & BEVERAGE OF LAS VEGAS, L.L.C., d/b/a Scores,

Plaintiffs,

vs.

NEVADA DEPARTMENT OF TAXATION, NEVADA TAX COMMISSION, NEVADA STATE BOARD OF EXAMINERS, and MICHELLE JACOBS, in her official capacity only,

Defendants.

Case No. 06A533273
Dept. No. XI

Coordinated with:

Case No. 08A554970
Dept. No. XI

AMENDED ORDER

. . .

. . .

. . .

K-KEL, INC., d/b/a *Spearmint Rhino Gentlemen's Club*; OLYMPUS GARDEN, INC., d/b/a *Olymic Garden*; SHAC, LLC, d/b/a *Sapphire*; THE POWER COMPANY, INC., d/b/a *Crazy Horse Too Gentlemen's Club*; D. WESTWOOD, INC., d/b/a *Treasures*; and D.I. FOOD & BEVERAGE OF LAS VEGAS, LLC, d/b/a *Scores*; Plaintiffs, v. NEVADA DEPARTMENT OF TAXATION; NEVADA TAX COMMISSION; and NEVADA STATE BOARD OF EXAMINERS, Defendants.	Case No. 08A554970 Dept. No. XI

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

AMENDED ORDER

DEFENDANTS' RE-NOTICED MOTION FOR PARTIAL SUMMARY JUDGMENT ON THE PLAINTIFFS' CLAIMS FOR REFUND AND MOTION TO DISMISS THE AS APPLIED CHALLENGE TO THE LIVE ENTERTAINMENT TAX AND THE CLAIMS FOR DAMAGES PURSUANT TO 42 U.S.C. §1983 and DEFENDANTS' MOTION TO COMPEL came on for hearing on August 23, 2011;

David J. Pope, Senior Deputy Attorney General, Blake A. Doerr, Senior Deputy Attorney General, and Vivienne Rakowsky, Deputy Attorney General appeared on behalf of the Defendants; William J. Brown, Esq. and Bradley J. Shafer, Esq. appeared on behalf of the Plaintiffs; Mark E. Ferrario appeared on behalf of Plaintiff SHAC, LLC.

The Court having first requested that Defendants' motion for partial summary judgment and motion to dismiss be re-noticed and having considered the papers and pleadings regarding the re-noticed motion and the motion to compel, as well as the oral argument presented by all parties, hereby orders:

. . .

. . .

. . .

DEFENDANTS' RE-NOTICED MOTION FOR PARTIAL SUMMARY JUDGMENT ON THE PLAINTIFFS' CLAIMS FOR REFUND AND MOTION TO DISMISS THE AS APPLIED CHALLENGE TO THE LIVE ENTERTAINMENT TAX AND THE CLAIMS FOR DAMAGES PURSUANT TO 42 U.S.C. §1983 is granted in part and denied in part.

With regard to Defendants' motion to dismiss and/or motion for partial summary judgment in Case #08A554970 ("Case 2"), this Court finds that the Defendants timely raised the question regarding the procedural posture of the case and based on the Nevada Supreme Court's decision in *Southern California Edison*, 127 Nev.Adv.Op. 22 (2011) all claims are dismissed and Case 2 shall proceed as a petition for judicial review pursuant to Chapter 233B of the NRS. The Court having tolled the statute of limitations for thirty-three (33) days to allow Plaintiffs thirty-three (33) days to file a petition for judicial review, Plaintiffs shall have thirty-three (33) days from August 23, 2011 to file a petition for judicial review pursuant to NRS 233B.130, *et seq.*

With regard to Defendants' motion to dismiss and/or for partial summary judgment in Case #06A533273 ("Case 1"), the motion is granted and all other claims including the "as applied" challenge, the refund claims and the official capacity claim against Michelle Jacobs are dismissed and Case 1 shall proceed as a facial challenge for declaratory relief only. Briefs are to be filed within thirty (30) days.

With regard to Defendants' motion to dismiss and/or for partial summary judgment regarding all 42 U.S.C. §1983 damages claims, the motion is granted and all such damages claims are dismissed from Case 1 and Case 2.

With regard to Plaintiffs motion to remand Case 2 to the Nevada Tax Commission, the motion is denied.

. . .

. . .

. . .

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

With regard to DEFENDANTS' MOTION TO COMPEL, this Court finds that any further discovery would be inappropriate and is hereby ordered cancelled.

IT IS SO ORDERED.

DATED this 19th day of December, 2011.

DISTRICT COURT JUDGE

Dist. Judge Gonzalez

Respectfully submitted:

CATHERINE CORTEZ MASTO
Attorney General

By: Blake Doerr
BLAKE A. DOERR
Senior Deputy Attorney General

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

EXHIBIT "3"

ORIGINAL

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CLERK OF THE COURT

MOT
William H. Brown, Esq.
Nevada Bar No. 7623
LAW OFFICES OF WILLIAM H. BROWN, LTD.
6029 S. Ft. Apache Rd., Ste. 100
Las Vegas, Nevada 89148
Phone: 702.385.7280
Fax: 702.386.2699
Email: Will@whbesq.com

Bradley J. Shafer
Michigan Bar No. P26604*
SHAFER & ASSOCIATES, P.C.
3800 Capital City Blvd. Suite 2
Lansing, MI 48906-2110
*Admitted Pro Hac Vice.

Counsel for Plaintiffs

Mark E. Ferrario, ESQ.
Nevada Bar No. 1625
Brandon E. Roos, ESQ.
Nevada Bar No. 7888
GREENBERG TRAURIG, LLP
3773 Howard Hughes Parkway
Suite 400 North
Las Vegas, Nevada 89169
Telephone: (702) 792-3773
Facsimile: (702) 792-9002
Emails: FerrarioM@gtlaw.com
RoosB@gtlaw.com
Counsel for Sapphire

GREENBERG TRAURIG, LLP
3773 Howard Hughes Parkway
Suite 400 North
Las Vegas, Nevada 89169
Telephone: (702) 792-3773
Facsimile (702) 792-9002

FILE WITH MASTER CALENDAR

DISTRICT COURT

CLARK COUNTY, NEVADA

DÉJÀ VU SHOWGIRLS OF LAS VEGAS, LLC., d/b/a Déjà Vu Showgirls, LITTLE DARLINGS OF LAS VEGAS, LLC, dba Little Darlings, K-KEL, INC. dba Spearmint Rhino Gentlemen's Club, OLYMPUS GARDEN, INC., dba Olympic Garden, SHAC, LLC dba, Sapphire, THE POWER COMPANY, INC, dba Crazy Horse Too Gentlemen's Club, D. WETWOOD, INC., dba Treasures, and D.I. FOOD & BEVERAGE OF LAS VEGAS, LLC dba Scores Plaintiffs, — *vs.* —	Case No. 06A533273-C Dept. No. XI Coordinated with: Case No. 08A554970 Dept. No. XI **PLAINTIFFS SHAC, LLC d/b/a/ SAPPHIRE'S MOTION TO AMEND ORDER ENTERED NOVEMBER 1, 2011 ON ORDER SHORTENING TIME**

NEVADA DEPARTMENT OF TAXATION, NEVADA TAX COMMISSION, NEVADA STATE BOARD OF EXAMINERS, and MICHELLE JACOBS, in her official capacity only,

Defendants.

Case No. 08A554970
Dept. No. XI

K-KEL INC., dba/ Spearmint Rhino Gentlemen's Club; OLYMPUS GARDEN, INC., dba Olympic Garden SHAC, LLC dba Sapphire; THE POWER COMPANY, INC., dba Crazy Horse Too Gentlemen's Club; D.WESTWOOD, INC., dba Treasures; and D.I. FOOD & BEVERAGE OF LAS VEGAS, LLC dba Scores;

Plaintiffs,

– *vs.* –

NEVADA DEPARTMENT OF TAXATION; NEVADA TAX COMMISSION; and NEVADA STATE BOARD OF EXAMINERS,

Defendant.

GREENBERG TRAURIG, LLP
3773 Howard Hughes Parkway
Suite 400 North
Las Vegas, Nevada 89169
Telephone: (702) 792-3773
Facsimile: (702) 792-9002

COMES NOW, Plaintiffs, by and through counsel Mark E. Ferrario and Brandon E. Roos of the law firm of GREENBERG TRAURIG, LLP and William H. Brown of the Law Offices of William H. Brown, LTD., and hereby files its Motion to Amend Order dated November 1, 2011. This Motion is brought pursuant to NRCP 59(a) and NRCP 60(a) and (b), and is based upon the record and pleadings in this matter, the attached Memorandum of Points and Authorities, and such oral argument as the Court permits.

ORDER SHORTENING TIME

It appearing to the satisfaction of the Court, and good cause appearing therefore, IT IS SO ORDERED that the foregoing **MOTION TO AMEND ORDER ENTERED NOVEMBER 1, 2011 ON ORDER SHORTENING TIME** will be heard on the 29 day of November, 2011, at the hour of 9:00 a.m./p.m. before Department XI. ~~The Opposition, if any, to this Motion shall be filed by the _____ day of November, 2011 by the hour of _____ a.m./p.m.; and any Reply shall be due by the _____ day of November, 2011 by the hour of _____ a.m./p.m.~~ Both

the Opposition and the Reply shall be served to opposing counsel by facsimile or email transmission or by hand delivery, as well as by mail.

DATED this 16 day of November, 2011.

DISTRICT COURT JUDGE

DECLARATION OF WILLIAM H. BROWN, ESQ.
IN SUPPORT OF ORDER SHORTENING TIME

After being duly sworn, Affiant deposes and says as follows:

1. I declare under penalty of perjury that the foregoing is true and correct.

2. I am an attorney at law who is authorized to practice law in the State of Nevada and appear before this Court.

3. I am counsel for Plaintiffs. I make this affidavit in support of Plaintiffs **MOTION TO AMEND ORDER ENTERED NOVEMBER 1, 2011 ON ORDER SHORTENING TIME** .

4. I have personal knowledge of the facts stated herein, except for those facts stated to be based upon information and belief. If called to do so, I would truthfully and competently testify to the facts stated herein, except for those facts stated to be based upon information and belief.

5. In a hearing held August 23, 2011, this Court asserted that Plaintiffs would have 30 days to file an action for judicial review.

6. However, this Court did not enter the written order from this ruling until November 1, 2011.

7. Even though the order was entered November 1, 2011, it stated that the 30 day period began running from the date of the hearing. Thus, in an order dated November 1, 2011, the Court created a deadline that had already expired nearly six weeks prior to the entry of that order.

8. On September 14, 2011, I sent correspondence to opposing counsel indicating in part: "... I don't believe the 30-day time period for briefs or for filing the PJR action begins to run until the order is actually entered ...[.]"

9. Out of abundance of caution, and before having received a signed written order,

GREENBERG TRAURIG, LLP
3773 Howard Hughes Parkway
Suite 400 North
Las Vegas, Nevada 89169
Telephone: (702) 792-3773
Facsimile: (702) 792-9002

Plaintiffs attempted to e-file their Petition for Judicial Review on September 22, 2011.

10. Without comment or explanation, the document was rejected.

11. Thus, Plaintiffs filed their Petition for Judicial Review again the following day, on September 23, 2011, one day after the retroactively created deadline, and that matter is coordinated with this matter.

12. Defendants have filed a Motion to Dismiss the Petition, asserting, as relevant here, that the Petition was untimely based upon the Court's November 1, 2011 order.

13. A favorable ruling on Plaintiff's request herein would moot this aspect of Defendant's Motion to Dismiss.

14. If set in the ordinary course, with the briefing schedule established by the Nevada Rules of Civil Procedure, the Motion for to Amend would heard and decided following the hearing of Defendants' Motion for injunctive relief, currently set for December 16, 2011, resulting in a waste of judicial resources.

15. For the foregoing reasons, the undersigned respectfully requests that the Court issue an order allowing Defendants' instant motion to be heard on an order shortening time.

16. This motion is made in good faith and not for purposes of delay.

Executed on November 13, 2011

/s/ William H. Brown

William H. Brown, Esq.

GREENBERG TRAURIG, LLP
3773 Howard Hughes Parkway
Suite 400 North
Las Vegas, Nevada 89169
Telephone: (702) 792-3773
Facsimile: (702) 792-9002

GREENBERG TRAURIG, LLP
3773 Howard Hughes Parkway
Suite 400 North
Las Vegas, Nevada 89169
Telephone: (702) 792-3773
Facsimile: (702) 792-9002

MEMORANDUM OF AUTHORITIES

As ever, desperate to avoid resolution of the issues raised by Plaintiff's challenges to the Live Entertainment Tax, the Defendants are attempting to obtain dismissal of the Petition herein based on the failure to meet a deadline that had not yet been created at the time the deadline passed. This Court has already ruled that Plaintiffs were entitled to bring a Petition for Judicial Review, and adoption of a deadline that would retroactive deny Plaintiffs the relief granted cannot have been the Court's intent. Accordingly, the entry of the order establishing a deadline based on the date of the hearing, rather than the date of the order, constitutes an irregularity in the order that deprives Plaintiffs of a fair hearing of its petition, and/or must have been the result of either clerical error, or mistake or inadvertence. Pursuant to NRCP Rule 59(a) and 60(a) and (b), this Court has the authority to amend the Order. Accordingly, this Court should amend the Order dated November 1, 2011, to allow the filing of a Petition for Judicial Review through the period ending 30 days from the date of the written order. [1]

STATEMENT OF RELEVANT FACTS

In a hearing held August 23, 2011, this Court determined that while a Petition for Judicial Review was the appropriate means for Plaintiffs to seek their requested relief, the time period for the filing of such Petition should be equitably tolled. Plaintiffs were to have 30 days to file their Petition for Judicial Review. **See Ex. 1, Minutes**. However, this Court did not enter the written order from this ruling until November 1, 2011. **See. Ex. 2, Order**. That Order, drafted by Defendants, provided that "Plaintiffs shall have thirty (30) days from August 23, 2011 to fie a petition for judicial review pursuant to NRS 233B.130, et seq." Notably, prior to submitting the Order, counsel for Plaintiffs wrote to Defendants regarding the 30-day period and stated: "... I don't believe the 30-day time period for briefs or for filing the PJR action begins to run until the order is actually entered ...[.]" See Decl. of William H. Brown, Esq. ¶ 8. Nonetheless, Defendants submitted the Order with the retroactive deadline.

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[1] Alternatively, the Court may amend the deadline to consist of 31 days from the hearing, in order to effect the Court's intent that Plaintiffs be permitted their opportunity to bring a petition for judicial review.

At the time the order was signed, this Court was aware that Plaintiffs had filed a Petition for Judicial Review on September 23, 2011 — 31 days after August 23, 2011. Indeed, the case opened by the filing of that Petition was coordinated with this Matter. Moreover, the order signed by the Court, was *submitted* by the Defendants *after* the Petition for Judicial Review had been filed. Yet, the November 1, 2011 order, as written, retroactively renders the Petition for Judicial Review untimely.

The Order was entered on November 1, 2011. No notice of entry of that order has been filed. This Motion is timely filed pursuant to NRCP 6, 59(e) and 60(3).

ARGUMENT

This Court should grant the requested relief and amend the November 1, 2011 order. There can be no dispute that this Court did not intend, in the same November 1, 2011 to both grant an equitable tolling of a deadline, and to retroactively take the benefit of such tolling away. Accordingly, this Court should amend the November 1, 2011 order

Under NRCP 59(a), a court grant relief from an order where there has been an irregularity in such order so as to deprive the moving party of a fair hearing. Under NRCP 60(a), a court may correct clerical mistakes in a judgment arising from an oversight or omission at any time. Clerical errors the result of a "mistake or omission by a clerk, counsel, judge" that could "cannot reasonably be attributed to the exercise of judicial consideration or discretion." *Channel 13 of Las Vegas, Inc. v. Ettlinger*, 94 Nev. 578, 580, 583 P.2d 1085, 1086 (1978). Additionally, NRCP 60(b), as relevant here, the court may relieve a party from a final judgment for mistake, inadvertence, surprise, or neglect. A district court has wide discretion in deciding whether to grant or deny a motion to set aside a judgment under NRCP 50 or 60, and its determination will not be disturbed on appeal absent an abuse of discretion. *Stoecklein v. Johnson Electric, Inc.*, 109 Nev. 268, 271, 849 P.2d 305, 307 (1993).

Here, any of these rules may justify the amendment of the Order. There was no reasonable basis upon which to commence the timing of the deadline from the date of the hearing, as the order granting equitable tolling and setting the deadline would not be effective until it was issued in writing. To the contrary, "[t]he filing with the clerk of a judgment, signed by the judge, or by the clerk, as the case may be, constitutes the entry of such judgment, and *no judgment shall be effective*

GREENBERG TRAURIG, LLP
3773 Howard Hughes Parkway
Suite 400 North
Las Vegas, Nevada 89169
Telephone: (702) 792-3773
Facsimile: (702) 792-9002

for any purpose until the entry of the same, as hereinbefore provided." NRCP 58(c). A "district court's oral pronouncement from the bench, the clerk's minute order, and even an unfiled written order are ineffective for any purpose." *Rust v. Clark County School Dist.* 103 Nev. 686, 689, 747 P.2d 1380, 1382 (1987). Thus, there can not be an order that would cause the oral ruling to have been retroactively determined to have been binding.

The order as written, which both gives and retroactively takes away the equitable tolling of the deadline to file a Petition for Judicial Review, demonstrates an irregularity that would deprive Plaintiffs of a fair hearing. Additionally, since the creation of a deadline that has already passed defies logic, it appears obvious that the deadline was the result of mistake on the part of either Defendants' counsel[2] in submitting the order, or by the Court. For the same reasons, the retroactive deadline reflects mistake or inadvertence on the part of the parties for failing to perceive that the wording of the order would render the Court's grant of equitable tolling meaningless.

CONCLUSION

As there are multiple grounds under Rules 59 and 60 to grant the requested relief, Plaintiffs respectfully request the Court to amend the November 1, 2011 order to provide that a petition for judicial review may be filed with 30 days of the order, or in the alternative, within 31 days of the

GREENBERG TRAURIG, LLP
3773 Howard Hughes Parkway
Suite 400 North
Las Vegas, Nevada 89169
Telephone: (702) 792-3773
Facsimile: (702) 792-9002

[2] Plaintiffs give Defendants' counsel the benefit of the doubt in assuming there was no intent to deliberately proffer an order to the Court that deprived the Plaintiffs of the very relief the Court was granting in the order.

August 23, 2011 hearing.

DATED this ____ day of November, 2011.

GREENBERG TRAURIG, LLP

Mark E. Ferrario, ESQ. (NV Bar No. 1625)
Brandon E. Roos, ESQ. (NV Bar No. 7888)
3773 Howard Hughes Parkway
Suite 400 North
Las Vegas, Nevada 89169
Counsel for Defendant SHAC, LLC d/b/a Sapphire

TURCO & DRASKOVICH

/s/ William H. Brown
William H. Brown, Esq.
815 S. Casino Center Blvd.
Las Vegas, NV 89101

SHAFER & ASSOCIATES, P.C.

/s/ Bradley J. Shafer
Bradley J. Shafer
3800 Capital City Blvd. Suite 2
Lansing, MI 48906-2110
Counsel for Plaintiffs

GREENBERG TRAURIG, LLP
3773 Howard Hughes Parkway
Suite 400 North
Las Vegas, Nevada 89169
Telephone: (702) 792-3773
Facsimile: (702) 792-9002

CERTIFICATE OF SERVICE

I hereby certify that on November 15th, 2011, I served the foregoing **PLAINTIFFS SHAC, LLC d/b/a/ SAPPHIRE'S MOTION TO AMEND ORDER ENTERED NOVEMBER 1, 2011 ON ORDER SHORTENING TIME** upon:

Catherine Cortez Masto
David J. Pope
Blake A. Doerr
Vivienne Rakowsky
Attorney General
555 E. Washington Ave., Suite 3900
Las Vegas, NV 89101

by causing a full, true, and correct copy thereof to be sent by the following indicated method or methods, on the date set forth below:

☒ by mailing in a sealed, first class postage-prepaid envelop, addressed to the last-known office address of the attorney, and deposited with the United States Postal Service in Las Vegas, Nevada.

☐ by hand delivery.

☐ by sending via overnight courier in a sealed envelope.

☐ by faxing to the attorney at the fax number that is the last-known fax number.

☐ by electronic mail to the last known e-mail address.

S. Renee Hilton

AN EMPLOYEE OF GREENBERG TRAURIG, LLP

GREENBERG TRAURIG, LLP
3773 Howard Hughes Parkway
Suite 400 North
Las Vegas, Nevada 89169
Telephone: (702) 792-3773
Facsimile: (702) 792-9002

EXHIBIT 1

REGISTER OF ACTIONS
CASE NO. 06A533273

Little Darlings Of Las Vegas LLC, K-Kel Inc, et al vs Nevada Dept Of Taxation, Olympus Garden Inc, et al

Case Type: **Other Civil Filing**
Subtype: **Other Civil Matters**
Date Filed: **12/19/2006**
Location: **Department 11**
Conversion Case Number: **A533273**

PARTY INFORMATION

		Lead Attorneys
Defendant	**Jacobs, Michelle**	**Blake A. Doerr** *Retained* 702-486-3416(W)
Defendant	**Nevada Dept Of Taxation**	**Blake A. Doerr** *Retained* 702-486-3416(W)
Defendant	**Nevada State Board Of Examiners**	**Blake A. Doerr** *Retained* 702-486-3416(W)
Defendant	**Nevada Tax Commission**	**Blake A. Doerr** *Retained* 702-486-3416(W)
Doing Business As	**Crazy Horse Too Gentlemen's Club**	~~**Dominic P. Gentile**~~ ~~*Retained*~~ ~~7023860066(W)~~
Doing Business As	**Deja Vu Showgirls**	~~**William H. Brown**~~ ~~*Retained*~~ ~~702-474-4222(W)~~
Doing Business As	**Little Darlings**	
Doing Business As	**Olympic Garden**	~~**Dominic P. Gentile**~~ ~~*Retained*~~ ~~7023860066(W)~~
Doing	**Scores**	~~**Dominic P. Gentile**~~

Business As		~~Retained~~ ~~7023860866(W)~~
Doing Business As	Spearmint Rhino Gentlemen's Club	~~Dominic P. Gentile~~ ~~Retained~~ ~~7023860866(W)~~
Doing Business As	Treasures	~~Dominic P. Gentile~~ ~~Retained~~ ~~7023860866(W)~~
Plaintiff	D I Food And Beverage Of Las Vegas LLC	William H. Brown *Retained* 702-474-4222(W)
Plaintiff	D Westwood Inc	William H. Brown *Retained* 702-474-4222(W)
Plaintiff	Deja Vu Showgirls Of Las Vegas LLC	William H. Brown *Retained* 702-474-4222(W)
Plaintiff	K-Kel Inc	William H. Brown *Retained* 702-474-4222(W)
Plaintiff	Little Darlings Of Las Vegas LLC	William H. Brown *Retained* 702-474-4222(W)
Plaintiff	Olympus Garden Inc	William H. Brown *Retained* 702-474-4222(W)
Plaintiff	Power Company Inc	William H. Brown *Retained* 702-474-4222(W)
Plaintiff	Shac LLC *Doing Business As* Sapphire	William H. Brown *Retained* 702-474-4222(W)

EVENTS & ORDERS OF THE COURT

08/23/2011 **All Pending Motions** (9:00 AM) (Judicial Officer Gonzalez, Elizabeth)

Minutes

08/23/2011 9:00 AM

- NEVADA DEPARTMENT OF TAXATION'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON THE PLAINTIFFS' CLAIMS FOR REFUND AND MOTION TO DISMISS THE AS APPLIED CHALLENGE TO THE LIVE ENTERTAINMENT TAX AND THE CLAIMS FOR DAMAGES PURSUANT TO 42 U.S.C. 1983 AND TO DISMISS CASE 2 FOR FAILURE TO FILE A PETITION FOR JUDICIAL REVIEW OR ALTERNATIVELY FOR AN ORDER THAT CASE 2 PROCEED AS A JUDICIAL REVIEW...DEFENDANTS' MOTION TO COMPEL ON AN ORDER SHORTENING TIME AS TO MOTION FOR SUMMARY JUDGMENT: Arguments by counsel. Court stated its findings, and ORDERED, Motion is GRANTED as to the issue of sole remedy. Counsel has 30 days to file a Petition for Judicial Review and matter to be randomly reassigned. The Court will make no comment on the timeliness of the original filing and will make no comment on the extent of the record any other Judge may decide in making that decision. Opposition to be filed 30 days later. Counsel agreed to one-half day of Argument. Mr. Shafer requested the Court grant alternative relief and remand the case. COURT ORDERED, it was not inclined to do that. Upon inquiry of counsel, COURT ORDERED, further discovery is inappropriate. AS TO DEFTS' MOTION TO COMPEL: COURT ORDERED, it had previously DISMISSED the damages.

Parties Present
Return to Register of Actions

EXHIBIT 2

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CLERK OF THE COURT

ORDR
CATHERINE CORTEZ MASTO
Attorney General
DAVID J. POPE
Senior Deputy Attorney General
Nevada Bar No. 008617
BLAKE A. DOERR
Senior Deputy Attorney General
Nevada Bar No. 009001
VIVIENNE RAKOWSKY
Deputy Attorney General
Nevada Bar No. 009160
555 E. Washington Ave., Ste. 3900
Las Vegas, Nevada 89101
P: (702) 486-3095
F: (702) 486-3416
dpope@ag.nv.gov
bdoerr@ag.nv.gov
vrakowsky@ag.nv.gov
Attorneys for Nevada Department of Taxation

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

DISTRICT COURT

CLARK COUNTY, NEVADA

DÉJÀ VU SHOWGIRLS OF LAS VEGAS, L.L.C., d/b/a Déjà vu Showgirls, LITTLE DARLINGS OF LAS VEGAS, L.L.C., d/b/a Little Darlings, K-KEL, INC. d/b/a Spearmint Rhino Gentlemen's Club, OLYMPUS GARDEN, INC., d/b/a Olympic Garden, SHAC, L.L.C., d/b/a Sapphire, THE POWER COMPANY, INC., d/b/a Crazy Horse Too Gentlemen's Club, D. WESTWOOD, INC., d/b/a Treasures, and D.I. FOOD & BEVERAGE OF LAS VEGAS, L.L.C., d/b/a Scores,

Plaintiffs,

vs.

NEVADA DEPARTMENT OF TAXATION, NEVADA TAX COMMISSION, NEVADA STATE BOARD OF EXAMINERS, and MICHELLE JACOBS, in her official capacity only,

Defendants.

Case No. 06A533273
Dept. No. XI

Coordinated with:

Case No. 08A554970
Dept. No. XI

ORDER

. . .

. . .

. . .

K-KEL, INC., d/b/a *Spearmint Rhino Gentlemen's Club*; OLYMPUS GARDEN, INC., d/b/a *Olymic Garden*; SHAC, LLC, d/b/a *Sapphire*; THE POWER COMPANY, INC., d/b/a *Crazy Horse Too Gentlemen's Club*; D. WESTWOOD, INC., d/b/a *Treasures*; and D.I. FOOD & BEVERAGE OF LAS VEGAS, LLC, d/b/a *Scores*; Plaintiffs, v. NEVADA DEPARTMENT OF TAXATION; NEVADA TAX COMMISSION; and NEVADA STATE BOARD OF EXAMINERS, Defendants.	Case No. 08A554970 Dept. No. XI

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

ORDER

DEFENDANTS' RE-NOTICED MOTION FOR PARTIAL SUMMARY JUDGMENT ON THE PLAINTIFFS' CLAIMS FOR REFUND AND MOTION TO DISMISS THE AS APPLIED CHALLENGE TO THE LIVE ENTERTAINMENT TAX AND THE CLAIMS FOR DAMAGES PURSUANT TO 42 U.S.C. §1983 and DEFENDANTS' MOTION TO COMPEL came on for hearing on August 23, 2011;

David J. Pope, Senior Deputy Attorney General, Blake A. Doerr, Senior Deputy Attorney General, and Vivienne Rakowsky, Deputy Attorney General appeared on behalf of the Defendants; William J. Brown, Esq. and Bradley J. Shafer, Esq. appeared on behalf of the Plaintiffs; Mark E. Ferrario appeared on behalf of Plaintiff SHAC, LLC.

The Court having first requested that Defendants' motion for partial summary judgment and motion to dismiss be re-noticed and having considered the papers and pleadings regarding the re-noticed motion and the motion to compel, as well as the oral argument presented by all parties, hereby orders:

. . .

. . .

. . .

DEFENDANTS' RE-NOTICED MOTION FOR PARTIAL SUMMARY JUDGMENT ON THE PLAINTIFFS' CLAIMS FOR REFUND AND MOTION TO DISMISS THE AS APPLIED CHALLENGE TO THE LIVE ENTERTAINMENT TAX AND THE CLAIMS FOR DAMAGES PURSUANT TO 42 U.S.C. §1983 is granted in part and denied in part.

With regard to Defendants' motion to dismiss and/or motion for partial summary judgment in Case #08A554970 ("Case 2"), this Court finds that the Defendants timely raised the question regarding the procedural posture of the case and based on the Nevada Supreme Court's decision in *Southern California Edison*, 127 Nev.Adv.Op. 22 (2011) all claims are dismissed and Case 2 shall proceed as a petition for judicial review pursuant to Chapter 233B of the NRS. The Court having tolled the statute of limitations for thirty (30) days to allow Plaintiffs thirty (30) days to file a petition for judicial review, Plaintiffs shall have thirty (30) days from August 23, 2011 to file a petition for judicial review pursuant to NRS 233B.130, *et seq.*

With regard to Defendants' motion to dismiss and/or for partial summary judgment in Case #06A533273 ("Case 1"), the motion is granted and all other claims including the "as applied" challenge, the refund claims and the official capacity claim against Michelle Jacobs are dismissed and Case 1 shall proceed as a facial challenge for declaratory relief only. Briefs are to be filed within thirty (30) days.

With regard to Defendants' motion to dismiss and/or for partial summary judgment regarding all 42 U.S.C. §1983 damages claims, the motion is granted and all such damages claims are dismissed from Case 1 and Case 2.

With regard to Plaintiffs motion to remand Case 2 to the Nevada Tax Commission, the motion is denied.

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Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

With regard to DEFENDANTS' MOTION TO COMPEL, this Court finds that any further discovery would be inappropriate and is hereby ordered cancelled.

IT IS SO ORDERED.

DATED this 27th day of October, 2011.

DISTRICT COURT JUDGE

Respectfully submitted:

CATHERINE CORTEZ MASTO
Attorney General

By: _____
David J. Pope
Senior Deputy Attorney General

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

EXHIBIT "2"

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CLERK OF THE COURT

WILLIAM H. BROWN, ESQ.
Nevada Bar No.: 7623
LAW OFFICES OF
WILLIAM H. BROWN, LTD.
330 S. Third Street, Suite 860
Las Vegas, NV 89101
Tel. (702) 366-9311
Fax: (702) 366-9371
E-Mail: Will@WHBesq.com
Counsel for Plaintiffs

BRADLEY J. SHAFER, ESQ.
Michigan State Bar P36604
SHAFER & ASSOCIATES, P.C.
3800 Capital City Boulevard, Suite 2
Lansing, Michigan 48906
Telephone: (517) 886-6560
Facsimile: (517) 886-6565
Co-Counsel for Plaintiffs
Admitted Pro Hac Vice

DISTRICT COURT
CLARK COUNTY, NEVADA

DÉJÀ VU SHOWGIRLS OF LAS VEGAS, LLC, d/b/a *Déjà Vu Showgirls*, LITTLE DARLINGS OF LAS VEGAS, LLC, d/b/a *Little Darlings*, K-KEL, INC., d/b/a *Spearmint Rhino Gentlemen's Club*, OLYMPUS GARDEN, INC., d/b/a *Olympic Garden*, SHAC, LLC, d/b/a *Sapphire*, THE POWER COMPANY, INC., d/b/a *Crazy Horse Too Gentlemen's Club*, D. WESTWOOD, INC., d/b/a *Treasures*, and D.I. FOOD & BEVERAGE OF LAS VEGAS, LLC, d/b/a *Scores*

Plaintiffs,

vs.

NEVADA DEPARTMENT OF TAXATION NEVADA TAX COMMISSION, NEVADA STATE BOARD OF EXAMINERS, and MICHELLE JACOBS, in her official capacity only,

Defendants.

Case No. A554970
Dept. No. IX

FIRST AMENDED COMPLAINT
COMPLAINT

Arbitration exemption: NAR 3(A): Seeks Declaratory and Injunctive Relief

NOW COME Plaintiffs, K-Kel, Inc., d/b/a *Spearmint Rhino Gentlemen's Club*, Olympus Garden, Inc., d/b/a *Olympic Garden*, SHAC, L.L.C., d/b/a *Sapphire*, The Power Company, Inc., d/b/a *Crazy Horse Too Gentlemen's Club*, D. Westwood, Inc., d/b/a *Treasures*, and D.I. Food & Beverage of Las Vegas, LLC, d/b/a *Scores* (collectively referred to herein as the "Plaintiffs"), by and through their attorneys, and state for their first amended complaint pursuant to N.R.S. 368A.290(1)(b) and N.R.S. 368A.300(3)(b) against Defendant Nevada Department of Taxation, Defendant Nevada Tax Commission, and Defendant Nevada State Board of Examiners (collectively referred to herein as the "Defendants"), as follows:

INTRODUCTION

1. This is a civil action brought pursuant to N.R.S. 368A.290(1)(b) and N.R.S. 368A.300(3)(b), wherein Plaintiffs pray for a refund of the Live Entertainment Tax paid for the tax periods of January, February, March, and April, 2004, as well as for declaratory judgment, injunctive relief, and damages. Specifically, Plaintiffs seek to have this Court declare as unconstitutional on its face and as applied to these Plaintiffs, and enjoin, the Nevada Tax on Live Entertainment (referred to herein as the "Live Entertainment Tax," or simply the "Tax") as established by Title 32, Chapter 368A, of the Nevada Revised Statutes ("Chapter 368A"), and the regulations promulgated in furtherance thereof, as being an impermissible tax on constitutionally protected expression. A copy of the statute as originally enacted is attached hereto as Exhibit 1, and a copy of the current codified version of Chapter 368A is attached hereto as Exhibit 2, and both are incorporated herein by reference. A copy of the administrative regulations promulgated in furtherance of Chapter 368A is attached hereto as Exhibit 3, and is incorporated herein by reference.

JURISDICTION AND VENUE

2. This Court has jurisdiction and power to grant the refund requested pursuant to N.R.S. 368A.290 as well as jurisdiction and authority to grant the declaratory judgment prayed for

here pursuant to Rule 57 of the Nevada Rules of Civil Procedure and N.R.S. 33.040. Additionally, this Court has jurisdiction and power to grant the injunctive relief requested pursuant to Rule 65 of the Nevada Rules of Civil Procedure and N.R.S. § 33.010.

3. This suit is authorized by law to redress deprivations under color of state law of the rights, privileges, and immunities secured by Article I, §§ 9 and 10, and Article 10, §1, of the Nevada Constitution, as well as the First and Fourteenth Amendments to the United States Constitution, and for declaratory and injunctive relief.

4. Venue resides in this Court and is proper and appropriate as relevant proceeds were conducted, and the Plaintiffs maintain their principal place of business, within Clark County in the State of Nevada, pursuant to N.R.S. 368A.290(2).

PARTIES

5. Plaintiffs incorporate herein by reference each and every paragraph above as though fully set forth herein.

6. Plaintiff, K-Kel, Inc., d/b/a *Spearmint Rhino Gentlemen's Club* ("*Spearmint Rhino*") is a Corporation duly organized under the laws of the State of Nevada, and is authorized and qualified to do business in the State of Nevada.

7. Plaintiff, Olympus Garden, Inc., d/b/a *Olympic Garden* ("*Olympic*")is a Corporation duly organized under the laws of the State of Nevada, and is authorized and qualified to do business in the State of Nevada.

8. Plaintiff, SHAC, L.L.C., d/b/a *Sapphire* ("*Sapphire*") is a Limited Liability Company duly organized under the laws of the State of Nevada, and is authorized and qualified to do business in the State of Nevada.

9. Plaintiff, The Power Company, Inc., d/b/a *Crazy Horse Too Gentlemen's Club* ("*Crazy Horse*") is a Corporation duly organized under the laws of the State of Nevada, and is authorized and qualified to do business in the State of Nevada.

10. Plaintiff, D. Westwood, Inc., d/b/a *Treasures* ("*Treasures*") is a Corporation duly organized under the laws of the State of Nevada, and is authorized and qualified to do business in the State of Nevada.

11. Plaintiff, D.I. Food & Beverage of Las Vegas, LLC, d/b/a *Scores* ("*Scores*") is a Corporation duly organized under the laws of the State of Nevada, and is authorized and qualified to do business in the State of Nevada.

12. None of the Plaintiffs operate their facilities as licensed gaming establishments under the laws of the State of Nevada.

13. Defendant Nevada Department of Taxation (hereinafter sometimes referred to simply as the "Department") is a governmental entity created under the laws of the State of Nevada, which administers and enforces the statutory provisions challenged herein, and collects the Live Entertainment Tax, for all non-gaming licensed taxpayers. It is a required Defendant in this action pursuant to N.R.S. 368A.290(1)(b) and N.R.S. 368A.300(3)(b).

14. Defendant Nevada Tax Commission (hereinafter sometimes referred to simply as the "Commission") is a governmental entity created under the laws of the State of Nevada, which administers and enforces some of the statutory provisions challenged herein, and is authorized to consider and rule upon, among other things, appeals of claims under Chapter 368A. It is named as a Defendant here as it rendered the decision which the Plaintiffs Challenge by way of this action.

15. Defendant, Nevada State Board of Examiners (hereinafter sometimes referred to simply as the "Board of Examiners") is a governmental entity created under the laws of the State of Nevada, and consists of the governor, the secretary of state, and the attorney general. Pursuant to N.R.S. § 368A.250, the Board of Examiners is authorized to approve, among other things, refunds with regard to any erroneously or illegally collected or computed tax under Chapter 368A, which the Plaintiffs seek here.

STATEMENT OF FACTS

16. Plaintiffs incorporate herein by reference each and every paragraph above as though fully set forth herein.

17. On or about July 22, 2003, the State of Nevada enacted, pursuant to the adoption of Chapter 368A, a Tax on Live Entertainment, which imposes, subject to numerous exceptions, an excise tax on admission to any facility within the State of Nevada that provides defined "live entertainment."

18. Shortly after the enactment of Chapter 368A, numerous and various administrative regulations were promulgated regarding the administration and enforcement of Chapter 38A. These regulations, which set forth definitions, applicability and methods of calculating the Live Entertainment Tax, and procedures, can be found at NAC 368A.010 through NAC 368.540, and are attached hereto as Exhibit 3. As utilized herein, the phrase "Chapter 368A" encompasses both the statute and these regulations promulgated in furtherance thereof attached as Exhibit 3.

19. Pursuant to N.R.S. § 368A.140, the Defendant Nevada Department of Taxation is obligated to collect the tax imposed by Chapter 368A from taxpayers who/which are not licensed gaming establishments, and is also obligated to adopt such regulations as are necessary to carry out those functions.

20. Upon information and belief, one of the primary purposes for the enactment of Chapter 368A was to impose an excise tax upon those establishments in the State of Nevada that provide live so-called "adult" entertainment in the form of exotic dancing, "topless" dancing, and fully nude performance dance entertainment.

21. As originally enacted, the tax imposed by Chapter 368A was not applicable, under the terms of N.R.S. § 368A.200(5)(d), to live entertainment that is not provided at a licensed gaming establishment if the facility in which the live entertainment is provided had a maximum

occupancy of less than 300 persons.

22. On June 17, 2005, Chapter 368A was amended by Assembly Bill No. 554, which - - among other things - - reduced the scope of the exception as contained in N.R.S. § 368A.200(5)(d) from a maximum seating capacity limitation of 300 to 200. Upon information and belief, the purpose of the July 17, 2005, amendments to Chapter 368A, and in particular those to N.R.S. § 368A.200(5)(d), was to specifically extend the tax obligation as contained in Chapter 368A to "adult" entertainment establishments which were not then subject to the Live Entertainment Tax, including a number of the Plaintiffs in this action. The same amendments changed the language of some provisions of Chapter 368A. Unless stated otherwise, all references herein to the statutory provisions of Chapter 368A are to the current codified version attached hereto as Exhibit 2.

23. *Spearmint Rhino* operates a commercial establishment at 3344 S. Highland Avenue, Las Vegas, Nevada, 89109, whereupon live performance dance entertainment is presented to the consenting adult public. The Defendants have taken the position that *Spearmint Rhino* is subject to Chapter 368A, as amended, and have required *Spearmint Rhino* to pay the Live Entertainment Tax as mandated therein.

24. *Olympic Garden* operates a commercial establishment at 1531 S. Las Vegas Boulevard, Las Vegas, Nevada, 89104, whereupon live performance dance entertainment is presented to the consenting adult public. The Defendants have taken the position that *Olympic Garden* is subject to Chapter 368A, as amended, and have required *Olympic Garden* to pay the Live Entertainment Tax as mandated therein.

25. *Sapphire* operates a commercial establishment at 3025 Industrial Road, Las Vegas, Nevada, 89109, whereupon live performance dance entertainment is presented to the consenting adult public. The Defendants have taken the position that *Sapphire* is subject to Chapter 368A, as amended, and have required *Sapphire* to pay the Live Entertainment Tax as mandated therein.

26. *Crazy Horse* operates a commercial establishment at 2476 Industrial Road, Las Vegas, Nevada, 89102, whereupon live performance dance entertainment is presented to the consenting adult public. The Defendants have taken the position that *Crazy Horse* is subject to Chapter 368A, as amended, and have required *Crazy Horse* to pay the Live Entertainment Tax as mandated therein.

27. *Treasures* operates a commercial establishment at 2801 Westwood, Las Vegas, Nevada, 89109, whereupon live performance dance entertainment is presented to the consenting adult public. The Defendants have taken the position that *Treasures* is subject to Chapter 368A, as amended, and have required *Treasures* to pay the Live Entertainment Tax as mandated therein.

28. *Scores* operates a commercial establishment at 3355 South Procyon Avenue, Las Vegas, Nevada, 89102, whereupon live performance dance entertainment is presented to the consenting adult public. The Defendants have taken the position that *Scores* is subject to Chapter 368A, as amended, and have required *Scores* to pay the Live Entertainment Tax as mandated therein.

29. All of the facilities operated by the Plaintiffs have maximum occupancies of less than 7,500 persons.

30. The Plaintiffs all present upon their business premises some form of live "exotic" performance dance entertainment. Some of the Plaintiffs present live clothed and "topless" female performance dance entertainment, and others of the Plaintiffs present live clothed, "topless" and fully nude female performance dance entertainment; all of which is non-obscene. The non-obscene performance dance entertainment presented on the establishments operated by the Plaintiffs constitutes speech and expression, as well as a form of assembly, protected by not only Article I, §§ 9 and 10, of the Nevada Constitution, but by the First and Fourteenth Amendments to the United States Constitution as well.

31. Chapter 368A is a lengthy and complex statute containing numerous and various provisions

affecting the constitutionally protected conduct of the Plaintiffs, their agents, representatives, entertainers and employees, as well as those individuals from the consenting adult audience who would seek to view the entertainment provided by the Plaintiffs. Plaintiffs assert the constitutional rights of their patrons as well in this action.

32. The Defendants take the position that pursuant to the definitions set forth in Chapter 368A, Plaintiffs are obligated to pay the Live Entertainment Tax since their establishments fall within the definition of "live entertainment" found in N.R.S. § 368A.090, and since they are not otherwise exempted from having to pay that tax.

33. Plaintiffs contend that the Live Entertainment Tax as mandated by Chapter 368A is both illegal and unconstitutional, and for those reasons they do not desire to pay those taxes. Nevertheless, under threat of criminal prosecution and/or the imposition of fines and other penalties against them, Plaintiffs have, beginning at various times, paid the Live Entertainment Tax mandated by Chapter 368A.

34. Pursuant to N.R.S. § 368A.260, Plaintiffs each filed timely requests for refunds of the Live Entertainment Tax they had paid, together with claims for the statutory interest provided for by N.R.S. § 368A.270 and § 368A.310.

35. To date, each request for refund has been denied by the Defendant Nevada Department of Taxation, pursuant to a one page letter. Each letter informed the Plaintiffs that the denial may be appealed to Defendant Nevada Tax Commission pursuant to N.R.S. § 360.245 by filing a written notice of appeal with the Defendant Department within thirty days of the service of the denial letter.

36. Each Plaintiff has filed a timely written notice of appeal with the Defendant Department of Taxation. After the Plaintiffs and the Defendant Department had an opportunity to submit briefing to the Defendant Nevada Tax Commission, a hearing was scheduled on July 9, 2007, before the Defendant Commission to hear the appeal of the denials of the requests for refunds

of the Live Entertainment Tax paid by the Plaintiffs for the tax periods of January, February, March, and April, 2004.

37. After the hearing commenced on July 9, 2007, the Defendant Commission voted to continue the hearing until August 6, 2007, in order to give the parties an opportunity to submit supplemental materials and information.

38. The Defendant Commission, after considering the testimony, argument, and materials submitted on July 9, 2007, and on August 6, 2007, issued a written decision denying Plaintiffs' appeals on October 12, 2007. That ruling is attached hereto as Exhibit 4.

39. Pursuant to N.R.S. § 368A.290, "[w]ithin 90 days after a final decision upon a claim filed pursuant to this chapter is rendered" by the Commission, "the claimant may bring an action against the Department on the grounds set forth in the claim." It is pursuant to this provision that Plaintiffs have filed this action.

40. Pursuant to N.R.S. 368A.300(3)(b), if the claimant is aggrieved by the decision of the "Nevada Tax Commission rendered on appeal, the claimant may, within 90 days after the decision is rendered, bring an action against the Board on the grounds set forth in the claim for the recovery of the whole or any part of the amount claimed as an overpayment."

41. Plaintiffs further filed this action in order to protect their fundamental constitutional rights from infringement by the enforcement of Chapter 368A, which they contend is unconstitutional on its face as it: 1) imposes a tax directly on "live entertainment;" an activity which is protected by Article I, §§ 9 and 10 of the Nevada Constitution as well as the First and Fourteenth to the United States Constitution, therefore constituting a direct tax on "First Amendment" freedoms and in particular on live exotic performance dance entertainment; 2) applies only to a small number and category of speakers; 3) it is in violation of Article 10, §1 of the Nevada Constitution; and 4) it is an impermissible discriminatory tax which discriminates based upon the content of speech and expression. In addition, N.R.S.

368A.200(5)(a) precludes the taxation of live entertainment that "the State is prohibited from taxing under the Constitution, laws or treaties of the United States or the Nevada Constitution." Because the Plaintiffs cannot be so taxed under either the United States or Nevada Constitutions, Plaintiffs are exempt from having to pay the Live Entertainment tax pursuant to this exemption. These are the grounds which Plaintiffs set forth in their requests for refunds.

EXCERPTS OF THE TAX ON LIVE ENTERTAINMENT STATUTE

42. Plaintiffs incorporate herein by reference each and every paragraph above as though fully set forth herein.

43. Chapter 368A states, at N.R.S. § 368A.200(1), that "[e]xcept as otherwise provided in this section, there is hereby imposed an excise tax on admission to any facility in this State where live entertainment is provided." If the live entertainment is provided at a facility with a maximum occupancy of less than 7,500, the rate of tax is 10% of the admission charge to the facility plus 10% of any amounts paid for food, refreshments and merchandise purchased at the facility. If the live entertainment is provided at a facility with a maximum occupancy of at least 7,500, the rate of the tax is 5% of the admission charged to the facility.

44. Chapter 368A defines an "[a]dmission charge" in N.R.S. § 368A.020 as:

> [T]he total amount, expressed in terms of money, of consideration paid for the right or privilege to have access to a facility where live entertainment is provided. The term includes, without limitation, an entertainment fee, a cover charge, a table reservation fee, or a required minimum purchase of food, refreshments or merchandise.

45. Chapter 368A defines a "facility" in N.R.S. § 368A.060 as:

> "(a) Any area or premises where live entertainment is provided and for which consideration is collected for the right or privilege of entering that area or those premises if the live entertainment is provided at:
>
> (1) An establishment that is not a licensed gaming establishment; or
> (2) A licensed gaming establishment that is licensed for less than 51 slot machines, less than six games, or any combination of slot machines and games within those respective limits.

(b) Any area or premises where live entertainment is provided if the live entertainment is provided at any other licensed gaming establishment."

46. "[L]ive entertainment" is defined in N.R.S. § 368A.090 as:

> "[A]ny activity provided for pleasure, enjoyment, recreation, relaxation, diversion or other similar purpose by a person or persons who are physically present when providing that activity to a patron or group of patrons who are physically present."

This definition includes, among other activities, "[d]ancing performed by one or more professional or amateur dancers."

47. Chapter 368A states, at N.R.S. § 368A.140(2), that the Defendant Department shall collect the Live Entertainment Tax from non-gaming licensed taxpayers, such as is the case of the Plaintiffs here, and is empowered to "adopt such regulations are necessary to carry out" that collection.

48. N.R.S. § 368A.090(b) specifically excludes certain types of entertainment from the definition of "live entertainment," such as: instrumental or vocal music if it "does not routinely rise to the volume that interferes with casual conversation" and would not "generally cause patrons to watch as well as listen"; occasional performances by employees who have primary job functions other than performing; performances in certain licensed gaming establishments "as long as performers stroll continuously throughout the facility" or if they "enhance the theme of the establishment or attract patrons to the areas of the performances"; entertainment that is provided by patrons; animal behaviors for the purpose of education and scientific research; and occasional dancing which, among other things, "primarily serves to provide ambience to the facility."

49. Pursuant to N.R.S. § 368A.200(5), the tax imposed by Chapter 368 is not applicable to a variety of circumstances. Some of the exemptions include live entertainment that the State is prohibited from taxing under the Constitution, laws or treaties of the United States or Nevada Constitution; live entertainment that is not provided at a licensed gaming establishment if the

facility has a maximum seating capacity of less than 200; live entertainment that is provided at a licensed gaming establishment that is licensed for less than 51 slot machines, less than six games, or any combination of slot machines and games within those limits, if the facility has a maximum seating capacity of less than 200; merchandise sold outside the facility in which the live entertainment is provided, unless the purchase of the merchandise entitles the purchaser to admission to the entertainment; and music performed by musicians who move constantly through the audience if no other form of live entertainment is afforded to the patrons.

50. Overpayments and refunds of the Live Entertainment Tax are addressed in N.R.S. § 368A.250, which provides that if the Defendant Department determines that any tax has been "erroneously or illegally collected or computed," the Defendant Department must record the fact and certify the amount owed and from whom it was collected to Defendant Board of Examiners. If the amount is approved by the Defendant Board of Examiners, it is then credited on any amount that is due from that person under Chapter 368A, with the balance refunded to that person.

51. Chapter 368A provides, at N.R.S. § 368A.290(1), that the Defendant Nevada Tax Commission is authorized to render a final decision upon claims for refunds under that chapter. Further, at N.R.S. § 368A.300(2), Chapter 368A provides that a claim thereunder that is disallowed by the Defendant Department may be appealed to the Defendant Commission.

COUNT I - DECLARATORY RELIEF

52. Plaintiffs incorporate herein by reference each and every paragraph above as though fully set forth herein.

53. Chapter 368A is unconstitutional on its face and as applied to the Plaintiffs under Article I, §§ 9 and 10, and Article 10, §1, of the Nevada Constitution as well as the First and Fourteenth Amendments to the United States Constitution, for numerous and various reasons, including, but not limited to, the fact that:

(a) It effectuates an impermissible prior restraint on speech and expression;

(b) It fails to further any important, substantial or compelling governmental interest;

(c) It permits restrictions on speech and expression that are greater than are essential to further any asserted governmental interests;

(d) It permits restrictions on speech and expression that are not the least restrictive means available;

(e) It contains criteria that are both arbitrary and capricious and which are not supported by any legislative record;

(f) It contains numerous and various terms and phrases which are impermissibly vague, and ambiguous, and the applicable definitions as contained therein are impermissibly and substantially overbroad judged in relation to their plainly legitimate sweep;

(g) It imbues the Defendants with unbridled discretion;

(h) It impermissibly singles out constitutionally protected businesses for certain regulations;

(i) It violates the procedural and substantive due process rights of the Plaintiffs and others, including but not limited to the customers and patrons who frequent Plaintiffs' establishments;

(j) It violates the privacy rights of the customers and patrons who frequent Plaintiffs' establishments;

(k) It violates Plaintiffs' equal protection rights in that it unconstitutionally discriminates against expressive businesses based upon the content of speech, and it further creates and permits uneven treatment in the exercise of constitutionally protected rights in the State of Nevada, and therefore permits differing treatment amongst individuals who desire to engage in constitutionally protected speech;

(l) It is an impermissible direct tax on constitutionally protected freedoms;

(m) It is a discriminatory tax that only impacts upon a small number and category of speakers;

(n) It is an impermissible discriminatory tax that discriminates based upon the content of speech and expression;

(o) It impermissibly requires a person or business to pay for the right to exercise a right guaranteed by the Nevada and United States Constitutions;

(p) It was enacted upon an insufficient record and is not justified on any factual or legal ground;

(q) It violates the separation of powers doctrine; and

(r) The Nevada Tax Commission violated Plaintiffs' procedural due process rights by failing to provide a fair and impartial hearing.

54. Because the Live Entertainment Tax is an impermissible and/or unconstitutional tax upon in violation of Article I, §§ 9 and 10, and Article 10, §1, of the Nevada Constitution as well as the First and Fourteenth Amendments to the United States Constitution, Plaintiffs are not subject to payment of the Live Entertainment Tax pursuant to the provisions of N.R.S. § 368A.200(5)(a).

55. This Court has the authority to declare the rights and other relations of the Plaintiffs and of the Defendants, and should do so here.

56. Because of the questioned constitutionality of the Live Entertainment Tax as required by Chapter 368A, and because of the potential application of the exemption as contained in N.R.S. § 368A.200(5)(a) in regard to the Live Entertainment Tax being applied to these Plaintiffs, Plaintiffs are entitled to a declaration by this Court in regard to the constitutionality of Chapter 368A as well as the applicability of the exemption as contained in N.R.S. § 368A.200(5)(a).

57. For the reasons as set forth above, this Court should declare that the Live Entertainment Tax as mandated by Chapter 368A is unconstitutional on its face and as applied to the Plaintiffs. Also for the reasons as set forth above, this Court should declare that Plaintiffs need not pay the Live Entertainment Tax as required by Chapter 368A both as a result of the constitutional violations as enumerated above as well as the specific exemption as set forth in N.R.S. § 368A.200(5)(a). In addition, this Court should declare that the Defendants have violated the constitutional rights of the Plaintiffs by requiring them to have paid the Live Entertainment Tax for the tax period of January 2004 through April 2004, which are at issue in this action.

COUNT II - REQUEST FOR REFUND

58. Plaintiffs incorporate herein by reference each and every paragraph above as though fully set

forth herein.

59. Plaintiffs should not have been required to pay the Live Entertainment Tax as mandated by Chapter 368A both because it violates Article I, §§ 9 and 10, and Article 10, §1, of the Nevada Constitution as well as the First and Fourteenth Amendments to the United States Constitution and because Plaintiffs are exempt from paying the Live Entertainment Tax pursuant to the provisions of N.R.S. § 368A.200(5)(a).

60. Both the Defendant Nevada Department of Taxation and the Defendant Nevada Tax Commission erred in not granting Plaintiffs' requests for refunds.

61. This Court has the power to grant Plaintiffs' requests for refunds pursuant to N.R.S. § 368A.290 and N.R.S. § 368A.300, and should do so here.

62. As a direct and proximate result of Defendants' acts, Plaintiffs have been damaged in an amount in excess of $10,000, plus interest thereon in an amount to be determined by the trier of fact.

COUNT III - INJUNCTIVE RELIEF

63. Plaintiffs incorporate herein by reference each and every paragraph above as though fully set forth herein.

64. Any action taken or to be taken by the Defendants to enforce any portion of Chapter 368A against Plaintiffs has been taken and will be taken under color of law, and has deprived and will deprive Plaintiffs of their constitutional rights as set forth herein, and will cause them irreparable harm for which compensatory damages are an inadequate remedy as a matter of law.

65. The threat of enforcement of Chapter 368A is both great and immediate. In addition, Chapter 368A is both flagrantly and patently violative of Plaintiffs' constitutional rights. There is no other remedy at law which would suffice to protect Plaintiffs' interests for the reasons above numerated.

66. The public interest weighs in favor of preventing deprivation of constitutional rights, and is always served by enjoining an unconstitutional law.

67. Plaintiffs have a substantial likelihood of success of prevailing on their constitutional claims against Chapter 368A, in that it is blatantly and patently unconstitutional. The Defendants will suffer no harm by the entry of such an injunction, as there can be no legitimate governmental interest in enforcing an unconstitutional law. In addition, the "balancing" of the equities tips in favor of the Plaintiffs and in the entry of a preliminary injunction, due to the paramount position of rights afforded under the First Amendment in comparison to the lack of harm occasioned to the Defendants if such an injunction is granted.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Honorable Court enter judgment against Defendants, which would include:

A. A declaration that the Live Entertainment Tax under Chapter 368A is unconstitutional on its face and as applied to the Plaintiffs; that Plaintiffs need not pay the Live Entertainment Tax as mandated by Chapter 368A both because it violates Article I, §§ 9 and 10, and Article 10, §1, of the Nevada Constitution as well as the First and Fourteenth Amendments to the United States Constitution, and because Plaintiffs are exempt from paying the Live Entertainment Tax pursuant to the provisions of N.R.S. § 368A.200(5)(a); and that the Defendants have violated the Plaintiffs' constitutional rights by having required them to have paid the Live Entertainment Tax in the past;

B. A preliminary and permanent injunction restraining the Defendants, as well as their officers, agents, employees and representatives, from enforcing Chapter 368A against the Plaintiffs and/or from collecting the Live Entertainment Tax against the Plaintiffs;

C. Entry of an order vacating the determinations of the Nevada Department of Taxation and the Defendant Nevada Tax Commission denying Plaintiffs' requests for refunds;

D. Entry of an order directing Defendant Nevada Department of Taxation to refund the Live Entertainment Taxes paid by the Plaintiffs for the tax periods of January, February, March and April 2004, together with the statutory interest provided for by N.R.S. § 368A.270 and § 368A.310;

E. A permanent injunction requiring Defendant Nevada Tax Commission to record the payments of the Live Entertainment Tax made by the Plaintiffs during those tax periods and to certify those amounts to the Defendant State Board of Examiners, and further ordering the Defendant State Board of Examiners to approve and authorize the refund from the State Treasury of all such Live Entertainment Tax payments that have been involuntarily made by the Plaintiffs under Chapter 368A during those tax periods, together with interest as required by N.R.S. § 368A.270 and § 368A.310; and

F. Entry of such other and further relief as the Court deems just and proper.

DATED this ~~27th~~ 9th day of ~~February, 2009.~~ December, 2010

SULLIVAN BROWN

By: WILLIAM H. BROWN, ESQ.
Nevada Bar #7623
SULLIVAN BROWN
332 S. Jones Boulevard
Las Vegas, NV 89107
Telephone:(702) 471-0112
Facsimile: (702) 567-0116
Counsel for Plaintiffs

BRADLEY J. SHAFER, ESQ.*
Michigan Bar #P36604
SHAFER & ASSOCIATES, P.C.
3800 Capital City Blvd., Suite 2
Lansing, Michigan 48906-2110
Telephone: (517) 886-6560
Facsimile: (517) 886-6565
Co-Counsel for Plaintiffs
*Admitted *Pro Hac Vice*

EXHIBIT "1"

IN THE SUPREME COURT FOR STATE OF NEVADA

DEJA VU SHOWGIRLS OF LAS VEGAS, L.L.C., d/b/a *Deja Vu Showgirls*, LITTLE DARLINGS OF LAS VEGAS, L.L.C., d/b/a *Little Darlings*, K-KEL, INC., d/b/a *Spearmint Rhino Gentlemen's Club*, OLYMPUS GARDEN, INC., d/b/a *Olympic Garden*, SHAC, L.L.C. d/b/a *Sapphire*, THE POWER COMPANY, INC., d/b/a *Crazy Horse Too Gentlemen's Club*, D. WESTWOOD, INC., d/b/a *Treasures*, and D.I. FOOD & BEVERAGE OF LAS VEGAS, LLC, d/b/a *Scores*, Plaintiffs, vs. NEVADA DEPARTMENT OF TAXATION, NEVADA TAX COMMISSION, NEVADA STATE BOARD OF EXAMINERS, and MICHELLE JACOBS, in her Official Capacity Only, Defendants.	Supreme Court Case No. 59752 District Court Case No. A554970

CERTIFICATION OF JOINT DOCKETING STATEMENT

NOW COMES Appellant SHAC, LLC, by and through its counsel GREENBURG TRAURIG, LLP, and hereby certifies that it concurs in the Docketing Statement filed by Plaintiffs Deja Vu Showgirls of Las Vegas, LLC; Little Darlings of Las Vegas, LLC; K-Kel,

/././

/././

/././

Inc.; Olympus Garden, Inc.; The Power Company, Inc., D. Westwood, Inc.; and D.I. Food & Beverage of Las Vegas, LLC.

GREENBERG TRAURIG, LLP

DATED this 20th day of December, 2011

BY: _____
MARK E. FERRARIO
Nevada Bar No. 1625
BRANDON E. ROOS
Nevada Bar No 7888
3733 Howard Hughes Parkway
Suite 400 North
Las Vegas, Nevada 89169
Telephone: (702) 792-3773
Facsimile: (702) 792-9002
Counsel for SHAC, LLC

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

DÉJÀ VU SHOWGIRLS OF LAS VEGAS, LLC, d/b/a *Déjà Vu Showgirls*, LITTLE DARLINGS OF LAS VEGAS, LLC, d/b/a *Little Darlings,* K-KEL, INC, d/b/a *Spearmint Rhino Gentlemen's Club*, OLYMPUS GARDEN, INC., d/b/a *Olympic Garden,* SHAC, LLC, d/b/a *Sapphire*, THE POWER COMPANY, INC., d/b/a *Crazy Horse Too Gentlemen's Club*, D. WESTWOOD, INC., d/b/a *Treasures*, and D.I. FOOD & BEVERAGE OF LAS VEGAS, LLC, d/b/a *Scores,*

Plaintiffs,

v.

NEVADA DEPARTMENT OF TAXATION NEVADA TAX COMMISSION, NEVADA STATE BOARD OF EXAMINERS, and MICHELLE JACOBS, in her official capacity only,

Defendants,

No. 59752

DOCKETING STATEMENT
CIVIL APPEALS

GENERAL INFORMATION

All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 26 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See* KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department XI

County Clark Judge Elizabeth Gonzalez

District Ct. Case No. 08A554970 coordinated/partially consolidated with 06A533273

2. Attorney filing this docketing statement:

Attorney William H. Brown Telephone (702) 385-7280

Firm Law Offices of William H. Brown, Ltd.
Address 6029 S. Ft. Apache Rd., Ste. 100
Las Vegas, NV 89148

Client(s) DEJA VU SHOWGIRLS OF LAS VEGAS, LLC, d/b/a Deja Vu Showgirls, LITTLE DARLINGS OF LAS VEGAS, LLC, d/b/a Little Darlings, K-KEL, INC., d/b/a Spearmint Rhino Gentlemen's Club, OLYMPUS GARDEN, INC., d/b/a Olympic Garden, THE POWER COMPANY, INC., d/b/a Crazy Horse Too Gentlemen's club, D. WESTWOOD, INC., d/b/a Treasures, and D.I. FOOD & BEVERAGE OF LAS VEGAS, LLC, d/b/a Scores

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney A.G. Catherine Cortez Masto, David Pope, Blake Doerr, Vivienne Rakowsky Telephone (702) 486-3095

Firm Attorney General - State of Nevada
Address 555 East Washington Avenue, Suite 3900
Las Vegas, Nevada 89101

Client(s) Nevada Dept. of Taxation, Nevada Tax Comm. and Nevada State Board of Examiners

Attorney _____ Telephone _____

Firm _____
Address

Client(s) _____
(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

Judgment after bench trial	[x] Dismissal:
Judgment after jury verdict	Lack of jurisdiction
Summary judgment	Failure to state a claim
Default judgment	Failure to prosecute
Grant/Denial of NRCP 60(b) relief	[x] Other (specify): to refile as PJR
Grant/Denial of injunction	Divorce Decree:
Grant/Denial of declaratory relief	Original Modification
Review of agency determination	Other disposition (specify):_____

5. Does this appeal raise issues concerning any of the following?

Child Custody

Venue

Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

None. However, Appellant anticipates that an appeal will be filed shortly in the coordinated and partially consolidated action, as explained below.

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings **in** other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

After the Appellants' claims for refund were denied by the Nevada Department of taxation and the Nevada Tax Commission, the underlying proceedings (Case No. A554970) were filed with the Eighth Judicial District Court for Clark County. The matter was coordinated and partially consolidated with Deja Vu Showgirls, et. al. v. Nevada Dept. of Taxation, et al., Eighth Judicial District Court for Clark County Case No. A533273. Summary Judgment in Case A533273 was entered on December 16, 2011, and it is anticipated that an appeal will be filed in that matter. In addition, the order dismissing the case below directed that the matter be re-filed as a Petition for Judicial Review. That matter has been filed with the Eighth Judicial District Court for Clark County and Assigned Case No. A-11-648894-J, Department XXX. That matter is still pending.

8. Nature of the action. Briefly describe the nature of the action and the result below:

The underlying action was a de novo action, filed pursuant to NRS 368A.290(1)(b) and NRS 368A.300(3)(b), against the Nevada Tax Commission for the refund of Live Entertainment Taxes ("LET(s)") (NRS Ch. 368A) paid by Appellants. Appellants contend that the LET is unconstitutional under the federal and State constitutions or that Appellants are exempted from taxation pursuant to NRS 368A.200(5)(a), which exempts live entertainment the State is precluded from taxing under the State or federal constitutions. Following the Nevada Supreme Court's decision in Southern Consolidated Edison v. First Judicial Dist. Court, 255 P.3d 231, 127 Nev. Adv. Op. 22 (2011), the matter was dismissed for re-filing and reassignment as a Petition for Judicial Review pursuant to NRS Ch. 233B.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

a. Whether as a matter of statutory interpretation an action for refund filed pursuant to NRS 368A.290(1)(b) and/or NRS 368A.300 (3)(b) is subject to the administrative procedures set forth in NRS Ch. 233B, so as to require that a suit seeking the refund of Live Entertainment Taxes must be filed as a petition for judicial review.

b. Whether the Nevada Supreme Court's reasoning in *Southern Consolidated Edison v. First Judicial Dist. Court*, 255 P.3d 231, 127 Nev. Adv. Op. 22 (2011) regarding the effect of amendments to Nevada's Administrative Procedures Act (NRS Ch. 233B) on existing administrative appeal statutes applies to more specific appeal statutes enacted after the amendments discussed in *Southern Consolidated Edison* and whether if so, the holding in *Southern Consolidated Edison* should be applied retroactively to existing cases.

c. Whether the Defendants should be estopped or otherwise precluded (waiver, etc.) from asserting that the action should proceed as a petition for judicial review.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

None.

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

Yes

No

If not, explain: It is noted that the underlying action challenges the constitutionality of Nevada's Live Entertainment Tax (NRS Ch. 368A) and that all the

Appellee-Defendants are state agencies.

12. Other issues. Does this appeal involve any of the following issues?

Reversal of well-settled Nevada precedent (identify the case(s))
An issue arising under the United States and/or Nevada Constitutions
[x] A substantial issue of first impression
[x] An issue of public policy
An issue where en bane consideration is necessary to maintain uniformity of this court's decisions
A ballot question

If so, explain:

First Impression and Public policy; *Southern Consolidated Edison v. First Judicial Dist. Court*, 255 P.3d 231, 127 Nev. Adv. Op. 22 (2011) addressed the effect of changes in 1989, 1997, and 1999 to NRS 233B.130, NRS 360.245, and NRS 372.68 on statutory provisions for challenging Nevada Tax Commissions denial of refund claims, which were enacted prior to those legislative changes. This appeal presents the question of whether the 1989-1997 changes modify provision enacted in 2003 for challenging the Tax Commissions denial of refund claims. Counsel is aware of other claims for refund before the Nevada Department of Taxation and the Nevada Tax Commission. The Court's decision in this appeal will resolve what type of action should be filed to challenge the Tax Commissions Denial of Refund claims. This action must also address how the Courts' Decision in *Southern Consolidated Edison* should be applied to cases before the district courts at the time that case was decided.

13. Trial. If this action proceeded to trial, how many days did the trial last? _____

Was it a bench or jury trial? No Trial

14. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice? Appellants do not anticipate filing a motion to disqualify or to recuse.

No.

TIMELINESS OF NOTICE OF APPEAL

15. Date of entry of written judgment or order appealed from Nov 1, 2011
If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

16. Date written notice of entry of judgment or order was served Nov 2, 2011
Was service by:
Delivery
[x] Mail/electronic/fax

17. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

NRCP 50(b) Date of filing _____

NRCP 52(b) Date of filing _____

[x] NRCP 59 Date of filing Nov 16, 2011

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. _____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion Dec 19, 2011

(c) Date written notice of entry of order resolving tolling motion was served Dec 20, 2011

Was service by:
Delivery
[x] Mail

18. Date notice of appeal filed Nov 28, 2011

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

All Plaintiffs below appealed by way of the same notice of appeal.

19. Specify statute or rule governing the time limit for filing the notice of appeal, *e.g.*, NRAP 4(a) or other

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

20. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a) [x] NRAP 3A(b)(1) NRS 38.205

NRAP 3A(b)(2) NRS 233B.150

NRAP 3A(b)(3) NRS 703.376

Other (specify)

(b) Explain how each authority provides a basis for appeal from the judgment or order:

The order appealed from dismisses all claims in the case and directs that the case be re-filed as a petition for judicial, which is to be randomly reassigned to another judge. Appellants appeal the propriety of that dismissal, which cannot be addressed in the context of there-filed petition for judicial review. The order forecloses *de novo* consideration of Appellants' claims as the petition for judicial review will be governed by the review standards of NRS 233B.135. The order appealed from is in substance a final judgment resolving all claims in Case No. A554970.

21. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Plaintiffs in the partially consolidated actions: Deja Vu Showgirls of Las Vegas, LLC; Little Darlings of Las Vegas, LLC; K-Kel, Inc.; Olympus Garden, Inc., SHAC, LLC; The Power Company, Inc., D. Westwood, Inc., and D.I. Food & Beverage of Las Vegas, LLC. Defendants in the partially consolidated actions: Nevada Department of Taxation, Nevada Tax Commission, Nevada State Board of Examiners, and Michelle Jacobs in her official capacity only.

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.,* formally dismissed, not served, or other:

Michelle Jacobs, in her official capacity only, is not a party to this appeal because she was not named as a defendant in the underlying case, but only in the partially consolidated action.

22. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Appellants filed a de novo action for declaratory relief, injunctive relief, money damages and/or refund of Live Entertainment Taxes paid, and attorney's fees and costs, pursuant to NRS 368A.290(1)(b), NRS 368A.300(3)(b), 42 U.S.C. § 1983, and 42 U.S.C. § 1988. The § 1983 damages claims were dismiss by order entered on April 6, 2011. Further proceedings on a motion to clarify that order ultimately lead to all the de novo claims in Case A554970 being dismissed from the action by Order entered Nov. 1, 2011.

23. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

Yes

☒ No

24. If you answered "No" to question 23, complete the following:

(a) Specify the claims remaining pending below:

That the order appealed from adjudicated the all rights and liabilities as to Appellants *de novo* claims in Case A554970. However, Appellant-Plaintiffs were redirected to re-file those claims in a petition for judicial review. The parties' claims in the partially consolidated action (Case A533273) proceeded to summary judgment, which was entered on Dec. 16, 2011.

(b) Specify the parties remaining below:

None in Case A554970. All parties to A533273 remained below.

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

Yes

☒ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

Yes

☒ No

25. If you answered "No" to any part of question 24, explain the basis for seeking appellate review *(e.g.*, order is independently appealable under NRAP 3A(b)):

The order is a final appealable order within the meaning of NRAP 3A(b)(l), and the issue of whether the de novo action was properly dismissed is not before the trial court in the subsequently filed petition for judicial review.

26. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 4l(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

DEJA VU SHOWGIRLS, OF LAS VEGAS, LLC, LITTLE DARLINGS OF LAS VEGAS, LLC, K-KEL, INC., OLYMPUS GARDEN, INC., THE POWER COMPANY INC., D. WESTWOOD, INC. and D.I. FOOD & BEVERAGE OF LAS VEGAS, LLC
Name of appellant(s)

William H. Brown
Name of counsel of record

December 20, 2011
Date

/s/ William H. Brown
Signature of counsel of record

Clark County, Nevada
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 20th day of December, 2011, I served a copy of this completed docketing statement upon all counsel of record:

By personally serving it upon him/her; or

By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below , please list names below and attach a separate sheet with the addresses.)

Dated this 20th day of December, 2011.

/s/ Arleen Viano
Signature