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*,

Appellants,

vs.

NEVADA DEPARTMENT OF TAXATION, NEVADA TAX COMMISSION, NEVADA STATE BOARD OF EXAMINERS, and MICHELLE JACOBS, in her Official Capacity Only,

Respondents.

Supreme Court Case No. 59752

District Court Case No. A558787

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[1] Because the case below (A554970) and "Case 1" (A533273) were coordinated (Order of August, 4, 2010, App.Apx. 1699-1702) and later consolidated (Order of April 6, 2011, App.Apx. 2638-2640) the relevant documents for both actions are included in an abundance of caution.

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DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

LITTLE DARLINGS OF LAS VEGAS, LLC, K-KEL, INC., et al.,	CASE NO. A-533273
Plaintiffs,	DEPT. NO. IX
vs.	
NEVADA DEPT. OF TAXATION, OLYMPUS GARDEN, INC., et al.,	**Transcript of Proceedings**
Defendants.	

BEFORE THE HONORABLE JENNIFER TOGLIATTI, DISTRICT COURT JUDGE

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

THURSDAY, NOVEMBER 13, 2008

APPEARANCES:

FOR THE PLAINTIFF:	DIANA SULLIVAN, ESQ. BRAD SHAFER, ESQ.
FOR NEVADA DEPARTMENT OF TAXATION:	BLAKE A. DOERR, ESQ. DAVID POPE, ESQ. *Attorney General's Office*
COURT RECORDER:	TRANSCRIPTION BY:
YVETTE SISON-BRITT District Court	VERBATIM DIGITAL REPORTING, LLC Englewood, CO 80110 (303) 798-0890

Proceedings recorded by audio-visual recording, transcript produced by transcription service.

LAS VEGAS, NEVADA, THURSDAY, NOVEMBER 13, 2008, 9:38 A.M.

THE COURT: Deja Vu Showgirls of Las Vegas vs. Nevada Department of Taxation.

MR. SULLIVAN: Morning, Your Honor, Diana Sullivan, local counsel for the plaintiffs.

THE COURT: Not for long.

MR. SULLIVAN: Right, exactly, not for long.

MR. SHAFER: Brad Shafer on behalf of the plaintiffs, Your Honor, pro hoc vice.

THE COURT: Are you looking around --

MR. SHAFER: Yes, Your Honor.

THE COURT: -- for a replacement?

MR. SHAFER: We were talking about that. As I drove here in the cab and I saw the billboard of my co-counsel, I pointed that out to the cab driver.

THE COURT: Okay.

MR. POPE: Good morning, Your Honor, David Pope, Senior Deputy Attorney General on behalf of the defendants.

MR. DOERR: Blake Doerr, deputy attorney general on behalf of the defendants.

THE COURT: Okay. I know you all have been waiting for a ruling on your previous motion, and you know, as you may know or not know, I have a tendency to wish that I had the time that an appellate court has to review these matters in the detail that they get to review them before I get reversed

or affirmed.

And of course, this is a serious matter with great implications. And so I apologize that you've had to wait, but at some point I want to give it the attention that it's due and read all the cases that you cite me and give it the study that I need to and -- and unfortunately, with 1800 cases, I have to do that when I can.

And so I'm working on it. I have the transcript. I have all your pleadings from the previous. I have today's briefing. I'm sure you will do your clients great justice in making this harder than ever for the court to decide, but I'm on it, I'm working on it. But I appreciate your patience.

MR. SHAFER: If I could just say one thing.

THE COURT: Sure.

MR. SHAFER: When we were in front of the Nevada Tax Commission, we made an offer to the Nevada Tax Commission to give them binders of the applicable cases with the portions that we had cited to and relied on, highlighted.

THE COURT: That would be great.

MR. SHAFER: We'd do the same thing to Your Honor.

THE COURT: That would be great.

MR. SHAFER: So --

THE COURT: I -- I would appreciate a binder.

MR. DOERR: We'll have you one.

THE COURT: I mean, I really would, because

otherwise, you know, what happens is I -- we have to set aside -- this is not a case, for example, that I could take an hour and look at. I have to have -- I have to have a day or blocks of days where I take the jury deliberation room and I spread this case out. And maybe for you all, you wouldn't need to do that, but --

MR. DOERR: We understand.

THE COURT: -- as you can imagine, you know, I have murder cases interwoven with construction defect interwoven with everything you can think of, and it's been a long time since I've engaged in an in-depth constitutional law study. And so it would be very helpful if you'd provide me the case law.

MR. SHAFER: Both sides already have it. We'll just make extra copies and get it to Your Honor.

THE COURT: Terrific, terrific. Okay. And so I really appreciate that. Do you -- do you know -- do you want me to set a deadline for that?

MR. DOERR: Yes, please.

THE COURT: I mean, you're doing it as a courtesy, so when do you think that you could --?

MR. DOERR: A binder with the cases?

THE COURT: The cases cited by you.

MR. DOERR: Sure. Next Friday.

THE COURT: Okay. Next Friday?

MR. SHAFER: Sure. Today's Thursday, yes.

THE COURT: Okay, next Friday.

MR. SHAFER: Oh, you know, Your Honor --

MR. POPE: Two weeks.

MR. SHAFER: -- two weeks would be better.

THE COURT: No problem.

MR. SHAFER: Although that's Thanksgiving, but if we could get it the day before Thanksgiving, that would be great.

MR. POPE: I think our binders might (indiscernible) a little.

THE COURT: Okay, here's what happens. Do you understand what happens if you provide to me the day before Thanksgiving?

MR. SHAFER: Or sometime thereafter. I -- I just forgot -- I just turned --

THE COURT: I will look at it and feel compelled to take it home because of the guilt of how long it has taken me.

MR. DOERR: Your Honor, may I suggest we have them to you after we return from Thanksgiving?

THE COURT: She's laughing because she knows. And he's laughing because he carries it out to the car. They're all laughing because they know it's -- so how about the Monday after Thanksgiving, give me the rest and then I'll -- December 1st, and that would be the binders.

I mean, it's not that I haven't been working on it.

I have, but.

MR. SHAFER: Yes, Your Honor, we can do that.

THE COURT: Okay. So December 1st at 5:00 p.m., how about that? Okay. I obviously have the Motion for Summary Judgment that has been filed for the Nevada defendants. I have the opposition to the Motion for Summary Judgment. I have the reply. And kind of by operation, I have the history of the case in the previous pleadings and the transcript from the previous proceeding where you've addressed many of -- many of the issues in this case. So I'm ready when you are.

MR. DOERR: Let me start by saying we didn't bring this motion to try to rush you through the others. And we appreciate the time and consideration you're giving to them.

THE COURT: If you were rushing me, you would have brought it two months ago, so it's okay.

MR. DOERR: We -- you know, we hope that a resolution of the matters could be done at one time. So we really aren't trying to rush you and we thank you for the thoughtful consideration that you've give the matter.

I'm not going to reiterate all that we've put in our brief. I'd just like to make a couple points. Basically, we see this issue as being about money. If there is no First Amendment right that's been infringed, then there's no First Amendment issue.

When you take that out of the equation, we're left

with a tax. We know that we all pay taxes. It's not a -- it's intertwined in the difficult constitutional issue, but ultimately if it's determined that it's not, which we believe the tax does not infringe on any right, I think the question becomes much easier. So I'd just like to start by saying that.

As plaintiffs stated in their opposition, and we believe this to be the whole time a facial challenge, and that's one where you say the -- the statute, the way it's right there, is unconstitutional, period. It can't be looked at in any way that -- that is not contrary to the Constitution.

In their briefs, throughout this case, they cite cases and make arguments that really appear to us to be as applied challenges. To the extent that they're making that argument, you know, perhaps, our motion was premature. They've stated that that's what they're making.

You know, they're making obviously, arguments for anything they can. I'm not faulting them for that, but they say it's a facial challenge, and if it is, that question is a question of law, it's not a question of fact. So their discovery isn't as extensive as I think they state, and we believe that question can be decided without any additional discovery whatsoever.

They've -- in their opposition they included an

affidavit of all the discovery that they say they want to do because they really haven't done any is what they say. I don't think that they stated with specificity exactly what they need, why they need it, how it's going to change the outcome of the question, is this statute unconstitutional?

So I'm concerned about that. Now, if -- if they're making it as applied challenge, maybe that answers -- maybe that's a different issue. Also, with our exhibits in the opposition to the Motion for Preliminary Injunction, and these documents were presented in the hearing before the Nevada Tax Commission, we've shown them that -- that the percentages of taxes that the Department administers.

As you know, the Gaming Commission administers the tax as to live entertainment tax that's collected in gaming properties. The Department who administers the tax against the plaintiffs, that -- that only amounts to seven percent of the entire amount of live entertainment tax.

And the plaintiffs are only a portion of that. So less than seven percent is coming from the plaintiffs. And I think that that speaks to their -- their -- their question about its targeting. It's going after a small group. It's targeting them specifically.

The combined plaintiffs are paying less than seven percent of it, you know, a single digit amount. So I think they have that information. They also say they want to find

out the name of every party that pays the tax. And I just don't see how that gets them there.

They know that them combined are paying less than seven percent. So I just wanted to make that point. I -- I've noticed in their briefs that they've never addressed the fact that the exact constitutional protection that -- that the cases that I've read, dealing with nude dancing, that level of constitutional protection at that level of -- that that activity is entitled to.

I'm not saying I know. I'm saying that the cases that I've read say it's different. It's sort of a hybrid. I cited cases and I cited treatises to try to say I think it's ultimately a determination that -- that you have to make.

I haven't said what I think it is. They haven't said what they think it is. Although, everything they say alludes to the fact that it's entitled to the highest level. And every argument that they make leads you down the path that this is entitled to strict scrutiny.

We don't believe that. And our major argument for that is that this is not a regulation. It's a tax. Regulations modify behavior. Taxes are there to generate revenue. Nothing in the live entertainment tax authorizes the Department are the Gaming Commission to stop them from doing anything. We don't say that they can dance -- can't dance within ten feet of their clients. We don't say they have to

wear pasties and a g-string.

A lot of the cases that we cited deal with those because those are regulations. This is about a tax. This is about money that we're collecting from the patrons, not from the business, not -- we're not talking about a prior restraint where they have to purchase a -- a license or pay a fee before they get to do their -- their jobs.

It's about taxing the admission to the facility. The tax on the business or the property. And we've cited cases that say that that -- that there's no violation of the Constitution when that's what they're doing.

I want to go back to the point -- their arguments they make assume that strict scrutiny applies and that the First Amendment is implicated by this. We've said we don't think it is. The purpose of this tax is not to stop them from dancing. In the -- in the last hearing we had before you Counsel said, you know, that his clients are -- are hated, that people hate them. The State of Nevada is -- that's one of our industries.

I think dancers are revered. That's me personally. But -- but I think if you -- if you go down the path that only strict scrutiny applies and the First Amendment is implicated, then for any tax, that taxes anything with a message, a book, a billboard, a Bible, anything, that you would say that they can't tax that whatsoever if you follow their reasoning.

And I think we know that that's not the case. That the purpose of this tax is -- is not to -- to change, inhibit, prohibit or stop them from delivering their message. It's purely a tax.

They've also stated that -- that we haven't articulated the State's compelling interest in doing this. And -- and we haven't done it for a reason. That's the strict scrutiny path. The -- the compelling government from says that the fee that we collect can only cover our administrative expenses. Well, taxes don't have to only cover administrative expenses because if they did, then the State could never raise any revenue higher than the administrative cost of it.

That the Adam's Outdoor case, the Pennsylvania case that we cited, and I presented a copy with -- and the last time we were here talks about that. It differentiates the tax and the regulation and how they're treated differently.

The plaintiffs also, they make -- they say there are four ways that -- that a tax can be unconstitutional. And the first one they say it's a direct tax on First Amendment freedoms. That's the -- the example of that is the licensing fee. You have to pay us a thousand dollars to get your license before you can dance. That's not what this tax is doing.

There's -- there's nothing that they have to do before they can dance. There's nothing they -- they don't --

they can't -- we -- we're not going to make them stop dancing. We have no authority to do that. We can't close the business down. We can't stop them from dancing even in they don't pay. All we can do is -- is attempt to collect the tax.

The second point that they say is a tax that targets a narrowly defined group of speakers. When you look at that point, I think it's important to realize that that question assumes that it's a First Amendment right that's being infringed. It targets a group of speakers.

If you take the fact that -- that we don't believe it inhibits their speech, I don't think we even get to that point. I mean, additionally, it's not aimed at their speech. It's a broad-based tax on all live entertainment. It doesn't target anyone. It applies equally to anyone who is not exempted or excepted from it.

And -- and going back to the point I said they -- they already have the information about the statistics, the seven percent number I talked about, they already have that information. 97 percent is coming from other businesses.

THE COURT: 93 percent, you said?

MR. DOERR: 93 percent is coming from other businesses. And -- and remember that the seven percent, they're only paying a part of that seven percent. I haven't looked at those numbers exactly, but it's less than seven percent. 93 percent is coming from other people. So how it's

targeting them is -- it's not targeting them, in fact.

The third point that they say is that the -- is if the -- the regulation is content based, it seeks to -- to control the content. Again, that point assumes that we're dealing with speech here. We don't think the tax deals with speech. It doesn't change, eliminate, prohibit, inhibit what they can do.

Also, the Nevada Tax Commission, when this was presented to them, they said no, this is not a content based tax. It's not -- has nothing to do with their content. It's about money.

The fourth point that they make they say that -- that the tax -- a tax on strictly First Amendment activity is -- is unconstitutional. Again, we think it's a tax on the business. We think it's a tax on the customer. So I don't think that -- I don't think that that tax is invalidated by any of those four points.

And I -- I want to go to a point about the exemptions. The live entertainment tax includes exemptions, there's no question about that. And -- but the fact that the tax that the legislature saw fit to include exemptions in the statute doesn't render the thing unconstitutional.

We cited a case in our reply, which was a case that was cited in Minneapolis Star, and it was part of the dissenting opinion where they said that the legislature must

classify or grant exemptions to ensure that the burden upon the taxpayer or upon the State in collecting the tax does not outweigh the burden of the revenues.

To the extent that the legislature has decided that the administration of the collection of -- of tax from a certain person, it outweighs the benefit of collecting it, I think it's makes sense that a legislature would exempt certain things.

They -- they state in their brief that because we haven't explained every single exemption, that that somehow makes the tax invalid, and I just don't believe that. And with that, if you have any questions, I'd be happy to answer them.

THE COURT: And very thorough. Thank you, twice.

MR. SHAFER: May it please the court, let me make three preliminary observations. First, based upon a presentation that you have heard today, you are absolutely capable of granting my client's summary judgment sua sponte, because what you heard the Government say is that they have not justified this tax, nor have they justified the targeting.

And the reason that they haven't done it is because they believe the laws on that subject is strict scrutiny and therefore they do not have to have a justification. There is not one single judicial decision out there in the entire United States that says that a government does not have to

justify a burden on First Amendment rights, and I'm going to get to that issue in a moment.

But it doesn't matter what the level of scrutiny is. If it's intermediate scrutiny and he's talking about the Barns [phonetic] case and the Paps (phonetic) case. If it's intermediate scrutiny, Your Honor, the only difference is rather than a substantial governmental interest, it has to be an important or compelling governmental interest. That's the only difference.

The government still has to justify it. They haven't done it. More importantly, this is a Motion for Summary Judgment and they haven't justified that.

And Your Honor, we have -- we have pointed out specifically -- this is at paragraph 52(m), small (m), of our Complaint. This is one of the grounds we have alleged it's unconstitutional. It was enacted upon an insufficient record and is not justified on any factual or legal ground.

You heard them today, they're not justifying it to you. You can grant my client summary judgment, end of ball game. Second quick point, Your Honor. God rest William Renquist's soul, a dissenting opinion is still a descending opinion. And it doesn't mean anything.

Third thing, the seven percent that he keeps articulating to you, first of all, I want you to understand -- I want -- I want the court to take a look at what they're

doing. First of all, he's saying that this is strictly a facial challenge. It's not, and I'm going to address that in a minute. But then in his initial motion, he attaches one single solitary page of the legislative record. Why? If it's a facial challenge, why would you do that?

Second, in their reply they attach documents that I can't even respond to now because that's in the reply. But I will tell you rather, that those documents were attached to the Government's documents submitted to the Nevada Tax Commission where, of course, we had no ability to take any discovery.

Now, I'm going to accept the seven percent on its face, on face value. Although, I get to take discovery to figure out exactly what that chart means. But let's even take that at face value.

You will recall, Your Honor, maybe you won't, it has been a couple of months since we were here last, I pointed out to the court and they went through explicit detail in this last motion the difference between the gaming portion of this tax and the non-gaming portion of the tax.

When he's talking about the 93 percent is the gaming portion of this tax, I pointed out to Your Honor last time, gaming is not protected by the First Amendment. There's no First Amendment issues there.

The question is, what tax is being paid by not only

my clients, but by First Amendment protected activities? And Your Honor, you may recall, the legislature record that we submitted not only in our Motion for Preliminary Injunction, but here as well, there's actually a reference in there to the fact that 90 percent of the tax, the non-gaming tax, was being paid by the gentlemen's clubs.

There was only one other manner discussed in the legislative record of who was paying the live entertainment tax, and that was the raceway. But this was the legislative history for the amendments. The raceway NASCAR is now exempted.

So the non-gaming tax is being paid probably, probably a hundred percent by my clients. But I'm entitled to take discovery in that regard.

Now, let's talk about the difference between the facial challenge and the as applied challenge. First of all, this court may recall, because it was the very first question that you asked me the last time I was here, is about the exceptions. The lawsuit deals not only with the constitutionality, but it deals with the question. And we don't exactly know what this phrase means, but there's an exemption of the tax of live entertainment that the State can't tax pursuant to the federal or Nevada Constitutions.

And we have asked for a declaratory relief that we fall within that provision. That is our as applied challenge,

Your Honor. So we are entitled to discovery. But more importantly, the justification in and of itself, which we are clearly entitled to discovery on for -- to see what they might have, you know, yes, I can get online and I can find out what is online, but I don't know what they have on individual files.

Usually when these type of laws are enacted, there's a big legislative file that says, this is what we're attempting to do and this is what we're doing. Now, that isn't part of the transcripts, which is the only thing we've been provided to date.

I'm entitled to find out what that is so maybe we can figure out what this was all about. Haven't had an opportunity to do that.

Now, immediately after, Your Honor, we left this court the last time was when we went over to Ms. Sullivan's office and we had our Rule 16.1 conference. The documents, the filing documents, were submitted literally in regard to that the day we filed our response.

So he's absolutely right, I haven't taken discovery to date, but we have a Motion for Preliminary Injunction pending, we have a Motion to Dismiss pending. Now we have a Motion for Summary Judgment pending.

And I was hoping to be able to get a little direction from the court in regard to what it was going to do

on the Motion to Dismiss and the Motion for Preliminary Injunction before I ever had to ever take discovery. Now, it's probably in the going to happen now because we do have a discovery cutoff date of April 27th, and I'm assuming based upon the very first comments the court gave us this morning, it's going to be a little bit longer before we get a ruling.

So we'll start taking the discovery. And they were absolutely correct what they said about what happened in that -- that -- that Rule 16.1 conference, in that they said they would cooperate with us in the discovery. And we talked about what we needed to do, and it's not a lot. It's probably a total of two depositions and some written discovery, but on a summary judgment motion where there -- where one of the constitutional issues is the justification for the law, that by the way, they haven't put one shred of evidence in front of Your Honor on, we're entitled to take that discovery before we have to respond, Your Honor.

Now, the -- the third quick point, and actually, I guess, it wasn't a quick point, but the third quick point I wanted to make is, the attorney general would be correct in regard to his constitutional arguments if the United States Supreme Court had never issued any of the 20 some odd decisions that we have cited to this court, and if all the lower courts that have addressed virtually this exact same issue had not decided their case the way they did.

The problem is it doesn't matter that this is a text. The -- and it doesn't matter that they say well, we're not telling you you can't operate your business. The U.S. Supreme Court has said the power to tax is the power to regulate. What is the best example of that? It's the Minneapolis Star Tribune case, the seminal case on this.

It wasn't a regulation on newspapers. It wasn't even a tax on newspapers. It was a tax on paper and ink. That was the tax. That's the tax the U.S. Supreme Court said violated the First Amendment to the United States Constitution.

You have to take a look at what is the impact of this tax. But this tax is even more different. This tax facially, facially applies to live entertainment. And it's interesting that they keep on going back to this issue about, you know, this differing level of constitutional protection, but the fact remains, there's the initial question of whether you can tax live entertainment separately.

Then there's the second question of what is the level of scrutiny you're going to apply if in an as applied challenge you're dealing with nude and topless dancing. I have provided Your Honor with the Puba case (phonetic), the Illinois Court of Appeals case, of virtually a very similar tax that the Illinois Supreme Court threw out, ruled unconstitutional, if it wasn't last year, it was late '06.

I have provided Your Honor with the trial court decision in Texas on the Texas Entertainment Association case where the -- that -- that court threw out again, based on First Amendment grounds, a very similar tax just last year. It might have even been earlier this year.

And I've also provided to Your Honor the opinion of the attorney general of the State of Tennessee when the State of Tennessee legislature was thinking about enacting a similar type of law, and he said you can't do it because this type of tax would violate the First Amendment and would be unconstitutional. Having nothing to do, nothing whatsoever to do with regulations that would prohibit a gentlemen's club from opening.

It's a tax -- you know, it -- he would maybe have an argument if he would come to court with one case, one case that looked at this type of tax and said, this is okay. Everything that we have submitted to the court, Your Honor, the courts that have looked at these directed taxes, and adult entertainment, every single one has either been ruled unconstitutional or the attorney general has said don't even try, don't even try because they're unconstitutional.

Now, in regard to the targeting. Again, this is a Motion for Summary Judgment. He said in his presentation they're not going to justify all these exceptions. There are only two exceptions that they've even attempted, even

attempted to justify in the pleading papers. Now, that's not evidence, though. And what was it? It wax boxing and, I don't remember if it was NASCAR, it might have been baseball.

Those were two, and we pointed out, Your Honor, multiple briefing. There are 25 different exemptions to this. Low volume music, animal shows. I mean, we went on and on, page by page and showed the court all of these somewhat bizarre exceptions that show the targeting.

Now, how can I demonstrate that to the court? I will be able to demonstrate to the court that targeting, not only facially, because the court can see the targeting and see that it's content based, but in regard to the second element of how a law -- how a tax law can violate the First Amendment, I can show that it only applies to a small group of taxpayers, when I can get my discovery, and when I can find out who is paying the non-gaming tax. Because right now I'm -- as I said before, I know from the legislative history that they basically said there were only two people paying it; the adult clubs and the racetrack, and now they've exempted out the racetrack.

THE COURT: So you're saying -- I mean, they're saying seven percent, and you're saying a hundred percent?

MR. SHAFER: That's right.

THE COURT: That what you read in the record belies what they're telling me today on this document?

MR. SHAFER: It -- it depends on how you look at it, Your Honor. They're looking it at -- they're adding the non -- they're adding the gaming tax into this. Remember that -- and they pointed this out very elaborately in their pleading papers in this motion, that this came from the casino entertainment tax.

The casinos were already taxed, and they can be taxed, because again, casinos are not constitutionally protected. The question is who's paying the non-casino tax? Who's paying the straight live entertainment with -- without casinos? And it -- it appears from the little legislative history that I've seen, now it's my client paying a hundred percent of it.

Now, the attorney general keeps on talking about the fact that -- and he gave this great example, and it was brilliant. He talked about the fact that, you know, if I was right, then you couldn't tax books, and you couldn't tax magazines and all that, and it's a great presentation, except for the fact that the U.S. Supreme Court has specifically addressed that issue.

We've pointed out to the court in briefing, and I've pointed it out to Your Honor, the difference is even people who are subject to First Amendment protections can be taxed on a generally applicable tax. If we have a generally applicable sales tax, the mere fact that we're -- my clients are engaged

in First Amendment activity, doesn't get them around that, and that's exactly, exactly the issue in the Jimmy Swaggart case.

U.S. Supreme Court that have been cited to this court. Jimmy Swaggart said, I have to have an exemption to this generally applicable sales tax because I'm engaged in First Amendment activity. The U.S. Supreme Court said no, everyone is subject to a generally applicable sales tax or a generally applicable tax.

Where you violate the Constitution is when you pick out First Amendment activity for special taxation. That clearly is what is going on here for two reasons. Number one, they just picked out live entertainment, which is constitutionally protected. And they're not making an argument that just general live entertainment has any type of lesser protection than anything lesser than strict scrutiny.

But more importantly, because they targeted this directly towards the adult businesses, primarily in Las Vegas, and they're imbued with the constitutional protections there as well. This is not a generally applicable sales tax. We're not challenging a generally applicable sales tax.

We're challenging not only a targeted tax on First Amendment rights but, Your Honor, a tax with 25 separate exemptions and exceptions that a number of them are based on content, and the Government to this day has not attempted to justify why those exemptions are there.

As I pointed out to the court in great detail at the last hearing, Your Honor, this is not my burden to prove the unconstitutionality of this tax. It impacts upon First Amendment rights. The U.S. Supreme Court has said it is the Government's burden to justify a differential taxation on First Amendment rights. They haven't even tried to do it to Your Honor. Haven't even tried.

They can say what they want in a brief, but on a summary judgment motion they have to put some evidence in front of Your Honor, and they certainly haven't put any of that type of evidence.

Your Honor, just one or two things in closing. We have alleged as well, a vagueness challenge. That is in paragraph 52(f) of our Complaint. We've pointed out to the court cases where -- in regard to vagueness challenges where you're entitled to take the deposition of the administering officials in order to determine whether the law is impermissibly vague or not, and whether it gives -- because there's two components of vagueness; whether -- whether it allows arbitrary enforcement being the primary one by the governing officials.

So I'm entitled to take discovery in that regard before this court can say well, I fully understand it. You know, I think it court can see a lot of these -- a lot of these exemptions on their face are impermissibly vague because

we don't know, you know, what does this mean, low -- you know, low -- low volume music that doesn't cause a viewer's head to turn. I mean, that literally is one of the exemptions.

But, you know, let them try to justify it. Let them try to explain what that is at a deposition. And don't grant summary judgment and preclude us from taking any discovery on these issues, Your Honor, because that's what they're asking by way of this motion.

I'm not going to rehash what we talked about a couple months ago. You know, the court I'm sure has plenty of notes in that regard and has the transcript. But what they're asked court to do now is simply to dismiss this out without allowing the taking of any discovery whatsoever. And that, Your Honor, is -- is impermissible.

Your Honor, unless you had any other questions, I think I've addressed everything that they've talked about in their presentation.

THE COURT: Thank you.

MR. SHAFER: Thank you.

MR. POPE: Thank you, Your Honor. First of all, we didn't say that we didn't have to justify it or that we didn't justify it. We're saying that we don't have to justify it because the tax doesn't infringe on speech. To justify a heightened level of scrutiny would -- would be to buy into their argument, which we're not going to do.

With -- with regard to summary judgment, if plaintiffs are bringing both the facial challenge and an as applied challenge, at least with regard to a facial challenge there's case law that says we don't look to facts to resolve facial challenge. It's -- it's a pure question of the law.

They -- they haven't put forward facts. They, in essence, then, don't have a right to find facts because it's just a question of law. And that -- the motion could then be granted, at least in part, to the facial challenge.

If they are, in fact, bringing a as applied challenge, then, you know, we feel we're going to prevail at the end of that as well.

The -- the plaintiffs are trying to fit into an exemption in Chapter 368(a) that's -- that basically says that the tax wouldn't apply in any situation where the tax would be contrary to -- to the Constitutions.

But what we have to remember here is in order to fit into an exemption, tax exemptions are strictly construed. They're -- they're construed against the taxpayer. Any reasonable doubt about whether they fit into that exemption is construed against the taxpayer. So they have the burden with regard to exemptions.

With regard to the seven percent issue. My co-counsel addressed that fairly well. But, you know, with regard to the distinction of a hundred percent, seven percent

and the plaintiffs claiming that they're paying a majority of -- of the seven percent, they're not the only taxpayers. They're, in essence, if there's six or seven plaintiffs here, they're six or seven of 40 taxpayers in the lower level, the level between 200 and 4,999 capacity taxpayers. So they're not targeted.

If we want to get into exemptions, the exemptions are found in the statute, it's law. And the -- by reading the exemptions you can tell that they don't target these taxpayers. In 368(a) 200, Sub 5(c) we briefly discussed boxing last time. The plaintiffs brought it up. No, boxing's taxed another way. So they weren't taxed by this tax. They pay a different tax. And that was in some of the prior briefing.

The -- the --

THE COURT: Remind me what the animal one is. Just because I have no life.

MR. DOERR: What was the question?

MR. POPE: I'm sorry?

THE COURT: What the animal exemption is. Like for a dog show or what -- what exactly was the animal exemption?

MR. POPE: I'm not sure what that exemption is.

THE COURT: Because Counsel brought it up and I don't remember, and so.

MR. POPE: Maybe -- maybe while I'm talking he can

find that one and direct us to it and I can take a -- take a stab at it.

THE COURT: Just because I'm fascinated mostly.

MR. POPE: The next two are Sub (5) and -- Sub 5(d) and (e), Your Honor. And -- and those deal with capacities of less than 200 persons. And so I would say that in that situation that has to do with the cost of administering the tax in those facilities. It's just going to outweigh the benefit of collecting, you know, the -- if the cost is going to outweigh the revenue that's collected there.

With regard to Sub (f), merchandise sold outside the facility in which the live entertainment is provided unless the purchase of the merchandise entitles the purchaser to, excuse me, to an admission charge. Well, that's self-explanatory. Why -- why would we tax that. Live entertainment --

THE COURT: So wait, backing up to (d) and (e) --

MR. POPE: Uh-huh.

THE COURT: -- I know this, because this is a matter of public knowledge, or this is a matter that's been, you know, determined by the Tax Commission in other similar type situations that this capacity versus burden, how -- how do I know that? How do I know that the money collected is going to be less than it would have cost to collect it in the -- to begin with?

MR. POPE: I -- you know, my response to that is my co-counsel had cited a case previously that at least that's a consideration that taxing authorities have --

THE COURT: Right.

MR. POPE: -- is they try to figure out, you know, we're only going to do it where the benefit outweighs the cost. And so --

THE COURT: But --

MR. POPE: -- we're --

THE COURT: -- how does the other side know? They just have to assume it, I would presume? I mean, you know, otherwise, they get to have the discovery where they ask the taxing authority, exactly how much would you make had you applied this or -- or -- I mean, somebody makes that determination.

MR. POPE: That's true, Your Honor, but even if it's in legislative history, there's case law that says that, you know, you can't rely on that for intent. So even if the legislative history just explains how they came to that level, I don't know what the -- you know, I guess, it will be determined later what the value of that is, but it's law and it's presumed constitutional and we're -- yeah, it's presumed that the legislature did what it was supposed to do to determine that value.

MR. SHAFER: Your Honor, did you want the cite on

the animal behavior exemption?

THE COURT: Yeah.

MR. SHAFER: Okay, that's 368A.090(b)(7).

THE COURT: Okay, thank you.

MR. SHAFER: You're welcome.

MR. POPE: I'll come back to that one, I guess, Your Honor, if that's okay.

THE COURT: The animal one?

MR. POPE: Yes.

THE COURT: No, it's just -- I'm just -- when I go through this, and I just want to have a moment of levity or break I'm going to go to the pet exemption and look at it.

MR. POPE: Okay.

THE COURT: It has nothing to do with this, really. I'm just -- it's just one of many, 20, I think, and I'm just interested to see what it says.

MR. POPE: (Indiscernible).

THE COURT: I don't remember from the --

MR. POPE: Thank you.

THE COURT: So anyway, I'm going to back to this capacities, you know, the administrative burden versus the benefit, and you were saying -- I cut you off, go ahead.

MR. POPE: I think we rely on the legislature to do what it's set out to do and --

THE COURT: So we know for a fact that they looked

at that and said this is -- 200 is cut off or x is the cutoff? We know that for a fact that, that they didn't -- because, you know, the suggestion is that this is a construct supported by -- I'm snot saying I agree with it one way or another -- but supported by some comments that they cite to about, hey, you can't make it that obvious from the first --

MR. POPE: Right.

THE COURT: -- hearing. So -- so you're suggesting to me that when -- when these cases talk about the court -- you know, the -- that the -- that the government is entitled to use this consideration and weigh it carefully, that there's no avenue to make that determination whether that was done, I just must presume it? Is that what you're saying?

MR. POPE: I think we have to presume it unless if there is something in the legislative history, and then with regard to what the value of the legislative history is, I guess, that will be determined later on.

But, you know, you've -- as you've pointed out --

THE COURT: But you're -- you're saying to me it's not in the kit and caboodle of things that opposing counsel would like to see that the legislature had to make this broad-based tax?

MR. POPE: I'm not sure if it's exactly in there. There's some reference to it. And as Your Honor has pointed out, I think that -- that those references indicated that the

Department was seeking additional revenue that -- that -- that the limit was lower to -- to get at additional revenue.

THE COURT: I mean, in their opposition they suggest to me --

MR. POPE: And to not harm small business. They -- they thought that they could go down to that level, not harm small business, but get more revenue. So at least something to that effect is in there.

THE COURT: So what does that have to do with an administrative burden?

MR. POPE: That --

THE COURT: That's just -- that's a burden on the business. That's not a burden on the administration of the actual tax itself by the taxing authority.

MR. POPE: I guess, implied in that is that they want -- you know, getting the additional revenue was worth -- worth it.

THE COURT: So when we look at paragraph -- I forget which paragraph it is in the affidavit that they say plaintiffs --

MR. DOERR: May I interject for one second?

THE COURT: -- indicate all the information they'd like to seek if they were given the opportunity to be able to address this and many other issues was paragraph -- what paragraph was it? Request to develop a full record.

MR. SHAFER: Your Honor, actually, I believe, it's in a couple of different paragraphs, but primarily in paragraph four, and then we go onto the justification in a couple of the other paragraphs later on.

THE COURT: But when you specifically -- you're -- you're telling the court what you would -- for example paragraph six, the Department of Taxation provides a limited amount of tax data online. So you've been unable to secure -- paragraph 7, line 13 through 18. Unable to secure a complete legislative history, including, but not limited to committee hearing transcripts, video recordings, reports, subcommittee hearing transcripts, legislative research, reports, studies and/or testimony relied by any committee or subcommittee. That's -- that's --

MR. SHAFER: Your Honor, we have -- we have had -- we have received limited transcripts of a couple of subcommittee meetings, and I believe they have been provided to Your Honor in the Motion for Preliminary Injunction, but you know, there's an old adage, I don't know what I don't know.

I don't know what else is out there. I -- I haven't seen any audio transcripts. Remember, when we were in the Nevada Tax Commission, I had no ability to take any discovery, so.

MR. POPE: But he would have ability to contact LCD,

which is not our client, to request that information. Just because a state -- a state division, or a department of the state doesn't mean that that's our client. We have that information.

THE COURT: But do they give out legislative research that, you know --

MR. POPE: Some of it's available on the website. If it's not available, you know --

THE COURT: How do you know if you have everything if you go and get something off the website? Do you know? Is there a way to know?

MR. POPE: What I -- you can call LCD and say, is this everything?

THE COURT: I'm sorry, I interrupted you again. Go ahead.

MR. POPE: Thank you. There's a common theme throughout these exemptions. Live entertainment that is provided at a trade show. You're not there for the entertainment. You're there for the trade show. So -- so any entertainment that's there is secondary.

Music performed by a musician who moves constantly throughout the audience. You're at a restaurant and there's somebody just walking around. You're not there for that. You're there to eat.

Live entertainment that's provided at a license

gaming establishment or a private meeting or a dinner. So you have a graduation party in a private room and you have somebody come and play the guitar or -- or a piano or something, you're there for your party, and the entertainment's just secondary.

So there's this common theme that runs through these. Live entertainment that is provided -- I'm skipping a couple of them -- live entertainment that is provided to the public in an outdoor area without any requirement for the payment of an admission charge. There's no -- no admission charge, and you know, this could be any live entertainment.

Live entertainment in the private room in a casino could be --

THE COURT: You mean the Pops at Summerlin?

MR. POPE: -- live entertainment.

MR. DOERR: Tops or Pops?

THE COURT: Pops. You know, you bring your picnic basket and you lay your blanket out, you listen to the music. Neighborhood thing.

MR. POPE: Yeah.

MR. DOERR: Exactly.

MR. POPE: I haven't been there, but.

THE COURT: You're missing out.

MR. POPE: So yeah, you're --

THE COURT: You gotta get up to Summerlin one of

these days. Take a walk on the wild side.

MR. POPE: With regard to the racetracks, Your Honor, the -- we did address this at a prior hearing and the exemption is for the -- the Nextel related races. And I'm told that there are two races; one car race and one truck race a year that is exempt. Any other races that occur out at the racetrack are subject to tax.

So it's very limited. This was part of, you know, what we believe is within the broad discretion --

THE COURT: So can I ask that --

MR. POPE: -- of the legislature. Yeah.

THE COURT: -- that constant question I keep asking?

MR. POPE: Um-h'm.

THE COURT: How do they know that? How do I know that? You made inquiry into this or it's belied by the records of the committee or the subcommittee? How do we know this? How do we know there's two races and all the other races are subject to a particular tax?

MR. POPE: You would know that from looking -- you know, following the statute, changes to the statute and by looking at legislative history.

THE COURT: Okay. Because, I mean, if the only way to really know that there's two particular races, for example, and all other races, I mean, that's really going to be in the legislative history. There's not -- you're not going to find

something like that in the statute, correct?

MR. POPE: Correct, yeah, unless if there was -- you know, if -- like this statute specifically says, the Nextel series. So if you're not -- if you're not a race buff, you might not know it. But if you are, you would know what -- what that is.

THE COURT: Which two races and how many races there are that are Nextel series versus not any other, would be in the committee hearings or in the statute itself? Is that what you're telling me?

MR. POPE: I think it could be in both. More likely to be in the legislative history, but you know, if something is -- is descriptive enough, then -- you know, descriptive enough in the statute, then I think you could tell it from the statute.

THE COURT: Okay.

MR. POPE: Just -- just to wrap up on the 7 percent, 100 percent distinction. This -- what we have to remember, this is one tax that's administered by two agencies. And the -- you know, the gaming portion of it is larger. But it's still one tax.

And it applies to -- just looking at the numbers you can see that gaming is -- is 93 percent, and the Department of Taxation's portion is -- is 7 percent of which plaintiffs only collect just a position of that. So whether -- whether it's a

majority of it or, you know, a smaller portion of it, it's just a fraction of the 7 percent.

We -- we believe that -- that plaintiffs are not targeted by the statute or by the exemptions. Plaintiffs argued that this is just like Minneapolis Star, and it's not. It's different in that in Minneapolis Star the effect of that tax was that it really focused on one or two taxpayers, and this -- that's not the case in this case as we've demonstrated.

It hits at least 40, or approximately 40 other lower level LET payers and approximately 15 higher level LET payers, in addition to all the taxpayers that fall under the jurisdiction of the -- the gaming side.

With regard to, you know, the -- the need -- we believe it's a generally applicable tax because it applies generally to all facilities that charge an admission for live entertainment. But you only have to get there if there's an infringement on a First Amendment right. But we're saying that there isn't one.

So it's -- it's the defense position that this -- this -- this is not content based, and that it doesn't single out the plaintiffs and it doesn't target them. And it doesn't target a small group. And if you can bear with me, Your Honor, I just -- I have a couple of quotes that I think are very important.

They are in cases. One case we didn't -- didn't cite, but at least if I mention them today, then we can include them in the packet. I brought copies today, but we'll just include them in the packet.

The first one is -- is Reagan v. Taxation. It's 461 U.S. 540. And that -- that case says that legislature has a broad discretion with creating classifications and distinctions in tax statutes. And it goes onto say that generally statutory classifications are valid if they bear a rational relation to a legitimate governmental purpose. Statutes are subject to a higher level of scrutiny if they interfere with the exercise of a fundamental right, such as freedom of speech, or employ a suspect class such as race. And again, that's the Reagan case, and that's 461 U.S. at 547.

That case also cites it a large quote from the Madden case. And it's Madden v. Kentucky, 309 U.S. 83, and we're looking at pages 87 to 88. And that case dates back to 1940. And then the Reagan case cited to it in '83. And it says, The broad discretion is the classification possessed a legislature and the field of taxation has long been recognized. The passage of time is only served to underscore the wisdom of that recognition of a large area of discretion which is needed by a legislature in formulating sound tax policy.

Traditionally classification has been a device for

fitting tax programs to local needs and usages in order to achieve an equitable distribution of the tax burden. It has, because of this, it's been pointed out that taxation even more than in other fields, legislatures possess the greatest freedom in classification.

And here's a really important part. It says, the presumption of constitutionality can be overcome only by the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes and that the burden is on the one attacking the legislative arrangement.

So in this case, the plaintiffs have the burden. There's no infringement on speech. The tax is subject to a rational basis review. Defense -- we also believe that summary judgment could at least be granted with regard to a facial attack, and we would request that it also be granted with regard to the as applied challenge. Thank you.

MR. SHAFER: Your Honor, could I have like 20 seconds in rebuttal, only because they brought up some case that they haven't cited before, and I'm not going to get any chance to respond to it. And also, I wanted to give the court a citation to the statute in regard to a provision that applies to a question you asked Counsel?

THE COURT: Yes.

MR. SHAFER: Your Honor, take a look at NRS

368A.205(n), which exempts out outdoor concerts. So what you were talking about, they're exempted out. That really doesn't fit within his idea of, this is all ancillary. That is, in fact, what's going on.

The second thing in regard to Madden. Madden predates all the First Amendment cases. Doesn't deal with First Amendment issues, and therefore, the justification as the U.S. Supreme Court has said time and time and time again on these First Amendment cases, the justification for a tax that impacts upon First Amendment rights is upon the government, not upon the challenger. Thank you, Your Honor.

THE COURT: I really appreciate you getting me the notebooks that you graciously offered to. And maybe you'll have new local counsel by the time I make a decision on these cases. I'm working on it, though. And I appreciate your patience. And --

MR. SHAFER: We -- we all appreciate your time, Your Honor. We understand that these are difficult issues.

THE COURT: Well, if there were less thorough lawyers involved, it would be much harder. Now it's just a matter of carving out some time to go through everything and read the cases myself and make sure that I'm giving you what you need so you can move on.

Congratulations.

MR. SULLIVAN: Oh, thank you, Judge.

THE COURT: And thank you very much. And I'll see your notebooks, and enjoy your holidays. Thanks.

MR. SULLIVAN: Thanks, very much.

MR. SHAFER: Okay, you enjoy your holidays as well, Your Honor.

THE COURT: Thanks.

MR. POPE: Your Honor, should we bring the notebooks to your chambers?

THE COURT: Yeah, if you could just bring them to chambers. Or you can --

MR. DOERR: We'll send them over with a runner.

THE COURT: -- put them in the in bin if you want. Although, if it's -- if --

MR. SHAFER: The ones that were submitted we're about yea big.

THE COURT: Yeah.

MR. SHAFER: To the Nevada Tax Commissioner.

THE COURT: Okay. Bring those to chambers.

MR. POPE: Okay.

THE COURT: I don't know if they'll fit in the in bin. Thank you.

MR. POPE: Thank you.

MR. SHAFER: Thank you, Your Honor.

MR. POPE: Have a good Thanksgiving.

THE COURT: You too.

THE MARSHAL: All rise.

(Proceeding concluded at 10:36 a.m.)

CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

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DISTRICT COURT

CLARK COUNTY, NEVADA

Dec 2 1 51 PM '08

CLERK OF THE COURT

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, 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.

CASE NO. A533273
DEPT NO. IX

RECEIVED
DEC 02 2008
CLERK OF THE COURT

SCHEDULING ORDER
(Discovery/Dispositive Motions/Motions to Amend or Add Parties)

NATURE OF ACTION: **Declaratory relief**

DATE OF FILING JOINT CASE CONFERENCE REPORT(S): **10/20/08**

TIME REQUIRED FOR TRIAL: **4 days** JURY DEMAND FILED: **No**

Counsel for Plaintiffs:
Diana L. Sullivan, Esq., Ghanem & Sullivan AND Bradley J. Shafer, Esq., Shafer & Associates (Michigan co-counsel)

Counsel for Defendants:
David J. Pope, Esq., Sr. Deputy Attorney General

DISCOVERY COMMISSIONER
EIGHTH JUDICIAL DISTRICT COURT

Counsel representing all parties have been heard and after consideration by the Discovery Commissioner,

IT IS HEREBY ORDERED:

1. all parties shall complete discovery on or before 4/27/09.

2. all parties shall file motions to amend pleadings or add parties on or before 1/27/09.

3. all parties shall make initial expert disclosures pursuant to N.R.C.P. 16.1(a)(2) on or before 1/27/09.

4. all parties shall make rebuttal expert disclosures pursuant to N.R.C.P. 16.1(a)(2) on or before 2/27/09.

5. all parties shall file dispositive motions on or before 5/27/09.

Certain dates from your case conference report(s) may have been changed to bring them into compliance with N.R.C.P. 16.1.

Within 60 days from the date of this Scheduling Order, the Court shall notify counsel for the parties as to the date of trial, as well as any further pretrial requirements in addition to those set forth above.

Unless otherwise directed by the court, all pretrial disclosures pursuant to N.R.C.P. 16.1(a)(3) must be made at least 30 days before trial.

. . .

. . .

Motions for extensions of discovery shall be made to the Discovery Commissioner in strict accordance with E.D.C.R. 2.35. Discovery is completed on the day responses are due or the day a deposition begins.

Unless otherwise ordered, all discovery disputes (except disputes presented at a pre-trial conference or at trial) must first be heard by the Discovery Commissioner.

Dated this 2 day of December, 2008.

DISCOVERY COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on the date filed, I placed a copy of the foregoing DISCOVERY SCHEDULING ORDER in the folder(s) in the Clerk's office or mailed as follows:

Diana L. Sullivan, Esq.
David J. Pope, Esq.

Bradley J. Shafer, Esq,
Shafer & Associates
3800 Capital City Blvd., Ste. 2
Lansing, MI 48906

Natalie Tetreault

COMMISSIONER DESIGNEE

(Mail)

DSO

FILED
DEC 2 1 56 PM '08
CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

K-KEL, INC., d/b/a Spearmint Rhino Gentleman'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 Gentleman'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. A554970
DEPT NO. IX

RECEIVED
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By

SCHEDULING ORDER
(Discovery/Dispositive Motions/Motions to Amend or Add Parties)

NATURE OF ACTION: **Declaratory relief**

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EIGHTH JUDICIAL DISTRICT COURT

1. all parties shall complete discovery on or before 4/27/09.

2. all parties shall file motions to amend pleadings or add parties on or before 1/27/09.

3. all parties shall make initial expert disclosures pursuant to N.R.C.P. 16.1(a)(2) on or before 1/27/09.

4. all parties shall make rebuttal expert disclosures pursuant to N.R.C.P. 16.1(a)(2) on or before 2/27/09.

5. all parties shall file dispositive motions on or before 5/27/09.

Certain dates from your case conference report(s) may have been changed to bring them into compliance with N.R.C.P. 16.1.

Within 60 days from the date of this Scheduling Order, the Court shall notify counsel for the parties as to the date of trial, as well as any further pretrial requirements in addition to those set forth above.

Unless otherwise directed by the court, all pretrial disclosures pursuant to N.R.C.P. 16.1(a)(3) must be made at least 30 days before trial.

Motions for extensions of discovery shall be made to the Discovery Commissioner in strict accordance with E.D.C.R. 2.35. Discovery is completed on the day responses are due or the day a deposition begins.

Unless otherwise ordered, all discovery disputes (except disputes presented at a pre-trial conference or at trial) must first be heard by the Discovery Commissioner.

Dated this 2 day of December, 2008.

DISCOVERY COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on the date filed, I placed a copy of the foregoing DISCOVERY SCHEDULING ORDER in the folder(s) in the Clerk's office or mailed as follows:

Diana L. Sullivan, Esq.
David J. Pope, Esq.

Bradley J. Shafer, Esq,
Shafer & Associates
3800 Capital City Blvd., Ste. 2
Lansing, MI 48906

COMMISSIONER DESIGNEE

CIVIL COURT MINUTES

06-A-533273-C Deja Vu Showgirls Of Las Vegas vs Nevada Dept Of Taxation

CONTINUED FROM PAGE: 007

12/11/08 ??:?? ?M 00 ALL PENDING MOTIONS 12/11/08

HEARD BY: Jennifer Togliatti, Judge; Dept. 9

OFFICERS: Alan Paul Castle, Court Clerk

PARTIES: NO PARTIES PRESENT

STATUS CHECK: DECISION - DEFENDANT'S MOTION FOR SUMMARY JUDGMENT...STATUS CHECK: DECISION - DEFENDANT'S MOTION TO DISMISS

COURT ORDERED, matters CONTINUED.

CONTINUED TO:
01/15/09 (CHAMBER) STATUS CHECK: DECISION - DEFENDANT'S MOTION FOR SUMMARY JUDGMENT...STATUS CHECK: DECISION - DEFENDANT'S MOTION TO DISMISS

CIVIL COURT MINUTES

06-A-533273-C Deja Vu Showgirls Of Las Vegas vs Nevada Dept Of Taxation

CONTINUED FROM PAGE: 008

12/16/08 09:00 AM 00 SULLIVAN'S MTN TO WITHDRAW AS COUNSEL /09

HEARD BY: James Brennan; Dept. VJ6

OFFICERS: Alan Paul Castle, Court Clerk
Yvette Lester, Reporter/Recorder

PARTIES:	0001 P1	Deja Vu Showgirls Of Las Vegas LLC	N
	004701	Sullivan, Diana L.	Y
	0002 D1	Nevada Dept Of Taxation	N
	009001	Doerr, Blake A.	Y
	008617	Pope, David J.	Y

Matter submitted. There being good cause shown and no opposition, COURT ORDERED, motion GRANTED with stipulated 30-day, no filing or action by parties for Plaintiff to secure new local counsel, i.e., status quo language to be included in the order. COURT ORDERED, status check on appearance of local counsel.

02/03/09 9:00 AM STATUS CHECK: APPEARANCE OF LOCAL COUNSEL

CIVIL COURT MINUTES

08-A-554970-C K-Kel Inc vs Nevada Dept Of Taxation

CONTINUED FROM PAGE: 001

12/16/08 09:00 AM 01 SULLIVAN'S MTN TO WITHDRAW AS COUNSEL /2

HEARD BY: James Brennan; Dept. VJ6

OFFICERS: Alan Paul Castle, Court Clerk
Yvette Lester, Reporter/Recorder

PARTIES:			
	0001 P1	K-Kel Inc	N
	004701	Sullivan, Diana L.	Y
	0002 D1	Nevada Dept Of Taxation	N
	008617	Pope, David J.	Y
	009001	Doerr, Blake A.	Y

Matter submitted. There being good cause shown and no opposition, COURT ORDERED, motion GRANTED with stipulated 30-day, no filing or action by parties for Plaintiff to secure new local counsel, i.e., status quo language to be included in the order. COURT ORDERED, status check on appearance of local counsel.

02/03/09 9:00 AM STATUS CHECK: APPEARANCE OF LOCAL COUNSEL

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FILED

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CLERK OF THE COURT

ORDR

DIANA L. SULLIVAN, ESQ.
Nevada Bar #4701
GHANEM & SULLIVAN, LLP
930 South Fourth Street, Suite 210
Las Vegas, NV 89101
Telephone: (702) 862-4450
Facsimile: (702) 862-4422
Attorneys for Plaintiffs

BRADLEY J. SHAFER
Michigan Bar # P36604
Shafer & Associates, P.C.
3800 Capital City Blvd., Suite 2
Lansing, Michigan 48906-2110
(517) 886-6560 - telephone
(517) 886-6565 - facsimile
Email: shaferassociates@acd.net
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,

Defendants.

Case No.: A533273
Dept. No.: IX

ORDER GRANTING MOTION TO WITHDRAW AS LOCAL COUNSEL OF RECORD FOR PLAINTIFFS

The above-entitled matter came on for hearing on December 16, 2008 on Diana L. Sullivan, Esq.'s Motion to Withdraw as Local Counsel of Record for Plaintiffs. The Court,

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CLERK OF THE COURT

having read all papers and pleadings on file herein; there being no opposition to the Motion, and good cause appearing, finds as follows:

IT IS HEREBY ORDERED that counsel's Motion to Withdraw as Local Counsel of Record for Plaintiffs is GRANTED;

IT IS FURTHER ORDERED that Plaintiffs have thirty (30) days from the date of entry of this Order in which to obtain new local counsel;

IT IS FURTHER ORDERED that all matters and discovery are stayed until Plaintiffs associate in new local counsel;

IT IS FURTHER ORDERED that there is a status check on February 3, 2009 to confirm Plaintiffs have obtained new local counsel;

IT IS FURTHER ORDERED that the close of discovery is April 27, 2009 and no Trial Date has yet been set;

IT IS FURTHER ORDERED that until local counsel is confirmed, all parties to this action shall serve Plaintiffs with all pleadings, correspondence, and further proceedings in this action at its last known addresses as follows:

D. WESTWOOD, INC.
d/b/a TREASURES
Attn: Alson Lee
2801 Westwood Drive
Las Vegas, Nevada 89109
Telephone: (702) 257-3030
Plaintiff

THE POWER COMPANY, INC. d/b/a
CRAZY HORSE TOO GENTLEMEN'S CLUB
2476 Industrial Road
Las Vegas, Nevada 89102
Telephone: (702) 382-8003
Plaintiff

SHAC, LLC d/b/a SAPPHIRE
Attn: Peter Feinstein
3025 S. Industrial Road
Las Vegas, Nevada 89109
Telephone: (702) 796-6000
Plaintiff

OLYMPUS GARDEN, INC.
d/b/a *Olympic Garden*
Attn: Delores Eliades
1531 S. Las Vegas Blvd.
Las Vegas, Nevada 89104
Telephone: (702) 385-8987
Plaintiff

K-KEL, INC. d/b/a SPEARMINT RHINO GENTLEMEN'S CLUB
Attn: Kevin Kelly
302 E. Carson Street, Suite 600
Las Vegas, Nevada 89101
Telephone: (702) 796-3600
Plaintiff

LITTLE DARLINGS OF LAS VEGAS, LLC
d/b/a LITTLE DARLINGS
Attn: Ronald Rahme
1514 Western Avenue
Las Vegas, Nevada 89102
Telephone: (702) 366-0959
Plaintiff

DÉJÀ VU SHOWGIRLS OF LAS VEGAS, LLC
d/b/a DÉJÀ VU SHOWGIRLS
Attn: Bob Proden
3247 Industrial Road
Las Vegas, Nevada 89109
Telephone: (702) 894-4167
Plaintiff

D.I. FOOD & BEVERAGE OF LAS VEGAS, LLC
d/b/a *Scores*
Attn: Dennis DeGori
3355 Procyon Street
Las Vegas, Nevada 89102
Telephone: (702) 367-4000
Plaintiff

BRADLEY J. SHAFER
Shafer & Associates, P.C.
3800 Capital City Blvd., Suite 2
Lansing, Michigan 48906-2110
(517) 886-6560 – telephone
Attorneys for Plaintiffs
Admitted Pro Hac Vice

IT IS SO ORDERED.

DATED this 19th day of December, 2008.

DISTRICT COURT JUDGE
FOR JENNIFER P. TOGLIATTI

Submitted by:

GHANEM & SULLIVAN, LLP

By Diana L. Sullivan
DIANA L. SULLIVAN, ESQ.
Nevada Bar # 4701
930 South Fourth Street, Suite 210
Las Vegas, Nevada 89101

ORDR

DIANA L. SULLIVAN, ESQ.
Nevada Bar #4701
GHANEM & SULLIVAN, LLP
930 South Fourth Street, Suite 210
Las Vegas, NV 89101
Telephone: (702) 862-4450
Facsimile: (702) 862-4422
Attorneys for Plaintiffs

BRADLEY J. SHAFER
Michigan Bar # P36604
Shafer & Associates, P.C.
3800 Capital City Blvd., Suite 2
Lansing, Michigan 48906-2110
(517) 886-6560 - telephone
(517) 886-6565 - facsimile
Email: shaferassociates@acd.net
Admitted Pro Hac Vice

DISTRICT COURT

CLARK COUNTY, NEVADA

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,

Defendants.

Case No.: A554970
Dept. No.: IX

ORDER GRANTING MOTION TO WITHDRAW AS LOCAL COUNSEL OF RECORD FOR PLAINTIFFS

The above-entitled matter came on for hearing on December 16, 2008 on Diana L. Sullivan, Esq.'s Motion to Withdraw as Local Counsel of Record for Plaintiffs. The Court,

having read all papers and pleadings on file herein; there being no opposition to the Motion, and good cause appearing, finds as follows:

IT IS HEREBY ORDERED that counsel's Motion to Withdraw as Local Counsel of Record for Plaintiffs is GRANTED;

IT IS FURTHER ORDERED that Plaintiffs have thirty (30) days from the date of entry of this Order in which to obtain new local counsel;

IT IS FURTHER ORDERED that all matters and discovery are stayed until Plaintiffs associate in new local counsel;

IT IS FURTHER ORDERED that there is a status check on February 3, 2009 to confirm Plaintiffs have obtained new local counsel;

IT IS FURTHER ORDERED that the close of discovery is April 27, 2009 and no Trial Date has yet been set;

IT IS FURTHER ORDERED that until local counsel is confirmed, all parties to this action shall serve Plaintiffs with all pleadings, correspondence, and further proceedings in this action at its last known addresses as follows:

D. WESTWOOD, INC.
d/b/a TREASURES
Attn: Alson Lee
2801 Westwood Drive
Las Vegas, Nevada 89109
Telephone: (702) 257-3030
Plaintiff

THE POWER COMPANY, INC. d/b/a
CRAZY HORSE TOO GENTLEMEN'S CLUB
2476 Industrial Road
Las Vegas, Nevada 89102
Telephone: (702) 382-8003
Plaintiff

SHAC, LLC d/b/a SAPPHIRE
Attn: Peter Feinstein
3025 S. Industrial Road
Las Vegas, Nevada 89109
Telephone: (702) 796-6000
Plaintiff

OLYMPUS GARDEN, INC.
d/b/a *Olympic Garden*
Attn: Delores Eliades
1531 S. Las Vegas Blvd.
Las Vegas, Nevada 89104
Telephone: (702) 385-8987
Plaintiff

K-KEL, INC. d/b/a SPEARMINT RHINO GENTLEMEN'S CLUB
Attn: Kevin Kelly
302 E. Carson Street, Suite 600
Las Vegas, Nevada 89101
Telephone: (702) 796-3600
Plaintiff

D.I. FOOD & BEVERAGE OF LAS VEGAS, LLC d/b/a *Scores*
Attn: Dennis DeGori
3355 Procyon Street
Las Vegas, Nevada 89102
Telephone: (702) 367-4000
Plaintiff

BRADLEY J. SHAFER
Shafer & Associates, P.C.
3800 Capital City Blvd., Suite 2
Lansing, Michigan 48906-2110
(517) 886-6560 – telephone
Attorneys for Plaintiffs
Admitted Pro Hac Vice

IT IS SO ORDERED.

DATED this 19th day of December, 2008.

JAMES A. BRENNAN

DISTRICT COURT JUDGE
FOR JENNIFER P. TOGLIATTI

Submitted by:

GHANEM & SULLIVAN, LLP

By Diana L. Sullivan
DIANA L. SULLIVAN, ESQ.
Nevada Bar # 4701
930 South Fourth Street, Suite 210
Las Vegas, Nevada 89101

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2008 DEC 22 A 11:51

CLERK OF THE COURT

NOEO
DIANA L. SULLIVAN, ESQ.
Nevada Bar #4701
GHANEM & SULLIVAN, LLP
8861 West Sahara, Suite 120
Las Vegas, NV 89117
Telephone: (702) 862-4450
Facsimile: (702) 862-4422
Attorneys for Plaintiffs

BRADLEY J. SHAFER*, MI Bar No. P36604
Shafer & Associates, P.C.
3800 Capital City Blvd., Suite 2
Lansing, Michigan 48906-2110
(517) 886-6560 - telephone
(517) 886-6565 - facsimile
shaferassociates@acd.net – email
Attorneys for Plaintiffs
Admitted Pro Hac

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,*

Plaintiff,

vs.

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

Defendants.

Case No.: A533273
Dept. No.: IX

NOTICE OF ENTRY OF ORDER

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CLERK OF THE COURT

PLEASE TAKE NOTICE that an Order was entered in the above-entitled action on the 19th day of December, 2008 a copy of which is attached.

DATED this 22nd day of December, 2008.

GHANEM & SULLIVAN, LLP

By Diana L. Sullivan

DIANA L. SULLIVAN, ESQ.
Nevada Bar #4701
930 South Fourth Street, Suite 210
Las Vegas, NV 89101
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE BY REGULAR MAIL

I hereby certify that on the 22nd day of December, 2008, the foregoing **NOTICE OF ENTRY OF ORDER** was served on the party(ies) by mailing of same in the United States mail, postage prepaid thereon, addressed as follows:

D. WESTWOOD, INC. d/b/a TREASURES
Attn: Alson Lee
2801 Westwood Drive
Las Vegas, Nevada 89109
Telephone: (702) 257-3030
Plaintiff

SHAC, LLC d/b/a SAPPHIRE
Attn: Peter Feinstein
3025 S. Industrial Road
Las Vegas, Nevada 89109
Telephone: (702) 796-6000
Plaintiff

K-KEL, INC. d/b/a SPEARMINT RHINO GENTLEMEN'S CLUB
Attn: Kevin Kelly
302 E. Carson Street, Suite 600
Las Vegas, Nevada 89101
Telephone: (702) 796-3600
Plaintiff

DÉJÀ VU SHOWGIRLS OF LAS VEGAS, LLC
d/b/a DÉJÀ VU SHOWGIRLS
Attn: Bob Proden
3247 Industrial Road
Las Vegas, Nevada 89109
Telephone: (702) 894-4167
Plaintiff

BRADLEY J. SHAFER
Shafer & Associates, P.C.
3800 Capital City Blvd., Suite 2
Lansing, Michigan 48906-2110
(517) 886-6560 – telephone
Attorneys for Plaintiffs
Admitted Pro Hac Vice

THE POWER COMPANY, INC. d/b/a CRAZY HORSE TOO GENTLEMEN'S CLUB
2476 Industrial Road
Las Vegas, Nevada 89102
Telephone: (702) 382-8003
Plaintiff

OLYMPUS GARDEN, INC.
d/b/a *Olympic Garden*
Attn: Delores Eliades
1531 S. Las Vegas Blvd.
Las Vegas, Nevada 89104
Telephone: (702) 385-8987
Plaintiff

LITTLE DARLINGS OF LAS VEGAS, LLC
d/b/a LITTLE DARLINGS
Attn: Ronald Rahme
1514 Western Avenue
Las Vegas, Nevada 89102
Telephone: (702) 366-0959
Plaintiff

D.I. FOOD & BEVERAGE OF LAS VEGAS, LLC d/b/a *Scores*
Attn: Dennis DeGori
3355 Procyon Street
Las Vegas, Nevada 89102
Telephone: (702) 367-4000
Plaintiff

David J. Pope, Esq., Sr. Deputy Attorney General
555 E. Washington Ave., Suite 3900
Las Vegas, NV 89101
Facsimile: (702) 486-3416
Attorneys for the Nevada Defendants

Jennifer Clark

An employee of GHANEM & SULLIVAN, LLP

ORDR

DIANA L. SULLIVAN, ESQ.
Nevada Bar #4701
GHANEM & SULLIVAN, LLP
930 South Fourth Street, Suite 210
Las Vegas, NV 89101
Telephone: (702) 862-4450
Facsimile: (702) 862-4422
Attorneys for Plaintiffs

BRADLEY J. SHAFER
Michigan Bar # P36604
Shafer & Associates, P.C.
3800 Capital City Blvd., Suite 2
Lansing, Michigan 48906-2110
(517) 886-6560 - telephone
(517) 886-6565 - facsimile
Email: shaferassociates@acd.net
Admitted Pro Hac Vice

FILED

Dec 19 3 11 PM '08

CLERK OF THE COURT

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,

Defendants.

Case No.: A533273
Dept. No.: IX

ORDER GRANTING MOTION TO WITHDRAW AS LOCAL COUNSEL OF RECORD FOR PLAINTIFFS

The above-entitled matter came on for hearing on December 16, 2008 on Diana L. Sullivan, Esq.'s Motion to Withdraw as Local Counsel of Record for Plaintiffs. The Court,

having read all papers and pleadings on file herein; there being no opposition to the Motion, and good cause appearing, finds as follows:

IT IS HEREBY ORDERED that counsel's Motion to Withdraw as Local Counsel of Record for Plaintiffs is GRANTED;

IT IS FURTHER ORDERED that Plaintiffs have thirty (30) days from the date of entry of this Order in which to obtain new local counsel;

IT IS FURTHER ORDERED that all matters and discovery are stayed until Plaintiffs associate in new local counsel;

IT IS FURTHER ORDERED that there is a status check on February 3, 2009 to confirm Plaintiffs have obtained new local counsel;

IT IS FURTHER ORDERED that the close of discovery is April 27, 2009 and no Trial Date has yet been set;

IT IS FURTHER ORDERED that until local counsel is confirmed, all parties to this action shall serve Plaintiffs with all pleadings, correspondence, and further proceedings in this action at its last known addresses as follows:

D. WESTWOOD, INC.
d/b/a TREASURES
Attn: Alson Lee
2801 Westwood Drive
Las Vegas, Nevada 89109
Telephone: (702) 257-3030
Plaintiff

THE POWER COMPANY, INC. d/b/a
CRAZY HORSE TOO GENTLEMEN'S CLUB
2476 Industrial Road
Las Vegas, Nevada 89102
Telephone: (702) 382-8003
Plaintiff

SHAC, LLC d/b/a SAPPHIRE
Attn: Peter Feinstein
3025 S. Industrial Road
Las Vegas, Nevada 89109
Telephone: (702) 796-6000
Plaintiff

OLYMPUS GARDEN, INC.
d/b/a *Olympic Garden*
Attn: Delores Eliades
1531 S. Las Vegas Blvd.
Las Vegas, Nevada 89104
Telephone: (702) 385-8987
Plaintiff

K-KEL, INC. d/b/a SPEARMINT RHINO GENTLEMEN'S CLUB
Attn: Kevin Kelly
302 E. Carson Street, Suite 600
Las Vegas, Nevada 89101
Telephone: (702) 796-3600
Plaintiff

LITTLE DARLINGS OF LAS VEGAS, LLC
d/b/a LITTLE DARLINGS
Attn: Ronald Rahme
1514 Western Avenue
Las Vegas, Nevada 89102
Telephone: (702) 366-0959
Plaintiff

DÉJÀ VU SHOWGIRLS OF LAS VEGAS, LLC
d/b/a DÉJÀ VU SHOWGIRLS
Attn: Bob Proden
3247 Industrial Road
Las Vegas, Nevada 89109
Telephone: (702) 894-4167
Plaintiff

D.I. FOOD & BEVERAGE OF LAS VEGAS, LLC
d/b/a *Scores*
Attn: Dennis DeGori
3355 Procyon Street
Las Vegas, Nevada 89102
Telephone: (702) 367-4000
Plaintiff

BRADLEY J. SHAFER
Shafer & Associates, P.C.
3800 Capital City Blvd., Suite 2
Lansing, Michigan 48906-2110
(517) 886-6560 – telephone
Attorneys for Plaintiffs
Admitted Pro Hac Vice

IT IS SO ORDERED.

DATED this 19th day of December, 2008.

JAMES A. BRENNAN

DISTRICT COURT JUDGE
For **JENNIFER P. TOGLIATTI**

Submitted by:

GHANEM & SULLIVAN, LLP

By Diana L. Sullivan

DIANA L. SULLIVAN, ESQ.
Nevada Bar # 4701
930 South Fourth Street, Suite 210
Las Vegas, Nevada 89101

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2008 DEC 22 A 11:50

CLERK OF THE COURT

NOEO
DIANA L. SULLIVAN, ESQ.
Nevada Bar #4701
GHANEM & SULLIVAN, LLP
930 South Fourth Street, Suite 210
Las Vegas, NV 89101
Telephone: (702) 862-4450
Facsimile: (702) 862-4422
Attorneys for Plaintiffs

BRADLEY J. SHAFER*
Michigan Bar # P36604
Shafer & Associates, P.C.
3800 Capital City Blvd., Suite 2
Lansing, Michigan 48906-2110
(517) 886-6560 - telephone
(517) 886-6565 - facsimile
Email: shaferassociates@acd.net
Admitted Pro Hac Vice

DISTRICT COURT

CLARK COUNTY, NEVADA

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,

Defendants.

Case No.: A554970
Dept. No.: IX

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that an Order was entered in the above-entitled action on the

....

....

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DEC 22 2008

CLERK OF THE COURT

19th day of December, 2008 a copy of which is attached.

DATED this 22nd day of December, 2008.

GHANEM & SULLIVAN, LLP

By _____
DIANA L. SULLIVAN, ESQ.
Nevada Bar #4701
930 South Fourth Street, Suite 210
Las Vegas, NV 89101
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE BY REGULAR MAIL

I hereby certify that on the 22nd day of December, 2008, the foregoing **NOTICE OF ENTRY OF ORDER** was served on the party(ies) by mailing of same in the United States mail, postage prepaid thereon, addressed as follows:

D. WESTWOOD, INC.
d/b/a TREASURES
Attn: Alson Lee
2801 Westwood Drive
Las Vegas, Nevada 89109
Telephone: (702) 257-3030
Plaintiff

THE POWER COMPANY, INC. d/b/a
CRAZY HORSE TOO GENTLEMEN'S CLUB
2476 Industrial Road
Las Vegas, Nevada 89102
Telephone: (702) 382-8003
Plaintiff

SHAC, LLC d/b/a SAPPHIRE
Attn: Peter Feinstein
3025 S. Industrial Road
Las Vegas, Nevada 89109
Telephone: (702) 796-6000
Plaintiff

OLYMPUS GARDEN, INC.
d/b/a *Olympic Garden*
Attn: Delores Eliades
1531 S. Las Vegas Blvd.
Las Vegas, Nevada 89104
Telephone: (702) 385-8987
Plaintiff

K-KEL, INC. d/b/a SPEARMINT RHINO GENTLEMEN'S CLUB
Attn: Kevin Kelly
302 E. Carson Street, Suite 600
Las Vegas, Nevada 89101
Telephone: (702) 796-3600
Plaintiff

D.I. FOOD & BEVERAGE OF LAS VEGAS, LLC
d/b/a *Scores*
Attn: Dennis DeGori
3355 Procyon Street
Las Vegas, Nevada 89102
Telephone: (702) 367-4000
Plaintiff

BRADLEY J. SHAFER
Shafer & Associates, P.C.
3800 Capital City Blvd., Suite 2
Lansing, Michigan 48906-2110
Attorneys for Plaintiffs
Admitted Pro Hac Vice

David J. Pope, Esq., Sr. Deputy Attorney General
555 E. Washington Avenue, Suite 3900
Las Vegas, Nevada 89101
Attorneys for Defendants

Jennifer Clark
an employee of GHANEM & SULLIVAN, LLP

ORDR

DIANA L. SULLIVAN, ESQ.
Nevada Bar #4701
GHANEM & SULLIVAN, LLP
930 South Fourth Street, Suite 210
Las Vegas, NV 89101
Telephone: (702) 862-4450
Facsimile: (702) 862-4422
Attorneys for Plaintiffs

BRADLEY J. SHAFER
Michigan Bar # P36604
Shafer & Associates, P.C.
3800 Capital City Blvd., Suite 2
Lansing, Michigan 48906-2110
(517) 886-6560 - telephone
(517) 886-6565 - facsimile
Email: shaferassociates@acd.net
Admitted Pro Hac Vice

DISTRICT COURT

CLARK COUNTY, NEVADA

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,

Defendants.

Case No.: A554970
Dept. No.: IX

ORDER GRANTING MOTION TO WITHDRAW AS LOCAL COUNSEL OF RECORD FOR PLAINTIFFS

The above-entitled matter came on for hearing on December 16, 2008 on Diana L. Sullivan, Esq.'s Motion to Withdraw as Local Counsel of Record for Plaintiffs. The Court,

having read all papers and pleadings on file herein; there being no opposition to the Motion, and good cause appearing, finds as follows:

IT IS HEREBY ORDERED that counsel's Motion to Withdraw as Local Counsel of Record for Plaintiffs is GRANTED;

IT IS FURTHER ORDERED that Plaintiffs have thirty (30) days from the date of entry of this Order in which to obtain new local counsel;

IT IS FURTHER ORDERED that all matters and discovery are stayed until Plaintiffs associate in new local counsel;

IT IS FURTHER ORDERED that there is a status check on February 3, 2009 to confirm Plaintiffs have obtained new local counsel;

IT IS FURTHER ORDERED that the close of discovery is April 27, 2009 and no Trial Date has yet been set;

IT IS FURTHER ORDERED that until local counsel is confirmed, all parties to this action shall serve Plaintiffs with all pleadings, correspondence, and further proceedings in this action at its last known addresses as follows:

D. WESTWOOD, INC.
d/b/a TREASURES
Attn: Alson Lee
2801 Westwood Drive
Las Vegas, Nevada 89109
Telephone: (702) 257-3030
Plaintiff

THE POWER COMPANY, INC. d/b/a
CRAZY HORSE TOO GENTLEMEN'S CLUB
2476 Industrial Road
Las Vegas, Nevada 89102
Telephone: (702) 382-8003
Plaintiff

SHAC, LLC d/b/a SAPPHIRE
Attn: Peter Feinstein
3025 S. Industrial Road
Las Vegas, Nevada 89109
Telephone: (702) 796-6000
Plaintiff

OLYMPUS GARDEN, INC.
d/b/a *Olympic Garden*
Attn: Delores Eliades
1531 S. Las Vegas Blvd.
Las Vegas, Nevada 89104
Telephone: (702) 385-8987
Plaintiff

K-KEL, INC. d/b/a SPEARMINT RHINO GENTLEMEN'S CLUB
Attn: Kevin Kelly
302 E. Carson Street, Suite 600
Las Vegas, Nevada 89101
Telephone: (702) 796-3600
Plaintiff

D.I. FOOD & BEVERAGE OF LAS VEGAS, LLC d/b/a *Scores*
Attn: Dennis DeGori
3355 Procyon Street
Las Vegas, Nevada 89102
Telephone: (702) 367-4000
Plaintiff

BRADLEY J. SHAFER
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3800 Capital City Blvd., Suite 2
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(517) 886-6560 – telephone
Attorneys for Plaintiffs
Admitted Pro Hac Vice

IT IS SO ORDERED.

DATED this 19th day of December, 2008.

JAMES A. BRENNAN

DISTRICT COURT JUDGE
FOR **JENNIFER P. TOGLIATTI**

Submitted by:

GHANEM & SULLIVAN, LLP

By Diana L. Sullivan
DIANA L. SULLIVAN, ESQ.
Nevada Bar # 4701
930 South Fourth Street, Suite 210
Las Vegas, Nevada 89101

CIVIL COURT MINUTES

06-A-533273-C Deja Vu Showgirls Of Las Vegas vs Nevada Dept Of Taxation

CONTINUED FROM PAGE: 009

01/15/09 ??:?? ?M 00 ALL PENDING MOTIONS 01/15/09

HEARD BY: Jennifer Togliatti, Judge; Dept. 9

OFFICERS: Alan Paul Castle, Court Clerk

PARTIES: NO PARTIES PRESENT

STATUS CHECK: DECISION - DEFENDANT'S MOTION FOR SUMMARY JUDGMENT...STATUS CHECK: DECISION - DEFENDANT'S MOTION TO DISMISS

COURT ORDERS, status check CONTINUED for further consideration of parties submitted authorities.

CONTINUED TO:
02/12/09 (CHAMBER) STATUS CHECK: DECISION - DEFENDANT'S MOTION FOR SUMMARY JUDGMENT...STATUS CHECK: DECISION - DEFENDANT'S MOTION TO DISMISS

CLERK'S NOTE: The above Minute Order has been distributed to: Sullivan Brown; and Catherine Cortez Masto, Attorney General (David Pope, Sr Deputy). apc/01/29/09

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DISTRICT COURT

CLARK COUNTY, 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*	**CASE NO. A533273** **DEPT. NO. IX**
Plaintiffs,	**VERIFIED AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF, DAMAGES, AND ATTORNEY FEES AND COSTS**
v.	
NEVADA DEPARTMENT OF TAXATION, NEVADA TAX COMMISSION, NEVADA STATE BOARD OF EXAMINERS, and MICHELLE JACOBS, in her official capacity only,	
Defendants.	

NOW COMES Plaintiffs, 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* (collectively referred to herein as the "Plaintiffs"), by and through their attorneys, and state for their complaint against Defendants Nevada Department of Taxation, Nevada Tax Commission, Nevada State Board of Examiners, and Michelle Jacobs in her official capacity only (collectively referred to herein as the "Defendants"), as follows:

INTRODUCTION

1. This is a civil action wherein Plaintiffs pray for a declaratory judgment, damages, attorney fees and costs, as well as both a preliminary and permanent injunction to restrain and enjoin the Defendants, as well as their agents, employees and representatives, from acting under color of state law to deprive the Plaintiffs of their rights, privileges and immunities secured to them by the Constitution of the State of Nevada and the Constitution of the United States. Specifically, Plaintiffs seek to have this Court declare as unconstitutional on its face and as applied to Plaintiffs, and to enjoin, all aspects of 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"), as being an impermissible tax on constitutionally protected expression. A copy of that statute is attached hereto as Ex. "A," and is incorporated herein by reference.

JURISDICTION AND VENUE

2. 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, and 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.

3. The federal statutory law which further authorizes the institution of this suit is 42 U.S.C. § 1983, which provides, in part:

> "Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . ."

4. Authorization for the request of attorney's fees and costs is conferred by 42 U.S.C. § 1988.

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

6. Venue resides in this Court and is proper and appropriate as the various acts complained of occurred, and the Defendants are located, within Clark County in the State of Nevada.

PARTIES

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

8. Plaintiff, Deja Vu Showgirls of Las Vegas, L.L.C., d/b/a *Deja Vu Showgirls* ("*Deja Vu*"), 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, Little Darlings of Las Vegas, L.L.C., d/b/a *Little Darlings* ("*Little Darlings*"), 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

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

17. 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.

18. 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.

19. 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.

20. Defendant, Michelle Jacobs, who is named in this lawsuit in her official capacity only, is an employee of the Nevada Department of Taxation, and is responsible for the administration of Chapter 368A.

STATEMENT OF FACTS

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

22. 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."

23. Pursuant to N.R.S. § 368A.140, the Defendant Nevada Department of Taxation is obligated to collect the tax imposed by Chapter 367A 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.

24. 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.

25. 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.

26. 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.

27. *Deja Vu* operates a commercial establishment at 3247 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 *Deja Vu* is subject to Chapter 368A, as amended, and have required *Deja Vu* to pay the Live Entertainment Tax as mandated therein.

28. *Little Darlings* operates a commercial establishment at 1514 Western Avenue, Las Vegas, Nevada, 89102, whereupon live performance dance entertainment is presented to the consenting adult public. The Defendants have taken the position that *Little Darlings* is subject to Chapter 368A, as amended, and have required *Little Darlings* to pay the Live Entertainment Tax as mandated therein.

29. *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.

30. *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.

31. *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.

32. *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.

33. *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.

34. *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.

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

36. 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 the First and Fourteenth Amendments to the United States Constitution, as well.

37. 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.

38. 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 all, beginning at various times, paid the Live Entertainment Tax mandated by Chapter 368A.

39. Plaintiffs have 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 and as applied to Plaintiffs as it 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. Chapter 368A is therefore a direct tax on "First Amendment" freedoms, and in particular on live exotic performance dance entertainment.

40. Plaintiffs have suffered, and will continue to suffer, irreparable harm due to the enforcement of Chapter 368A in that their constitutional rights have been infringed upon, as well as their ability to provide constitutionally protected entertainment.

EXCERPTS OF THE TAX ON LIVE ENTERTAINMENT STATUTE

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

42. 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.

43. 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.

44. 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."

45. "[L]ive entertainment" is defined in § 368A.090 as:

> "[A]ny activity provided for pleasure, enjoyment, recreation, relaxation, diversion or other similar pupose 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."

46. Chapter 368A states, at N.R.S. § 368A.142(2), that the 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.

47. 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.

48. Overpayments and refunds of the Live Entertainment Tax are addressed in N.R.S. § 368A.250, which provides that if the Department determines that any tax has been "erroneously or illegally collected or computed," the 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 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.

49. Chapter 368A provides, at N.R.S. § 368A.280(1), that "[n]o injunction, writ of mandate or other legal or equitable process may issue in any suit, action or proceeding in any court against this state or against any officer of the State to prevent or enjoin the collection under this chapter of the tax imposed by this chapter or any amount of tax, penalty or interest required to be collected." Accordingly, Plaintiffs have no ability to seek injunctive relief in state court against collection of the Live Entertainment Tax.

50. Chapter 368A provides, at N.R.S. § 368A.290(1), that the 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 Department may be appealed to the Nevada Tax Commission.

COUNT I - DECLARATORY RELIEF

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

52. Chapter 368A is unconstitutional on its face and as applied to Plaintiffs under Article I, §§ 9 and 10 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 substantive due process rights of the Plaintiffs and others;

j. 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;

k. It is an impermissible direct tax on constitutionally protected freedoms;

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

m. It was enacted upon an insufficient record and is not justified on any factual or legal ground; and

n. It violates the separation of powers doctrine.

53. Because the Live Entertainment Tax is an impermissible and/or unconstitutional direct tax upon expression protected by Article I, §§ 9 and 10 of the Nevada Constitution as well as the First Amendment 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).

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

55. 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).

56. 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 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 in the past.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court declare the Live Entertainment Tax under Chapter 368A unconstitutional on its face and as applied to Plaintiffs; that Plaintiffs need not pay the Live Entertainment Tax as mandated by Chapter 368A both because it violates Article I, §§ 9 and 10 of the Nevada Constitution as well as the First Amendment 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.

COUNT II - INJUNCTIVE RELIEF

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

58. 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.

59. 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.

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

61. 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.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court enter both a preliminary and permanent enjoining 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. Further, Plaintiffs respectfully request that this Honorable Court enter a permanent injunction ordering Defendant Nevada Tax Commission to record the payments of the Live Entertainment Tax made by the Plaintiffs 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, together with interest as required by N.R.S. § 368A.310.

COUNT III - DAMAGES AGAINST DEFENDANTS

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

63. All of the actions of Defendants, by and through their agents, employees and representatives, have been undertaken, and will be undertaken, in the course and scope of official duties and under the color of state law.

64. As a direct and proximate cause of the application and/or enforcement of Chapter 368A by Defendants against the Plaintiffs, the Plaintiffs have incurred and suffered significant and substantial damages, and will in the future suffer significant and substantial damages, including, but not limited to having to pay an illegal and/or unconstitutional tax; loss of constitutional rights; lost business profits; and having to incur costs and attorney fees in seeking protection of their constitutional rights asserted herein.

65. Any actions by Defendants to enforce and/or apply Chapter 368A against the Plaintiffs have been and will be made under color of state law, and will unquestionably result in the deprivation of Plaintiffs' constitutional and civil rights as set forth above so as to render Defendants liable for these losses pursuant to 42 U.S.C. §1983.

66. Pursuant to 42 U.S.C. §1983 and common law, Plaintiffs are entitled to an award of damages for the injuries set forth above.

WHEREFORE, Plaintiffs respectfully request this Honorable Court to enter an award of damages against Defendants and in favor of the Plaintiffs in amounts to which the Plaintiffs are found to be entitled.

COUNT IV - ATTORNEY FEES AND COSTS

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

68. Because Chapter 368A is violative of the Nevada Constitution and the United States Constitution on its face and as applied to Plaintiffs, and because its application and/or enforcement has and will deprive the Plaintiffs of their fundamental state and federal constitutional rights, Plaintiffs are entitled, as prevailing parties, to an award of costs and attorney fees incurred herein pursuant to 42 U.S.C. § 1988.

WHEREFORE, Plaintiffs respectfully request this Honorable Court to award costs and

Respectfully submitted,

SHAFER & ASSOCIATES, P.C.

Dated: January 26, 2009

By: _____

BRADLEY J. SHAFER (P36604)
Attorney for Plaintiffs
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Admitted Pro Hac Vice

West's Nevada Revised Statutes Annotated Currentness
Title 32. Revenue and Taxation
➡ Chapter 368A. Tax on Live Entertainment
General Provisions

368A.010. Definitions

As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 368A.020 to 368A.115, inclusive, have the meanings ascribed to them in those sections.

[FN1] See Historical and Statutory Notes below for effective date information.

368A.020. "Admission charge" defined

"Admission charge" means the 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.

[FN1] See Historical and Statutory Notes below for effective date information.

368A.030. "Board" defined

"Board" means the State Gaming Control Board.

[FN1] See Historical and Statutory Notes below for effective date information.

368A.040. "Business" defined

"Business" means any activity engaged in or caused to be engaged in by a business entity with the object of gain, benefit or advantage, either direct or indirect, to any person or governmental entity.

[FN1] See Historical and Statutory Notes below for effective date information.

368A.050. "Business entity" defined

1. "Business entity" includes:

(a) A corporation, partnership, proprietorship, limited-liability company, business association, joint venture, limited-liability partnership, business trust and their equivalents organized under the laws of this state or another jurisdiction and any other type of entity that engages in business.

(b) A natural person engaging in a business if he is deemed to be a business entity pursuant to NRS 368A.120.

2. The term does not include a governmental entity.

[FN1] See Historical and Statutory Notes below for effective date information.

368A.053. "Casual assemblage" defined

"Casual assemblage" includes, without limitation:

1. Participants in conventions, business meetings or tournaments governed by chapter 463 of NRS, and their guests; or

2. Persons celebrating a friend's or family member's wedding, birthday, anniversary, graduation, religious ceremony or similar occasion that is generally recognized as customary for celebration.

368A.055. "Commission" defined

"Commission" means the Nevada Gaming Commission.

368A.060. "Facility" defined

1. "Facility" means:

(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] 6 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.

2. "Facility" encompasses, if live entertainment is provided at a licensed gaming establishment that is licensed for:

(a) Less than 51 slot machines, less than 6 games, or any combination of slot machines and games within those respective limits, any area or premises where the live entertainment is provided and for which consideration is collected, from one or more patrons, for the right or privilege of entering that area or those premises, even if additional consideration is collected for the right or privilege of entering a smaller venue within that area or those premises; or

(b) At least 51 slot machines or at least 6 games, any designated area on the premises of the licensed gaming establishment within which the live entertainment is provided.

[FN1] See Historical and Statutory Notes below for effective date information.

368A.070. "Game" defined

"Game" has the meaning ascribed to it in NRS 463.0152.

[FN1] See Historical and Statutory Notes below for effective date information.

368A.080. "Licensed gaming establishment" defined

"Licensed gaming establishment" has the meaning ascribed to it in NRS 463.0169.

[FN1] See Historical and Statutory Notes below for effective date information.

368A.090. "Live entertainment" defined

1. "Live entertainment" means any 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.

2. The term:

(a) Includes, without limitation, any one or more of the following activities:

(1) Music or vocals provided by one or more professional or amateur musicians or vocalists;

(2) Dancing performed by one or more professional or amateur dancers or performers;

(3) Acting or drama provided by one or more professional or amateur actors or players;

(4) Acrobatics or stunts provided by one or more professional or amateur acrobats, performers or stunt persons;

(5) Animal stunts or performances induced by one or more animal handlers or trainers, except as otherwise provided in subparagraph (7) of paragraph (b);

(6) Athletic or sporting contests, events or exhibitions provided by one or more professional or amateur athletes or sportsmen;

(7) Comedy or magic provided by one or more professional or amateur comedians, magicians, illusionists, entertainers or performers;

(8) A show or production involving any combination of the activities described in subparagraphs (1) to (7), inclusive; and

(9) A performance involving one or more of the activities described in this paragraph by a disc jockey who presents recorded music. For the purposes of this subsection, a disc jockey shall not be deemed to have engaged in a performance involving one or more of the activities described in this paragraph if the disc jockey generally limits his interaction with patrons to introducing the recorded music, making announcements of general interest to patrons, and explaining, encouraging or directing participatory activities between patrons.

(b) Excludes, without limitation, any one or more of the following activities:

(1) Instrumental or vocal music, which may or may not be supplemented with commentary by the musicians, in a restaurant, lounge or similar area if such music does not routinely rise to the volume that interferes with casual conversation and if such music would not generally cause patrons to watch as well as listen;

(2) Occasional performances by employees whose primary job function is that of preparing, selling or serving food, refreshments or beverages to patrons, if such performances are not advertised as entertainment to the public;

(3) Performances by performers of any type if the performance occurs in a licensed gaming establishment other than a licensed gaming establishment that is licensed for less than 51 slot machines, less than 6 games, or any combination of slot machines and games within those respective limits, as long as the performers stroll continuously throughout the facility;

(4) Performances in areas other than in nightclubs, lounges, restaurants or showrooms, if the performances occur in a licensed gaming establishment other than a licensed gaming establishment that is licensed for less than 51 slot machines, less than 6 games, or any combination of slot machines and games within those respective limits, which enhance the theme of the establishment or attract patrons to the areas of the performances, as long as any seating provided in the immediate area of the performers is limited to seating at slot machines or gaming tables;

(5) Television, radio, closed circuit or Internet broadcasts of live entertainment;

(6) Entertainment provided by a patron or patrons, including, without limitation, singing by patrons or dancing by or between patrons;

(7) Animal behaviors induced by animal trainers or caretakers primarily for the purpose of education and scientific research; and

(8) An occasional activity, including, without limitation, dancing, that:

(I) Does not constitute a performance;

(II) Is not advertised as entertainment to the public;

(III) Primarily serves to provide ambience to the facility; and

(IV) Is conducted by an employee whose primary job function is not that of an entertainer.

[FN1] See Historical and Statutory Notes below for effective date information.

368A.097. "Shopping mall" defined

"Shopping mall" includes any area or premises where multiple vendors assemble for the primary purpose of selling goods or services, regardless of whether consideration is collected for the right or privilege of entering that area or those premises.

368A.100. "Slot machine" defined

"Slot machine" has the meaning ascribed to it in NRS 463.0191.

[FN1] See Historical and Statutory Notes below for effective date information.

368A.110. "Taxpayer" defined

"Taxpayer" means:

1. If live entertainment that is taxable under this chapter is provided at a licensed gaming establishment, the person licensed to conduct gaming at that establishment.

2. Except as otherwise provided in subsection 3, if live entertainment that is taxable under this chapter is not provided at a licensed gaming establishment, the owner or operator of the facility where the live entertainment is provided.

3. If live entertainment that is taxable under this chapter is provided at a publicly owned facility or on public land, the person

who collects the taxable receipts.

[FN1] See Historical and Statutory Notes below for effective date information.

368A.115. "Trade show" defined

"Trade show" means an event of limited duration primarily attended by members of a particular trade or industry for the purpose of exhibiting their merchandise or services or discussing matters of interest to members of that trade or industry.

368A.120. Natural persons who are deemed to be business entities

A natural person engaging in a business shall be deemed to be a business entity that is subject to the provisions of this chapter if the person is required to file with the Internal Revenue Service a Schedule C (Form 1040), Profit or Loss From Business Form, or its equivalent or successor form, or a Schedule E (Form 1040), Supplemental Income and Loss Form, or its equivalent or successor form, for the business.

[FN1] See Historical and Statutory Notes below for effective date information.

Administration

368A.130. Repealed

368A.140. Duties of Board, Commission and Department; applicability of chapters 360 and 463 of NRS

1. The Board shall collect the tax imposed by this chapter from taxpayers who are licensed gaming establishments. The Commission shall adopt such regulations as are necessary to carry out the provisions of this subsection. The regulations must be adopted in accordance with the provisions of chapter 233B of NRS and must be codified in the Nevada Administrative Code.

2. The Department shall:

(a) Collect the tax imposed by this chapter from all other taxpayers; and

(b) Adopt such regulations as are necessary to carry out the provisions of paragraph (a).

3. For the purposes of:

(a) Subsection 1, the provisions of chapter 463 of NRS relating to the payment, collection, administration and enforcement of gaming license fees and taxes, including, without limitation, any provisions relating to the imposition of penalties and interest, shall be deemed to apply to the payment, collection, administration and enforcement of the taxes imposed by this chapter to the extent that those provisions do not conflict with the provisions of this chapter.

(b) Subsection 2, the provisions of chapter 360 of NRS relating to the payment, collection, administration and enforcement of taxes, including, without limitation, any provisions relating to the imposition of penalties and interest, shall be deemed to apply to the payment, collection, administration and enforcement of the taxes imposed by this chapter to the extent that those provisions do not conflict with the provisions of this chapter.

4. To ensure that the tax imposed by NRS 368A.200 is collected fairly and equitably, the Commission, the Board and the Department shall:

(a) Jointly, coordinate the administration and collection of that tax and the regulation of taxpayers who are liable for the payment of the tax.

(b) Upon request, assist the other agencies in the collection of that tax.

[FN1] See Historical and Statutory Notes below for effective date information.

368A.150. Establishment of amount of tax liability when Board or Department determines that taxpayer is acting with intent to defraud State or to evade payment of tax

1. If:

(a) The Board determines that a taxpayer who is a licensed gaming establishment is taking any action with intent to defraud the State or to evade the payment of the tax or any part of the tax imposed by this chapter, the Board shall establish an amount upon which the tax imposed by this chapter must be based.

(b) The Department determines that a taxpayer who is not a licensed gaming establishment is taking any action with intent to defraud the State or to evade the payment of the tax or any part of the tax imposed by this chapter, the Department shall establish an amount upon which the tax imposed by this chapter must be based.

2. The amount established by the Board or the Department pursuant to subsection 1 must be based upon the tax liability of business entities that are deemed comparable by the Board or the Department to that of the taxpayer.

[FN1] See Historical and Statutory Notes below for effective date information.

368A.160. Maintenance and availability of records for determining liability of taxpayer; liability to taxpayer of lessee, assignee or transferee of certain premises; penalty

1. Each person responsible for maintaining the records of a taxpayer shall:

(a) Keep such records as may be necessary to determine the amount of the liability of the taxpayer pursuant to the provisions of this chapter;

(b) Preserve those records for:

(1) At least 5 years if the taxpayer is a licensed gaming establishment or until any litigation or prosecution pursuant to this chapter is finally determined, whichever is longer; or

(2) At least 4 years if the taxpayer is not a licensed gaming establishment or until any litigation or prosecution pursuant to this chapter is finally determined, whichever is longer; and

(c) Make the records available for inspection by the Board or the Department upon demand at reasonable times during regular business hours.

2. The Commission and the Department may adopt regulations pursuant to NRS 368A.140 specifying the types of records

which must be kept to determine the amount of the liability of a taxpayer for the tax imposed by this chapter.

3. Any agreement that is entered into, modified or extended after January 1, 2004, for the lease, assignment or transfer of any premises upon which any activity subject to the tax imposed by this chapter is, or thereafter may be, conducted shall be deemed to include a provision that the taxpayer required to pay the tax must be allowed access to, upon demand, all books, records and financial papers held by the lessee, assignee or transferee which must be kept pursuant to this section. Any person conducting activities subject to the tax imposed by NRS 368A.200 who fails to maintain or disclose his records pursuant to this subsection is liable to the taxpayer for any penalty paid by the taxpayer for the late payment or nonpayment of the tax caused by the failure to maintain or disclose records.

4. A person who violates any provision of this section is guilty of a misdemeanor.

[FN1] See Historical and Statutory Notes below for effective date information.

368A.170. Examination of records by Board or Department; payment of expenses of Board or Department for examination of records outside State

1. To verify the accuracy of any report filed or, if no report is filed by a taxpayer, to determine the amount of tax required to be paid:

(a) The Board, or any person authorized in writing by the Board, may examine the books, papers and records of any licensed gaming establishment that may be liable for the tax imposed by this chapter.

(b) The Department, or any person authorized in writing by the Department, may examine the books, papers and records of any other person who may be liable for the tax imposed by this chapter.

2. Any person who may be liable for the tax imposed by this chapter and who keeps outside of this state any books, papers and records relating thereto shall pay to the Board or the Department an amount equal to the allowance provided for state officers and employees generally while traveling outside of the State for each day or fraction thereof during which an employee of the Board or the Department is engaged in examining those documents, plus any other actual expenses incurred by the employee while he is absent from his regular place of employment to examine those documents.

[FN1] See Historical and Statutory Notes below for effective date information.

368A.180. Confidentiality of records and files of Board and Department

1. Except as otherwise provided in this section and NRS 360.250, the records and files of the Board and the Department concerning the administration of this chapter are confidential and privileged. The Board, the Department and any employee of the Board or the Department engaged in the administration of this chapter or charged with the custody of any such records or files shall not disclose any information obtained from the records or files of the Board or the Department or from any examination, investigation or hearing authorized by the provisions of this chapter. The Board, the Department and any employee of the Board or the Department may not be required to produce any of the records, files and information for the inspection of any person or for use in any action or proceeding.

2. The records and files of the Board and the Department concerning the administration of this chapter are not confidential and privileged in the following cases:

(a) Testimony by a member or employee of the Board or the Department and production of records, files and information on behalf of the Board or the Department or a taxpayer in any action or proceeding pursuant to the provisions of this chapter, if that testimony or the records, files or information, or the facts shown thereby, are directly involved in the action or proceeding.

(b) Delivery to a taxpayer or his authorized representative of a copy of any report or other document filed by the taxpayer pursuant to this chapter.

(c) Publication of statistics so classified as to prevent the identification of a particular person or document.

(d) Exchanges of information with the Internal Revenue Service in accordance with compacts made and provided for in such cases.

(e) Disclosure in confidence to the Governor or his agent in the exercise of the Governor's general supervisory powers, or to any person authorized to audit the accounts of the Board or the Department in pursuance of an audit, or to the Attorney General or other legal representative of the State in connection with an action or proceeding pursuant to this chapter, or to any agency of this or any other state charged with the administration or enforcement of laws relating to taxation.

[FN1] See Historical and Statutory Notes below for effective date information.

Imposition and Collection

368A.200. Imposition and amount of tax; liability and reimbursement for payment; ticket for live entertainment must indicate whether tax is included in price of ticket; exemptions from tax

1. Except 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:

(a) Less than 7,500, the rate of the tax is 10 percent of the admission charge to the facility plus 10 percent of any amounts paid for food, refreshments and merchandise purchased at the facility.

(b) At least 7,500, the rate of the tax is 5 percent of the admission charge to the facility.

2. Amounts paid for:

(a) Admission charges collected and retained by a nonprofit religious, charitable, fraternal or other organization that qualifies as a tax-exempt organization pursuant to 26 U.S.C. § 501(c), or by a nonprofit corporation organized or existing under the provisions of chapter 82 of NRS, are not taxable pursuant to this section.

(b) Gratuities directly or indirectly remitted to persons employed at a facility where live entertainment is provided or for service charges, including those imposed in connection with the use of credit cards or debit cards, which are collected and retained by persons other than the taxpayer are not taxable pursuant to this section.

3. A business entity that collects any amount that is taxable pursuant to subsection 1 is liable for the tax imposed, but is entitled to collect reimbursement from any person paying that amount.

4. Any ticket for live entertainment must state whether the tax imposed by this section is included in the price of the ticket. If

the ticket does not include such a statement, the taxpayer shall pay the tax based on the face amount of the ticket.

5. The tax imposed by subsection 1 does not apply to:

(a) Live entertainment that this State is prohibited from taxing under the Constitution, laws or treaties of the United States or the Nevada Constitution.

(b) Live entertainment that is provided by or entirely for the benefit of a nonprofit religious, charitable, fraternal or other organization that qualifies as a tax-exempt organization pursuant to 26 U.S.C. § 501(c), or a nonprofit corporation organized or existing under the provisions of chapter 82 of NRS.

(c) Any boxing contest or exhibition governed by the provisions of chapter 467 of NRS.

(d) Live entertainment that is not provided at a licensed gaming establishment if the facility in which the live entertainment is provided has a maximum occupancy of less than 200 persons.

(e) Live entertainment that is provided at a licensed gaming establishment that is licensed for less than 51 slot machines, less than [six] 6 games, or any combination of slot machines and games within those respective limits, if the facility in which the live entertainment is provided has a maximum occupancy of less than 200 persons.

(f) 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.

(g) Live entertainment that is provided at a trade show.

(h) Music performed by musicians who move constantly through the audience if no other form of live entertainment is afforded to the patrons.

(i) Live entertainment that is provided at a licensed gaming establishment at private meetings or dinners attended by members of a particular organization or by a casual assemblage if the purpose of the event is not primarily for entertainment.

(j) Live entertainment that is provided in the common area of a shopping mall, unless the entertainment is provided in a facility located within the mall.

(k) Food and product demonstrations provided at a shopping mall, a craft show or an establishment that sells grocery products, housewares, hardware or other supplies for the home.

(l) Live entertainment that is incidental to an amusement ride, a motion simulator or a similar digital, electronic, mechanical or electromechanical attraction. For the purposes of this paragraph, live entertainment shall be deemed to be incidental to an amusement ride, a motion simulator or a similar digital, electronic, mechanical or electromechanical attraction if the live entertainment is:

(1) Not the predominant element of the attraction; and

(2) Not the primary purpose for which the public rides, attends or otherwise participates in the attraction.

(m) Live entertainment that is provided to the public in an outdoor area, without any requirements for the payment of an admission charge or the purchase of any food, refreshments or merchandise.

(n) An outdoor concert, unless the concert is provided on the premises of a licensed gaming establishment.

(o) Beginning July 1, 2007, race events scheduled at a race track in this State as a part of the National Association for Stock Car Auto Racing Nextel Cup Series, or its successor racing series, and all races associated therewith.

(p) Live entertainment provided in a restaurant which is incidental to any other activities conducted in the restaurant or which only serves as ambience so long as there is no charge to the patrons for that entertainment.

6. The Commission may adopt regulations establishing a procedure whereby a taxpayer that is a licensed gaming establishment may request an exemption from the tax pursuant to paragraph (p) of subsection 5. The regulations must require the taxpayer to seek an administrative ruling from the Chairman of the Board, provide a procedure for appealing that ruling to the Commission and further describe the forms of incidental or ambient entertainment exempted pursuant to that paragraph.

7. As used in this section, "maximum occupancy" means, in the following order of priority:

(a) The maximum occupancy of the facility in which live entertainment is provided, as determined by the State Fire Marshal or the local governmental agency that has the authority to determine the maximum occupancy of the facility;

(b) If such a maximum occupancy has not been determined, the maximum occupancy of the facility designated in any permit required to be obtained in order to provide the live entertainment; or

(c) If such a permit does not designate the maximum occupancy of the facility, the actual seating capacity of the facility in which the live entertainment is provided.

[FN1] See Historical and Statutory Notes below for effective date information.

368A.210. Repealed

368A.220. Filing of reports and payment of tax; deposit of amounts received in State General Fund

1. Except as otherwise provided in this section:

(a) Each taxpayer who is a licensed gaming establishment shall file with the Board, on or before the 24th day of each month, a report showing the amount of all taxable receipts for the preceding month or the month in which the taxable events occurred. The report must be in a form prescribed by the Board.

(b) All other taxpayers shall file with the Department, on or before the last day of each month, a report showing the amount of all taxable receipts for the preceding month. The report must be in a form prescribed by the Department.

2. The Board or the Department, if it deems it necessary to ensure payment to or facilitate the collection by the State of the tax imposed by NRS 368A.200, may require reports to be filed not later than 10 days after the end of each calendar quarter.

3. Each report required to be filed by this section must be accompanied by the amount of the tax that is due for the period covered by the report.

4. The Board and the Department shall deposit all taxes, interest and penalties it receives pursuant to this chapter in the State Treasury for credit to the State General Fund.

[FN1] See Historical and Statutory Notes below for effective date information.

368A.230. Extension of time for payment; payment of interest during period of extension

Upon written application made before the date on which payment must be made, the Board or the Department may, for good cause, extend by 30 days the time within which a taxpayer is required to pay the tax imposed by this chapter. If the tax is paid during the period of extension, no penalty or late charge may be imposed for failure to pay at the time required, but the taxpayer shall pay interest at the rate of 1 percent per month from the date on which the amount would have been due without the extension until the date of payment, unless otherwise provided in NRS 360.232 or 360.320.

[FN1] See Historical and Statutory Notes below for effective date information.

368A.240. Credit for amount of tax paid on account of certain charges taxpayer is unable to collect; violations

1. If a taxpayer:

(a) Is unable to collect all or part of an admission charge or charges for food, refreshments and merchandise which were included in the taxable receipts reported for a previous reporting period; and

(b) Has taken a deduction on his federal income tax return pursuant to 26 U.S.C. § 166(a) for the amount which he is unable to collect,

he is entitled to receive a credit for the amount of tax paid on account of that uncollected amount. The credit may be used against the amount of tax that the taxpayer is subsequently required to pay pursuant to this chapter.

2. If the Internal Revenue Service disallows a deduction described in paragraph (b) of subsection 1 and the taxpayer claimed a credit on a return for a previous reporting period pursuant to subsection 1, the taxpayer shall include the amount of that credit in the amount of taxes reported pursuant to this chapter in the first return filed with the Board or the Department after the deduction is disallowed.

3. If a taxpayer collects all or part of an admission charge or charges for food, refreshments and merchandise for which he claimed a credit on a return for a previous reporting period pursuant to subsection 2, he shall include:

(a) The amount collected in the charges reported pursuant to paragraph (a) of subsection 1; and

(b) The tax payable on the amount collected in the amount of taxes reported,

in the first return filed with the Board or the Department after that collection.

4. Except as otherwise provided in subsection 5, upon determining that a taxpayer has filed a return which contains one or more violations of the provisions of this section, the Board or the Department shall:

(a) For the first return of any taxpayer that contains one or more violations, issue a letter of warning to the taxpayer which provides an explanation of the violation or violations contained in the return.Green numbers along left margin indicate location on the printed bill (e.g., 5-15 indicates page 5, line 15).

(b) For the first or second return, other than a return described in paragraph (a), in any calendar year which contains one or more violations, assess a penalty equal to the amount of the tax which was not reported.

(c) For the third and each subsequent return in any calendar year which contains one or more violations, assess a penalty of three times the amount of the tax which was not reported.

5. For the purposes of subsection 4, if the first violation of this section by any taxpayer was determined by the Board or the Department through an audit which covered more than one return of the taxpayer, the Board or the Department shall treat all returns which were determined through the same audit to contain a violation or violations in the manner provided in paragraph (a) of subsection 4.

[FN1] See Historical and Statutory Notes below for effective date information.

Overpayments and Refunds

368A.250. Certification of excess amount collected; credit and refund

If the Department determines that any tax, penalty or interest it is required to collect has been paid more than once or has been erroneously or illegally collected or computed, the Department shall set forth that fact in its records and shall certify to the State Board of Examiners the amount collected in excess of the amount legally due and the person from whom it was collected or by whom it was paid. If approved by the State Board of Examiners, the excess amount collected or paid must be credited on any amounts then due from the person under this chapter, and the balance refunded to the person or his successors in interest.

[FN1] See Historical and Statutory Notes below for effective date information.

368A.260. Limitations on claims for refund or credit; form and contents of claim; failure to file claim constitutes waiver; service of notice of rejection of claim

1. Except as otherwise provided in NRS 360.235 and 360.395:

(a) No refund may be allowed unless a claim for it is filed with:

(1) The Board, if the taxpayer is a licensed gaming establishment; or

(2) The Department, if the taxpayer is not a licensed gaming establishment.

A claim must be filed within 3 years after the last day of the month following the reporting period for which the overpayment was made.

(b) No credit may be allowed after the expiration of the period specified for filing claims for refund unless a claim for credit is filed with the Board or the Department within that period.

2. Each claim must be in writing and must state the specific grounds upon which the claim is founded.

3. Failure to file a claim within the time prescribed in this chapter constitutes a waiver of any demand against the State on account of overpayment.

4. Within 30 days after rejecting any claim in whole or in part, the Board or the Department shall serve notice of its action on the claimant in the manner prescribed for service of notice of a deficiency determination.

[FN1] See Historical and Statutory Notes below for effective date information.

368A.270. Interest on overpayments; disallowance of interest

1. Except as otherwise provided in this section and NRS 360.320, interest must be paid upon any overpayment of any amount of the tax imposed by this chapter in accordance with the provisions of NRS 368A.140.

2. If the overpayment is paid to the Department, the interest must be paid:

(a) In the case of a refund, to the last day of the calendar month following the date upon which the person making the overpayment, if he has not already filed a claim, is notified by the Department that a claim may be filed or the date upon which the claim is certified to the State Board of Examiners, whichever is earlier.

(b) In the case of a credit, to the same date as that to which interest is computed on the tax or amount against which the credit is applied.

3. If the Board or the Department determines that any overpayment has been made intentionally or by reason of carelessness, the Board or the Department shall not allow any interest on the overpayment.

[FN1] See Historical and Statutory Notes below for effective date information.

368A.280. Injunction or other process to prevent collection of tax prohibited; filing of claim is condition precedent to maintaining action for refund

1. No injunction, writ of mandate or other legal or equitable process may issue in any suit, action or proceeding in any court against this state or against any officer of the State to prevent or enjoin the collection under this chapter of the tax imposed by this chapter or any amount of tax, penalty or interest required to be collected.

2. No suit or proceeding may be maintained in any court for the recovery of any amount alleged to have been erroneously or illegally determined or collected unless a claim for refund or credit has been filed.

[FN1] See Historical and Statutory Notes below for effective date information.

368A.290. Action for refund: Period for commencement; venue; waiver

1. Within 90 days after a final decision upon a claim filed pursuant to this chapter is rendered by:

(a) The Commission, the claimant may bring an action against the Board on the grounds set forth in the claim.

(b) The Nevada Tax Commission, the claimant may bring an action against the Department on the grounds set forth in the claim.

2. An action brought pursuant to subsection 1 must be brought in a court of competent jurisdiction in Carson City, the county of this State where the claimant resides or maintains his principal place of business or a county in which any relevant proceedings were conducted by the Board or the Department, for the recovery of the whole or any part of the amount with respect to which the claim has been disallowed.

3. Failure to bring an action within the time specified constitutes a waiver of any demand against the State on account of

alleged overpayments.

[FN1] See Historical and Statutory Notes below for effective date information.

368A.300. Rights of claimant upon failure of Board or Department to mail notice of action on claim; allocation of judgment for claimant

1. If the Board fails to mail notice of action on a claim within 6 months after the claim is filed, the claimant may consider the claim disallowed and file an appeal with the Commission within 30 days after the last day of the 6- month period.

2. If the Department fails to mail notice of action on a claim within 6 months after the claim is filed, the claimant may consider the claim disallowed and file an appeal with the Nevada Tax Commission within 30 days after the last day of the 6-month period.

3. If the claimant is aggrieved by the decision of:

(a) The 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.

(b) The Nevada Tax Commission rendered on appeal, the claimant may, within 90 days after the decision is rendered, bring an action against the Department on the grounds set forth in the claim for the recovery of the whole or any part of the amount claimed as an overpayment.

4. If judgment is rendered for the plaintiff, the amount of the judgment must first be credited towards any tax due from the plaintiff.

5. The balance of the judgment must be refunded to the plaintiff.

[FN1] See Historical and Statutory Notes below for effective date information.

368A.310. Allowance of interest in judgment for amount illegally collected

In any judgment, interest must be allowed at the rate of 6 percent per annum upon the amount found to have been illegally collected from the date of payment of the amount to the date of allowance of credit on account of the judgment, or to a date preceding the date of the refund warrant by not more than 30 days. The date must be determined by the Board or the Department.

[FN1] See Historical and Statutory Notes below for effective date information.

368A.320. Standing to recover

A judgment may not be rendered in favor of the plaintiff in any action brought against the Board or the Department to recover any amount paid when the action is brought by or in the name of an assignee of the person paying the amount or by any person other than the person who paid the amount.

[FN1] See Historical and Statutory Notes below for effective date information.

368A.330. Action for recovery of erroneous refund: Jurisdiction; venue; prosecution

1. The Board or the Department may recover a refund or any part thereof which is erroneously made and any credit or part thereof which is erroneously allowed in an action brought in a court of competent jurisdiction in Carson City or Clark County in the name of the State of Nevada.

2. The action must be tried in Carson City or Clark County unless the court, with the consent of the Attorney General, orders a change of place of trial.

3. The Attorney General shall prosecute the action, and the provisions of NRS, the Nevada Rules of Civil Procedure and the Nevada Rules of Appellate Procedure relating to service of summons, pleadings, proofs, trials and appeals are applicable to the proceedings.

[FN1] See Historical and Statutory Notes below for effective date information.

368A.340. Cancellation of illegal determination

1. If any amount in excess of $25 has been illegally determined, either by the person filing the return or by the Board or the Department, the Board or the Department shall certify this fact to the State Board of Examiners, and the latter shall authorize the cancellation of the amount upon the records of the Board or the Department.

2. If an amount not exceeding $25 has been illegally determined, either by the person filing a return or by the Board or the Department, the Board or the Department, without certifying this fact to the State Board of Examiners, shall authorize the cancellation of the amount upon the records of the Board or the Department.

[FN1] See Historical and Statutory Notes below for effective date information.

Miscellaneous Provisions

368A.350. Prohibited acts; penalty

1. A person shall not:

(a) Make, cause to be made or permit to be made any false or fraudulent return or declaration or false statement in any report or declaration, with intent to defraud the State or to evade payment of the tax or any part of the tax imposed by this chapter.

(b) Make, cause to be made or permit to be made any false entry in books, records or accounts with intent to defraud the State or to evade the payment of the tax or any part of the tax imposed by this chapter.

(c) Keep, cause to be kept or permit to be kept more than one set of books, records or accounts with intent to defraud the State or to evade the payment of the tax or any part of the tax imposed by this chapter.

2. Any person who violates the provisions of subsection 1 is guilty of a gross misdemeanor.

[FN1] See Historical and Statutory Notes below for effective date information.

368A.360. Revocation of gaming license for failure to report, pay or truthfully account for tax

Any licensed gaming establishment liable for the payment of the tax imposed by NRS 368A.200 who willfully fails to report, pay or truthfully account for the tax is subject to the revocation of his gaming license by the Commission.

[FN1] See Historical and Statutory Notes below for effective date information.

368A.370. Remedies of State are cumulative

The remedies of the State provided for in this chapter are cumulative, and no action taken by the Commission, the Board, the Department or the Attorney General constitutes an election by the State to pursue any remedy to the exclusion of any other remedy for which provision is made in this chapter.

[FN1] See Historical and Statutory Notes below for effective date information.

Current through the 2005 73rd Regular Session and the 22nd Special Session of the Nevada Legislature
END OF DOCUMENT

CERT
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
bjshafer@acd.net
Attorneys 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. A533273 Dept. No. IX **CERTIFICATE OF SERVICE**

STATE OF MICHIGAN)
) ss
COUNTY OF CLINTON)

CERTIFICATE OF SERVICE

DENISE A. SHOAL, employed as a legal assistant with Shafer & Associates, P.C. hereby certifies that a copy of ***Plaintiffs' Motion to Amend Complaint*** and ***Plaintiff's Amended Complaint for Declaratory and Injunctive Relief, Damages, and Attorney Fees and Costs*** have been served upon the following parties by depositing the same in the United States mail in Clinton County, Michigan on January 26, 2009:

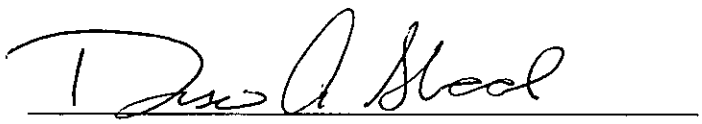
David J. Pope, Esq.
Attorney for Defendants
555 East Washington Avenue, Suite 3900
Las Vegas, Nevada 89101

Michelle Jacobs, Defendant
1550 College Parkway, Suite 100
Carson City, Nevada 89706

Nevada State Board of Examiners, Defendant
1550 College Parkway, Suite 100
Carson City, Nevada 89706

Nevada Tax Commission, Defendant
1550 College Parkway, Suite 100
Carson City, Nevada 89706

Nevada Dept of Taxation, Defendant
1550 College Parkway, Suite 100
Carson City, Nevada 89706



Denise A. Shoal

CIVIL COURT MINUTES

06-A-533273-C Deja Vu Showgirls Of Las Vegas vs Nevada Dept Of Taxation

CONTINUED FROM PAGE: 010

02/03/09 09:00 AM 00 STATUS CHECK: APPEARANCE OF NEW LOCAL COUNSEL

HEARD BY: Jennifer Togliatti, Judge; Dept. 9

OFFICERS: Alan Paul Castle, Court Clerk
Yvette Lester, Reporter/Recorder

PARTIES:	0001 P1	Deja Vu Showgirls Of Las Vegas LLC	N
	007623	Brown, William H.	Y
	0002 D1	Nevada Dept Of Taxation	N
	008617	Pope, David J.	Y

Mr. Brown present and confirmed as Plaintiff's local counsel. Colloquy regarding Discovery cutoffs. Court directed parties to stipulate to cutoff.

CIVIL COURT MINUTES

08-A-554970-C K-Kel Inc vs Nevada Dept Of Taxation

CONTINUED FROM PAGE: 002

02/03/09 09:00 AM 00 STATUS CHECK: APPEARANCE OF LOCAL COUNSEL

HEARD BY: Jennifer Togliatti, Judge; Dept. 9

OFFICERS: Alan Paul Castle, Court Clerk
Yvette Lester, Reporter/Recorder

PARTIES:	0001 P1	K-Kel Inc	N
	007623	Brown, William H.	Y
	0002 D1	Nevada Dept Of Taxation	N
	008617	Pope, David J.	Y

Mr. Brown present and confirmed as Plaintiff's local counsel. Colloquy regarding Discovery cutoffs. Court directed parties to stipulate to cutoff.

CIVIL COURT MINUTES

06-A-533273-C Deja Vu Showgirls Of Las Vegas vs Nevada Dept Of Taxation

CONTINUED FROM PAGE: 011

02/12/09 ??:?? ?M 00 ALL PENDING MOTIONS 2/12/09

HEARD BY: Jennifer Togliatti, Judge; Dept. 9

OFFICERS: Carole D'Aloia, Relief Clerk

PARTIES: NO PARTIES PRESENT

NEVADA DEPARTMENT OF TAXATION, NEVADA TAX COMMISSION, NEVADA STATE BOARD OF EXAMINERS, AND MICHELLE JACOBS IN HER OFFICIAL CAPACITY ONLY MOTION FOR SUMMARY JUDGMENT...NEVADA DEPARTMENT OF TAXATION, NEVADA TAX COMMISSION, NEVADA STATE BOARD OF EXAMINERS, AND MICHELLE JACOBS IN HER OFFICIAL CAPACITY ONLY MOTION TO DISMISS

COURT ORDERS, matter CONTINUED to 2/26/09 Chamber Calendar.

CLERK'S NOTE: COPY OF THIS MINUTE ORDER PLACED IN THE ATTORNEY FILES OF DAVID J. POPE, SR. DEPUTY ATTORNEY GENERAL, DIANA L. SULLIVAN, ESQ. (GHANEM & SULLIVAN), AND BRADLEY J. SHAFER, ESQ. (SHAFER & ASSOCIATES, P.C.) THIS DATE. cd

ORIGINAL

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DISTRICT COURT

CLARK COUNTY, NEVADA

FILED
Mar 4 4 18 PM '09
CLERK OF THE COURT

DÉJÀ VU SHOWGIRLS, et al.,

Plaintiff/s,

vs.

NEVADA DEPARTMENT., OF TAXATION, et al.,

Defendant/s.

CASE NO.: A533273
DEPT NO.: IX

ORDER SETTING CIVIL JURY TRIAL

IT IS HEREBY ORDERED THAT:

A. The above-entitled case is set to be tried by jury on a FIVE-week stack to begin, **MONDAY AUGUST 3, 2009** at **10:30 AM.**

B. A Pre-Trial Conference with the designated attorney and/or parties in proper person will be held **ONLY UPON REQUEST.**

C. A calendar call will be held on **JULY 23, 2009** at **9:15 AM.**

Parties must have the following ready for trial:

(1) All exhibits marked by counsel for identification purposes;

(2) Typed exhibit lists with all stipulated exhibits marked as admitted;

(3) Original depositions;

(4) A list of equipment needed for trial; and

(5) Courtesy copies of legal briefs on trial issues.

D. Pre-Trial Memorandums must be filed by **JULY 24, 2009** with courtesy copy delivered to Dept. IX. All parties, (Attorneys and parties in proper person) **MUST** comply with **ALL REQUIREMENTS** of **EDCR 2.67**.

E. All discovery deadlines, deadlines for filing dispositive motions and motion to amend the pleadings or add parties are controlled by the previously issued Scheduling Order.

F. All other pre-trial motions, including motions in Limine, must be in writing and set for hearing no later than **JULY 21, 2009.**

G. Any pre-trial motion **MUST** be filed by 5:00 PM on **JUNE 29, 2009**;

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CLERK OF THE COURT

JENNIFER P. TOGLIATTI
DISTRICT JUDGE
DEPARTMENT NINE
LAS VEGAS, NEVADA 89155

Oppositions are to be filed by 5:00 PM **JULY 8, 2009**; Replies thereto are to be filed by 5:00 PM **JULY 14, 2009. Orders shortening time will not be signed except in extreme emergencies. (Request for trial continuance is not an emergency.)**

H. **Failure of the designated trial attorney or any party appearing in proper person to appear for any court appearances or to comply with this Order shall result in any of the following: (1) dismissal of the action; (2) default judgment; (3) monetary sanctions; (4) vacation of trial date; and/or any other appropriate remedy or sanction.**

Counsel is required to advise the Court immediately when the case settles or is otherwise resolved prior to trial. **A stipulation which terminates a case by dismissal must also indicate whether a Scheduling Order has been filed and, if a trial date has been set, the date of that trial. A copy should be given to Chambers.**

DATED: this 24th day of February, 2009

Jennifer P. Togliatti

JENNIFER P. TOGLIATTI
DISTRICT JUDGE

CERTIFICATE OF MAILING

I hereby certify that on date filed, I mailed to the following proper persons or placed a copy of this Order in the attorneys' folder(s) in the Clerk=s Office of the following:

William Brown, Esq. – SULLIVAN BROWN AND Bradley J. Shafer, Esq. – SHAFER & ASSOCIATES

David J. Pope, Esq. – SR. DEPUTY ATTORNEY GENERAL

Rose Najera

ROSE NAJERA
Judicial Executive Assistant

A533273

JENNIFER P. TOGLIATTI
DISTRICT JUDGE
DEPARTMENT NINE
LAS VEGAS, NEVADA 89155

ORIGINAL

0123

DISTRICT COURT

CLARK COUNTY, NEVADA

FILED
Mar 4 4 23 PM '09

CLERK OF THE COURT

K-KEL INC., et al.,

Plaintiff/s,

vs.

NEVADA DEPARTMENT OF TAXATION, et al.,

Defendant/s.

CASE NO.: A554970
DEPT NO.: IX

ORDER SETTING CIVIL JURY TRIAL

IT IS HEREBY ORDERED THAT:

A. The above-entitled case is set to be tried by jury on a FIVE-week stack to begin, **MONDAY AUGUST 3, 2009** at **10:30 AM.**

B. A Pre-Trial Conference with the designated attorney and/or parties in proper person will be held **ONLY UPON REQUEST.**

C. A calendar call will be held on **JULY 23, 2009** at **9:15 AM.**

Parties must have the following ready for trial:

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(2) Typed exhibit lists with all stipulated exhibits marked as admitted;

(3) Original depositions;

(4) A list of equipment needed for trial; and

(5) Courtesy copies of legal briefs on trial issues.

D. Pre-Trial Memorandums must be filed by **JULY 24, 2009** with courtesy copy delivered to Dept. IX. All parties, (Attorneys and parties in proper person) **MUST** comply with **ALL REQUIREMENTS** of **EDCR 2.67**.

E. All discovery deadlines, deadlines for filing dispositive motions and motion to amend the pleadings or add parties are controlled by the previously issued Scheduling Order.

F. All other pre-trial motions, including motions in Limine, must be in writing and set for hearing no later than **JULY 21, 2009.**

G. Any pre-trial motion **MUST** be filed by 5:00 PM on **JUNE 29, 2009**;

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CLERK OF THE COURT

JENNIFER P. TOGLIATTI
DISTRICT JUDGE
DEPARTMENT NINE
LAS VEGAS, NEVADA 89155

Oppositions are to be filed by 5:00 PM **JULY 8, 2009**; Replies thereto are to be filed by 5:00 PM **JULY 14, 2009. Orders shortening time will not be signed except in extreme emergencies. (Request for trial continuance is not an emergency.)**

H. **Failure of the designated trial attorney or any party appearing in proper person to appear for any court appearances or to comply with this Order shall result in any of the following: (1) dismissal of the action; (2) default judgment; (3) monetary sanctions; (4) vacation of trial date; and/or any other appropriate remedy or sanction.**

Counsel is required to advise the Court immediately when the case settles or is otherwise resolved prior to trial. **A stipulation which terminates a case by dismissal must also indicate whether a Scheduling Order has been filed and, if a trial date has been set, the date of that trial. A copy should be given to Chambers.**

DATED: this 24th day of February, 2009

Jennifer P. Togliatti

JENNIFER P. TOGLIATTI
DISTRICT JUDGE

CERTIFICATE OF MAILING

I hereby certify that on date filed, I mailed to the following proper persons or placed a copy of this Order in the attorneys' folder(s) in the Clerk=s Office of the following:

William Brown, Esq. – SULLIVAN BROWN AND Bradley J. Shafer, Esq. – SHAFER & ASSOCIATES

David J. Pope, Esq. – SR. DEPUTY ATTORNEY GENERAL

Rose Najera

ROSE NAJERA
Judicial Executive Assistant

A554970

JENNIFER P. TOGLIATTI
DISTRICT JUDGE
DEPARTMENT NINE
LAS VEGAS, NEVADA 89155

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FILED

2009 MAR 17 P 3:22

CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

DÉJÀ VU SHOWGIRLS, et al.,

Plaintiff/s,

-vs.-

NEVADA DEPARTMENT OF TAXATION, et al.,

Defendant/s.

CASE NO.: A533273
DEPT NO.: IX

AMENDED ORDER SETTING NON-JURY CIVIL TRIAL

IT IS HEREBY ORDERED THAT:

A. The above-entitled case is set to be tried on a FIVE-week stack to begin, **MONDAY, AUGUST 3, 2009** at **10:30 AM.**

B. A Pre-Trial Conference with the designated attorney and/or parties in proper person will be held **ONLY UPON REQUEST.**

C. A calendar call will be held on **JULY 23, 2009 at 9:15 AM.**

Parties must have the following ready for trial:

(1) All exhibits marked by counsel for identification purposes;

(2) Typed exhibit lists with all stipulated exhibits marked as admitted;

(3) Original depositions;

(4) A list of equipment needed for trial; and

(5) Courtesy copies of legal briefs on trial issues.

D. Pre-Trial Memorandums must be filed by **JULY 24, 2009** with courtesy copy delivered to Dept. IX. All parties, (Attorneys and parties in proper person) **MUST** comply with **ALL REQUIREMENTS** of **EDCR 2.67**.

E. All discovery deadlines, deadlines for filing dispositive motions and motion to amend the pleadings or add parties are controlled by the previously issued Scheduling Order.

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CLERK OF THE COURT

JENNIFER P. TOGLIATTI
DISTRICT JUDGE
DEPARTMENT NINE
LAS VEGAS, NEVADA 89155

F. All other pre-trial motions, including motions in Limine, must be in writing and set for hearing no later than **JULY 21, 2009**.

G. Any pre-trial motion **MUST** be filed by 5:00 PM on **JUNE 29, 2009**; Oppositions are to be filed by 5:00 PM **JULY 8, 2009**; Replies thereto are to be filed by 5:00 PM **JULY 14, 2009**. **Orders shortening time will not be signed except in extreme emergencies. (Request for trial continuance is not an emergency.)**

H. **Failure of the designated trial attorney or any party appearing in proper person to appear for any court appearances or to comply with this Order shall result in any of the following: (1) dismissal of the action; (2) default judgment; (3) monetary sanctions; (4) vacation of trial date; and/or any other appropriate remedy or sanction.**

Counsel is required to advise the Court immediately when the case settles or is otherwise resolved prior to trial. **A stipulation which terminates a case by dismissal must also indicate whether a Scheduling Order has been filed and, if a trial date has been set, the date of that trial. A copy should be given to Chambers.**

DATED: this 11th of March, 2009

Jennifer P. Togliatti

JENNIFER P. TOGLIATTI
DISTRICT JUDGE

I hereby certify that on date filed, I mailed to the following proper persons or placed a copy of this Order in the attorneys' folder(s) in the Clerk=s Office of the following:

William Brown, Esq. – SULLIVAN BROWN
And Bradley J. Shafer, Esq. – SHAFER & Associates (Michigan co-counsel)

David J. Pope, Esq. – SR. DEPUTY ATTORNEY GENERAL

Rose Najera

ROSE NAJERA
Judicial Executive Assistant

A533273

JENNIFER P. TOGLIATTI
DISTRICT JUDGE
DEPARTMENT NINE
LAS VEGAS, NEVADA 89155

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2009 MAR 17 P 3:23
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

K-KEL, INC., et al., Plaintiff/s, -vs.- NEVADA DEPARTMENT OF TAXATION, et al., Defendant/s.	)	CASE NO.: A554970 DEPT NO.: IX

AMENDED ORDER SETTING NON-JURY CIVIL TRIAL

IT IS HEREBY ORDERED THAT:

A. The above-entitled case is set to be tried on a FIVE-week stack to begin, **MONDAY, AUGUST 3, 2009** at **10:30 AM.**

B. A Pre-Trial Conference with the designated attorney and/or parties in proper person will be held **ONLY UPON REQUEST.**

C. A calendar call will be held on **JULY 23, 2009 at 9:15 AM.**

Parties must have the following ready for trial:

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(2) Typed exhibit lists with all stipulated exhibits marked as admitted;

(3) Original depositions;

(4) A list of equipment needed for trial; and

(5) Courtesy copies of legal briefs on trial issues.

D. Pre-Trial Memorandums must be filed by **JULY 24, 2009** with courtesy copy delivered to Dept. IX. All parties, (Attorneys and parties in proper person) **MUST** comply with **ALL REQUIREMENTS** of **EDCR 2.67**.

E. All discovery deadlines, deadlines for filing dispositive motions and motion to amend the pleadings or add parties are controlled by the previously issued Scheduling Order.

CMC

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MAR 17 2009
CLERK OF THE COURT

JENNIFER P. TOGLIATTI
DISTRICT JUDGE
DEPARTMENT NINE
LAS VEGAS, NEVADA 89155

F. All other pre-trial motions, including motions in Limine, must be in writing and set for hearing no later than **JULY 21, 2009**.

G. Any pre-trial motion **MUST** be filed by 5:00 PM on **JUNE 29, 2009**; Oppositions are to be filed by 5:00 PM **JULY 8, 2009**; Replies thereto are to be filed by 5:00 PM **JULY 14, 2009. Orders shortening time will not be signed except in extreme emergencies. (Request for trial continuance is not an emergency.)**

H. **Failure of the designated trial attorney or any party appearing in proper person to appear for any court appearances or to comply with this Order shall result in any of the following: (1) dismissal of the action; (2) default judgment; (3) monetary sanctions; (4) vacation of trial date; and/or any other appropriate remedy or sanction.**

Counsel is required to advise the Court immediately when the case settles or is otherwise resolved prior to trial. **A stipulation which terminates a case by dismissal must also indicate whether a Scheduling Order has been filed and, if a trial date has been set, the date of that trial. A copy should be given to Chambers.**

DATED: this 11th of March, 2009

Jennifer P. Togliatti

JENNIFER P. TOGLIATTI
DISTRICT JUDGE

I hereby certify that on date filed, I mailed to the following proper persons or placed a copy of this Order in the attorneys' folder(s) in the Clerk=s Office of the following:

William Brown, Esq. – SULLIVAN BROWN
And Bradley J. Shafer, Esq. – SHAFER & Associates (Michigan co-counsel)

David J. Pope, Esq. – SR. DEPUTY ATTORNEY GENERAL

Rose Najera

ROSE NAJERA
Judicial Executive Assistant

A554970

CERT
BRADLEY J. SHAFER, ESQ.
Michigan State Bar P36604
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3800 Capital City Boulevard, Suite 2
Lansing, Michigan 48906
Telephone: (517) 886-6560
Facsimile: (517) 886-6565
bjshafer@acd.net
Attorneys 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. A533273 Dept. No. IX **CERTIFICATE OF SERVICE**

STATE OF MICHIGAN)
) ss
COUNTY OF CLINTON)

CERTIFICATE OF SERVICE

Denise A. Herig, employed as a legal assistant with Shafer & Associates, P.C. hereby certifies that a copy of ***Plaintiffs' First Set of Interrogatories to Defendants*** and ***Plaintiff's First Request for the Production of Documents and Things to Defendants*** have been served upon the following parties by facsimile transmission and by depositing the same in the United States mail in Clinton County, Michigan on March 26, 2009:

David J. Pope, Esq.
Senior Deputy Attorney General
Attorney for Defendants
555 East Washington Avenue, Suite 3900
Las Vegas, Nevada 89101

Denise A. Herig

CIVIL COURT MINUTES

06-A-533273-C Deja Vu Showgirls Of Las Vegas vs Nevada Dept Of Taxation

CONTINUED FROM PAGE: 012

04/02/09 ??:?? ?M 00 PLTF'S MTN FOR LEAVE TO AMEND COMPLAINT/16

HEARD BY: Jennifer Togliatti, Judge; Dept. 9

OFFICERS: Maria Garibay/mg, Relief Clerk

PARTIES: NO PARTIES PRESENT

There being no opposition, and good cause shown, COURT ORDERED, Motion GRANTED.

CLERK'S NOTE: A copy of this minute order to be placed in the attorney folder(s) of William Brown (Sullivan B), Blake Doerr (Dep Atty Gen), Dominic Gentile (Gordon & S, Ltd) and David Pope (Sr Dep Atty Gen).

CIVIL COURT MINUTES

08-A-554970-C K-Kel Inc vs Nevada Dept Of Taxation

CONTINUED FROM PAGE: 003

04/02/09 ??:?? ?M 00 PLTFS' MOTION TO AMEND COMPLAINT /8

HEARD BY: Jennifer Togliatti, Judge; Dept. 9

PARTIES: NO PARTIES PRESENT

There being no opposition, and good cause shown, COURT ORDERED, Motion GRANTED.

CLERK'S NOTE: A copy of this minute order to be placed in the attorney folder(s) of William Brown (Sullivan B), and David Pope (Sr Dep Atty Gen).

CIVIL COURT MINUTES

06-A-533273-C Deja Vu Showgirls Of Las Vegas vs Nevada Dept Of Taxation

CONTINUED FROM PAGE: 013

04/16/09 ??:?? ?M 00 ALL PENDING MOTIONS 04/16/09

HEARD BY: Jennifer Togliatti, Judge; Dept. 9

OFFICERS: Alan Paul Castle, Court Clerk

PARTIES: NO PARTIES PRESENT

STATUS CHECK: DECISION - NEVADA DEPARTMENT OF TAXATION, NEVADA TAX COMMISSION, NEVADA STATE BOARD OF EXAMINERS, AND MICHELLE JACOBS, IN HER OFFICIAL CAPACITY ONLY MOTION FOR SUMMARY JUDGMENT...STATUS CHECK: DECISION - NEVADA DEPARTMENT OF TAXATION, NEVADA TAX COMMISSION, NEVADA STATE BOARD OF EXAMINERS, AND MICHELLE JACOBS' IN HER OFFICIAL CAPACITY ONLY MOTION TO DISMISS

COURT ORDERED, CONTINUED for further consideration.

...CONTINUED TO:
05/14/09 (CHAMBER) STATUS CHECK: DECISION - NEVADA DEPARTMENT OF TAXATION, NEVADA TAX COMMISSION, NEVADA STATE BOARD OF EXAMINERS, AND MICHELLE JACOBS, IN HER OFFICIAL CAPACITY ONLY MOTION FOR SUMMARY JUDGMENT...STATUS CHECK: DECISION - NEVADA DEPARTMENT OF TAXATION, NEVADA TAX COMMISSION, NEVADA STATE BOARD OF EXAMINERS, AND MICHELLE JACOBS' IN HER OFFICIAL CAPACITY ONLY MOTION TO DISMISS

CERT
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
bjshafer@acd.net
Attorneys 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. A533273 Dept. No. IX **CERTIFICATE OF SERVICE**

STATE OF MICHIGAN)
) ss
COUNTY OF CLINTON)

CERTIFICATE OF SERVICE

Denise A. Herig, employed as a legal assistant with Shafer & Associates, P.C. hereby certifies that a copy of ***Plaintiffs' Notice of Rule 30(b)(6) Deposition of Defendants; and Subpoena Duces Tecum*** have been served upon the following parties by facsimile transmission and by depositing the same in the United States mail overnight delivery in Clinton County, Michigan on April 15, 2009:

State of Nevada
c/o David J. Pope, Esq.
Senior Deputy Attorney General
Attorney for Defendants
555 East Washington Avenue, Suite 3900
Las Vegas, Nevada 89101

Denise A. Herig

ORIGINAL

ORDR
WILLIAM H. BROWN, ESQ.
Nevada Bar No.: 7623
SULLIVAN BROWN
332 S. Jones Boulevard
Las Vegas, Nevada 89107
Telephone: (702) 471-0112
Facsimile: (702) 567-0116
WBrown@SullivanBrown.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	Case No. A533273 Dept. No. IX **ORDER GRANTING PLAINTIFFS' MOTION FOR LEAVE TO AMEND COMPLAINT**

STATE BOARD OF EXAMINERS, and MICHELLE JACOBS, in her official capacity only,

Defendants.

ORDER GRANTING PLAINTIFFS' MOTION FOR LEAVE TO AMEND COMPLAINT

Plaintiffs' Motion for Leave to Amend Complaint having come on for hearing in the above-entitled Court, on the 2nd day of April, 2009, in Chambers, in Department IX, no parties in attendance, the Court having read and considered the papers and pleadings on file herein, and good cause appearing therefore, the Court finds, concludes, and hereby orders as follows:

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED there being no opposition, and good cause shown, Plaintiffs' Motion for Leave to Amend Complaint is hereby GRANTED.

DATED this 7th day of ~~April~~ May, 2009.

IT IS SO ORDERED.

DISTRICT COURT JUDGE
For JENNIFER P. TOGLIATTI

Respectfully submitted:

SULLIVANBROWN

By: _____
WILLIAM H. BROWN, ESQ. (7623)
332 S. Jones Ave.
LV, NV 89107
Tel: 471.0112
Fax: 567.0116
Counsel for Plaintiffs

ORIGINAL

37

FILED

MAY 11 11 07 AM '09

CLERK OF THE COURT

ORDR
WILLIAM H. BROWN, ESQ.
Nevada Bar No.: 7623
SULLIVAN BROWN
332 S. Jones Boulevard
Las Vegas, Nevada 89107
Telephone: (702) 471-0112
Facsimile: (702) 567-0116
WBrown@SullivanBrown.com
Counsel for Plaintiffs

BRADLEY J. SHAFER, ESQ.
Michigan State Bar P36604
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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

08A554970
100289

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	Case No. A554970 Dept. No. IX **ORDER GRANTING PLAINTIFFS' MOTION FOR LEAVE TO AMEND COMPLAINT**

RECEIVED
MAY 11 2009
CLERK OF THE COURT

STATE BOARD OF EXAMINERS, and MICHELLE JACOBS, in her official capacity only,

Defendants.

ORDER GRANTING PLAINTIFFS' MOTION FOR LEAVE TO AMEND COMPLAINT

Plaintiffs' Motion for Leave to Amend Complaint having come on for hearing in the above-entitled Court, on the 2nd day of April, 2009, in Chambers, in Department IX, no parties in attendance, the Court having read and considered the papers and pleadings on file herein, and good cause appearing therefore, the Court finds, concludes, and hereby orders as follows:

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED, there being no opposition, and good cause shown, Plaintiffs Motion for Leave to Amend Complaint is hereby GRANTED.

DATED this 7th day of ~~April~~ May, 2009.

IT IS SO ORDERED.

DISTRICT COURT JUDGE

For JENNIFER P. TOGLIATTI

Respectfully submitted:

SULLIVANBROWN

By: _____

WILLIAM H. BROWN, ESQ. (7623)
332 S. Jones Ave.
LV, NV 89107
Tel: 471.0112
Fax: 567.0116
Counsel for Plaintiffs

ORIGINAL

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Counsel for Plaintiffs

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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

Case No. A533273
Dept. No. IX

NOTICE OF ENTRY OF ORDER

STATE BOARD OF EXAMINERS, and MICHELLE JACOBS, in her official capacity only,

Defendants.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that an Order Granting Plaintiffs' Motion for Leave to Amend Complaint was entered on the 11th day of May, 2009, a copy of which is attached hereto.

DATED this 14th day of May, 2009.

SULLIVANBROWN

By: _____

WILLIAM H. BROWN, ESQ. (7623)
332 S. Jones Ave.
LV, NV 89107
Tel: 471.0112
Fax: 567.0116
Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of May, 2009, service of the forgoing:

NOTICE OF ENTRY OF ORDER

was made this date by faxing a true and correct copy of same to the address listed below:

David J. Pope, Esq.
Nevada Attorney General
555 E. Washington Ave., Ste. 3900
LV, NV 89101
Fax: 486-3416
Counsel for Defendants

An employee of SULLIVANBROWN

ORDR

WILLIAM H. BROWN, ESQ.
Nevada Bar No.: 7623
SULLIVAN BROWN
332 S. Jones Boulevard
Las Vegas, Nevada 89107
Telephone: (702) 471-0112
Facsimile: (702) 567-0116
WBrown@SullivanBrown.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	Case No. A533273 Dept. No. IX **ORDER GRANTING PLAINTIFFS' MOTION FOR LEAVE TO AMEND COMPLAINT**

STATE BOARD OF EXAMINERS, and MICHELLE JACOBS, in her official capacity only,

Defendants.

ORDER GRANTING PLAINTIFFS' MOTION FOR LEAVE TO AMEND COMPLAINT

Plaintiffs' Motion for Leave to Amend Complaint having come on for hearing in the above-entitled Court, on the 2nd day of April, 2009, in Chambers, in Department IX, no parties in attendance, the Court having read and considered the papers and pleadings on file herein, and good cause appearing therefore, the Court finds, concludes, and hereby orders as follows:

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED there being no opposition, and good cause shown, Plaintiffs' Motion for Leave to Amend Complaint is hereby GRANTED.

DATED this 7 day of May, 2009.

IT IS SO ORDERED.

LEE A. GATES
DISTRICT COURT JUDGE
FOR JENNIFER P. TOGLIATTI

Respectfully submitted:

SULLIVANBROWN

By: _____
WILLIAM H. BROWN, ESQ. (7623)
332 S. Jones Ave.
LV, NV 89107
Tel: 471.0112
Fax: 567.0116
Counsel for Plaintiffs

TRANSMISSION VERIFICATION REPORT

TIME : 05/14/2009 15:34
NAME : SULLIVAN BROWN
FAX : 7025670116
TEL : 7024710112
SER.# : BROL8J885623

DATE,TIME	05/14 15:34
FAX NO./NAME	4863416
DURATION	00:00:43
PAGE(S)	05
RESULT	OK
MODE	STANDARD ECM

NOE
WILLIAM H. BROWN, ESQ.
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332 S. Jones Boulevard
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BRADLEY J. SHAFER, ESQ.
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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*	)	Case No. A533273 Dept. No. IX

ORIGINAL

NEO

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

BRADLEY J. SHAFER, ESQ.
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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	Case No. A554970 Dept. No. IX **NOTICE OF ENTRY OF ORDER**

STATE BOARD OF EXAMINERS, and MICHELLE JACOBS, in her official capacity only,

Defendants.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that an Order Granting Plaintiffs' Motion for Leave to Amend Complaint was entered on the 11th day of May, 2009, a copy of which is attached hereto.

DATED this 14th day of May, 2009.

SULLIVANBROWN

By: _____
WILLIAM H. BROWN, ESQ. (7623)
332 S. Jones Ave.
LV, NV 89107
Tel: 471.0112
Fax: 567.0116
Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of May, 2009, service of the forgoing:

NOTICE OF ENTRY OF ORDER

was made this date by faxing a true and correct copy of same to the address listed below:

David J. Pope, Esq.
Nevada Attorney General
555 E. Washington Ave., Ste. 3900
LV, NV 89101
Fax: 486-3416
Counsel for Defendants

An employee of SULLIVANBROWN

ORDR

WILLIAM H. BROWN, ESQ.
Nevada Bar No.: 7623
SULLIVAN BROWN
332 S. Jones Boulevard
Las Vegas, Nevada 89107
Telephone: (702) 471-0112
Facsimile: (702) 567-0116
WBrown@SullivanBrown.com
Counsel for Plaintiffs

BRADLEY J. SHAFER, ESQ.
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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	Case No. A554970 Dept. No. IX **ORDER GRANTING PLAINTIFFS' MOTION FOR LEAVE TO AMEND COMPLAINT**

STATE BOARD OF EXAMINERS, and MICHELLE JACOBS, in her official capacity only,

Defendants.

ORDER GRANTING PLAINTIFFS' MOTION FOR LEAVE TO AMEND COMPLAINT

Plaintiffs' Motion for Leave to Amend Complaint having come on for hearing in the above-entitled Court, on the 2nd day of April, 2009, in Chambers, in Department IX, no parties in attendance, the Court having read and considered the papers and pleadings on file herein, and good cause appearing therefore, the Court finds, concludes, and hereby orders as follows:

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED, there being no opposition, and good cause shown, Plaintiffs Motion for Leave to Amend Complaint is hereby GRANTED.

DATED this __ day of April, 2009.

IT IS SO ORDERED.

DISTRICT COURT JUDGE

Respectfully submitted:

SULLIVANBROWN

By: _____

WILLIAM H. BROWN, ESQ. (7623)
332 S. Jones Ave.
LV, NV 89107
Tel: 471.0112
Fax: 567.0116
Counsel for Plaintiffs

TRANSMISSION VERIFICATION REPORT

TIME : 05/14/2009 15:39
NAME : SULLIVAN BROWN
FAX : 7025670116
TEL : 7024710112
SER.# : BROL8J885623

DATE,TIME	05/14 15:38
FAX NO./NAME	4863416
DURATION	00:00:47
PAGE(S)	05
RESULT	OK
MODE	STANDARD ECM

NEO
WILLIAM H. BROWN, ESQ.
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Counsel for Plaintiffs

BRADLEY J. SHAFER, ESQ.
Michigan State Bar P36604
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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*	Case No. A554970 Dept. No. IX

DISTRICT COURT
CLARK COUNTY, NEVADA

Other Civil Filing **COURT MINUTES** **June 17, 2009**

06A533273 Little Darlings Of Las Vegas LLC, K-Kel Inc, et al
vs
Nevada Dept Of Taxation, Olympus Garden Inc, et al

June 17, 2009 **9:00 AM** **Discovery Conference**

HEARD BY: Bulla, Bonnie **COURTROOM:** RJC Level 5 Hearing Room

COURT CLERK: Jennifer Lott

RECORDER:

REPORTER:

PARTIES PRESENT:

Brown, William H.	Attorney for Pltf
Doerr, Blake A.	Attorney for Nevada Dept of Taxation
Pope, David J.	Attorney for Nevada Tax Commission, Nevada State Board of Examiners, and Michelle Jacobs

JOURNAL ENTRIES

- Counsel agreed Complaint was properly Amended. COMMISSIONER RECOMMENDED, 8/3/09 trial date VACATED; discovery cutoff is EXTENDED to 9/30/09; adding parties, amended pleadings, and initial expert disclosures are CLOSED; rebuttal expert disclosures DUE 7/30/09; dispositive motions TO BE FILED BY 10/29/09. Amended Scheduling Order will issue.

06A533273

DISTRICT COURT
CLARK COUNTY, NEVADA

Other Civil Filing **COURT MINUTES** **June 17, 2009**

06A533273 Little Darlings Of Las Vegas LLC, K-Kel Inc, et al
vs
Nevada Dept Of Taxation, Olympus Garden Inc, et al

June 17, 2009 **9:00 AM** **Discovery Conference**

HEARD BY: Bulla, Bonnie **COURTROOM:** RJC Level 5 Hearing Room

COURT CLERK: Jennifer Lott

RECORDER:

REPORTER:

PARTIES PRESENT:

Brown, William H.	Attorney for Pltf
Doerr, Blake A.	Attorney for Nevada Dept of Taxation
Pope, David J.	Attorney for Nevada Tax Commission, Nevada State Board of Examiners, and Michelle Jacobs

JOURNAL ENTRIES

- Counsel agreed Complaint was properly Amended. COMMISSIONER RECOMMENDED, 8/3/09 trial date VACATED; discovery cutoff is EXTENDED to 9/30/09; adding parties, amended pleadings, and initial expert disclosures are CLOSED; rebuttal expert disclosures DUE 7/30/09; dispositive motions TO BE FILED BY 10/29/09. Amended Scheduling Order will issue.

REGISTER OF ACTIONS
CASE NO. 08A554970

K-Kel Inc vs Nevada Dept Of Taxation, Olympus Garden Inc, et al

Case Type: **Other Civil Filing**
Subtype: **Other Civil Matters**
Date Filed: **01/09/2008**
Location: **Department 11**
Conversion Case Number: **A554970**
Supreme Court No.: **59752**

PARTY INFORMATION

		Lead Attorneys
Defendant	**Nevada Dept Of Taxation**	**David J. Pope** *Retained* 7026568084(W)
Defendant	**Nevada State Board Of Examiners**	**David J. Pope** *Retained* 7026568084(W)
Defendant	**Nevada Tax Commission**	**David J. Pope** *Retained* 7026568084(W)
Doing Business As	**Crazy Horse Too Gentlemen's Club**	
Doing Business As	**Olympic Garden**	
Doing Business As	**Sapphire**	
Doing Business As	**Scores**	
Doing Business As	**Spearmint Rhino Gentlemen's Club**	
Doing Business As	**Treasures**	
Plaintiff	**D I Food And Beverage 0f Las Vegas LLC**	**William H. Brown** *Retained* 702-474-4222(W)
Plaintiff	**D Westwood Inc**	**William H. Brown** *Retained* 702-474-4222(W)
Plaintiff	**K-Kel Inc**	**William H. Brown** *Retained* 702-474-4222(W)
Plaintiff	**Olympus Garden Inc**	**William H. Brown**

		Retained 702-474-4222(W)
Plaintiff	**Power Co Inc**	**William H. Brown** *Retained* 702-474-4222(W)
Plaintiff	**SHAC LLC**	**William H. Brown** *Retained* 702-474-4222(W)

EVENTS & ORDERS OF THE COURT

06/17/2009 **Discovery Conference** (9:00 AM) (Judicial Officer Bulla, Bonnie)

Minutes
06/17/2009 9:00 AM
- COMMISSIONER RECOMMENDED, 8/3/09 trial date VACATED; discovery cutoff is EXTENDED to 9/30/09; adding parties, amended pleadings, and initial expert disclosures are CLOSED; rebuttal expert disclosures DUE 7/30/09; dispositive motions TO BE FILED BY 10/29/09. Amended Scheduling Order will issue.

Parties Present
Return to Register of Actions

ORIGINAL

"FILED"

JUL 20 10 28 AM '09

CLERK

DSO

DISTRICT COURT

CLARK COUNTY, NEVADA

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, 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.

CASE NO. A533273
DEPT NO. IX

06A533273
262168

AMENDED SCHEDULING ORDER
(Discovery/Dispositive Motions/Motions to Amend or Add Parties)

NATURE OF ACTION: **Declaratory relief**

TIME REQUIRED FOR TRIAL: **4 days**

Counsel for Plaintiffs:
William H. Brown, Esq., Sullivan Brown

Counsel for Defendants:
Blake A. Doerr, Esq., Sr. Deputy Attorney General

Counsel representing all parties have been heard and after consideration by the Discovery Commissioner,

RECEIVED
JUL 20 2009
CLERK OF THE COURT

DISCOVERY COMMISSIONER
EIGHTH JUDICIAL DISTRICT COURT

IT IS HEREBY ORDERED:

1. all parties shall complete discovery on or before 9/30/09.

2. all parties shall file motions to amend pleadings or add parties on or before - closed.

3. all parties shall make initial expert disclosures pursuant to N.R.C.P. 16.1(a)(2) on or before - closed.

4. all parties shall make rebuttal expert disclosures pursuant to N.R.C.P. 16.1(a)(2) on or before 7/30/09.

5. all parties shall file dispositive motions on or before 10/29/09.

Certain dates from your case conference report(s) may have been changed to bring them into compliance with N.R.C.P. 16.1.

Within 60 days from the date of this Scheduling Order, the Court shall notify counsel for the parties as to the date of trial, as well as any further pretrial requirements in addition to those set forth above.

Unless otherwise directed by the court, all pretrial disclosures pursuant to N.R.C.P. 16.1(a)(3) must be made at least 30 days before trial.

Motions for extensions of discovery shall be made to the Discovery Commissioner in strict accordance with E.D.C.R. 2.35. Discovery is completed on the day responses are due or the day a deposition begins.

. . .

Unless otherwise ordered, all discovery disputes (except disputes presented at a pre-trial conference or at trial) must first be heard by the Discovery Commissioner.

Dated this 17 day of July, 2009.

DISCOVERY COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on the date filed, I placed a copy of the foregoing AMENDED DISCOVERY SCHEDULING ORDER in the folder(s) in the Clerk's office or mailed as follows:

William H. Brown, Esq.
Blake A. Doerr, Esq.

COMMISSIONER DESIGNEE

ORIGINAL

FILED

JUL 20 10 28 AM '09

DSO

DISTRICT COURT

CLARK COUNTY, NEVADA

K-KEL, INC., d/b/a Spearmint Rhino Gentleman'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 Gentleman'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. A554970
DEPT NO. IX

08A554970
262179

AMENDED SCHEDULING ORDER
(Discovery/Dispositive Motions/Motions to Amend or Add Parties)

NATURE OF ACTION: **Declaratory relief**

TIME REQUIRED FOR TRIAL: **4 days**

Counsel for Plaintiffs:
William H. Brown, Esq., Sullivan Brown

Counsel for Defendants:
Blake A. Doerr, Esq., Sr. Deputy Attorney General

Counsel representing all parties have been heard and after consideration by the Discovery Commissioner,

IT IS HEREBY ORDERED:

1. all parties shall complete discovery on or before 9/30/09.

RECEIVED
JUL 20 2009
CLERK OF THE COURT

DISCOVERY COMMISSIONER
EIGHTH JUDICIAL DISTRICT COURT

2. all parties shall file motions to amend pleadings or add parties on or before - closed.

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4. all parties shall make rebuttal expert disclosures pursuant to N.R.C.P. 16.1(a)(2) on or before 7/30/09.

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Certain dates from your case conference report(s) may have been changed to bring them into compliance with N.R.C.P. 16.1.

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. . .

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Unless otherwise ordered, all discovery disputes (except disputes presented at a pre-trial conference or at trial) must first be heard by the Discovery Commissioner.

Dated this 17 day of July, 2009.

DISCOVERY COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on the date filed, I placed a copy of the foregoing AMENDED DISCOVERY SCHEDULING ORDER in the folder(s) in the Clerk's office or mailed as follows:

William H. Brown, Esq.
Blake A. Doerr, Esq.

COMMISSIONER DESIGNEE

ORIGINAL

S20 14

0063

DISTRICT COURT FILED

CLARK COUNTY, NEVADA

2009 AUG -4 A 8:37

DÉJÀ VU SHOWGIRLS, et al.,

Plaintiff/s,

vs.

NEVADA DEPARTMENT OF TAXATION et al.,

Defendant/s.

CASE NO.: A533273
DEPT NO.: IX

06A533273
297815

AMENDED ORDER SETTING NON-JURY CIVIL TRIAL

IT IS HEREBY ORDERED THAT:

A. The above-entitled case is set to be tried on a FIVE-week stack to begin, **MONDAY, JANUARY 4, 2010** at **10:30 AM.**

B. A Pre-Trial Conference with the designated attorney and/or parties in proper person will be held **ONLY UPON REQUEST.**

C. A calendar call will be held on **DECEMBER 17, 2009** at **9:15 AM.**

Parties must have the following ready for trial:

(1) All exhibits marked by counsel for identification purposes;

(2) Typed exhibit lists with all stipulated exhibits marked as admitted;

(3) Original depositions;

(4) A list of equipment needed for trial; and

(5) Courtesy copies of legal briefs on trial issues.

D. Pre-Trial Memorandums must be filed by **DECEMBER 18, 2009** with courtesy copy delivered to Dept. IX. All parties, (Attorneys and parties in proper person) **MUST** comply with **ALL REQUIREMENTS** of **EDCR 2.67**.

E. All discovery deadlines, deadlines for filing dispositive motions and motion to amend the pleadings or add parties are controlled by the previously issued Scheduling Order.

F. All other pre-trial motions, including motions in Limine, must be in writing and set for hearing no later than **DECEMBER 15, 2009.**

G. Any pre-trial motion **MUST** be filed by 5:00 PM on **NOVEMBER 24, 2009**; Oppositions are to be filed by 5:00 PM **DECEMBER 3, 2009**; Replies thereto are to be filed

MC

RECEIVED
AUG 04 2009
CLERK OF THE COURT

JENNIFER P. TOGLIATTI
DISTRICT JUDGE
DEPARTMENT NINE
LAS VEGAS, NEVADA 89155

by 5:00 PM **DECEMBER 8, 2009. Orders shortening time will not be signed except in extreme emergencies. (Request for trial continuance is not an emergency.)**

H. **Failure of the designated trial attorney or any party appearing in proper person to appear for any court appearances or to comply with this Order shall result in any of the following: (1) dismissal of the action; (2) default judgment; (3) monetary sanctions; (4) vacation of trial date; and/or any other appropriate remedy or sanction.**

Counsel is required to advise the Court immediately when the case settles or is otherwise resolved prior to trial. **A stipulation which terminates a case by dismissal must also indicate whether a Scheduling Order has been filed and, if a trial date has been set, the date of that trial. A copy should be given to Chambers.**

DATED: this 30th day of July, 2009.

Jennifer P. Togliatti

JENNIFER P. TOGLIATTI
DISTRICT JUDGE

CERTIFICATE OF MAILING

I hereby certify that on date filed, I mailed to the following proper persons or placed a copy of this Order in the attorneys' folder(s) in the Clerk's Office of the following:

William H. Brown, Esq. – SULLIVAN BROWN

Blake A. Doerr, Esq. – Sr. Deputy Attorney General

Rose Najera

ROSE NAJERA
Judicial Executive Assistant

A5533273

JENNIFER P. TOGLIATTI
DISTRICT JUDGE
DEPARTMENT NINE
LAS VEGAS, NEVADA 89155

0063

DISTRICT COURT

CLARK COUNTY, NEVADA

FILED
2009 AUG -4 A 8:27

K-KEL, INC, et al.,

Plaintiff/s,

vs.

NEVADA DEPARTMENT OF TAXATION et al.,

Defendant/s.

CASE NO.: A554970
DEPT NO.: IX

AMENDED ORDER SETTING NON-JURY CIVIL TRIAL

IT IS HEREBY ORDERED THAT:

A. The above-entitled case is set to be tried on a FIVE-week stack to begin, **MONDAY, JANUARY 4, 2010** at **10:30 AM.**

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JENNIFER P. TOGLIATTI
DISTRICT JUDGE
DEPARTMENT NINE
LAS VEGAS, NEVADA 89155

by 5:00 PM **DECEMBER 8, 2009. Orders shortening time will not be signed except in extreme emergencies. (Request for trial continuance is not an emergency.)**

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DATED: this 30th day of July, 2009.

JENNIFER P. TOGLIATTI
DISTRICT JUDGE

CERTIFICATE OF MAILING

I hereby certify that on date filed, I mailed to the following proper persons or placed a copy of this Order in the attorneys' folder(s) in the Clerk's Office of the following:

William H. Brown, Esq. – SULLIVAN BROWN

Blake A. Doerr, Esq. – Sr. Deputy Attorney General

ROSE NAJERA
Judicial Executive Assistant

A554970

INIFER P. TOGLIATTI
DISTRICT JUDGE

DEPARTMENT NINE
S VEGAS, NEVADA 89155

0063

DISTRICT COURT

CLARK COUNTY, NEVADA

FILED

2009 AUG -4 A 8:37

DÉJÀ VU SHOWGIRLS, et al.,

Plaintiff/s,

vs.

NEVADA DEPARTMENT OF TAXATION et al.,

Defendant/s.

CASE NO.: A533273
DEPT NO.: IX

AMENDED ORDER SETTING NON-JURY CIVIL TRIAL

IT IS HEREBY ORDERED THAT:

A. The above-entitled case is set to be tried on a FIVE-week stack to begin, **MONDAY, JANUARY 4, 2010** at **10:30 AM.**

B. A Pre-Trial Conference with the designated attorney and/or parties in proper person will be held **ONLY UPON REQUEST.**

C. A calendar call will be held on **DECEMBER 17, 2009** at **9:15 AM.**

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JENNIFER P. TOGLIATTI
DISTRICT JUDGE
DEPARTMENT NINE
LAS VEGAS, NEVADA 89155

by 5:00 PM **DECEMBER 8, 2009**. **Orders shortening time will not be signed except in extreme emergencies. (Request for trial continuance is not an emergency.)**

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DATED: this 30th day of July, 2009.

Jennifer P. Togliatti

JENNIFER P. TOGLIATTI
DISTRICT JUDGE

CERTIFICATE OF MAILING

I hereby certify that on date filed, I mailed to the following proper persons or placed a copy of this Order in the attorneys' folder(s) in the Clerk's Office of the following:

William H. Brown, Esq. – SULLIVAN BROWN ✓

Blake A. Doerr, Esq. – Sr. Deputy Attorney General

Rose Najera

ROSE NAJERA
Judicial Executive Assistant

A5533273

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WILLIAM H. BROWN, ESQ.
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BRADLEY J. SHAFER, ESQ.
Michigan State Bar P36604
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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	Case No. A533273 Dept. No. IX **STIPULATION AND ORDER FOR EXTENSION OF TIME TO COMPLETE DISCOVERY AND TO CONTINUE TRIAL (SECOND REQUEST)**

STATE BOARD OF EXAMINERS, and MICHELLE JACOBS, in her official capacity only,

Defendants.

STIPULATION AND ORDER FOR EXTENSION OF TIME TO COMPLETE DISCOVERY AND TO CONTINUE TRIAL (SECOND REQUEST)

IT IS HEREBY STIPULATED and agreed by and between Plaintiff(s), 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* (collectively referred to hereinafter as "Plaintiffs"), and Defendants, NEVADA DEPARTMENT OF TAXATION, NEVADA TAX COMMISSION, NEVADA STATE BOARD OF EXAMINERS and MICHELLE JACOBS, (collectively referred to hereinafter as "Defendants") by and through their respective counsel of record, pursuant to EDCR 2.35, that the following discovery, motion, and trial deadlines in the previously filed Scheduling Order be extended as follows:

I.

DISCOVERY COMPLETED

The following discovery has been completed in this matter: Plaintiffs have served their Early Case Conference Disclosure Statement pursuant to NRCP 16.1; Defendants have served their Early Case Conference Disclosure Statement; a Joint Case Conference Report has been filed and served; Plaintiffs have served their First Set of Interrogatories and Requests for Production of Documents; Defendants have submitted Responses to First Set of Interrogatories and Responses to the Request for Production of Documents; Plaintiffs have noticed the Depositions of the Defendants Witnesses.

As Plaintiffs contend that Defendants' discovery responses are incomplete, they are preparing a motion to compel discovery.

II.

DISCOVERY TO BE COMPLETED

The parties will litigate Plaintiffs' motion to compel discovery. The Plaintiffs will need to take the depositions of the Defendants' witnesses. The parties will continue in their efforts to identify and obtain relevant and discoverable evidence and supplement their respective Early Case Conference disclosures as appropriate, propound additional written discovery, retain Expert witnesses, retain rebuttal expert witnesses, notice and conduct the depositions of the parties and/or their Person(s) Most Knowledgeable, notice and conduct the depositions of the various witnesses who are believed to have information discoverable under NRCP 26(b), and perform any additional discovery which may be necessary to fully litigate this matter.

III.

REASONS WHY DISCOVERY WAS NOT COMPLETE PRIOR TO THE TIME LIMITS SET FORTH WITHIN THE DISCOVERY SCHEDULING ORDER

As of the filing of this Stipulation, the Discovery period has not closed. Plaintiffs did not receive Defendants' Responses to Interrogatories and Requests for Production of Documents until August 17, 2009. Plaintiffs contend that those responses and documents are incomplete, and the parties have been attempting to resolve the discovery disputes on their own without resorting to filing motions.

Those attempts have been unsuccessful, therefore Plaintiffs must now file a motion to compel discovery. Plaintiffs contend that the requested responses and documents must be received and reviewed before meaningful depositions can be taken.

Resolution of Plaintiffs' motion to compel must be resolved by the Discovery Commissioner, and possibly the Court should one party object to the Discovery Commissioner's Report and Recommendations, which could very well take ninety (90) days, which is past the current September 30, 2009, discovery deadline.

IV.

PROPOSED SCHEDULE FOR COMPLETING ALL REMAINING DISCOVERY

The parties propose that the following dates, be utilized:

1. All Depositions to be conducted: February 1, 2010 through February 26, 2010

2. Close of discovery: February 26, 2010

3. Final Date to File Dispositive Motions: March 26, 2010

V.

TRIAL DATE

The trial in this matter is currently set on a five (5) week stack beginning Monday, January 4, 2010. As such, the current trial date would need to be vacated in accordance with the aforementioned proposed schedule for completing discovery and a new trial date would need to be set by the court.

The parties represent that this is the second request for an extension of the Scheduling Order deadlines made by any party to this litigation and that this Stipulation is entered into in good faith.

Dated : 9-14-09

SULLIVAN BROWN

By: William Brown

William H. Brown, Esq.
Nevada Bar No.: 7623
332 South Jones Blvd.
Las Vegas, NV 89017
WBrown@SullivanBrown.com
(702) 471-0112
(702) 567-0116
Counsel for Plaintiffs

Dated: 9/14/09

OFFICE OF THE ATTORNEY GENERAL

By: Blake Doerr

Blake A. Doerr
Nevada Bar No. 9001
555 E. Washington Avenue
Ste. 3900
Las Vegas, NV 89135
bdoerr@ag.nv.gov
(702) 486-3095
(702) 486-3416
Counsel for Defendants

ORDER FOR EXTENSION OF TIME TO COMPLETE DISCOVERY AND TO CONTINUE TRIAL DATE (SECOND REQUEST)

Upon the request of counsel for the parties herein for the extension of time to complete Discovery and good cause appearing therefore:

IT IS HEREBY ORDERED the following discovery and motion deadlines in the above entitled matter by extended as follows:

1. All Depositions to be conducted: February 1, 2010 through February 26, 2010
2. Close of discovery: February 26, 2010
3. Final Date to File Dispositive Motions: March 26, 2010

IT IS FURTHER ORDERED that the AMENDED ORDER SETTING NON-JURY CIVIL TRIAL dated August 4, 2009, and the Monday, January 4, 2010 trial setting be vacated and continued pursuant to the foregoing deadlines. A Second Scheduling Order will Not be issued, this stipulation will take the place of the amended scheduling order, the case will be ready for trial by May 10, 2010.

IT IS SO ORDERED.

DATED: September 25, 2009

DISCOVERY COMMISSIONER

Respectfully submitted by:

SULLIVANBROWN

By: William Brown

WILLIAM H. BROWN, ESQ.
Nevada Bar No.: 7623
330 S. Third St., Ste. 860
Las Vegas, Nevada 89101
Telephone: (702) 366-9311
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WBrown@SullivanBrown.com
Counsel for Plaintiffs

ORIGINAL

FILED
SEP 28 2009
CLERK OF COURT

SAO
WILLIAM H. BROWN, ESQ.
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330 S. Third St., Ste. 860
Las Vegas, Nevada 89101
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WBrown@SullivanBrown.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	Case No. A554970 Dept. No. IX **STIPULATION AND ORDER FOR EXTENSION OF TIME TO COMPLETE DISCOVERY AND TO CONTINUE TRIAL (SECOND REQUEST)**

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423322

RECEIVED
SEP 28 2009
CLERK OF THE COURT

STATE BOARD OF EXAMINERS, and MICHELLE JACOBS, in her official capacity only,

Defendants.

STIPULATION AND ORDER FOR EXTENSION OF TIME TO COMPLETE DISCOVERY AND TO CONTINUE TRIAL (SECOND REQUEST)

IT IS HEREBY STIPULATED and agreed by and between Plaintiff(s), 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* (collectively referred to hereinafter as "Plaintiffs"), and Defendants, NEVADA DEPARTMENT OF TAXATION, NEVADA TAX COMMISSION, NEVADA STATE BOARD OF EXAMINERS and MICHELLE JACOBS, (collectively referred to hereinafter as "Defendants") by and through their respective counsel of record, pursuant to EDCR 2.35, that the following discovery, motion, and trial deadlines in the previously filed Scheduling Order be extended as follows:

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III.

REASONS WHY DISCOVERY WAS NOT COMPLETE PRIOR TO THE TIME LIMITS SET FORTH WITHIN THE DISCOVERY SCHEDULING ORDER

As of the filing of this Stipulation, the Discovery period has not closed. Plaintiffs did not receive Defendants' Responses to Interrogatories and Requests for Production of Documents until August 17, 2009. Plaintiffs contend that those responses and documents are incomplete, and the parties have been attempting to resolve the discovery disputes on their own without resorting to filing motions.

Those attempts have been unsuccessful, therefore Plaintiffs must now file a motion to compel discovery. Plaintiffs contend that the requested responses and documents must be received and reviewed before meaningful depositions can be taken.

Resolution of Plaintiffs' motion to compel must be resolved by the Discovery Commissioner, and possibly the Court should one party object to the Discovery Commissioner's Report and Recommendations, which could very well take ninety (90) days, which is past the current September 30, 2009, discovery deadline.

IV.

PROPOSED SCHEDULE FOR COMPLETING ALL REMAINING DISCOVERY

The parties propose that the following dates, be utilized:

1. All Depositions to be conducted: February 1, 2010 through February 26, 2010

2. Close of discovery: February 26, 2010

3. Final Date to File Dispositive Motions: March 26, 2010

V.

TRIAL DATE

The trial in this matter is currently set on a five (5) week stack beginning Monday, January 4, 2010. As such, the current trial date would need to be vacated in accordance with the aforementioned proposed schedule for completing discovery and a new trial date would need to be set by the court.

The parties represent that this is the second request for an extension of the Scheduling Order deadlines made by any party to this litigation and that this Stipulation is entered into in good faith.

Dated : 9-14-09

SULLIVAN BROWN

By: William Brown

William H. Brown, Esq.
Nevada Bar No.: 7623
332 South Jones Blvd.
Las Vegas, NV 89017
WBrown@SullivanBrown.com
(702) 471-0112
(702) 567-0116
Counsel for Plaintiffs

Dated: 9/14/09

OFFICE OF THE ATTORNEY GENERAL

By: Blake Doerr

Blake A. Doerr
Nevada Bar No. 9001
555 E. Washington Avenue
Ste. 3900
Las Vegas, NV 89135
bdoerr@ag.nv.gov
(702) 486-3095
(702) 486-3416
Counsel for Defendants

ORDER FOR EXTENSION OF TIME TO COMPLETE DISCOVERY AND TO CONTINUE TRIAL DATE (SECOND REQUEST)

Upon the request of counsel for the parties herein for the extension of time to complete Discovery and good cause appearing therefore:

IT IS HEREBY ORDERED the following discovery and motion deadlines in the above entitled matter by extended as follows:

1. All Depositions to be conducted: February 1, 2010 through February 26, 2010
2. Close of discovery: February 26, 2010
3. Final Date to File Dispositive Motions: March 26, 2010

IT IS FURTHER ORDERED that the AMENDED ORDER SETTING NON-JURY CIVIL TRIAL dated August 4, 2009, and the Monday, January 4, 2010 trial setting be vacated and continued pursuant to the foregoing deadlines. A Second Scheduling Order will NOT be issued; this stipulation will take the place of an amended scheduling order; the case will be ready for trial by May 10, 2010.

IT IS SO ORDERED.

DATED: September 25, 2009

DISCOVERY COMMISSIONER

Respectfully submitted by:

SULLIVANBROWN

By: William Brown

WILLIAM H. BROWN, ESQ.
Nevada Bar No.: 7623
330 S. Third St., Ste. 860
Las Vegas, Nevada 89101
Telephone: (702) 366-9311
Facsimile: (702) 366-9371
WBrown@SullivanBrown.com
Counsel for Plaintiffs

MOT
WILLIAM H. BROWN, ESQ.
Nevada Bar No.: 7623
SULLIVAN BROWN
330 South Third Street, Ste. 860
Las Vegas, NV 89101
Telephone: (702) 366-9311
Facsimile: (702) 336-9371
Counsel for Plaintiffs

BRADLEY J. SHAFER,
Michigan Bar No. P36604*
SHAFER & ASSOCIATES, P.C.
3800 Capital City Blvd., Suite #2
Lansing, Michigan 48906-2110
Telephone: (517) 886-6566
Facsimile: (517) 886-6565
Co-Counsel for Plaintiffs
**Admitted Pro Hac Vice*

DISTRICT COURT

CLARK COUNTY, 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.

Case No.: A533273
Dept. No.: IX

MOTION TO COMPEL DISCOVERY OF DEFENDANTS

BEFORE THE DISCOVERY COMMISSIONER

Date of Hearing: _____, 2009
Time of Hearing: _:00 _.m.

COME NOW Plaintiffs, by and through their attorneys of record, William H. Brown, Esq. of the law firm of SULLIVAN BROWN, and Bradley J. Shafer, Esq. of the law firm of SHAFER & ASSOCIATES, P.C., and pursuant to Rule 37(a)(2)(B) move this Honorable Court for an order compelling Defendant Nevada Department of Taxation to answer interrogatories previously propounded and produce documents previously demanded, and/or for expenses and sanctions in having to file this instant motion. This motion is based upon the following points and authorities, the affidavit of counsel herewith attached, and testimony and argument which may be adduced at any hearing set in this matter.

NOTICE OF MOTION

TO: Nevada Department of Taxation, Nevada Tax Commission, Nevada State Board of Examiners, and Michelle Jacobs, Defendants; and

TO: Defendants' Attorney, David Pope

PLEASE TAKE NOTICE that Plaintiffs will bring their Motion to Compel Discovery of Defendants before the Discovery Commissioner, on the 13 of NOV, 2009, at 9:30 ~~9:00~~ _.m., or as soon thereafter as counsel can be heard.

DATED this 30th day of September, 2009.

Respectfully submitted,

BY: William Brown

WILLIAM H. BROWN, ESQ.
Nevada Bar No.: 7623
SULLIVAN BROWN
330 South Third Street, Ste. 860
Las Vegas, NV 89101
Telephone: (702) 366-9311
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Counsel for Plaintiffs

BRADLEY J. SHAFER,
Michigan Bar No. P36604*
SHAFER & ASSOCIATES, P.C.
3800 Capital City Blvd., Suite #2
Lansing, Michigan 48906-2110
Co-Counsel for Plaintiffs
**Admitted Pro Hac Vice*

MEMORANDUM OF POINTS AND AUTHORITIES

I.
BACKGROUND

A. PLAINTIFFS' LAWSUIT.

Plaintiffs operate commercial entertainment establishments in Las Vegas offering live performance dance entertainment to the consenting adult public. Verified Complaint for Declaratory and Injunctive Relief, Damages, and Attorney Fees and Costs ("Complaint") at ¶¶ 27-34. The entertainment presented by the Plaintiffs constitutes speech and expression, as well as a form of assembly, protected by the First and Fourteenth Amendments to the United States Constitution,[1] as well as by Art. I, §§ 9 and 10 of the Nevada Constitution.[2] Complaint ¶ 36.

On December 19, 2006, Plaintiffs sued Defendants, arguing the Live Entertainment Tax ("LET" or the "tax") as mandated by NRS Chapter 368A ("Chapter 368A") is both illegal and unconstitutional because it unconstitutionally taxes expression protected by the Nevada and

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[1] Because the Federal Constitution represents the "floor" level of protections that can be afforded under the State Constitution (*see S.O.C., Inc. v. Mirage Casino-Hotel*, 117 Nev. 403, 414, 23 P.3d 243 (2001)), the federal case law cited herein is applicable to Plaintiffs' Nevada constitutional challenges as well.

[2] Exotic dancing, in the form of clothed, "topless," and even fully nude entertainment, falls within the scope of the liberties, including the right to free expressive association, afforded by the First Amendment. *See, e.g., Barnes v. Glen Theatre, Inc.*, 501 U.S. 560, 565(1991) (nude dancing receives protections under the Constitution); *City of Erie v. Pap's A.M.*, 529 U.S. 277, 289 (2000) (same); *Schad v. Borough of Mt. Ephraim*, 452 U.S. 61, 65-66 (1981) ("Nor may an entertainment program be prohibited solely because it displays the nude human figure. '[N]udity alone' does not place otherwise protected material outside the mantle of the First Amendment. . . . Furthermore, . . . nude dancing is not without its First Amendment protections form official regulation"); and *Deja Vu of Nashville, Inc. v. Metropolitan Government of Nashville and Davidson County*, 274 F.3d 377, 396 (6th Cir. 2001), *citing* Roberts v. United States Jaycees, 468 U.S. 609, 622 (1984) (Court held that "the First Amendment protects the entertainers and audience members' right to free expressive association. They are certainly engaged in a 'collective effort on behalf of shared goals.'").

United States Constitution. In addition and alternatively, Plaintiffs argued they are specifically exempted from paying the LET pursuant to the statutory exemptions and/or the exceptions in NRS 368A.200(5)(a). Complaint ¶¶ 38-39, 53. Further, Plaintiffs argued, as the LET is unconstitutional, Plaintiffs are not required to pay it and are also entitled to refunds for the amounts paid to date.

Nevertheless, under threats of criminal prosecution and the imposition of fines and other penalties against them, Plaintiffs have all, beginning at various times, paid the LET mandated by Chapter 368A. Complaint ¶ 38.

Plaintiffs' specific legal challenges to the LET are summarized below.

B. PLAINTIFFS' SPECIFIC LEGAL CHALLENGES.

As a preliminary matter, it is unconstitutional to directly tax First Amendment protected activities; as the Supreme Court has noted:

> It is one thing to impose a tax on the income or property of a preacher, it is quite another thing to exact a tax from him for the privilege of delivering a sermon. The tax imposed [here] is a flat license tax, the payment of which is a condition of the exercise of these constitutional privileges. ***The power to tax the exercise of a privilege is the power to control or suppress its enjoyment.***"

Murdock v. Commonwealth of Pennsylvania, 319 U.S. 105, 112 (1943) (emphasis and clarification added).Stated somewhat differently:

> A power to tax differentially, as opposed to a power to tax generally, gives a government a powerful weapon against the taxpayer selected. ***When the State imposes a generally applicable tax, there is little cause for concern. We need not fear that a government will destroy a selected group of taxpayers by burdensome taxation if it must impose the same burden on the rest of its constituency.***
>
> * * *
>
> Further, ***differential treatment***, unless justified by some special characteristic of the press, suggests that the goal of the regulation is not unrelated to suppression of expression, and such a goal is ***presumptively unconstitutional***.

Minneapolis Star and Tribune Co. v. Minnesota Commissioner of Revenue, 460 U.S. 575, 585 (1983) (emphasis added).

The reason for this is simple:

> ***We note that the general applicability of any burdensome tax law helps to ensure that it will be met with widespread opposition. When such a law applies only to a single constituency, however, it is insulated from this political constraint.***
>
> *Leathers v. Medlock*, 499 U.S. 439, 445 (1991) (emphasis added).

Generally, a tax may violate the First Amendment three ways: (1) by directly taxing First Amendment freedoms; (2) by targeting a narrowly defined group of speakers; or (3) by taxing speech based on content.

First, a direct tax specifically on First Amendment freedoms is unconstitutional.

> ***Freedom of speech***, freedom of the press, freedom of religion are available to all, not merely to those who can pay their own way . . . . ***[I]t could hardly be denied that a tax laid specifically on the exercise of those freedoms would be unconstitutional.***
>
> *Murdock*, 319 U.S. at 108, 111 (emphasis added).

Second, a tax that targets a narrowly defined group of speakers is unconstitutional; as set forth by the Supreme Court:

> A tax is also suspect if it targets a small group of speakers.
>
> * * *
>
> The danger from a scheme that targets a small number of speakers is the danger of censorship; a tax on a small number of speakers runs the risk of affecting only a limited range of views. The risk is similar to that from a content-based regulation: It will distort the market for ideas.
>
> *Leathers*, 499 U.S. at 447-448.

Third, a content-based tax is unconstitutional. *Leathers*, 499 U.S at 447 ("Finally, for reasons that are obvious, a tax will trigger heightened scrutiny under the First Amendment if it discriminates on the basis of the content of taxpayer speech").

Here, the LET violates the First Amendment for all three of these reasons[3]; but the information Plaintiffs requested from the Department via discovery focused on the second and third reasons (i.e., targeting adult entertainment establishments; and being a content-based tax, respectively).

1. The LET Is An Impermissible Content-Based Tax.

With respect to being an impermissible content-based tax, the LET is a direct tax upon protected expression, and only upon one form of entertainment (applying only to that which is "live"). Moreover, it does not even tax that particular mode of expression in a unified and even fashion, as a wide variety of "live entertainment" is specifically and statutorily exempted from the scope of the tax based upon the *content* of that entertainment.

Initially, the definition of "live entertainment" itself contains numerous exceptions. It ***excludes***, without limitation, certain specific activities (e.g., instrumental or vocal music, occasional performances, performers who stroll continuously throughout the facility, performances which enhance the theme of the establishment or attract patrons to the areas of the performances, broadcasts of live entertainment, entertainment by patrons, animal behaviors, and performances that provide ambience to the facility). N.R.S. § 368A.090(b).

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[3] The LET is unconstitutional under the first test in that it is a tax "laid specifically on the exercise of [First Amendment] freedoms" (i.e., live entertainment). *Murdock*, 319 U.S. at 108 (clarification added). In regard to the second test, the large number of exemptions from the LET demonstrate that the tax targets a "narrowly defined group of speakers," as will be demonstrated by the discussion of the third test below.

Chapter 368A also contains seventeen categories of exceptions to the LET (e.g., live entertainment that the State is prohibited from taxing under the Constitution, laws or treaties of the United States or the Nevada Constitution, boxing, minor league baseball, or NASCAR events, trade show entertainment, performances by musicians who move through the audience, entertainment provided at shopping malls and amusement rides, outdoor concerts, or entertainment in restaurants which serves as ambience). NRS § 368A.200(5).

These exceptions/exemptions determine whether an entity or individual is subject to the tax based upon the content of the live entertainment; as such, the LET is a content-based tax and is subject to strict constitutional scrutiny.

In other words, these exceptions/exemptions have been gerrymandered in such a fashion to ensure that, with the exception of casino entertainment (which was already subject to tax pursuant to the prior casino entertainment tax), virtually the only remaining live entertainment that is subject to the tax is adult entertainment. And, if a facial reading of the LET leaves any doubt it was specifically intended to tax live adult entertainment, reviewing the legislative history clearly demonstrates such facial targeting.

2. The LET Impermissibly Targets Adult Entertainment Establishments.

It is constitutionally impermissible to apply a tax on protected expression in such a discriminatory, content-based manner. Where a tax was "not evenly applied to all magazines" and treated "some magazines less favorably than others" the Supreme Court held:

> Indeed, this case involves a more disturbing use of selective taxation than *Minneapolis Star*, because the basis on which Arkansas differentiates between magazines is particularly repugnant to First Amendment principles: ***a magazine's tax status depends entirely on its content.*** Above all else, the First Amendment means the government has no power to restrict ***expression*** because of its message, its ideas, its subject matter, or its content. . . . Regulations which permit the Government to discriminate on the basis of the content of the message cannot be tolerated under the First Amendment.

Arkansas Writers Project, 481 U.S. at 229 (citations omitted, emphasis in original and added).

Likewise, in December 2007, in *Pooh-Bah Enterprises, Inc. v. County of Cook et al.*, 378 Ill.App.3d 268, 317 Ill.Dec. 384, 881 N.E.2d 552 (2007), the Illinois Court of Appeals invalidated a similar tax aimed at adult entertainment based upon this very issue.

There, Chicago had adopted a "fine arts" or "small venue" exception to its tax, although that exclusion did not include "adult entertainment." 881 N.E.2d at 559-560. Like the LET here, the Chicago tax contained exceptions that exempted "favored" amusement from the tax. In a unanimous decision, the court of appeals declared Chicago's broadly worded "amusement" tax to be unconstitutional on its face. That is the case here.

Here, the LET exempts a wide variety of "favored" live entertainment, but applies to adult entertainment. This demonstrates a preference for certain messages and speakers and in doing so makes the LET content-based and therefore subject to strict scrutiny. Further, under *Pooh-Bah* this sort of favoritism is fatal to a tax on live entertainment. 881 N.E.2d at 560.

Further, the United States Supreme Court has noted that

> [e]xemptions from an otherwise legitimate regulation of a medium of speech may be noteworthy for a reason quite apart from the risk of view point and content discrimination: They may diminish the credibility of the government's rationale for restricting speech in the first place.

City of Ladue v. Gilleo, 512 U.S. 43, 52 (1994).

There, the court found an ordinance banning outdoor signs unconstitutional as being impermissibly content-based because the law included a variety of exceptions of signs that were nevertheless permitted.[4]

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[4] *See also*, *Church of Lukumi v. Hialeah*, 508 U.S. 520, 535-540 (1993) (Court found that exemptions to three city ordinances banning the killing of animals rendered the laws to be

Here, the numerous exemptions reveal that apart from casino entertainment, the LET is in fact targeted principally, if not exclusively, at adult entertainment facilities, which are protected by the First Amendment. Therefore, the LET is content specific; in turn, it is subject to strict scrutiny and it is invalid.

It is against this backdrop of constitutional scrutiny that Plaintiffs sent the Department discovery requests.

3. Plaintiffs' Discovery Requests and the Resulting Dispute.

On March 24, 2009, Plaintiffs served Plaintiffs' First Set of Interrogatories to Defendants (attached as Exhibit 1); on March 26, 2009, Plaintiffs served Plaintiffs' First Request for the Production of Documents and Things to Defendants (attached as Exhibit 2).

On August 17, 2009, ten days before depositions of Defendants' representatives were scheduled to be taken[5], Plaintiffs received the Department's Responses to Plaintiffs' First Set of Interrogatories (attached as Exhibit 3) and Responses to Plaintiffs' First Request for Production of Documents and Things (attached as Exhibit 4). The Department's discovery responses were deficient, and insufficient, as discussed more fully below.

Accordingly, Matthew Hoffer, on behalf of Plaintiff's counsel, held telephone conferences with Blake Doerr, counsel for Defendants, regarding the inadequacy of the discovery responses. In the course of discussions, Plaintiffs' counsel offered to allow

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content-based, and therefore unconstitutional, as being directed at those practicing the Santeria religion, and that the "pattern of exemptions parallels the pattern of narrow prohibitions. Each contributes to the gerrymander); and *U.S. v. Eichman*, 495 U.S. 310, 317-19 (1990) (Court found the facially neutral Flag Protection Act content-based and therefore unconstitutional because although it prohibited burning of the flag, it exempted the burning of a "worn or soiled" flag as a means of disposal. The exception was an act "traditionally associated with patriotic respect for the flag," and demonstrated content targeting by preferring patriotic rather than disrespectful acts upon a flag).

[5] Depositions of Defendants' representatives were scheduled for August 27 and 28, 2009.

responses pursuant to a protective order that would protect business information from the public and even from Plaintiffs themselves, but would allow Plaintiffs' counsel to conduct the necessary analysis to support their claims of unconstitutionality. Still, Defendants' counsel refused to produce the requested responses and documents.

Hence, on September 1, 2009, pursuant to NRCP 37(a)(1), and EDCR 2.34, Matthew Hoffer, of the office of Bradley Shafer, counsel for Plaintiffs, and Blake Doerr, counsel for Defendants, conferred regarding the information not contained in the discovery responses in an attempt to resolve this discovery dispute out of Court. The parties were unable to resolve their differences, thereby necessitating this motion. *See* Exhibit 5 hereto.

Now, Plaintiffs have been forced to incur expenses and costs solely as a result of Defendants' failure to provide adequate discovery and hence, seek appropriate relief from the Court.

4. Requested Relief.

For the reasons discussed below, Plaintiffs move this Honorable for an order:

(1) Compelling the Department to immediately submit to the Plaintiffs, within ten (10) days of the entry of this Court's order, the Department's answers to the below-described interrogatories, and to produce within that same time all the un-redacted items and documents requested by the below-described requests for production, all without objection;

(2) Sanctioning the Department for failing to comply with discovery, by awarding Plaintiffs their costs and attorney fees for having filed this motion; and, in addition and alternatively,

(3) Striking the portion of Defendants' Opposition to Plaintiffs' Motion for Preliminary Injunction that relies upon information the Department now refuses to produce (attached to the Department's Opposition as Exhibits A and B).

II.
LAW AND ARGUMENT

A. THE DEPARTMENT'S DISCOVERY RESPONSES ARE DEFICIENT.

The Rules of Civil Procedure are designed to permit broad inquiry into any matter relevant to the pending action. *See Hickman v. Taylor*, 329 U.S. 495, 501 (1947). And the Nevada Rules of Civil Procedure allow for the discovery of all evidence which is relevant or which could lead to the discovery of relevant information; NRCP 26(b)(1) reads:

> **Parties may obtain discovery regarding any matter, not privileged, which is relevant** to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears **reasonably calculated to lead to the discovery of admissible evidence.**

NRCP 26(b)(1) (emphasis added).

Here, the Department's discovery responses are deficient in both substance (essential information is redacted) and temporal scope (responses are largely limited to 2004).

1. Substantively, the Department's Responses Are Meaningless Because Nearly All Relevant Information Is Redacted.

Substantively, the Department has so heavily redacted key information from many documents that they are worthless. Specifically, by way of redaction the Department will not

identify (1) the name of the businesses paying the LET, (2) the type of live entertainment provided at those establishments, or (3) how much tax those businesses pay.

For example,

- the Department's Responses to Interrogatories 1, 2, 3, and 15 refer to documents that are redacted to the point of non-responsiveness (Exhibit 3);
- the Department's Response to Interrogatory 19 is non-responsive because it refuses to identify any entities, persons, businesses, or classes that have requested to be exempt from the LET (Exhibit 3); and
- the Department's Response to Interrogatory 20, references a non-existent Exhibit AAA, and incorporates Response 19 (Exhibit 3).

Also, the Department responded to all of Plaintiffs' 26 Requests for Documents by generally incorporating the entire packet of produced documents, stating, "See Exhibits A-KK." Such a blanket response lacks sufficient specificity to be meaningful.

Under NRCP 34(b),

> A party who produces documents for inspection shall produce them as they are kept in the usual course of business or ***shall organize and*** label them to correspond with the categories in the request.

NRCP 34(b) (Emphasis added).

Separating the documents into exhibits was pointless if the Department was simply going to refer broadly and generally to all the documents in response to every request. Further, as discussed above, many of the documents produced are redacted to the point of non-

responsiveness (those documents are Exhibit A, E, G, H, I, J, K, L, M, N, R, S, T, EE[6], FF[7], and II, attached hereto as Exhibit 4.

By redacting virtually all relevant information in the documents produced, the Department has failed to provide responses that are substantive or meaningful. Further, any otherwise meaningful response is nullified by the limited temporal scope.

2. Plaintiffs Requested Information from 2003 to 2008; the Department Primarily Produced Information for 2004.

Each of Plaintiffs' Requests for Documents asked for "any and all documents" since the LET has been in effect (i.e., since 2003). See Exhibit 2. In response, the Department primarily provided information for the tax year 2004 (referring to Exhibits B, E, F, I, S, T, U, and II). See Exhibit 4 hereto.

Further, where the Department did provide documents for years other than 2004, the documents were incomplete and/or heavily redacted. For example,

- Exhibits G and J have no dates listed and are heavily redacted;
- Exhibit L, in addition to being completely redacted except for the totals at the bottom, is missing data for 2003, July-December 2004, January-June 2005, and 2008 (although again, the data provided is useless because of the near complete redaction of information);
- Exhibit M contains only data for 2007; and
- Exhibit N appears to only contain (again redacted) data for February and March 2009. Exhibit 4 hereto.

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[6] Due to the size of this exhibit only Bate Stamp numbers DV000551, 552, 554, 556, 557, 558, 575-581, 584-587, and 604 are attached hereto as they are the redacted documents.

[7] Due to the size of this exhibit, only Bate Stamp numbers DV000660- 662, 667-671, 675, 676, and 678- 680, are attached hereto as they are the redacted documents.

The Department has been administering the LET since its inception in 2003. As such, it presumably possesses data from 2003 to 2008 (as Plaintiffs requested) and not (as the Department responded) for 2004. Yet when Mr. Hoffer spoke with Mr. Doerr regarding this curious omission, Mr. Doerr had no answer and did not offer to produce the missing documents.

Also, beyond failing to meaningfully respond, the Department ostensibly relies upon a privilege that does not apply here.

B. THE LEGISLATURE HAS DETERMINED THE PRIVILEGE THE DEPARTMENT RELIES UPON DOES NOT APPLY TO THIS CASE.

In its privilege log, the Department relies exclusively on NRS 368A.180(2)(C), which it also relies upon in its discovery responses in addition to NRS 49.025. Exhibit 4.

The Department's reliance on these statutes is misplaced.

The privilege under NRS Chapter 368A is expressly *not* applicable to this case because (1) this lawsuit is brought under the provisions of Chapter 368A; and (2) in any event, the Department may disclose the information in a manner that prevents identification of a particular person or document.

1. The Privilege Is Not Applicable Because this Case Is Brought Pursuant to NRS Chapter 386A.

The Department claims the information Plaintiffs requested is privileged under NRS 49.025 and NRS 368A.180(2)(c). Not so.

The Department's reliance on NRS 49.025 is misplaced because NRS 368A.180 does not render any documents unequivocally privileged and confidential and, in fact, specifically states exceptions—under which this lawsuit falls—permitting the disclosure of tax records and information.

Under NRS 49.025, a "public officer or agency to whom a return or report is required by law to be made has a privilege to refuse to disclose the return or report ***if the law requiring it to be made so provides***." Here, the law requiring the report to be made is Chapter 368A, which does provide that certain documents are privileged and confidential.

However, Chapter 368A also clearly states that documents are *not* subject to that privilege if they are requested during ***any action or proceeding pursuant to the provisions of this chapter and are directly involved in the action or proceeding.*** NRS 368A.180(2)(a) (emphasis supplied).

Here, this exception applies because this lawsuit is an action under Chapter 368A. The complaint specifically seeks declaratory judgment finding that Plaintiffs were exempt under NRS 368A.200(5)(a), and seeking a refund pursuant to NRS 368A.310. Complaint at 12-13, 15. Likewise, the companion case[8] is an actual appeal pursuant to the administrative process provided for in Chapter 368A. Complaint at 1.

Therefore, since the law requiring the payment of the LET does not provide for an absolute privilege, the Department cannot rely upon NRS 49.025 to refuse to provide properly discoverable information. Our Supreme Court's decision in *Tidvall v. Eighth Judicial District Court*, 91 Nev. 520 (1975), supports this conclusion.

In *Tidvall*, a statute granted the superintendent of banks the absolute right to exercise the privilege to keep all information obtained in bank examination reports confidential, without exception; as the court noted:

> The legislature did not empower the superintendent to place whatever information he might deem confidential beyond the reach of a court order. Instead, it has specifically declared all examination reports and all

[8] *Deja Vu Showgirls of Las Vegas, LLC, dba Deja Vu Showgirls, et al. v. Nevada Department of Taxation, et al.* (District Court Case No. A554970; Dept. 9).

> information obtained by the superintendent in conducting examinations of banks to be confidential and privileged information and has given the superintendent the absolute right to exercise the privilege of nondisclosure.
>
> *Id.* at 525.

The court in *Tidvall* cites NRS 49.025, which the Department now relies on. However, in *Tidvall*, unlike here, the underlying statutes (NRS 665.055, 665.065, and 665.075) granted the superintendent a non-discretionary privilege to keep *all* reports confidential.

Here, on the other hand, NRS 368A.180 specifically states that the privilege is ***not*** absolute and sets forth exceptions under which this lawsuit squarely falls, i.e., an action pursuant to Chapter 368A.

As such, based on the reasoning in *Tidvall*, and the plain language of NRS 368A.180(2)(a), the legislature has clearly decided the privilege the Department relies upon does not apply to this case.

2. The Privilege Is Also Not Applicable Here Because the Department May Produce Information In Statistical Form Without Identifying Individuals or Documents.

Additionally and alternatively, the Department could have produced the requested information pursuant to a second exception to the privilege, which allows for the production of statistical information. Under NRS 368A.180(2)(c),

> 2. The records and files of the Board and the Department concerning the administration of this chapter are *not* confidential and privileged in the following cases:
> ***
> (c) Publication of statistics so classified as to prevent identification of a particular person or document.
>
> NRS 368A.180(2)(c) (emphasis supplied).

Here, the Department could have produced the requested information in a statistical form that would prevent identification of a particular person or document. That is, the Department could have disclosed who, and what type of business, is paying what percentage of the non-gaming portion of the LET, and for which years, without identifying a particular person or document.

Plaintiffs are not asking to see actual tax returns or any confidential business information. They simply wish to know who is paying what portion of the LET and when. The Department is not required to identify individual businesses to provide responsive information.

Rather--and well within the above-cited general statistics exception to the privilege—the Department could simply identify which *types* of businesses (as opposed to names) the LET affects, e.g., adult-oriented/First Amendment, others. Likewise, the Department could produce similar statistics showing what percentage of total tax revenue is generated from adult-oriented/First Amendment businesses. And again, such a disclosure would be both responsive and fit within the statistical data exception cited above.

Finally, assuming *arguendo* a confidentiality issues exists, a protective order would provide adequate safeguards while allowing discovery.

3. The Protective Order Plaintiffs Offered Would Preserve Confidentiality While Allowing Discovery.

Finally, and although the privilege the Department relies upon is inapplicable, Plaintiffs' counsel even offered to allow the Department to respond pursuant to a stipulated protective order which would permit only the Court and the attorneys to see identifying information (other than the category of establishment) for the payers of the LET. This would prevent even the Plaintiffs from knowing which clubs paid how much money, but would

permit Plaintiffs' counsel to prove their contention that the adult entertainment businesses are paying the majority of the LET. However, the Department refused to consider this option.

4. Beyond the Exceptions to the Privilege, the Information Is Essential to Plaintiffs' Case.

In sum, there are two clear exceptions to the privilege the Department presumes to rely upon and thus, that privilege is not applicable. It is, however, essential to Plaintiffs' case. The requested information (who, and what type of business, is paying what percentage of the non-gaming portion of the LET, for which years) goes to the heart of Plaintiffs' argument: that the LET is unconstitutionally directed at adult entertainment establishments. Likewise, identifying what types of businesses are exempt from, or subject to, the LET is also essential to prove Plaintiffs' claims.

Yet this is the exact information the Department completely redacted, including the names of businesses, the type of businesses, and the amount of tax paid. Lastly, the Department redacted the names of employees and consultants on non-privileged communications regarding the LET.

C. THE DEPARTMENT SIMPLY FAILED TO PROVIDE REQUESTED INFORMATION.

Finally, the Department's response to Interrogatory 24, requesting the identity of the "Live Entertainment Tax Examiner," states that "no such title exists in the Department of Taxation." (Exhibit 3, p. 23). Such a title was identified multiple times in LET forms issued by the Department itself (attached as Exhibit 6), along with a phone number.

The Department did not state a reason for failing to disclose the identity of the Live Entertainment Tax Examiner, or for failing to produce the data that existed for the tax years 2003, 2005, 2006, 2007, 2008 and 2009, as set forth in Section IIA(2), above.

Under NRCP 37(a), the Court may issue orders compelling discovery when a party fails to respond to a request for inspection submitted under NRCP 34. *Fire Insurance Exchange v. Zenith Radio Corporation*, 103 Nev. 648, 651(1987).

As such, and considering there is no good faith basis for refusing to respond, the Court must now compel the Department's response. Additionally and alternatively, the Court should not allow the Department to rely upon information it now withholds.

D. THE DEPARTMENT CANNOT RELY ON PRIOR ARGUMENTS BASED ON INFORMATION IT NOW REFUSES TO PRODUCE

In Defendants' Opposition to Plaintiffs' Motion for Preliminary Injunction (filed June 23, 2008), Defendants argued that:

> Additionally, the fact that PLAINTIFFS' industry generates more revenue from the tax than any other industry falling under the administration of the Department (n. 4) is simply irrelevant because it is merely a corollary with the number of those types of businesses which have been established in the state compared to other live entertainment establishments – nothing more.
>
> * * *
>
> n. 4 The LET is one tax administered by the Gaming Control Board and the Department of Taxation. NRS 368A.140. The Gaming Control Board collects the majority of the LET. See Exhibit A.

Defendants' Opposition at 13-14.

In support of this contention, the Department attached a table showing the percentage of non-gaming licensees who paid the LET in 2006. This is the exact information the Department now refuses to produce.

Plaintiffs sought data from the Defendants during discovery to establish not only who is paying the LET, but more importantly who is paying the *non-gaming* portion of the tax, the category under which Plaintiffs fall.

Further, Defendants argued that there was no irreparable harm to Plaintiffs' business because the "LET collections increased in 2005 and 2006 and were forecasted to increase in

2007, 2008 and 2009. See Exhibit B." Defendants' Opposition at 15. Those tables and charts attached as Exhibit B to Defendants' Opposition only showed *total* LET numbers, not broken down by type of establishment, or even into gaming and non-gaming categories.

Our Supreme Court has held that "Under NRCP 37(d), a court may strike a pleading of a party for his failure to answer interrogatories." *Havas v. Bank of Nevada*, 613 Nev. 567, 569-570 (1980). To the extent the Department relied on the unresponsive document production as its answers to Plaintiffs' interrogatories, the Department should not be able to rely on those charts and tables in this litigation if it is not going to produce the underlying data.

Therefore, if the Court is not inclined to compel the Department to produce information it relied upon, it should strike those portions of Defendants' Opposition to Plaintiffs' Motion for Preliminary Injunction relying on those Exhibits.

E. PLAINTIFFS ARE ENTITLED TO ATTORNEY'S FEES AND COSTS FOR HAVING TO BRING THIS MOTION.

If a party refuses to produce discovery or fails to respond to an opposing party's lawful discovery responses, the moving party is entitled to recover costs involved in bringing the motion to compel. Under NRCP 26(g),

> If a certification is made in ***violation of this rule***, the court, upon motion or upon its own initiative, ***shall impose upon the person*** who made the certification, the party on whose behalf the request, response, or objection was made, or both, ***an appropriate sanction***, which may include an order to pay the amount of the reasonable ***expenses incurred*** because of the violation, ***including a reasonable attorney's fee***.
>
> NRCP Rule 26(g) (emphasis added).

Additionally, NRCP 37 and EDCR 2.34 allow for an appropriate sanction when one party must move to compel the other to comply with discovery. The relevant portion of NRCP 37 states:

> If the motion is granted, the court shall, . . . require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees . . .
>
> NRCP 37(a)(4) (emphasis added).

The relevant provision of EDCR 2.34 states:

> If after request, responding counsel fails to participate in good faith in the conference or to answer discovery, the court may require such counsel to pay to any other party the reasonable expenses, including attorney's fees, caused by the failure.
>
> EDCR 2.34(d) (emphasis added).

Here, Plaintiffs sent lawful discovery demands to the Department and even after discussions and emails with Plaintiffs' counsel the Department refuses to answer the discovery fully, or to produce relevant, non-privileged information or documents. Further, the Department received the discovery requests in March. If it was going to raise these confidentiality issues, it should have done so before August, 10 days before depositions of Defendants' representatives were to be taken.

Therefore, the Court should impose an appropriate sanction in the form of attorney's fees as compensation for the Department's blatant refusal to produce adequate, timely responses to Plaintiffs' interrogatories and request for production of documents.

III.
CONCLUSION

For all these reasons, Plaintiffs seek from this Honorable Court an order:

(1) Compelling the Department to immediately submit to the Plaintiffs, within ten (10) days of the entry of this Court's order, the Department's answers to the below-described interrogatories, and to produce within that same time all the

un-redacted items and documents requested by the below-described requests for production, all without objection;

(2) Sanctioning the Department for failing to comply with discovery, by awarding Plaintiffs their costs and attorney fees for having filed this motion; and, in addition and alternatively,

(3) Striking the portion of Defendants' Opposition to Plaintiffs' Motion for Preliminary Injunction that relies upon information the Department now refuses to produce (attached to the Department's Opposition as Exhibits A and B).

DATED this 30th day of September, 2009.

Respectfully submitted,

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**Admitted Pro Hac Vice*

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of September, 2009, the foregoing **MOTION TO COMPEL DISCOVERY OF DEFENDANTS** was served on the party(ies) by faxing a copy and mailing of same in the United States mail, postage prepaid thereon, addressed as follows:

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Exhibit 1

INTG
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DISTRICT COURT

CLARK COUNTY, 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*	**CASE NO. A533273** **DEPT. NO. IX**
Plaintiffs,	
v.	
NEVADA DEPARTMENT OF TAXATION, NEVADA TAX COMMISSION, NEVADA STATE BOARD OF EXAMINERS, and MICHELLE JACOBS, in her official capacity only,	
Defendants.	

PLAINTIFFS' FIRST SET OF INTERROGATORIES TO DEFENDANTS

The above-captioned Plaintiffs, by and through counsel and pursuant to Nev.R.Civ.P Rules 26 and 33, request Plaintiff the Nevada Department of Taxation to answer under oath the interrogatories set forth below.

You are request to produce the materials specified below for inspection and copying at [Sullivan Brown to enter date at least 30 days from the date of service].

Definitions and Instructions

A. This First Set of Interrogatories shall be deemed to be continuing in nature, calling for the answers to be changed promptly upon receipt of more and/or different information.

B. As used in these interrogatories, the phrase "Chapter 368A" or the "Live Entertainment Tax" shall refer to Chapter 368A of the Nevada Revised Statutes as referred in Plaintiffs' Complaint.

C. As used in these interrogatories, the phrase "Ten Percent LET" shall refer to the tax imposed by N.R.S. § 368A.200(1)(a).

D. As used in these interrogatories, the phrase "Five Percent LET" shall refer to the tax imposed by N.R.S. § 368A.200(1)(b).

E. As used in interrogatories, the term "Department" shall refer to the Nevada Department of Taxation.

F. As used in these interrogatories, the term "Commission" shall refer to the Nevada Gaming Commission.

G. As used in these interrogatories, the term "Board" shall refer to the State Gaming Control Board.

H. As used in these interrogatories, the term "regulation" shall refer to any regulation promulgated or adopted by either the Department or the Commission pursuant to the provisions of NRS § 368A.140.

I. As used in these interrogatories, the term "business entity" shall have the meaning ascribed to it in NRS § 368A.050.

J. As used in these interrogatories, the term "document" means any writing, letter, opinion, printing, memorandum, report, compilation, survey, summary, evaluation, correspondence, list, directive, study, contract,

agreement, chart, graph, index, data sheet, data processing card or tape, note, entry, telegrams, telefax, advertisement, brochure, circular, tape, record, receipt, invoice, bulletin, paper, book, pamphlet, account, photograph, magazine or newspaper article, records of meetings, conference records, telephone records, records of conversation or any other form of communication, journal, and any other written, typewritten, handwritten, or other graphic matter, any electronic or other recording of any kind or nature, any mechanical or electronic sound or video recordings or transcripts thereof, however produced or reproduced, and all copies or facsimiles of documents by whatever means made.

K. As used in these interrogatories, the phrase "person or persons" shall refer to individuals and not the collective knowledge of any group of persons.

L. As used in these interrogatories, the phrase "relating to" includes referring to, pertaining to, showing, describing, analyzing, containing, having, discussing, or concerning, in any manner or fashion whatsoever.

M. As used in these interrogatories, the term "you" (or "your") shall refer collectively to the above-captioned defendants.

N. If you object to any interrogatory herein on the basis of a claim of privilege, please:

1. State the nature of the privilege(s) asserted; and
2. State in detail the factual basis for the claim(s) of privilege.

O. In each case where you are asked to identify a person, or where the answer to an interrogatory refers to a person, state with respect to each person:

1. His or her name;
2. His or her current last known address and telephone number;
3. His or her occupation, employer and business address at the date of the referenced event or transaction; and
4. His or her present occupation, employer and business address and telephone number.

P. In each case in which you are asked to identify an agency, company, business entity or other organization, state with respect to each agency, company, business entity or other organization:

1. The full name, address and phone number of the entity/organization;
2. The type of entity/organization (e.g., corporation, limited liability company, partnership, sole proprietorship, etc.)

Q. In each case where you are asked to identify a writing or document or where the answer to an interrogatory refers to a writing or document, state with respect to each writing or document:

1. The identity of the person who signed it or over whose name it was issued;
2. The addressee;
3. The nature and substance of the document with sufficient particularity to enable identification;
4. The date of the writing; and
5. The identity of each person who has custody of the writing or any copy.

INTERROGATORIES

1. For each separate tax year from 2003 to present, please identify each and every person or business entity that paid the Live Entertainment Tax during that tax year; whether the entity is subject to the Five Percent LET or the Ten Percent LET; and specify the amount of Live Entertainment Tax paid for such year. In the event that a single entity is subject to both the Five Percent LET and the Ten Percent LET or made payments to both the Department and the Commission, identify each such payment separately.

RESPONSE:

2. Identify each and every person or business entity subject that paid taxes under the original version of the Live Entertainment Tax enacted in 2003, but due to any change(s) in the Live Entertainment Tax, changes or adoption of Live Entertainment Tax Regulations, or due to any Department or Commission policy, was not required to pay the Live Entertainment Tax in any subsequent year. For each person or business entity so identified, also specify the change(s) in law, regulation, or policy that resulted in the person or entity no longer being subject to the Live Entertainment Tax.

RESPONSE:

3. Identify each and every person or business entity not subject to the original version of the Live Entertainment Tax, but due to any change(s) in the changes or adoption of Live Entertainment Tax, Live Entertainment Tax Regulations, or due to

any Department or Commission policy, became subject to the Live Entertainment Tax in any subsequent year. For each person or business entity so identified, also specify the change(s) in law, regulation, or policy that resulted in the person or business entity becoming subject to the Live Entertainment Tax.

RESPONSE:

4. Identify the person or persons most knowledgeable of the introduction, drafting, consideration of, revising, adopting and/or amending the Live Entertainment Tax.

RESPONSE:

5. Identify the person or persons most knowledgeable of the introduction, drafting, consideration of, revising, adopting and/or amending any and all regulations relating to, or promulgated under, the Live Entertainment Tax.

RESPONSE:

6. Identify the person or persons most knowledgeable of the persons and entities who/which have paid the Live Entertainment Tax since the initial adoption of that statute.

RESPONSE:

7. Identify the person or persons most knowledgeable about the persons or business entities meant to be taxed by the Live Entertainment Tax.

RESPONSE:

8. Identify the person or persons most knowledgeable of the purposes for each and every one of the exceptions to the definition of "live entertainment" set forth in NRS § 368A.090. Should you conclude that the person most knowledgeable differs depending on the legislative act, list the person most knowledgeable regarding each legislative act.

RESPONSE:

9. Identify the person or persons most knowledgeable of the purposes for any and all legislative changes to the exceptions to the definition of "live entertainment" set forth in NRS § 368A.090.

RESPONSE:

10. Identify the person or persons most knowledgeable of the purposes for each and every one of the exceptions to the application of the Live Entertainment Tax set

forth in NRS § 368A.200. Should you conclude that the person most knowledgeable differs depending on the legislative act, list the person most knowledgeable regarding each legislative act.

RESPONSE:

11. Identify the person or persons most knowledgeable of the purposes for each and every one of the exceptions to the application of the Live Entertainment Tax or to the definition of "live entertainment" created by any regulation or policy of the Department. Do not duplicate responses to previous interrogatories. In the event that different persons are most knowledgeable regarding different changes, list such individuals separately, together with the changes with regard to which the person is most knowledgeable.

RESPONSE:

12. Identify the person or persons most knowledgeable of the purposes for each and every one of the exceptions to the application of the Live Entertainment Tax or to the definition of "live entertainment" created by any regulation or policy of the Commission. In the event that different persons are most knowledgeable regarding different changes, list such individuals separately, together with the changes with regard to which the person is most knowledgeable.

RESPONSE:

13. Identify the person or persons most knowledgeable regarding the steps by which the proposed "5% across the board" tax on live entertainment was modified to, instead, tax certain live entertainment at the rate of 10%, as provided by NRS § 368A.200(1).

RESPONSE:

14. Identify the person or persons most knowledgeable regarding the purpose(s) of modifying the proposed "5% across the board" tax on live entertainment to, instead, tax certain live entertainment at the rate of 10%, as provided by NRS § 368A.200(1).

RESPONSE:

15. Identify each and every person or business entity that became subject to the Live Entertainment Tax as a result of NRS § 368A.200 being amended: (1) to change the seating capacity or occupancy requirement (presently NRS §§ 368A.200(5)(d) and (e)) from 300 to 200; or (2) to change the language to refer to "maximum occupancy" rather than "maximum seating capacity."

RESPONSE:

16. Identify the person or persons most knowledgeable regarding the purpose(s) of changing the maximum seating capacity/maximum occupancy specified by (presently) NRS §§ 368A.200(5)(d) and (e) from 300 to 200.

RESPONSE:

17. Identify the person or persons most knowledgeable regarding the effect(s) of changing the maximum seating capacity/maximum occupancy specified by (presently) NRS §§ 368A.200(5)(d) and (e) from 300 to 200.

RESPONSE:

18. Identify the person or persons most knowledgeable regarding the purpose(s) of changing the language of (presently) NRS §§ 368A.200(5)(d) and (e) from referring to "maximum seating capacity" to "maximum occupancy."

RESPONSE:

19. Identify any and all persons, business entities, or classes of business entities, who/which have requested to be exempt from the Live Entertainment Tax.

RESPONSE:

20. For each business entity or class of business entities identified in the preceding interrogatory, indicate whether such entity is currently subject to taxation via presently effective version of the Live Entertainment Tax. If the business entity or class of business entities is not subject to the Live Entertainment Tax, identify the change in the Live Entertainment Tax, regulations, and/or administration responsible for the business entity or class of business entities not being presently subject to taxation.

RESPONSE:

21. Identify each and every governmental interest meant to be served by the enactment or operation of the Live Entertainment Tax.

RESPONSE:

22. Identify each and every governmental interest meant to be served by the enactment of each and every one of the exceptions and exemptions to the Live Entertainment Tax.

RESPONSE:

23. Identify each and every person from the State of Nevada whose job responsibilities include administering the collection and payment of the Live Entertainment Tax.

RESPONSE:

24. Identify all persons associated with the Department, Commission, or Board who hold or act under the title "live entertainment tax examiner." Also, identify the person or persons responsible for overseeing the activities of the live entertainment tax examiners.

RESPONSE:

Dated: March 24, 2009

Respectfully Submitted,

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