

Exhibit 2

REQT
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DISTRICT COURT

CLARK COUNTY, NEVADA

DEJA VU SHOWGIRLS OF LAS VEGAS,)	
L.L.C., d/b/a <i>Deja Vu Showgirls</i> , LITTLE)	CASE NO. A533273
DARLINGS OF LAS VEGAS, L.L.C., d/b/a)	DEPT. NO. IX
<i>Little Darlings</i> , K-KEL, INC., d/b/a)	
<i>Spearmint Rhino Gentlemen's Club</i> ,)	
OLYMPUS GARDEN, INC., d/b/a <i>Olympic</i>)	
<i>Garden</i> , SHAC, L.L.C. d/b/a <i>Sapphire</i> , THE)	
POWER COMPANY, INC., d/b/a <i>Crazy Horse</i>)	
<i>Too Gentlemen's Club</i> , D. WESTWOOD, INC.,)	
d/b/a <i>Treasures</i> , and D.I. FOOD & BEVERAGE)	
OF LAS VEGAS, LLC, d/b/a <i>Scores</i>)	
)	
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 REQUEST FOR THE PRODUCTION OF DOCUMENTS AND
THINGS TO DEFENDANTS**

The above-captioned Plaintiffs, by and through counsel and pursuant to Nev.R.Civ.P Rules 26 and 34, request Plaintiff the Nevada Department of Taxation to produce the documents and things on the date, time and place specified herein, and to permit Plaintiffs, its agents, or its attorney to inspect and copy said materials.

You are requested to produce the materials specified below for inspection and copying at Sullivan Brown, LLC, 332 South Jones Boulevard, Las Vegas, Nevada 89107 on or before *April 29, 2009*.

Definitions and Instructions

- A. This Request for Production of Documents and Things shall be deemed to be continuing in nature, calling for the prompt production by the listed Plaintiff of any and all documents which come into its actual or constructive possession, trust, care or control at any time in the future, as well as any and all documents now in the actual or constructive possession, trust, care or control of said Plaintiff. The specificity of any request shall not be construed as reducing the scope of any more generalized request.
- B. As used in these requests for production of documents and things, 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 requests for production of documents and things, the phrase "Ten Percent LET" shall refer to the tax imposed by N.R.S. § 368A.200(1)(a).
- D. As used in these requests for production of documents and things, the phrase "Five Percent LET" shall refer to the tax imposed by N.R.S. § 368A.200(1)(b).
- E. As used in these requests for production of documents and things, the term "Department" shall refer to the Nevada Department of Taxation.
- F. As used in these requests for production of documents and things, the term "Commission" shall refer to the Nevada Gaming Commission.
- G. As used in these requests, the term "Board" shall refer to the State Gaming Control Board.
- H. As used in these requests, the term "regulation" shall refer to any regulation promulgated or adopted by either the Department of Taxation or the Commission.

- I. As used in these requests, the term "business entity" shall have the meaning ascribed to it in NRS § 368A.050.
- J. As used in these requests for production of documents and things, 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 requests for production of documents and things, the phrase "person or persons" shall refer to individuals and not the collective knowledge of any group of persons.
- L. As used in these requests for production of documents and things, 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 requests for production of documents and things, the term "you" (or "your") shall refer collectively to the above-captioned defendants.
- N. If you object to any request for production of documents and things herein on the basis of a claim of privilege, please:
 - 1. Identify each such document with sufficient particularity as to the author(s)' address(es) or recipient(s)' address(es), and the contents thereof so as to allow the court sufficient information to be able to rule upon any claim of privilege;
 - 2. Identify all persons in possession of each document;
 - 3. State the nature of the privilege(s) asserted; and
 - 4. State in detail the factual basis for the claim(s) of privilege.
- O. In each case where you are asked to identify a person in an objection, 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.

DOCUMENTS TO BE PRODUCED

Plaintiffs requests that you produce and make available for inspection and copying, separately in response to each numbered paragraph, the following documents:

1. Any and all documents related to any payments of the ten percent LET.

RESPONSE:

2. Any and all documents related to any payments of the five percent LET.

RESPONSE:

3. Any and all Live Entertainment Tax Returns or similar documents submitted to the Department relating to the payment or anticipated payment of the Ten Percent LET.

RESPONSE:

4. Any and all Live Entertainment Tax Returns or similar documents submitted to the Department relating to the payment or anticipated payment of the Five Percent LET.

RESPONSE:

5. Any and all Live Entertainment Tax Reports or similar documents submitted to the Board or Commission relating to the payment or the anticipated payment of the Ten Percent LET.

RESPONSE:

6. Any and all Live Entertainment Tax Reports or similar documents submitted to the Board or Commission relating to the payment or the anticipated payment of Five Percent LET.

RESPONSE:

7. Any and all Live Entertainment Tax Returns, Live Entertainment Tax Reports, or similar documents relating to any payments of the Live Entertainment Tax.

RESPONSE:

8. Any and all documents listing, memorializing, summarizing, analyzing, or otherwise describing amounts collected pursuant to the Live Entertainment Tax, including but not limited to documents that identify the payees of the Live Entertainment Tax.

RESPONSE:

9. Any and all documents relating to projections of revenue to be generated by, or amounts to be collected pursuant to, the Live Entertainment Tax.

RESPONSE:

10. Any and all documents relating to projections of revenue generated by, or amounts to be collected pursuant to, any proposed live adult entertainment tax. The phrase "live adult entertainment" shall have the meaning ascribed to it by Senate Bill 247 of the year 2005.

RESPONSE:

11. Any and all documents relating to the purpose(s) of introducing, drafting, considering, revising, adopting, and/or amending the Live Entertainment Tax.

RESPONSE:

12. Any and all document relating to the introduction, drafting, consideration, revisions, amendments to, and enactment of the Live Entertainment Tax.

RESPONSE:

13. Any and all documents either submitted to or in any way either considered and/or relied upon by the Nevada Legislature, it committees, subcommittees, employees, analysts, or the like relating to the purpose of introducing, drafting, considering, revising, adopting, and/or amending the Live Entertainment Tax.

RESPONSE:

14. Any and all documents either submitted to or in any way either considered and/or relied upon by the Nevada Legislature, its committees, subcommittees, employees, analysts, or the like relating to the introduction, drafting, considering, revising, adopting and/or amending the Live Entertainment Tax.

RESPONSE:

15. Any and all transcripts, audio or video recording, minutes, or other records of any sessions, meetings or hearings of the Nevada Legislature, or its committees or subcommittees relating to the introduction, consideration and enactment of the Live Entertainment Tax.

RESPONSE:

16. Any and all documents either submitted to or in any way either considered and/or relied upon by the Nevada Legislature or its committees or subcommittees relating to the purpose of introducing, drafting, considering, revising, adopting, and/or amending any tax or proposed tax on "live adult entertainment."

RESPONSE:

17. Any and all documents that constitute the legislative history of the Live Entertainment Tax or any amendments thereto.

RESPONSE:

18. Any and all transcripts, audio or video recording, minutes, or other records of any sessions, meetings or hearings of the Nevada Legislature, or its committees or subcommittees

relating to the introduction, consideration and enactment of any tax or proposed tax on "live adult entertainment," including but not limited to Senate Bill 247 of 2005.

RESPONSE:

19. Any and all documents relating to how or whether any provision of Senate Bill 247 or any other proposed tax on "live adult entertainment" were incorporated into the Live Entertainment Tax.

RESPONSE:

20. Any and all documents either submitted to or in any way either considered and/or relied upon by the Department, its employees, or agents relating to the purpose of introducing, drafting, considering, revising, adopting, and/or amending of any rules relating to, or promulgated under, the Live Entertainment Tax.

RESPONSE:

21. Any and all documents either submitted to or in any way either considered and/or relied upon by the Department, its employees, or agents relating to the introduction, drafting, consideration, revision, amendments to, and/or promulgation of any rules relating to, or promulgated under, the Live Entertainment Tax.

RESPONSE:

22. Any and all transcripts, audio or video recording, or other records of any sessions, meetings or hearings of the Department, its employee, or agents relating to the purpose of introducing, drafting, considering, revising, adopting, and/or amending of any rules which created or clarified any exceptions or exemptions to the application of the Live Entertainment Tax.

RESPONSE:

23. Any and all documents relating to any request by or on behalf of any business entity or class of business entities, contending that, taking the opposition that, or inquiring whether, the business entity or class of business entities is/are exempted from the Live Entertainment Tax.

RESPONSE:

24. Any and all documents relating to the procedures by which the Department determines whether a business entity is subject to the Live Entertainment Tax.

RESPONSE:

25. Any and all documents relating to any challenge by any business entity to the applicability of the Live Entertainment Tax or of amounts owned by way of the Live Entertainment Tax.

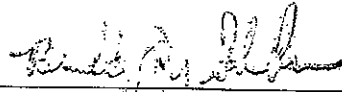
RESPONSE:

26. Any and all documents relating to the administration of the Live Entertainment Tax or the providing of advice relating to the Live Entertainment tax by any person operating under the title "live entertainment tax examiner."

RESPONSE:

Dated: March 26, 2009

Respectfully Submitted,



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Exhibit 3

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

Case No. A533273

Dept No. IX

**NEVADA DEPARTMENT OF
TAXATION'S RESPONSES TO
PLAINTIFFS' FIRST SET OF
INTERROGATORIES TO
DEFENDANTS**

TO: Plaintiffs; and

TO: Shafer & Associates, P.C., attorney of record for Plaintiffs:

1 Defendants, NEVADA DEPARTMENT OF TAXATION, NEVADA TAX COMMISSION,
2 NEVADA STATE BOARD OF EXAMINERS and MICHELLE JACOBS by and through its
3 attorney Catherine Cortez Masto, Attorney General, and Blake Doerr, Deputy Attorney
4 General, hereby responds to Plaintiff's First Set of Interrogatories and states as follows:

5 It should be noted that Responding Party has not fully completed discovery in this
6 action and has not completed preparation for trial. All of the responses contained herein are
7 based only upon such information and documents which are presently available and
8 specifically known to Responding Party. As discovery proceeds, witnesses, facts and
9 evidence may be discovered which are not set forth herein, but which may be responsive to
10 an interrogatory. Therefore, the following responses are given without prejudice to
11 Responding Party's right to supplement the responses upon any subsequently discovered
12 facts or witnesses which it may later recall.

13 Responding Party further assumes no obligation to voluntarily supplement these
14 responses to reflect witnesses, facts and evidence following the filing of these responses
15 other than provided by Nevada Rule of Civil Procedure 26(e). In addition, because some
16 responses may have been ascertained by its attorneys and investigators, Responding Party
17 may not have personal knowledge of the information from which these responses are derived.

18 **GENERAL OBJECTIONS**

19 1. Responding Party objects to the instructions and directions that accompany the
20 Interrogatories to the extent that such instructions and directions tend to impose a discovery
21 obligation beyond that required by applicable rules of civil procedure, and Responding Party
22 refuses to comply with such instructions and directions to the extent that they attempt to
23 impose a discovery obligation beyond that required by applicable rules of civil procedure.

24 2. Responding Party objects to the instructions and directions that accompany the
25 Interrogatories to the extent that such instructions and directions call for a response that
26 involves information that compromises attorney work product and/or information that is
27 protected by the attorney/client privilege and/or statutes requiring confidentiality.

1 3. Responding Party objects to the Interrogatories to the extent that they utilize the
2 terms "all", "each", or "any" concerning various subjects or events on the grounds that the
3 Interrogatories are overly broad, unduly burdensome, onerous, and request information that is
4 not relevant or which is not likely to lead to the discovery of admissible evidence.

5 Without waiving any of the foregoing objections, and reserving the right to supplement
6 each and every one of its Responses as discovery continues, Responding Party responds as
7 follows:

8 **INTERROGATORY NUMBER 1**

9 For each separate tax year from 2003 to present, please identify each and every
10 person or business entity that paid the Live Entertainment Tax during that tax year; whether
11 the entity is subject to the Five Percent LET or the Ten Percent LET; and specify the amount
12 of Live Entertainment Tax paid for such year. In the event that a single entity is subject to
13 both the Five Percent LET and the Ten Percent LET or made payments to both the
14 Department and the Commission, identify each such payment separately.

15 **RESPONSE TO INTERROGATORY NUMBER 1**

16 This Responding Party hereby objects to this interrogatory on grounds including, but
17 not limited to, that the interrogatory is compound, overly broad, vague and ambiguous,
18 improperly seeks attorney work product information, requests confidential and/or privileged
19 information pursuant to NRS 40.025 and NRS 368A.180, asks for information which is not
20 reasonably calculated to lead to the discovery of admissible evidence, and is overly
21 burdensome. Without waiving said objections, and while reserving same, and while reserving
22 the right to supplement or amend this response, this Responding Party asserts as follows:

23 As to the non-objectionable portion of this Interrogatory, see Exhibit "A" to Response to
24 Plaintiffs' First Request for Production, filed concurrently herewith. Discovery is continuing.

25 **INTERROGATORY NUMBER 2**

26 Identify each and every person or business entity subject that paid taxes under the
27 original version of the Live Entertainment Tax enacted in 2003 but due to any changes in the
28

1 Live Entertainment Tax, changes or adoption of Live Entertainment Tax Regulations, or due
2 to any Department or Commission policy, was not required to pay the Live Entertainment Tax
3 in any subsequent year. For each person or business entity so identified, also specify the
4 change(s) in law, regulation, or policy that resulted in the person or entity no longer being
5 subject to the Live Entertainment Tax.

6 **RESPONSE TO INTERROGATORY NUMBER 2**

7 This Responding Party hereby objects to this interrogatory on grounds including, but
8 not limited to, that the interrogatory is compound, overly broad, vague and ambiguous, calls
9 for speculation, improperly seeks attorney work product information, requests information
10 which is confidential and/or privileged pursuant to NRS 49.025 and NRS 368A.180, asks for
11 information which is not reasonably calculated to lead to the discovery of admissible evidence,
12 and is overly burdensome as it would require expensive review of records. The Interrogatory
13 additionally seeks information that is obtainable from another more convenient, less
14 burdensome and less expensive source.

15 Without waiving said objections, and while reserving same, and while reserving the
16 right to supplement or amend this response, this Responding Party asserts as follows:

17 As to the non-objectionable portion of this Interrogatory, see Exhibit "A" to Response to
18 Plaintiffs' First Request for Production, filed concurrently herewith. Discovery is continuing.

19 **INTERROGATORY NUMBER 3**

20 Identify each and every person or business entity not subject to the original version of
21 the Live Entertainment Tax, but due to any change(s) in the changes or adoption of Live
22 Entertainment Tax Regulations, or due to any Department or Commission policy, became
23 subject to the Live Entertainment Tax in any subsequent year. For each person or business
24 entity so identified, also specify the change(s) in law, regulation, or policy that resulted in the
25 person or business entity becoming subject to the Live Entertainment Tax.

26 //

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1 **RESPONSE TO INTERROGATORY NUMBER 3**

2 This Responding Party hereby objects to this interrogatory on grounds including, but
3 not limited to, that the interrogatory is compound, overly broad, vague and ambiguous, calls
4 for speculation, improperly seeks attorney work product information, requests information
5 which is confidential and/or privileged pursuant to NRS 40.025 and NRS 368A.180, asks for
6 information which is not reasonably calculated to lead to the discovery of admissible evidence,
7 and is overly burdensome as it would require expensive review of records. The Interrogatory
8 additionally seeks information that is obtainable from another more convenient, less
9 burdensome and less expensive source, and information already in the custody and control of
10 the Plaintiffs.

11 Without waiving said objections, and while reserving same, and while reserving the
12 right to supplement or amend this response, this Responding Party asserts as follows:

13 As to the non-objectionable portion of this Interrogatory, see Exhibit "A" to Response to
14 Plaintiffs' First Request for Production which contains discoverable information related to the
15 LET tax, filed concurrently herewith. Discovery is continuing.

16 **INTERROGATORY NUMBER 4**

17 Identify the person or persons most knowledgeable of the introduction, drafting,
18 consideration of, revising, adopting and /or amending the Live Entertainment Tax.

19 **RESPONSE TO INTERROGATORY NUMBER 4**

20 This Responding Party hereby objects to this interrogatory on grounds including, but
21 not limited to, that the interrogatory is compound, overly broad, vague and ambiguous, calls
22 for speculation, improperly seeks attorney work product information, requests information
23 which is not reasonably calculated to lead to the discovery of admissible evidence, and is
24 overly burdensome as it would require expensive review of public records which are
25 obtainable from another more convenient, less burdensome and less expensive source.

26 Without waiving said objections, and while reserving same, and while reserving the
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1 right to supplement or amend this response, this Responding Party asserts as follows:

2 Dino DiCianno
3 Executive Director
4 Department of Taxation

5 As to the non-objectionable portion of this Interrogatory, see public access
6 Legislative History documents at:

7 <http://www.leg.state.nv.us/73rd/Reports/history.cfm?ID=1877>

8 <http://www.leg.state.nv.us/73rd/Reports/history.cfm?DocumentType=1&BillNo=554>.

9 Discovery is continuing.

10 **INTERROGATORY NUMBER 5**

11 Identify the person or persons most knowledgeable of the introduction, drafting,
12 consideration of, revising, adopting and /or amending any and all regulations relating to, or
13 promulgated under, the Live Entertainment Tax.

14 **RESPONSE TO INTERROGATORY NUMBER 5**

15 This Responding Party hereby objects to this interrogatory on grounds including, but
16 not limited to, that the interrogatory is compound, overly broad, vague and ambiguous, calls
17 for speculation, improperly seeks attorney work product information, requests information
18 which is not reasonably calculated to lead to the discovery of admissible evidence, and is
19 overly burdensome as it would require expensive review of public records which are
20 obtainable from another more convenient, less burdensome and less expensive source.

21 Without waiving said objections, and while reserving same, and while reserving the
22 right to supplement or amend this response, this Responding Party asserts as follows:

23 Dino DiCianno
24 Executive Director
25 Department of Taxation

26 As to the non-objectionable portion of this Interrogatory, See public access to
27 Legislative History documents at:

28 <http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1232> (SB4);

<http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1234> (SB5).

1 <http://www.leg.state.nv.us/73rd/Reports/history.cfm?ID=1877> (SB247);

2 <http://www.leg.state.nv.us/73rd/Reports/history.cfm?DocumentType=1&BillNo=554>

3 (AB 544).

4 See also regulation workshop recordings, attached to Responses to Plaintiffs' Request
5 for Production, Exhibit "AAA".

6 Discovery is continuing.

7 **INTERROGATORY NUMBER 6**

8 Identify the person or persons most knowledgeable of the persons and entities
9 who/which have paid the Live Entertainment Tax since the initial adoption of that statute.

10 **RESPONSE TO INTERROGATORY NUMBER 6**

11 This Responding Party hereby objects to this interrogatory on grounds including, but
12 not limited to, that the interrogatory is compound, overly broad, vague and ambiguous, calls
13 for speculation, improperly seeks attorney work product information, requests information
14 which is confidential and / or privileged pursuant to NRS 40.025 and NRS 368A.180, asks for
15 information which is not reasonably calculated to lead to the discovery of admissible evidence,
16 and is overly burdensome as it would require expensive review of records. The Interrogatory
17 additionally seeks information that is obtainable from another more convenient, less
18 burdensome and less expensive source, and information already in the custody and control of
19 the Plaintiffs.

20 Without waiving said objections, and while reserving same, and while reserving the
21 right to supplement or amend this response, this Responding Party asserts as follows:

22 As to the non-objectionable portion of this Interrogatory, and subject to the prohibitions
23 of NRS 40.025 and NRS 368A.180:

24 Michelle Jacobs
25 Tax Examiner II
26 Department of Taxation

27 Discovery is continuing.
28

1 **INTERROGATORY NUMBER 7**

2 Identify the person or persons most knowledgeable about the persons or business
3 entities meant to be taxed by the Live Entertainment Tax.

4 **RESPONSE TO INTERROGATORY NUMBER 7**

5 This Responding Party hereby objects to this interrogatory on grounds including, but
6 not limited to, that the interrogatory is compound, overly broad, vague and ambiguous, calls
7 for speculation, improperly seeks attorney work product information, requests information
8 which is not reasonably calculated to lead to the discovery of admissible evidence, and is
9 overly burdensome as it would require expensive review of public records which are
10 obtainable from another more convenient, less burdensome and less expensive source.

11 Without waiving said objections, and while reserving same, and while reserving the
12 right to supplement or amend this response, and subject to the prohibitions of NRS 40.025
13 and NRS 368A.180: this Responding Party asserts as follows:

14 Dino DiCianno
15 Executive Director
16 Department of Taxation

17 As to the non-objectionable portion of this Interrogatory, entities who provide "live
18 entertainment" is defined by NRS 368A.090. See Answer to Interrogatory 5. See all public
19 access Legislative History documents at:

20 <http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1232> (SB4);

21 <http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1234> (SB5).

22 <http://www.leg.state.nv.us/73rd/Reports/history.cfm?ID=1877> (SB247);

23 <http://www.leg.state.nv.us/73rd/Reports/history.cfm?DocumentType=1&BillNo=554>

24 (AB 544).

25 Discovery is continuing.

26 **INTERROGATORY NUMBER 8**

27 Identify the person or persons most knowledgeable of the purposes for each and every
28 one of the exceptions to the definition of "live entertainment" set forth in NRS 368A.090.

1 Should you conclude that the person most knowledgeable differs depending on the legislative
2 act, list the person most knowledgeable regarding each legislative act.

3 **RESPONSE TO INTERROGATORY NUMBER 8**

4 This Responding Party hereby objects to this interrogatory on grounds including, but
5 not limited to, that the interrogatory is compound, overly broad, vague and ambiguous, calls
6 for speculation, improperly seeks attorney work product information, requests information
7 which is not reasonably calculated to lead to the discovery of admissible evidence, and is
8 overly burdensome as it would require expensive review of public records which are
9 obtainable from another more convenient, less burdensome and less expensive source.

10 Without waiving said objections, and while reserving same, and while reserving the
11 right to supplement or amend this response, this Responding Party asserts as follows:

12 As to the non-objectionable portion of this Interrogatory, subject to the prohibitions of
13 NRS 40.025 and NRS 368A.180:

14 Michelle Jacobs
15 Tax Examiner II
16 Department of Taxation

17 See all public access Legislative History documents at:

18 <http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1232> (SB4);

19 <http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1234> (SB5).

20 <http://www.leg.state.nv.us/73rd/Reports/history.cfm?ID=1877> (SB247);

21 <http://www.leg.state.nv.us/73rd/Reports/history.cfm?DocumentType=1&BillNo=554>

22 (AB 544).

23 Discovery is continuing.

24 **INTERROGATORY NUMBER 9**

25 Identify the person or persons most knowledgeable of the purposes for any and all
26 legislative changes to the exceptions to the definition of "live entertainment" set forth in NRS
27 368A.090.
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1 **RESPONSE TO INTERROGATORY NUMBER 9**

2 This Responding Party hereby objects to this interrogatory on grounds including, but
3 not limited to, that the interrogatory is compound, overly broad, vague and ambiguous, calls
4 for speculation, improperly seeks attorney work product information, requests information
5 which is not reasonably calculated to lead to the discovery of admissible evidence, and is
6 overly burdensome as it would require expensive review of public records which are
7 obtainable from another more convenient, less burdensome and less expensive source.

8 Without waiving said objections, and while reserving same, and while reserving the
9 right to supplement or amend this response, this Responding Party asserts as follows

10 As to the non-objectionable portion of this Interrogatory:

11 Dino DiCianno
12 Executive Director
13 Department of Taxation

14 The definition for "live entertainment" is contained in NRS 368A.090. See all public
15 access Legislative History documents at:

16 <http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1232> (SB4);

17 <http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1234> (SB5).

18 <http://www.leg.state.nv.us/73rd/Reports/history.cfm?ID=1877> (SB247);

19 <http://www.leg.state.nv.us/73rd/Reports/history.cfm?DocumentType=1&BillNo=554>

20 (AB 544).

21 Discovery is continuing.

22 **INTERROGATORY NUMBER 10**

23 Identify the person or persons most knowledgeable of the purposes for each and every
24 one of the exceptions to the application of the Live Entertainment Tax set forth in NRS
25 368A.200. Should you conclude that the person most knowledgeable differs depending on
26 the legislative act, list the person most knowledgeable regarding each legislative act.

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28 //

1 **RESPONSE TO INTERROGATORY NUMBER 10**

2 This Responding Party hereby objects to this interrogatory on grounds including, but
3 not limited to, that the interrogatory is compound, overly broad, vague and ambiguous, calls
4 for speculation, improperly seeks attorney work product information, requests information
5 which is not reasonably calculated to lead to the discovery of admissible evidence, and is
6 overly burdensome as it would require expensive review of public records which are
7 obtainable from another more convenient, less burdensome and less expensive source.

8 Without waiving said objections, and while reserving same, and while reserving the
9 right to supplement or amend this response, this Responding Party asserts as follows:

10 As to the non-objectionable portion of this Interrogatory, and subject to the prohibitions
11 of NRS 40.025 and NRS 368A.180:

12 Michelle Jacobs
13 Tax Examiner II
14 Department of Taxation

15 The entities who provide "live entertainment" are defined in NRS 368A.090. See all
16 public access Legislative History documents at:

17 <http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1232> (SB4);

18 <http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1234> (SB5).

19 <http://www.leg.state.nv.us/73rd/Reports/history.cfm?ID=1877> (SB247);

20 <http://www.leg.state.nv.us/73rd/Reports/history.cfm?DocumentType=1&BillNo=554>
(AB 544).

21 Discovery is continuing.

22 **INTERROGATORY NUMBER 11**

23 Identify the person or persons most knowledgeable of the purposes for each and every
24 one of the exceptions to the application of the Live Entertainment Tax or to the definition of
25 "live entertainment" created by any regulation or policy of the Department. Do not duplicate
26 responses to previous interrogatories. In the event that different persons are most
27 knowledgeable regarding different changes, list such individuals separately together with any
28

changes with regard to which the person is most knowledgeable.

RESPONSE TO INTERROGATORY NUMBER 11

This Responding Party hereby objects to this interrogatory on grounds including, but not limited to, that the interrogatory is compound, duplicative, overly broad, vague and ambiguous, calls for speculation, improperly seeks attorney work product information, requests information which is not reasonably calculated to lead to the discovery of admissible evidence, presumes facts not in evidence, presents an incomplete hypothetical, and is overly burdensome as it would require expensive review of public records which are obtainable from another more convenient, less burdensome and less expensive source.

Without waiving said objections, and while reserving same, and while reserving the right to supplement or amend this response, this Responding Party asserts as follows

As to the non-objectionable portion of this Interrogatory, and subject to the prohibitions of NRS 40.025 and NRS 368A.180:

Michelle Jacobs
Tax Examiner II
Department of Taxation

The entities who provide "live entertainment" are defined in NRS 368A.090. See all public access Legislative History documents at:

<http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1232> (SB4);

<http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1234> (SB5).

<http://www.leg.state.nv.us/73rd/Reports/history.cfm?ID=1877> (SB247);

<http://www.leg.state.nv.us/73rd/Reports/history.cfm?DocumentType=1&BillNo=554>

(AB 544).

Discovery is continuing.

INTERROGATORY NUMBER 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

1 different persons are most knowledgeable regarding different changes, list such individuals
2 separately, together with the changes with regard to which the person is most knowledgeable.

3 **RESPONSE TO INTERROGATORY NUMBER 12**

4
5 This Responding Party hereby objects to this interrogatory on grounds including, but
6 not limited to, that the interrogatory is compound, duplicative, overly broad, vague and
7 ambiguous, calls for speculation, improperly seeks attorney work product information,
8 requests information which is not reasonably calculated to lead to the discovery of admissible
9 evidence, presumes facts not in evidence, presents an incomplete hypothetical, and is overly
10 burdensome as it would require expensive review of public records which are obtainable from
11 another more convenient, less burdensome and less expensive source.

12 Without waiving said objections, and while reserving same, and while reserving the
13 right to supplement or amend this response, this Responding Party asserts as follows

14 As to the non-objectionable portion of this Interrogatory:

15 Dino DiCianno
16 Executive Director
17 Department of Taxation

18 The entities who provide "live entertainment" are defined in NRS 368A.090. See all
19 public access Legislative History documents at:

20 <http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1232> (SB4);

21 <http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1234> (SB5).

22 <http://www.leg.state.nv.us/73rd/Reports/history.cfm?ID=1877> (SB247);

23 <http://www.leg.state.nv.us/73rd/Reports/history.cfm?DocumentType=1&BillNo=554>
(AB 544).

24 Discovery is continuing.

25 **INTERROGATORY NUMBER 13**

26 Identify the person or persons most knowledgeable regarding the steps by which the
27 proposed "5% across the board" tax on live entertainment was modified to, instead, tax
28

1 certain live entertainment at the rate of 10%, as provided by NRS 368A.200(1).

2 **RESPONSE TO INTERROGATORY NUMBER 13**

3 This Responding Party hereby objects to this interrogatory on grounds including, but
4 not limited to, that the interrogatory is compound, duplicative, overly broad, vague and
5 ambiguous, calls for speculation, improperly seeks attorney work product information,
6 requests information which is not reasonably calculated to lead to the discovery of admissible
7 evidence, presumes facts not in evidence, presents an incomplete hypothetical, and is overly
8 burdensome as it would require expensive review of public records which are obtainable from
9 another more convenient, less burdensome and less expensive source.

10 Without waiving said objections, and while reserving same, and while reserving the
11 right to supplement or amend this response, this Responding Party asserts as follows:

12 As to the non-objectionable portion of this Interrogatory:

13 Dino DiCianno
14 Executive Director
15 Department of Taxation

16 See all public access Legislative History documents at:

17 <http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1232> (SB4);

18 <http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1234> (SB5).

19 <http://www.leg.state.nv.us/73rd/Reports/history.cfm?ID=1877> (SB247);

20 <http://www.leg.state.nv.us/73rd/Reports/history.cfm?DocumentType=1&BillNo=554>

21 (AB 544).

22 Discovery is continuing.

23 **INTERROGATORY NUMBER 14**

24 Identify the person or persons most knowledgeable regarding the purpose(s) of
25 modifying the proposed "5% across the board" tax on live entertainment to, instead, tax
26 certain live entertainment at the rate of 10%, as provided by NRS 368A.200(1).

27 //

28 //

1 **RESPONSE TO INTERROGATORY NUMBER 14**

2
3 This Responding Party hereby objects to this interrogatory on grounds including, but
4 not limited to, that the interrogatory is compound, duplicative, overly broad, vague and
5 ambiguous, calls for speculation, improperly seeks attorney work product information,
6 requests information which is not reasonably calculated to lead to the discovery of admissible
7 evidence, presumes facts not in evidence, presents an incomplete hypothetical, and is overly
8 burdensome as it would require expensive review of public records which are obtainable from
9 another more convenient, less burdensome and less expensive source.

10 Without waiving said objections, and while reserving same, and while reserving the
11 right to supplement or amend this response, this Responding Party asserts as follows:

12 As to the non-objectionable portion of this Interrogatory:

13 Dino DiCianno
14 Executive Director
15 Department of Taxation

16 See all public access Legislative History documents at:

17 <http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1232> (SB4);

18 <http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1234> (SB5).

19 <http://www.leg.state.nv.us/73rd/Reports/history.cfm?ID=1877> (SB247);

20 <http://www.leg.state.nv.us/73rd/Reports/history.cfm?DocumentType=1&BillNo=554>

21 (AB 544).

22 Discovery is continuing.

23 **INTERROGATORY NUMBER 15**

24 Identify each and every person or business entity that became subject to the Live
25 Entertainment Tax as a result of NRS 368A.200 being amended" (1) to change the seating or
26 capacity or occupancy requirement (presently NRS 368A.200(5)(d) and (e) from 300 to 200:
27 or (2) to change the language to refer to "maximum occupancy" rather than "maximum seating
28 capacity."

1 **RESPONSE TO INTERROGATORY NUMBER 15**

2 This Responding Party hereby objects to this interrogatory on grounds including,
3 but not limited to, that the interrogatory is compound, overly broad, vague and ambiguous,
4 calls for speculation, improperly seeks attorney work product information, requests information
5 which is confidential and privileged pursuant to NRS 49.025 and NRS 368A.180, asks for
6 information which is not reasonably calculated to lead to the discovery of admissible evidence,
7 presumes facts not in evidence, presents an incomplete hypothetical, and is overly
8 burdensome as it would require expensive review of public records which are obtainable from
9 another more convenient, less burdensome and less expensive source, and information that is
10 already in the custody and control of the Plaintiffs.

11 Without waiving said objections, and while reserving same, and while reserving the
12 right to supplement or amend this response, this Responding Party asserts as follows:

13 As to the non-objectionable portion of this Interrogatory, See **Exhibit "B"**.

14 Discovery is continuing.

15 **INTERROGATORY NUMBER 16**

16 Identify the person or persons most knowledgeable regarding the purpose(s) of
17 changing the maximum seating capacity/maximum occupancy specified by (present) NRS
18 368A.200(5)(d) and (e) from 300 to 200.

19 **RESPONSE TO INTERROGATORY NUMBER 16**

20 This Responding Party hereby objects to this interrogatory on grounds including, but
21 not limited to, that the interrogatory is overly broad, vague and ambiguous, calls for
22 speculation, improperly seeks attorney work product information, requests information which
23 is not reasonably calculated to lead to the discovery of admissible evidence, presumes facts
24 not in evidence, presents an incomplete hypothetical, and is overly burdensome as it would
25 require expensive review of public records which are obtainable from another more
26 convenient, less burdensome and less expensive source.

1 Without waiving said objections, and while reserving same, and while reserving the
2 right to supplement or amend this response, this Responding Party asserts as follows:

3 As to the non-objectionable portion of this Interrogatory:

4 Dino DiCianno
5 Executive Director
6 Department of Taxation

7 See all public access Legislative History documents at:

8 <http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1232> (SB4);

9 <http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1234> (SB5).

10 <http://www.leg.state.nv.us/73rd/Reports/history.cfm?ID=1877> (SB247);

11 <http://www.leg.state.nv.us/73rd/Reports/history.cfm?DocumentType=1&BillNo=554>

12 (AB 544).

13 Discovery is continuing.

14 **INTERROGATORY NUMBER 17**

15 Identify the person or persons most knowledgeable regarding the effect(s) of changing
16 the maximum seating capacity/maximum occupancy specified by NRS 368A.200(5)(d) and (e)
17 from 300 to 200.

18 **RESPONSE TO INTERROGATORY NUMBER 17**

19 This Responding Party hereby objects to this interrogatory on grounds including, but
20 not limited to, that the interrogatory is compound, duplicative, overly broad, vague and
21 ambiguous, calls for speculation, improperly seeks attorney work product information,
22 requests information which is not reasonably calculated to lead to the discovery of admissible
23 evidence, presumes facts not in evidence, presents an incomplete hypothetical, asks for an
24 expert opinion, and is overly burdensome as it would require expensive review of public
25 records which are obtainable from another more convenient, less burdensome and less
26 expensive source.

1 Without waiving said objections, and while reserving same, and while reserving the
2 right to supplement or amend this response, this Responding Party asserts as follows:

3 As to the non-objectionable portion of this Interrogatory:

4 Dino DiCianno
5 Executive Director
6 Department of Taxation

7 See all public access Legislative History documents at:

8 <http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1232> (SB4);

9 <http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1234> (SB5).

10 <http://www.leg.state.nv.us/73rd/Reports/history.cfm?ID=1877> (SB247);

11 <http://www.leg.state.nv.us/73rd/Reports/history.cfm?DocumentType=1&BillNo=554>

12 (AB 544).

13 Discovery is continuing.

14 **INTERROGATORY NUMBER 18**

15 Identify the person or persons most knowledgeable regarding the purpose(s) of
16 changing the language of (presently) NRS 368A.200(5)(d) and (e) from referring to "maximum
17 seating capacity" to "maximum occupancy."

18 **RESPONSE TO INTERROGATORY NUMBER 18**

19 This Responding Party hereby objects to this interrogatory on grounds including, but
20 not limited to, that the interrogatory is compound, duplicative, overly broad, vague and
21 ambiguous, calls for speculation, improperly seeks attorney work product information,
22 requests information which is not reasonably calculated to lead to the discovery of admissible
23 evidence, presumes facts not in evidence, presents an incomplete hypothetical, and is overly
24 burdensome as it would require expensive review of public records which are obtainable from
25 another more convenient, less burdensome and less expensive source.

26 Without waiving said objections, and while reserving same, and while reserving the
27 right to supplement or amend this response, this Responding Party asserts as follows:
28

1 As to the non-objectionable portion of this Interrogatory:

2 Dino DiCianno
3 Executive Director
4 Department of Taxation

5 See all public access Legislative History documents at:

6 <http://www.leg.state.nv.us/73rd/Reports/history.cfm?ID=1877> (SB247);

7 <http://www.leg.state.nv.us/73rd/Reports/history.cfm?DocumentType=1&BillNo=554>

8 (AB 544).

9 Discovery is continuing.

10 **INTERROGATORY NUMBER 19**

11 Identify any and all persons, business entities, or classes, who/which have requested
12 to be exempt from the Live Entertainment Tax.

13 **RESPONSE TO INTERROGATORY NUMBER 19**

14 This Responding Party hereby objects to this interrogatory on grounds including, but
15 not limited to, that the interrogatory is compound, overly broad, vague and ambiguous, calls
16 for speculation, improperly seeks attorney work product information, requests information
17 which is confidential and privileged pursuant to NRS 368A.180 and NRS 49.025, asks for
18 information which is not reasonably calculated to lead to the discovery of admissible evidence,
19 and is overly burdensome as it would require expensive review of records. The Interrogatory
20 additionally seeks information that is obtainable from another more convenient, less
21 burdensome and less expensive source, and information which is already in the custody and
22 control of the Plaintiffs.

23 Without waiving said objections, and while reserving same, and while reserving the
24 right to supplement or amend this response, this Responding Party asserts as follows: The
25 information requested is confidential and non-discoverable pursuant to NRS 40.025 and NRS
26 368A.180.

27 Discovery is continuing.
28

1 **INTERROGATORY NUMBER 20**

2 For each business entity or class of business entities identified in the preceding
3 interrogatory, indicate whether such entity is currently subject to taxation via presently
4 effective version of the Live Entertainment Tax. If the business entity or class of business
5 entities is not subject to the Live Entertainment Tax, identify the change in the Live
6 Entertainment Tax, regulations, and/or administration responsible for the business entity or
7 class of business entities not being presently subject to taxation.

8 **RESPONSE TO INTERROGATORY NUMBER 20**

9 This Responding Party hereby objects to this interrogatory on grounds including, but
10 not limited to, that the interrogatory is compound, overly broad, vague and ambiguous, calls
11 for speculation, improperly seeks attorney work product information, requests information
12 which is confidential and privileged pursuant to NRS 368A.180 and NRS 49.025, asks for
13 information which is not reasonably calculated to lead to the discovery of admissible evidence,
14 and is overly burdensome as it would require expensive review of records. The Interrogatory
15 additionally seeks information that is obtainable from another more convenient, less
16 burdensome and less expensive source, and information which is already in the possession of
17 Plaintiffs.

18 Without waiving said objections, and while reserving same, and while reserving the
19 right to supplement or amend this response, this Responding Party asserts as follows: See
20 NRS 368A.090. See also Exhibit "AAA" to Response to Plaintiffs' Requests for Production
21 and response to Interrogatory 19 above.

22 **INTERROGATORY NUMBER 21**

23 Identify each and every governmental interest meant to be served by the enactment or
24 operation of the Live Entertainment Tax.

25 **RESPONSE TO INTERROGATORY NUMBER 21**

26 This Responding Party hereby objects to this interrogatory on grounds including, but
27 not limited to, that the interrogatory is compound, overly broad, vague and ambiguous, calls
28

1 for speculation, improperly seeks attorney work product information, requests information
2 which is confidential and privileged pursuant to NRS 368A.180 and NRS 49.025, asks for
3 information which is not reasonably calculated to lead to the discovery of admissible evidence,
4 and is overly burdensome as it would require expensive review of records. The Interrogatory
5 additionally seeks information that is obtainable from another more convenient, less
6 burdensome and less expensive source.

7 Without waiving said objections, and while reserving same, and while reserving the
8 right to supplement or amend this response, this Responding Party asserts as follows:

9 As to the non-objectionable portion of this Interrogatory, the purpose of the Live
10 Entertainment Tax is to generate revenue for the state. See NRS Chapter 368A, NAC
11 Chapter 368A, see also all public access legislative history documents at:

12 <http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1232> (SB4);

13 <http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1234> (SB5).

14 <http://www.leg.state.nv.us/73rd/Reports/history.cfm?ID=1877> (SB247);

15 <http://www.leg.state.nv.us/73rd/Reports/history.cfm?DocumentType=1&BillNo=554>

16 (AB 544).

17 Discovery is continuing.

18 **INTERROGATORY NUMBER 22**

19 Identify each and every governmental interest meant to be served by the enactment of
20 each and every one of the exceptions and exemptions to the Live Entertainment Tax.

21 **RESPONSE TO INTERROGATORY NUMBER 22**

22 This Responding Party hereby objects to this interrogatory on grounds including, but
23 not limited to, that the interrogatory is compound, overly broad, vague and ambiguous, calls
24 for speculation, improperly seeks attorney work product information, requests information
25 which is confidential and privileged pursuant to NRS 368A.180, asks for information which is
26 not reasonably calculated to lead to the discovery of admissible evidence, and is overly
27 burdensome as it would require expensive review of records. The Interrogatory additionally
28

1 seeks information that is obtainable from another more convenient, less burdensome and less
2 expensive source.

3 Without waiving said objections, and while reserving same, and while reserving the
4 right to supplement or amend this response, this Responding Party asserts as follows:

5 As to the non-objectionable portion of this Interrogatory, the purpose of the Live
6 Entertainment Tax is to generate revenue for the state. See NRS Chapter 368A, NAC
7 Chapter 368A, see also all public access legislative history documents at:

8 <http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1232> (SB4);

9 <http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1234> (SB5).

10 <http://www.leg.state.nv.us/73rd/Reports/history.cfm?ID=1877> (SB247);

11 <http://www.leg.state.nv.us/73rd/Reports/history.cfm?DocumentType=1&BillNo=554>

12 (AB 544).

13 Discovery is continuing.

14 **INTERROGATORY NUMBER 23**

15 Identify each and every person from the State of Nevada whose job responsibilities
16 include administering the collection and payment of the Live Entertainment Tax.

17 **RESPONSE TO INTERROGATORY NUMBER 23**

18 This Responding Party hereby objects to this interrogatory on grounds including, but
19 not limited to, that the interrogatory is compound, overly broad, vague and ambiguous, calls
20 for speculation, improperly seeks attorney work product information, requests employee
21 information which is confidential and privileged, asks for information which is not reasonably
22 calculated to lead to the discovery of admissible evidence, and is overly burdensome as it
23 would require expensive review of records. The Interrogatory additionally seeks information
24 that is obtainable from another more convenient, less burdensome and less expensive source.

25 Without waiving said objections, and while reserving same, and while reserving the
26 right to supplement or amend this response, this Responding Party asserts as follows:

27 As to the non-objectionable portion of this Interrogatory, all employees of the
28

1 Department of Taxation may have some responsibility for the administration of the collection
2 and payment of the LET.

3 Discovery is continuing.

4 **INTERROGATORY NUMBER 24**

5 Identify all persons associated with the department, commission, or Board who hold or
6 act under the title "live entertainment tax examiner." Also, identify the person or persons
7 responsible for overseeing the activities of the live entertainment tax examiners.


8 **RESPONSE TO INTERROGATORY NUMBER 24**

9 This Responding Party hereby objects to this interrogatory on grounds including, but
10 not limited to, that the interrogatory is compound, overly broad, vague and ambiguous, calls
11 for speculation, improperly seeks attorney work product information, requests employee
12 information which is confidential and privileged, asks for information which is not reasonably
13 calculated to lead to the discovery of admissible evidence, and is overly burdensome as it
14 would require expensive review of records.

15 Without waiving said objections, and while reserving same, and while reserving the
16 right to supplement or amend this response, no such title exists in the Department of Taxation,
17 and all employees of the Department of Taxation may have some responsibility for the
18 administration of the collection and payment of the LET.

19 DATED THIS 14th day of August, 2009.

21 CATHERINE CORTEZ MASTO
22 Attorney General

23 By: 
24 Blake A. Doerr, #9001
25 Deputy Attorney General
26 David J. Pope, #8617
27 Sr. Deputy Attorney General
28 555 E. Washington Avenue, Suite 3900
Las Vegas, Nevada 89101
Attorneys for Nevada Department of Taxation

VERIFICATION

STATE OF NEVADA)
) SS
COUNTY OF CLARK)

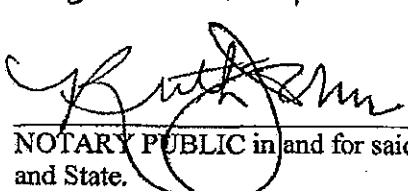
Dino DiCianno, Executive Director of the Department of Taxation, being first duly sworn, upon oath, deposes and says that he has read the foregoing and knows the contents thereof; that the same is true of his own knowledge, except as to those matters stated thereon upon information and belief; and as to those matters he believes them to be true.

Dated 8/13/09


Dino DiCianno, Executive Director

SUBSCRIBED AND SWORN to before me
this 13 day of August, 2009




NOTARY PUBLIC in and for said County
and State.

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of August, 2009, the foregoing NEVADA DEPARTMENT OF TAXATION'S RESPONSES TO PLAINTIFF'S FIRST SET OF INTERROGATORIES TO DEFENDANTS was served on the foregoing party by Federal Express, addressed to:

Federal Express Airbill #8601 4135 5818

Bradley J. Shafer
SHAFFER & ASSOCIATES, P.C.
3800 Capital City Blvd., Suite #2
Lansing, Michigan 48906-2110
Fax: 517-886-6565

Dated this 14th day of August, 2009


An Employee of the State of Nevada

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REGISTER OF ACTIONS

CASE NO. 06A533273

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

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§
§

Case Type: **Other Civil Filing**
Subtype: **Other Civil Matters**
Date Filed: **12/19/2006**
Location: **Department 11**
Conversion Case Number: **A533273**
Supreme Court No.: **60037**

PARTY INFORMATION

Lead Attorneys

Defendant Jacobs, Michelle

Blake A. Doerr
Retained
702-486-3416(W)

Defendant Nevada Dept Of Taxation

Blake A. Doerr
Retained
702-486-3416(W)

Defendant Nevada State Board Of Examiners

Blake A. Doerr
Retained
702-486-3416(W)

Defendant Nevada Tax Commission

Blake A. Doerr
Retained
702-486-3416(W)

Doing Crazy Horse Too Gentlemen's Club
Business As

Dominic P. Gentile
Retained
~~7023860066(W)~~

Doing Deja Vu Showgirls
Business As

William H. Brown
Retained
~~702-474-4222(W)~~

Doing Little Darlings
Business As

Doing Olympic Garden
Business As

Dominic P. Gentile
Retained
~~7023860066(W)~~

Doing Scores
Business As

Dominic P. Gentile
Retained
~~7023860066(W)~~

Doing Spearmint Rhino Gentlemen's Club
Business As

Dominic P. Gentile
Retained
~~7023860066(W)~~

Doing Treasures
Business As

Dominic P. Gentile
Retained
~~7023860066(W)~~

Plaintiff	D I Food And Beverage Of Las Vegas LLC	William H. Brown <i>Retained</i> 702-474-4222(W)
Plaintiff	D Westwood Inc	William H. Brown <i>Retained</i> 702-474-4222(W)
Plaintiff	Deja Vu Showgirls Of Las Vegas LLC	William H. Brown <i>Retained</i> 702-474-4222(W)
Plaintiff	K-Kel Inc	William H. Brown <i>Retained</i> 702-474-4222(W)
Plaintiff	Little Darlings Of Las Vegas LLC	William H. Brown <i>Retained</i> 702-474-4222(W)
Plaintiff	Olympus Garden Inc	William H. Brown <i>Retained</i> 702-474-4222(W)
Plaintiff	Power Company Inc	William H. Brown <i>Retained</i> 702-474-4222(W)
Plaintiff	Shac LLC <i>Doing Business</i> As Sapphire	William H. Brown <i>Retained</i> 702-474-4222(W)

EVENTS & ORDERS OF THE COURT

12/11/2008 **All Pending Motions** (3:00 AM) (Judicial Officer Togliatti, Jennifer)
ALL PENDING MOTIONS 12/11/08 Court Clerk: Alan Paul Castle Heard By: Jennifer Togliatti

Minutes

12/11/2008 3:00 AM

- 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

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REGISTER OF ACTIONS

CASE NO. 06A533273

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

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§

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Date Filed: **12/19/2006**
Location: **Department 11**
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PARTY INFORMATION

Lead Attorneys

Defendant Jacobs, Michelle

Blake A. Doerr
Retained
702-486-3416(W)

Defendant Nevada Dept Of Taxation

Blake A. Doerr
Retained
702-486-3416(W)

Defendant Nevada State Board Of Examiners

Blake A. Doerr
Retained
702-486-3416(W)

Defendant Nevada Tax Commission

Blake A. Doerr
Retained
702-486-3416(W)

Doing Crazy Horse Too Gentlemen's Club
Business As

Dominic P. Gentile
Retained
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Business As

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Retained
702-474-4222(W)

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Business As

Doing Olympic Garden
Business As

Dominic P. Gentile
Retained
7023860066(W)

Doing Scores
Business As

Dominic P. Gentile
Retained
7023860066(W)

Doing Spearmint Rhino Gentlemen's Club
Business As

Dominic P. Gentile
Retained
7023860066(W)

Doing Treasures
Business As

Dominic P. Gentile
Retained
7023860066(W)

Plaintiff	D I Food And Beverage Of Las Vegas LLC	William H. Brown <i>Retained</i> 702-474-4222(W)
Plaintiff	D Westwood Inc	William H. Brown <i>Retained</i> 702-474-4222(W)
Plaintiff	Deja Vu Showgirls Of Las Vegas LLC	William H. Brown <i>Retained</i> 702-474-4222(W)
Plaintiff	K-Kel Inc	William H. Brown <i>Retained</i> 702-474-4222(W)
Plaintiff	Little Darlings Of Las Vegas LLC	William H. Brown <i>Retained</i> 702-474-4222(W)
Plaintiff	Olympus Garden Inc	William H. Brown <i>Retained</i> 702-474-4222(W)
Plaintiff	Power Company Inc	William H. Brown <i>Retained</i> 702-474-4222(W)
Plaintiff	Shac LLC <i>Doing Business As</i> Sapphire	William H. Brown <i>Retained</i> 702-474-4222(W)

EVENTS & ORDERS OF THE COURT

12/16/2008 **Motion to Withdraw as Counsel** (9:00 AM) (Judicial Officer Togliatti, Jennifer)
SULLIVAN'S MTN TO WITHDRAW AS COUNSEL /09 Court Clerk: Alan Paul Castle Reporter/Recorder: Yvette Lester Heard By: James Brennan

Minutes

12/16/2008 9:00 AM

- 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

[Parties Present](#)

[Return to Register of Actions](#)

ORDR

DIANA L. SULLIVAN, ESQ.
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Attorneys for Plaintiffs

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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

E. J. Shafer
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,

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

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

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

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

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

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

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

16 D. WESTWOOD, INC.
17 d/b/a TREASURES
18 Attn: Alson Lee
19 2801 Westwood Drive
20 Las Vegas, Nevada 89109
21 Telephone: (702) 257-3030
22 *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

23 SHAC, LLC d/b/a SAPPHIRE
24 Attn: Peter Feinstein
25 3025 S. Industrial Road
26 Las Vegas, Nevada 89109
27 Telephone: (702) 796-6000
28 *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

1 K-KEL, INC. d/b/a SPEARMINT
2 RHINO GENTLEMEN'S CLUB

3 Attn: Kevin Kelly
4 302 E. Carson Street, Suite 600
5 Las Vegas, Nevada 89101
6 Telephone: (702) 796-3600

7 *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

6 DÉJÀ VU SHOWGIRLS OF LAS
7 VEGAS, LLC

8 d/b/a DÉJÀ VU SHOWGIRLS
9 Attn: Bob Proden
10 3247 Industrial Road
11 Las Vegas, Nevada 89109
12 Telephone: (702) 894-4167

13 *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

11 BRADLEY J. SHAFER
12 Shafer & Associates, P.C.
13 3800 Capital City Blvd., Suite 2
14 Lansing, Michigan 48906-2110
15 (517) 886-6560 – telephone

Attorneys for Plaintiffs

Admitted Pro Hac Vice

16
17 **IT IS SO ORDERED.**

18 DATED this 19th day of December, 2008.

JAMES A. BRENNAN

DISTRICT COURT JUDGE

for JENNIFER P. TOGLIATTI

21 Submitted by:

22
23 GHANEM & SULLIVAN, LLP

24
25 By

Diana L. Sullivan

26 DIANA L. SULLIVAN, ESQ.

27 Nevada Bar # 4701

28 930 South Fourth Street, Suite 210

Las Vegas, Nevada 89101

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Location : District Court Civil/Criminal Help

REGISTER OF ACTIONS

CASE NO. 06A533273

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

§
§
§
§
§
§
§

Case Type: **Other Civil Filing**
Subtype: **Other Civil Matters**
Date Filed: **12/19/2006**
Location: **Department 11**
Conversion Case Number: **A533273**
Supreme Court No.: **60037**

PARTY INFORMATION

Lead Attorneys

Defendant Jacobs, Michelle

Blake A. Doerr
Retained
702-486-3416(W)

Defendant Nevada Dept Of Taxation

Blake A. Doerr
Retained
702-486-3416(W)

Defendant Nevada State Board Of Examiners

Blake A. Doerr
Retained
702-486-3416(W)

Defendant Nevada Tax Commission

Blake A. Doerr
Retained
702-486-3416(W)

Doing Crazy Horse Too Gentlemen's Club
Business As

Dominic P. Gentile
Retained
7023860066(W)

Doing Deja Vu Showgirls
Business As

William H. Brown
Retained
702-474-4222(W)

Doing Little Darlings
Business As

Doing Olympic Garden
Business As

Dominic P. Gentile
Retained
7023860066(W)

Doing Scores
Business As

Dominic P. Gentile
Retained
7023860066(W)

Doing Spearmint Rhino Gentlemen's Club
Business As

Dominic P. Gentile
Retained
7023860066(W)

Doing Treasures
Business As

Dominic P. Gentile
Retained
7023860066(W)

Plaintiff	D I Food And Beverage Of Las Vegas LLC	William H. Brown <i>Retained</i> 702-474-4222(W)
Plaintiff	D Westwood Inc	William H. Brown <i>Retained</i> 702-474-4222(W)
Plaintiff	Deja Vu Showgirls Of Las Vegas LLC	William H. Brown <i>Retained</i> 702-474-4222(W)
Plaintiff	K-Kel Inc	William H. Brown <i>Retained</i> 702-474-4222(W)
Plaintiff	Little Darlings Of Las Vegas LLC	William H. Brown <i>Retained</i> 702-474-4222(W)
Plaintiff	Olympus Garden Inc	William H. Brown <i>Retained</i> 702-474-4222(W)
Plaintiff	Power Company Inc	William H. Brown <i>Retained</i> 702-474-4222(W)
Plaintiff	Shac LLC <i>Doing Business</i> As Sapphire	William H. Brown <i>Retained</i> 702-474-4222(W)

EVENTS & ORDERS OF THE COURT

01/15/2009 **All Pending Motions** (3:00 AM) (Judicial Officer Togliatti, Jennifer)
ALL PENDING MOTIONS 01/15/09 Court Clerk: Alan Paul Castle Heard By: Jennifer Togliatti

Minutes

01/15/2009 3:00 AM

- 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

[Return to Register of Actions](#)

1 ACOM
2 BRADLEY J. SHAFER
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9 bjshafer@acd.net
10 Attorneys for Plaintiffs
11 Admitted Pro Hac Vice

FILED

JAN 28 12 21 PM '09

E. J. Smith
CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

10 DEJA VU SHOWGIRLS OF LAS VEGAS,)
11 L.L.C., d/b/a *Deja Vu Showgirls*, LITTLE)
12 DARLINGS OF LAS VEGAS, L.L.C., d/b/a)
13 *Little Darlings*, K-KEL, INC., d/b/a)
14 *Spearmint Rhino Gentlemen's Club*,)
15 OLYMPUS GARDEN, INC., d/b/a *Olympic*)
16 *Garden*, SHAC, L.L.C. d/b/a *Sapphire*, THE)
17 POWER COMPANY, INC., d/b/a *Crazy Horse*)
18 *Too Gentlemen's Club*, D. WESTWOOD, INC.,)
19 d/b/a *Treasures*, and D.I. FOOD & BEVERAGE)
20 OF LAS VEGAS, LLC, d/b/a *Scores*)

21 Plaintiffs,)

22 v.)

23 NEVADA DEPARTMENT OF)
24 TAXATION, NEVADA TAX)
25 COMMISSION, NEVADA STATE)
26 BOARD OF EXAMINERS, and MICHELLE)
27 JACOBS, in her official capacity only,)

28 Defendants.)

CASE NO. A533273
DEPT. NO. IX

VERIFIED AMENDED
COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF,
DAMAGES, AND ATTORNEY
FEES AND COSTS

24 NOW COMES Plaintiffs, *Deja Vu Showgirls of Las Vegas, L.L.C., d/b/a Deja Vu*
25 *Showgirls*, *Little Darlings of Las Vegas, L.L.C., d/b/a Little Darlings*, *K-Kel, Inc., d/b/a Spearmint*
26 *Rhino Gentlemen's Club*, *Olympus Garden, Inc., d/b/a Olympic Garden*, *SHAC, L.L.C., d/b/a*
27 *Sapphire*, *The Power Company, Inc., d/b/a Crazy Horse Too Gentlemen's Club*, *D. Westwood, Inc.,*

RECEIVED

JAN 28 2009

CLERK OF THE COURT

Appellants' Appendix

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1 d/b/a *Treasures*, and D.I. Food & Beverage of Las Vegas, LLC, d/b/a *Scores* (collectively referred
2 to herein as the "Plaintiffs"), by and through their attorneys, and state for their complaint against
3 Defendants Nevada Department of Taxation, Nevada Tax Commission, Nevada State Board of
4 Examiners, and Michelle Jacobs in her official capacity only (collectively referred to herein as the
5 "Defendants"), as follows:

6 **INTRODUCTION**

7 1. This is a civil action wherein Plaintiffs pray for a declaratory judgment, damages, attorney
8 fees and costs, as well as both a preliminary and permanent injunction to restrain and enjoin
9 the Defendants, as well as their agents, employees and representatives, from acting under
10 color of state law to deprive the Plaintiffs of their rights, privileges and immunities secured
11 to them by the Constitution of the State of Nevada and the Constitution of the United States.
12 Specifically, Plaintiffs seek to have this Court declare as unconstitutional on its face and as
13 applied to Plaintiffs, and to enjoin, all aspects of the Nevada Tax on Live Entertainment
14 (referred to herein as the "Live Entertainment Tax," or simply the "Tax") as established by
15 Title 32, Chapter 368A, of the Nevada Revised Statutes ("Chapter 368A"), as being an
16 impermissible tax on constitutionally protected expression. A copy of that statute is attached
17 hereto as Ex. "A," and is incorporated herein by reference.

18 **JURISDICTION AND VENUE**

19 2. This Court has jurisdiction and power to grant the injunctive relief requested pursuant to
20 Rule 65 of the Nevada Rules of Civil Procedure and N.R.S. § 33.010, and jurisdiction and
21 authority to grant the declaratory judgment prayed for here pursuant to Rule 57 of the Nevada
22 Rules of Civil Procedure and N.R.S. 33.040.

23 3. The federal statutory law which further authorizes the institution of this suit is 42 U.S.C.
24 § 1983, which provides, in part:

25 "Every person who, under color of any statute, ordinance, regulation, custom
26 or usage, of any State or Territory . . . subjects, or causes to be subjected, any
27 citizen of the United States or other person within the jurisdiction thereof to
28 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

1 authorized and qualified to do business in the State of Nevada.

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

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

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

10 17. Defendant, Nevada Department of Taxation (hereinafter sometimes referred to simply as the
11 "Department") is a governmental entity created under the laws of the State of Nevada, which
12 administers and enforces the statutory provisions challenged herein, and collects the Live
13 Entertainment Tax, for all non-gaming licensed taxpayers.

14 18. Defendant, Nevada Tax Commission (hereinafter sometimes referred to simply as the
15 "Commission") is a governmental entity created under the laws of the State of Nevada,
16 which administers and enforces some of the statutory provisions challenged herein, and is
17 authorized to consider and rule upon, among other things, appeals of claims under
18 Chapter 368A.

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

25 20. Defendant, Michelle Jacobs, who is named in this lawsuit in her official capacity only, is an
26 employee of the Nevada Department of Taxation, and is responsible for the administration
27 of Chapter 368A.
28

1 **STATEMENT OF FACTS**

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

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

8 23. Pursuant to N.R.S. § 368A.140, the Defendant Nevada Department of Taxation is obligated
9 to collect the tax imposed by Chapter 367A from taxpayers who/which are not licensed
10 gaming establishments, and is also obligated to adopt such regulations as are necessary to
11 carry out those functions.

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

16 25. As originally enacted, the tax imposed by Chapter 368A was not applicable, under the terms
17 of N.R.S. § 368A.200(5)(d), to live entertainment that is not provided at a licensed gaming
18 establishment if the facility in which the live entertainment is provided had a maximum
19 occupancy of less than 300 persons.

20 26. On June 17, 2005, Chapter 368A was amended by Assembly Bill No. 554, which - - among
21 other things - - reduced the scope of the exception as contained in N.R.S. § 368A.200(5)(d)
22 from a maximum seating capacity limitation of 300 to 200. Upon information and belief, the
23 purpose of the July 17, 2005, amendments to Chapter 368A, and in particular those to N.R.S.
24 § 368A.200(5)(d), was to specifically extend the tax obligation as contained in Chapter 368A
25 to "adult" entertainment establishments which were not then subject to the Live
26 Entertainment Tax, including a number of the Plaintiffs in this action.

- 1 27. *Deja Vu* operates a commercial establishment at 3247 Industrial Road, Las Vegas, Nevada,
2 89109, whereupon live performance dance entertainment is presented to the consenting adult
3 public. The Defendants have taken the position that *Deja Vu* is subject to Chapter 368A, as
4 amended, and have required *Deja Vu* to pay the Live Entertainment Tax as mandated therein.
- 5 28. *Little Darlings* operates a commercial establishment at 1514 Western Avenue, Las Vegas,
6 Nevada, 89102, whereupon live performance dance entertainment is presented to the
7 consenting adult public. The Defendants have taken the position that *Little Darlings* is
8 subject to Chapter 368A, as amended, and have required *Little Darlings* to pay the Live
9 Entertainment Tax as mandated therein.
- 10 29. *Spearmint Rhino* operates a commercial establishment at 3344 S. Highland Avenue, Las
11 Vegas, Nevada, 89109, whereupon live performance dance entertainment is presented to the
12 consenting adult public. The Defendants have taken the position that *Spearmint Rhino* is
13 subject to Chapter 368A, as amended, and have required *Spearmint Rhino* to pay the Live
14 Entertainment Tax as mandated therein.
- 15 30. *Olympic Garden* operates a commercial establishment at 1531 S. Las Vegas Boulevard, Las
16 Vegas, Nevada, 89104, whereupon live performance dance entertainment is presented to the
17 consenting adult public. The Defendants have taken the position that *Olympic Garden* is
18 subject to Chapter 368A, as amended, and have required *Olympic Garden* to pay the Live
19 Entertainment Tax as mandated therein.
- 20 31. *Sapphire* operates a commercial establishment at 3025 Industrial Road, Las Vegas, Nevada,
21 89109, whereupon live performance dance entertainment is presented to the consenting adult
22 public. The Defendants have taken the position that *Sapphire* is subject to Chapter 368A,
23 as amended, and have required *Sapphire* to pay the Live Entertainment Tax as mandated
24 therein.
- 25 32. *Crazy Horse* operates a commercial establishment at 2476 Industrial Road, Las Vegas,
26 Nevada, 89102, whereupon live performance dance entertainment is presented to the
27 consenting adult public. The Defendants have taken the position that *Crazy Horse* is subject
28

1 to Chapter 368A, as amended, and have required *Crazy Horse* to pay the Live Entertainment
2 Tax as mandated therein.

3 33. *Treasures* operates a commercial establishment at 2801 Westwood, Las Vegas, Nevada,
4 89109, whereupon live performance dance entertainment is presented to the consenting adult
5 public. The Defendants have taken the position that *Treasures* is subject to Chapter 368A,
6 as amended, and have required *Treasures* to pay the Live Entertainment Tax as mandated
7 therein.

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

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

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

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

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

6 39. Plaintiffs have filed this action in order to protect their fundamental constitutional rights
7 from infringement by the enforcement of Chapter 368A, which they contend is
8 unconstitutional on its face and as applied to Plaintiffs as it imposes a tax directly on "live
9 entertainment;" an activity which is protected by Article I, §§ 9 and 10 of the Nevada
10 Constitution as well as the First and Fourteenth to the United States Constitution. Chapter
11 368A is therefore a direct tax on "First Amendment" freedoms, and in particular on live
12 exotic performance dance entertainment.

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

16 **EXCERPTS OF THE TAX ON LIVE ENTERTAINMENT STATUTE**

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

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

26 43. Chapter 368A defines an "[a]dmission charge" in N.R.S. § 368A.020 as:
27
28

1 [T]he total amount, expressed in terms of money, of consideration paid for
2 the right or privilege to have access to a facility where live entertainment is
3 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.

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

5 "(a) Any area or premises where live entertainment is provided and for which
6 consideration is collected for the right or privilege of entering that area or
those premises if the live entertainment is provided at:

- 7 (1) An establishment that is not a licensed gaming establishment; or
8 (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.

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

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

12 "[A]ny activity provided for pleasure, enjoyment, recreation, relaxation,
13 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."

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

16 46. Chapter 368A states, at N.R.S. § 368A.142(2), that the Department shall collect the Live
17 Entertainment Tax from non-gaming licensed taxpayers, such as is the case of the Plaintiffs
18 here, and is empowered to "adopt such regulations are necessary to carry out" that collection.

19 47. Pursuant to N.R.S. § 368A.200(5), the tax imposed by Chapter 368 is not applicable to a
20 variety of circumstances. Some of the exemptions include live entertainment that the State
21 is prohibited from taxing under the Constitution, laws or treaties of the United States or
22 Nevada Constitution; live entertainment that is not provided at a licensed gaming
23 establishment if the facility has a maximum seating capacity of less than 200; live
24 entertainment that is provided at a licensed gaming establishment that is licensed for less
25 than 51 slot machines, less than six games, or any combination of slot machines and games
26 within those limits, if the facility has a maximum seating capacity of less than 200;
27 merchandise sold outside the facility in which the live entertainment is provided, unless the
28

1 purchase of the merchandise entitles the purchaser to admission to the entertainment; and
2 music performed by musicians who move constantly through the audience if no other form
3 of live entertainment is afforded to the patrons.

4 48. Overpayments and refunds of the Live Entertainment Tax are addressed in N.R.S.
5 § 368A.250, which provides that if the Department determines that any tax has been
6 “erroneously or illegally collected or computed,” the Department must record the fact and
7 certify the amount owed and from whom it was collected to Defendant Board of Examiners.
8 If the amount is approved by the Board of Examiners, it is then credited on any amount that
9 is due from that person under Chapter 368A, with the balance refunded to that person.

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

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

20 **COUNT I - DECLARATORY RELIEF**

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

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

27 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

1 N.R.S. § 368A.200(5)(a) in regard to the Live Entertainment Tax being applied to these
2 Plaintiffs, Plaintiffs are entitled to a declaration by this Court in regard to the
3 constitutionality of Chapter 368A as well as the applicability of the exemption as contained
4 in N.R.S. § 368A.200(5)(a).

5 56. For the reasons as set forth above, this Court should declare that the Live Entertainment Tax
6 as mandated by Chapter 368A is unconstitutional on its face and as applied to Plaintiffs.
7 Also for the reasons as set forth above, this Court should declare that Plaintiffs need not pay
8 the Live Entertainment Tax as required by Chapter 368A both as a result of the constitutional
9 violations as enumerated above as well as the specific exemption as set forth in N.R.S.
10 § 368A.200(5)(a). In addition, this Court should declare that the Defendants have violated
11 the constitutional rights of the Plaintiffs by requiring them to have paid the Live
12 Entertainment Tax in the past.

13 **WHEREFORE**, Plaintiffs respectfully request that this Honorable Court declare the Live
14 Entertainment Tax under Chapter 368A unconstitutional on its face and as applied to Plaintiffs; that
15 Plaintiffs need not pay the Live Entertainment Tax as mandated by Chapter 368A both because it
16 violates Article I, §§ 9 and 10 of the Nevada Constitution as well as the First Amendment to the
17 United States Constitution, and because Plaintiffs are exempt from paying the Live Entertainment
18 Tax pursuant to the provisions of N.R.S. § 368A.200(5)(a); and that the Defendants have violated
19 the Plaintiffs' constitutional rights by having required them to have paid the Live Entertainment Tax
20 in the past.

21 **COUNT II - INJUNCTIVE RELIEF**

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

24 58. Any action taken or to be taken by the Defendants to enforce any portion of Chapter 368A
25 against Plaintiffs has been taken and will be taken under color of law, and has deprived and
26 will deprive Plaintiffs of their constitutional rights as set forth herein, and will cause them
27 irreparable harm for which compensatory damages are an inadequate remedy as a matter of
28

1 law.

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

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

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

15 **WHEREFORE**, Plaintiffs respectfully request that this Honorable Court enter both a
16 preliminary and permanent enjoining the Defendants, as well as their officers, agents, employees and
17 representatives, from enforcing Chapter 368A against the Plaintiffs and/or from collecting the Live
18 Entertainment Tax against the Plaintiffs. Further, Plaintiffs respectfully request that this Honorable
19 Court enter a permanent injunction ordering Defendant Nevada Tax Commission to record the
20 payments of the Live Entertainment Tax made by the Plaintiffs and to certify those amounts to the
21 Defendant State Board of Examiners, and further ordering the Defendant State Board of Examiners
22 to approve and authorize the refund from the State Treasury of all such Live Entertainment Tax
23 payments that have been involuntarily made by the Plaintiffs under Chapter 368A, together with
24 interest as required by N.R.S. § 368A.310.

25 **COUNT III - DAMAGES AGAINST DEFENDANTS**

26 62. Plaintiffs incorporate herein by reference each and every paragraph above as though fully set
27 forth herein.
28

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,

SHAFFER & ASSOCIATES, P.C.

Dated: January 26, 2009

By:


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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

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REGISTER OF ACTIONS

CASE NO. 06A533273

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

§
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§
§
§
§
§

Case Type: **Other Civil Filing**
Subtype: **Other Civil Matters**
Date Filed: **12/19/2006**
Location: **Department 11**
Conversion Case Number: **A533273**
Supreme Court No.: **60037**

PARTY INFORMATION

Lead Attorneys

Defendant Jacobs, Michelle

Blake A. Doerr
Retained
702-486-3416(W)

Defendant Nevada Dept Of Taxation

Blake A. Doerr
Retained
702-486-3416(W)

Defendant Nevada State Board Of Examiners

Blake A. Doerr
Retained
702-486-3416(W)

Defendant Nevada Tax Commission

Blake A. Doerr
Retained
702-486-3416(W)

Doing Crazy Horse Too Gentlemen's Club
Business As

Dominic P. Gentile
Retained
7023860066(W)

Doing Deja Vu Showgirls
Business As

William H. Brown
Retained
702-474-4222(W)

Doing Little Darlings
Business As

Doing Olympic Garden
Business As

Dominic P. Gentile
Retained
7023860066(W)

Doing Scores
Business As

Dominic P. Gentile
Retained
7023860066(W)

Doing Spearmint Rhino Gentlemen's Club
Business As

Dominic P. Gentile
Retained
7023860066(W)

Doing Treasures
Business As

Dominic P. Gentile
Retained
7023860066(W)

Plaintiff	D I Food And Beverage Of Las Vegas LLC	William H. Brown <i>Retained</i> 702-474-4222(W)
Plaintiff	D Westwood Inc	William H. Brown <i>Retained</i> 702-474-4222(W)
Plaintiff	Deja Vu Showgirls Of Las Vegas LLC	William H. Brown <i>Retained</i> 702-474-4222(W)
Plaintiff	K-Kel Inc	William H. Brown <i>Retained</i> 702-474-4222(W)
Plaintiff	Little Darlings Of Las Vegas LLC	William H. Brown <i>Retained</i> 702-474-4222(W)
Plaintiff	Olympus Garden Inc	William H. Brown <i>Retained</i> 702-474-4222(W)
Plaintiff	Power Company Inc	William H. Brown <i>Retained</i> 702-474-4222(W)
Plaintiff	Shac LLC <i>Doing Business As</i> Sapphire	William H. Brown <i>Retained</i> 702-474-4222(W)

EVENTS & ORDERS OF THE COURT

02/03/2009	<p>Status Check (9:00 AM) (Judicial Officer Togliatti, Jennifer) <i>STATUS CHECK: APPEARANCE OF NEW LOCAL COUNSEL Court Clerk: Alan Paul Castle Reporter/Recorder: Yvette Lester Heard By: Jennifer Togliatti</i></p> <p>Minutes 02/03/2009 9:00 AM - Mr. Brown present and confirmed as Plaintiff's local counsel. Colloquy regarding Discovery cutoffs. Court directed parties to stipulate to cutoff.</p> <p>Parties Present Return to Register of Actions</p>
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REGISTER OF ACTIONS

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Plaintiff	Power Company Inc	William H. Brown <i>Retained</i> 702-474-4222(W)
Plaintiff	Shac LLC <i>Doing Business</i> As Sapphire	William H. Brown <i>Retained</i> 702-474-4222(W)

EVENTS & ORDERS OF THE COURT

02/12/2009 **All Pending Motions** (3:00 AM) (Judicial Officer Togliatti, Jennifer)
ALL PENDING MOTIONS 2/12/09 Relief Clerk: Carole D'Aloia Heard By: Jennifer Togliatti

Minutes

02/12/2009 3:00 AM

- 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

[Return to Register of Actions](#)

ORIGINAL

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0123

DISTRICT COURT

CLARK COUNTY, NEVADA

MAR 4 4 10 PM '09

DÉJÀ VU SHOWGIRLS,
et al.,

Plaintiff/s,

vs.

NEVADA DEPARTMENT.,
OF TAXATION, et al.,

Defendant/s.

CASE NO.: A533273

DEPT NO.: IX

CLERK OF THE COURT

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.

Appellants' Appendix

Page 142

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MAR 4 2009


CLERK OF THE COURT

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

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

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

12 DATED: this 24th day of February, 2009

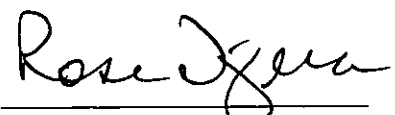
13 
14 JENNIFER P. TOGLIATTI
15 DISTRICT JUDGE

16 CERTIFICATE OF MAILING

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

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

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

22 
23 ROSE NAJERA
24 Judicial Executive Assistant

25
26 A533273
27
28

ORIGINAL

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DISTRICT COURT
CLARK COUNTY, NEVADA

2009 MAR 17 P 3:22

E. J. Smith
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

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.

RECEIVED

MAR 17 2009

CLERK OF THE COURT



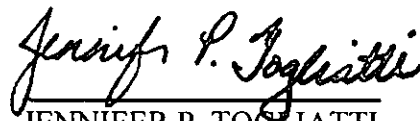
1 F. All other pre-trial motions, including motions in Limine, must be in writing
2 and set for hearing no later than JULY 21, 2009.

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

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

11 Counsel is required to advise the Court immediately when the case settles or is
12 otherwise resolved prior to trial. A stipulation which terminates a case by dismissal must
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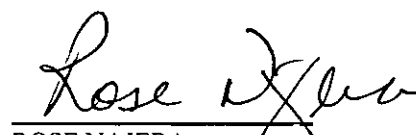
15 DATED: this 14th of March, 2009

16 
17 JENNIFER P. TOGLIATTI
18 DISTRICT JUDGE

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

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

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

24 
25 ROSE NAJERA
26 Judicial Executive Assistant
27

28 A533273

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Location : District Court Civil/Criminal Help

REGISTER OF ACTIONS

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PARTY INFORMATION

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Blake A. Doerr
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702-486-3416(W)

Defendant Nevada Dept Of Taxation

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Retained
7023860066(W)

Doing Deja Vu Showgirls
Business As

William H. Brown
Retained
702-474-4222(W)

Doing Little Darlings
Business As

Doing Olympic Garden
Business As

Dominic P. Gentile
Retained
7023860066(W)

Doing Scores
Business As

Dominic P. Gentile
Retained
7023860066(W)

Doing Spearmint Rhino Gentlemen's Club
Business As

Dominic P. Gentile
Retained
7023860066(W)

Doing Treasures
Business As

Dominic P. Gentile
Retained
7023860066(W)

Plaintiff	D I Food And Beverage Of Las Vegas LLC	William H. Brown <i>Retained</i> 702-474-4222(W)
Plaintiff	D Westwood Inc	William H. Brown <i>Retained</i> 702-474-4222(W)
Plaintiff	Deja Vu Showgirls Of Las Vegas LLC	William H. Brown <i>Retained</i> 702-474-4222(W)
Plaintiff	K-Kel Inc	William H. Brown <i>Retained</i> 702-474-4222(W)
Plaintiff	Little Darlings Of Las Vegas LLC	William H. Brown <i>Retained</i> 702-474-4222(W)
Plaintiff	Olympus Garden Inc	William H. Brown <i>Retained</i> 702-474-4222(W)
Plaintiff	Power Company Inc	William H. Brown <i>Retained</i> 702-474-4222(W)
Plaintiff	Shac LLC <i>Doing Business</i> As Sapphire	William H. Brown <i>Retained</i> 702-474-4222(W)

EVENTS & ORDERS OF THE COURT

04/02/2009 **Motion** (3:00 AM) (Judicial Officer Togliatti, Jennifer)
PLTF'S MTN FOR LEAVE TO AMEND COMPLAINT/16 Relief Clerk: Maria Garibay/mg Heard By: Jennifer Togliatti

Minutes

04/02/2009 3:00 AM

- 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).

[Return to Register of Actions](#)

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REGISTER OF ACTIONS

CASE NO. 06A533273

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

§
§
§
§
§
§
§

Case Type: **Other Civil Filing**
Subtype: **Other Civil Matters**
Date Filed: **12/19/2006**
Location: **Department 11**
Conversion Case Number: **A533273**
Supreme Court No.: **60037**

PARTY INFORMATION

Lead Attorneys

Defendant Jacobs, Michelle

Blake A. Doerr
Retained
702-486-3416(W)

Defendant Nevada Dept Of Taxation

Blake A. Doerr
Retained
702-486-3416(W)

Defendant Nevada State Board Of Examiners

Blake A. Doerr
Retained
702-486-3416(W)

Defendant Nevada Tax Commission

Blake A. Doerr
Retained
702-486-3416(W)

Doing Crazy Horse Too Gentlemen's Club
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Dominic P. Gentile
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7023860066(W)

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702-474-4222(W)

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Doing Treasures
Business As

Dominic P. Gentile
Retained
7023860066(W)

Plaintiff	D I Food And Beverage Of Las Vegas LLC	William H. Brown <i>Retained</i> 702-474-4222(W)
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Plaintiff	Olympus Garden Inc	William H. Brown <i>Retained</i> 702-474-4222(W)
Plaintiff	Power Company Inc	William H. Brown <i>Retained</i> 702-474-4222(W)
Plaintiff	Shac LLC <i>Doing Business</i> As Sapphire	William H. Brown <i>Retained</i> 702-474-4222(W)

EVENTS & ORDERS OF THE COURT

04/16/2009 **All Pending Motions** (3:00 AM) (Judicial Officer Togliatti, Jennifer)
ALL PENDING MOTIONS 04/16/09 Court Clerk: Alan Paul Castle Heard By: Jennifer Togliatti

Minutes

04/16/2009 3:00 AM

- 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

[Return to Register of Actions](#)

ORIGINAL

50

1 **ORDR**

2 **WILLIAM H. BROWN, ESQ.**

3 Nevada Bar No.: 7623

4 **SULLIVAN BROWN**

5 332 S. Jones Boulevard

6 Las Vegas, Nevada 89107

7 Telephone: (702) 471-0112

8 Facsimile: (702) 567-0116

9 WBrown@SullivanBrown.com

10 *Counsel for Plaintiffs*

11 **BRADLEY J. SHAFER, ESQ.**

12 Michigan State Bar P36604

13 **SHAFER & ASSOCIATES, P.C.**

14 3800 Capital City Boulevard, Suite 2

15 Lansing, Michigan 48906

16 Telephone: (517) 886-6560

17 Facsimile: (517) 886-6565

18 *Co-Counsel for Plaintiffs*

19 *Admitted Pro Hac Vice*

14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 DÉJÀ VU SHOWGIRLS OF LAS VEGAS,)

17 LLC, d/b/a *Déjà Vu Showgirls*, LITTLE)

18 DARLINGS OF LAS VEGAS, LLC, d/b/a)

19 *Little Darlings*, K-KEL, INC., d/b/a)

20 *Spearmint Rhino Gentlemen's Club*,)

21 OLYMPUS GARDEN, INC., d/b/a *Olympic*)

22 *Garden*, SHAC, LLC, d/b/a *Sapphire*, THE)

23 POWER COMPANY, INC., d/b/a *Crazy*)

24 *Horse Too Gentlemen's Club*, D.)

25 WESTWOOD, INC., d/b/a *Treasures*, and)

26 D.I. FOOD & BEVERAGE OF LAS)

27 VEGAS, LLC, d/b/a *Scores*)

28 Plaintiffs,)

29 vs.)

30 NEVADA DEPARTMENT OF TAXATION)

31 NEVADA TAX COMMISSION, NEVADA)

32 **RECEIVED**

33 MAY 11 2009

34 **CLERK OF THE COURT**

FILED

MAY 11 4 00 PM '09

Earl D. Smith
CLERK OF THE COURT

Case No. A533273

Dept. No. IX

**ORDER GRANTING PLAINTIFFS'
MOTION FOR LEAVE TO AMEND
COMPLAINT**

06A533273
103640



-1-

1
2 STATE BOARD OF EXAMINERS, and)
3 MICHELLE JACOBS, in her official)
4 capacity only,)
5 Defendants.)
6)

7 **ORDER GRANTING PLAINTIFFS' MOTION FOR LEAVE TO AMEND COMPLAINT**

8
9 Plaintiffs' Motion for Leave to Amend Complaint having come on for hearing in the above-
10 entitled Court, on the 2nd day of April, 2009, in Chambers, in Department IX, no parties in attendance,
11 the Court having read and considered the papers and pleadings on file herein, and good cause appearing
12 therefore, the Court finds, concludes, and hereby orders as follows:
13

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

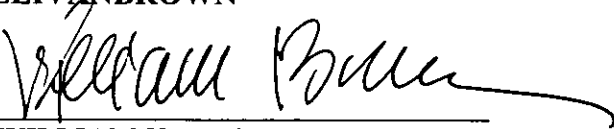
16 DATED this 7th day of May, 2009.
17

18 IT IS SO ORDERED.

19 
20 DISTRICT COURT JUDGE
21 For JENNIFER P. TOGLIATTI 

22 Respectfully submitted:

23 SULLIVANBROWN

24 By: 
25 WILLIAM H. BROWN, ESQ. (7623)
26 332 S. Jones Ave.
27 LV, NV 89107
28 Tel: 471.0112
Fax: 567.0116
Counsel for Plaintiffs

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REGISTER OF ACTIONS

CASE NO. 06A533273

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

§
§
§
§
§
§
§

Case Type: **Other Civil Filing**
Subtype: **Other Civil Matters**
Date Filed: **12/19/2006**
Location: **Department 11**
Conversion Case Number: **A533273**
Supreme Court No.: **60037**

PARTY INFORMATION

Lead Attorneys

Defendant Jacobs, Michelle

Blake A. Doerr
Retained
702-486-3416(W)

Defendant Nevada Dept Of Taxation

Blake A. Doerr
Retained
702-486-3416(W)

Defendant Nevada State Board Of Examiners

Blake A. Doerr
Retained
702-486-3416(W)

Defendant Nevada Tax Commission

Blake A. Doerr
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Doing Crazy Horse Too Gentlemen's Club
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Plaintiff	D I Food And Beverage Of Las Vegas LLC	William H. Brown <i>Retained</i> 702-474-4222(W)
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Plaintiff	Power Company Inc	William H. Brown <i>Retained</i> 702-474-4222(W)
Plaintiff	Shac LLC <i>Doing Business</i> As Sapphire	William H. Brown <i>Retained</i> 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

- 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.

[Parties Present](#)

[Return to Register of Actions](#)

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JUL 20 10 28 AM '09

E. [Signature]
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,

Appellants' Appendix

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JUL 20 2009

CLERK OF THE COURT

1 IT IS HEREBY ORDERED:

2 1. all parties shall complete discovery on or before
3 9/30/09.

4 2. all parties shall file motions to amend pleadings or
5 add parties on or before - closed.

6 3. all parties shall make initial expert disclosures
7 pursuant to N.R.C.P. 16.1(a)(2) on or before - closed.

8 4. all parties shall make rebuttal expert disclosures
9 pursuant to N.R.C.P. 16.1(a)(2) on or before 7/30/09.

10 5. all parties shall file dispositive motions on or
11 before 10/29/09.

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

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

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

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

25 . . .

1 Unless otherwise ordered, all discovery disputes (except
2 disputes presented at a pre-trial conference or at trial) must
3 first be heard by the Discovery Commissioner.
4

5 Dated this 17 day of July, 2009.

6
7 
8
9 DISCOVERY COMMISSIONER

10 **CERTIFICATE OF SERVICE**

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

14 William H. Brown, Esq.
15 Blake A. Doerr, Esq.

16
17 
18
19 COMMISSIONER DESIGNEE
20
21
22
23
24
25
26
27
28

ORIGINAL

14
S20

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

Appellants' Appendix

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MC

CLERK OF THE COURT

AUG 04 2009

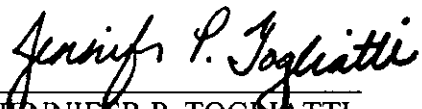
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1 by 5:00 PM DECEMBER 8, 2009. Orders shortening time will not be signed except in
2 extreme emergencies. (Request for trial continuance is not an emergency.)

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

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

11 DATED: this 30th day of July, 2009.

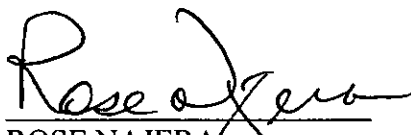
12 
13 JENNIFER P. TOGLIATTI
14 DISTRICT JUDGE

15 CERTIFICATE OF MAILING

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

18 William H. Brown, Esq. – SULLIVAN BROWN

19 Blake A. Doerr, Esq. – Sr. Deputy Attorney General

20 
21 ROSE NAJERA
22 Judicial Executive Assistant

23
24 A5533273
25
26
27
28

FILED
SEP 28 2009
Clerk of Court

SAO
WILLIAM H. BROWN, ESQ.
Nevada Bar No.: 7623
SULLIVAN BROWN
330 S. Third St., Ste. 860
Las Vegas, Nevada 89101
Telephone: (702) 366-9311
Facsimile: (702) 366-9371
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

STIPULATION AND ORDER FOR
EXTENSION OF TIME TO COMPLETE
DISCOVERY AND TO CONTINUE
TRIAL (SECOND REQUEST)

1
2 STATE BOARD OF EXAMINERS, and)
3 MICHELLE JACOBS, in her official)
4 capacity only,)
5 Defendants.)

6 **STIPULATION AND ORDER FOR EXTENSION OF TIME TO COMPLETE**
7 **DISCOVERY AND TO CONTINUE TRIAL (SECOND REQUEST)**

8 IT IS HEREBY STIPULATED and agreed by and between Plaintiff(s), DÉJÀ VU
9 SHOWGIRLS OF LAS VEGAS. LLC, d/b/a *Déjà Vu Showgirls*, LITTLE DARLINGS OF LAS
10 VEGAS, LLC d/b/a *Little Darlings*, K-KEL, INC., d/b/a *Spearmint Rhino Gentlemen's Club*,
11 OLYMPUS GARDEN, INC., d/b/a *Olympic Garden*, SHAC, LLC, d/b/a *Sapphire*, THE POWER
12 COMPANY, INC., d/b/a *Crazy Horse Too Gentlemen's Club*, D. WESTWOOD, INC., d/b/a *Treasures*,
13 and D.I. FOOD & BEVERAGE OF LAS VEGAS, LLC, d/b/a *Scores* (collectively referred to
14 hereinafter as "Plaintiffs"), and Defendants, NEVADA DEPARTMENT OF TAXATION, NEVADA
15 TAX COMMISSION, NEVADA STATE BOARD OF EXAMINERS and MICHELLE JACOBS,
16 (collectively referred to hereinafter as "Defendants") by and through their respective counsel of record,
17 pursuant to EDCR 2.35, that the following discovery, motion, and trial deadlines in the previously filed
18 Scheduling Order be extended as follows:

19 I.

20 **DISCOVERY COMPLETED**

21 The following discovery has been completed in this matter: Plaintiffs have served their Early
22 Case Conference Disclosure Statement pursuant to NRCP 16.1; Defendants have served their Early Case
23 Conference Disclosure Statement; a Joint Case Conference Report has been filed and served; Plaintiffs
24 have served their First Set of Interrogatories and Requests for Production of Documents; Defendants
25 have submitted Responses to First Set of Interrogatories and Responses to the Request for Production of
26 Documents; Plaintiffs have noticed the Depositions of the Defendants Witnesses.
27
28

1 As Plaintiffs contend that Defendants' discovery responses are incomplete, they are preparing a
2 motion to compel discovery.

3
4 **II.**

5 **DISCOVERY TO BE COMPLETED**

6 The parties will litigate Plaintiffs' motion to compel discovery. The Plaintiffs will need to take
7 the depositions of the Defendants' witnesses. The parties will continue in their efforts to identify and
8 obtain relevant and discoverable evidence and supplement their respective Early Case Conference
9 disclosures as appropriate, propound additional written discovery, retain Expert witnesses, retain rebuttal
10 expert witnesses, notice and conduct the depositions of the parties and/or their Person(s) Most
11 Knowledgeable, notice and conduct the depositions of the various witnesses who are believed to have
12 information discoverable under NRCP 26(b), and perform any additional discovery which may be
13 necessary to fully litigate this matter.

14
15 **III.**

16 **REASONS WHY DISCOVERY WAS NOT COMPLETE PRIOR TO THE**
17 **TIME LIMITS SET FORTH WITHIN THE DISCOVERY SCHEDULING ORDER**

18 As of the filing of this Stipulation, the Discovery period has not closed. Plaintiffs did not receive
19 Defendants' Responses to Interrogatories and Requests for Production of Documents until August 17,
20 2009. Plaintiffs contend that those responses and documents are incomplete, and the parties have been
21 attempting to resolve the discovery disputes on their own without resorting to filing motions.

22 Those attempts have been unsuccessful, therefore Plaintiffs must now file a motion to compel
23 discovery. Plaintiffs contend that the requested responses and documents must be received and
24 reviewed before meaningful depositions can be taken.

25 Resolution of Plaintiffs' motion to compel must be resolved by the Discovery Commissioner,
26 and possibly the Court should one party object to the Discovery Commissioner's Report and
27 Recommendations, which could very well take ninety (90) days, which is past the current September 30,
28 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

Dated: 9/14/09

SULLIVAN BROWN

OFFICE OF THE ATTORNEY GENERAL

By: William H. Brown

By: Blake A. Doerr

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

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 be issued, ^{Not} this stipulation will take the place of the amended scheduling order; the case will be ready for trial by

IT IS SO ORDERED.

DATED: September 25, 2009

May 10, 2010.60

DISCOVERY COMMISSIONER

Respectfully submitted by:

SULLIVANBROWN

By:


WILLIAM H. BROWN, ESQ.

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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.

FILED

SEP 30 2009

Alison D. Johnson
CLERK OF COURT

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
.m., or as soon thereafter as counsel can be heard.

DATED this 30th day of September, 2009.

Respectfully submitted,

BY: William Brown
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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

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.'").

1 United States Constitution. In addition and alternatively, Plaintiffs argued they are specifically
2 exempted from paying the LET pursuant to the statutory exemptions and/or the exceptions in
3 NRS 368A.200(5)(a). Complaint ¶¶ 38-39, 53. Further, Plaintiffs argued, as the LET is
4 unconstitutional, Plaintiffs are not required to pay it and are also entitled to refunds for the
5 amounts paid to date.

6
7 Nevertheless, under threats of criminal prosecution and the imposition of fines and
8 other penalties against them, Plaintiffs have all, beginning at various times, paid the LET
9 mandated by Chapter 368A. Complaint ¶ 38.

10 Plaintiffs' specific legal challenges to the LET are summarized below.

11 **B. PLAINTIFFS' SPECIFIC LEGAL CHALLENGES.**

12
13 As a preliminary matter, it is unconstitutional to directly tax First Amendment protected
14 activities; as the Supreme Court has noted:

15 It is one thing to impose a tax on the income or property of a preacher, it is quite
16 another thing to exact a tax from him for the privilege of delivering a sermon.
17 The tax imposed [here] is a flat license tax, the payment of which is a condition
18 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."

19 *Murdock v. Commonwealth of Pennsylvania*, 319 U.S. 105, 112 (1943) (emphasis and
20 clarification added). Stated somewhat differently:

21 A power to tax differentially, as opposed to a power to tax generally, gives a
22 government a powerful weapon against the taxpayer selected. When the State
imposes a generally applicable tax, there is little cause for concern. We need
23 not fear that a government will destroy a selected group of taxpayers by
24 burdensome taxation if it must impose the same burden on the rest of its
constituency.

25 * * *

26
27 Further, *differential treatment*, unless justified by some special characteristic of
28 the press, suggests that the goal of the regulation is not unrelated to suppression
of expression, and such a goal is presumptively unconstitutional.

1 *Minneapolis Star and Tribune Co. v. Minnesota Commissioner of Revenue*, 460 U.S.
2 575, 585 (1983) (emphasis added).

3 The reason for this is simple:

4 *We note that the general applicability of any burdensome tax law helps to*
5 *ensure that it will be met with widespread opposition. When such a law*
6 *applies only to a single constituency, however, it is insulated from this*
7 *political constraint.*

8 *Leathers v. Medlock*, 499 U.S. 439, 445 (1991) (emphasis added).

9 Generally, a tax may violate the First Amendment three ways: (1) by directly taxing
10 First Amendment freedoms; (2) by targeting a narrowly defined group of speakers; or (3) by
11 taxing speech based on content.

12 First, a direct tax specifically on First Amendment freedoms is unconstitutional.

13 *Freedom of speech*, freedom of the press, freedom of religion are available to
14 all, not merely to those who can pay their own way *[I]t could hardly be*
15 *denied that a tax laid specifically on the exercise of those freedoms would be*
16 *unconstitutional.*

17 *Murdock*, 319 U.S. at 108, 111 (emphasis added).

18 Second, a tax that targets a narrowly defined group of speakers is unconstitutional; as
19 set forth by the Supreme Court:

20 A tax is also suspect if it targets a small group of speakers.

21 * * *

22 The danger from a scheme that targets a small number of speakers is the danger
23 of censorship; a tax on a small number of speakers runs the risk of affecting
24 only a limited range of views. The risk is similar to that from a content-based
regulation: It will distort the market for ideas.

25 *Leathers*, 499 U.S. at 447-448.

1 Third, a content-based tax is unconstitutional. *Leathers*, 499 U.S. at 447 (“Finally, for
2 reasons that are obvious, a tax will trigger heightened scrutiny under the First Amendment if it
3 discriminates on the basis of the content of taxpayer speech”).

4 Here, the LET violates the First Amendment for all three of these reasons³; but the
5 information Plaintiffs requested from the Department via discovery focused on the second and
6 third reasons (i.e., targeting adult entertainment establishments; and being a content-based tax,
7 respectively).

9 **1. The LET Is An Impermissible Content-Based Tax.**

10 With respect to being an impermissible content-based tax, the LET is a direct tax upon
11 protected expression, and only upon one form of entertainment (applying only to that which is
12 “live”). Moreover, it does not even tax that particular mode of expression in a unified and even
13 fashion, as a wide variety of “live entertainment” is specifically and statutorily exempted from
14 the scope of the tax based upon the *content* of that entertainment.

15 Initially, the definition of “live entertainment” itself contains numerous exceptions. It
16 *excludes*, without limitation, certain specific activities (e.g., instrumental or vocal music,
17 occasional performances, performers who stroll continuously throughout the facility,
18 performances which enhance the theme of the establishment or attract patrons to the areas of
19 the performances, broadcasts of live entertainment, entertainment by patrons, animal
20 behaviors, and performances that provide ambience to the facility). N.R.S. § 368A.090(b).

26 ³ The LET is unconstitutional under the first test in that it is a tax “laid specifically on the
27 exercise of [First Amendment] freedoms” (i.e., live entertainment). *Murdock*, 319 U.S. at 108
28 (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.

1 *Arkansas Writers Project*, 481 U.S. at 229 (citations omitted, emphasis in original and
2 added).

3 Likewise, in December 2007, in *Pooh-Bah Enterprises, Inc. v. County of Cook et al.*,
4 378 Ill.App.3d 268, 317 Ill.Dec. 384, 881 N.E.2d 552 (2007), the Illinois Court of Appeals
5 invalidated a similar tax aimed at adult entertainment based upon this very issue.
6

7 There, Chicago had adopted a “fine arts” or “small venue” exception to its tax, although
8 that exclusion did not include “adult entertainment.” 881 N.E.2d at 559-560. Like the LET
9 here, the Chicago tax contained exceptions that exempted “favored” amusement from the tax.
10 In a unanimous decision, the court of appeals declared Chicago’s broadly worded
11 “amusement” tax to be unconstitutional on its face. That is the case here.
12

13 Here, the LET exempts a wide variety of “favored” live entertainment, but applies to
14 adult entertainment. This demonstrates a preference for certain messages and speakers and in
15 doing so makes the LET content-based and therefore subject to strict scrutiny. Further, under
16 *Pooh-Bah* this sort of favoritism is fatal to a tax on live entertainment. 881 N.E.2d at 560.
17

18 Further, the United States Supreme Court has noted that

19 [e]xemptions from an otherwise legitimate regulation of a medium of speech
20 may be noteworthy for a reason quite apart from the risk of view point and
21 content discrimination: They may diminish the credibility of the government’s
22 rationale for restricting speech in the first place.

23 *City of Ladue v. Gilleo*, 512 U.S. 43, 52 (1994).

24 There, the court found an ordinance banning outdoor signs unconstitutional as being
25 impermissibly content-based because the law included a variety of exceptions of signs that
26 were nevertheless permitted.⁴
27

28 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

1 Here, the numerous exemptions reveal that apart from casino entertainment, the LET is
2 in fact targeted principally, if not exclusively, at adult entertainment facilities, which are
3 protected by the First Amendment. Therefore, the LET is content specific; in turn, it is subject
4 to strict scrutiny and it is invalid.

5
6 It is against this backdrop of constitutional scrutiny that Plaintiffs sent the Department
7 discovery requests.

8 **3. Plaintiffs' Discovery Requests and the Resulting Dispute.**

9 On March 24, 2009, Plaintiffs served Plaintiffs' First Set of Interrogatories to
10 Defendants (attached as Exhibit 1); on March 26, 2009, Plaintiffs served Plaintiffs' First
11 Request for the Production of Documents and Things to Defendants (attached as Exhibit 2).
12

13 On August 17, 2009, ten days before depositions of Defendants' representatives were
14 scheduled to be taken⁵, Plaintiffs received the Department's Responses to Plaintiffs' First Set
15 of Interrogatories (attached as Exhibit 3) and Responses to Plaintiffs' First Request for
16 Production of Documents and Things (attached as Exhibit 4). The Department's discovery
17 responses were deficient, and insufficient, as discussed more fully below.
18

19 Accordingly, Matthew Hoffer, on behalf of Plaintiff's counsel, held telephone
20 conferences with Blake Doerr, counsel for Defendants, regarding the inadequacy of the
21 discovery responses. In the course of discussions, Plaintiffs' counsel offered to allow
22

23 content-based, and therefore unconstitutional, as being directed at those practicing the Santeria
24 religion, and that the "pattern of exemptions parallels the pattern of narrow prohibitions. Each
25 contributes to the gerrymander); and *U.S. v. Eichman*, 495 U.S. 310, 317-19 (1990) (Court
26 found the facially neutral Flag Protection Act content-based and therefore unconstitutional
27 because although it prohibited burning of the flag, it exempted the burning of a "worn or
28 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.

1 responses pursuant to a protective order that would protect business information from the
2 public and even from Plaintiffs themselves, but would allow Plaintiffs' counsel to conduct the
3 necessary analysis to support their claims of unconstitutionality. Still, Defendants' counsel
4 refused to produce the requested responses and documents.

5
6 Hence, on September 1, 2009, pursuant to NRCP 37(a)(1), and EDCR 2.34, Matthew
7 Hoffer, of the office of Bradley Shafer, counsel for Plaintiffs, and Blake Doerr, counsel for
8 Defendants, conferred regarding the information not contained in the discovery responses in an
9 attempt to resolve this discovery dispute out of Court. The parties were unable to resolve their
10 differences, thereby necessitating this motion. *See* Exhibit 5 hereto.

11
12 Now, Plaintiffs have been forced to incur expenses and costs solely as a result of
13 Defendants' failure to provide adequate discovery and hence, seek appropriate relief from the
14 Court.

15 **4. Requested Relief.**

16 For the reasons discussed below, Plaintiffs move this Honorable for an order:

- 17
18 (1) Compelling the Department to immediately submit to the Plaintiffs, within ten
19 (10) days of the entry of this Court's order, the Department's answers to the
20 below-described interrogatories, and to produce within that same time all the
21 un-redacted items and documents requested by the below-described requests for
22 production, all without objection;
23
24 (2) Sanctioning the Department for failing to comply with discovery, by awarding
25 Plaintiffs their costs and attorney fees for having filed this motion; and, in
26 addition and alternatively,
27
28

1 (3) Striking the portion of Defendants' Opposition to Plaintiffs' Motion for
2 Preliminary Injunction that relies upon information the Department now refuses
3 to produce (attached to the Department's Opposition as Exhibits A and B).
4

5
6 **II.**
LAW AND ARGUMENT

7 **A. THE DEPARTMENT'S DISCOVERY RESPONSES ARE DEFICIENT.**
8

9 The Rules of Civil Procedure are designed to permit broad inquiry into any matter
10 relevant to the pending action. *See Hickman v. Taylor*, 329 U.S. 495, 501 (1947). And the
11 Nevada Rules of Civil Procedure allow for the discovery of all evidence which is relevant or
12 which could lead to the discovery of relevant information; NRCP 26(b)(1) reads:

13 **Parties may obtain discovery regarding any matter, not privileged, which is**
14 **relevant** to the subject matter involved in the pending action, whether it relates
15 to the claim or defense of the party seeking discovery or to the claim or defense
16 of any other party, including the existence, description, nature, custody,
17 condition and location of any books, documents, or other tangible things and the
18 identity and location of persons having knowledge of any discoverable matter.
19 It is not ground for objection that the information sought will be inadmissible at
20 the trial if the information sought appears **reasonably calculated to lead to the**
21 **discovery of admissible evidence.**

22 NRCP 26(b)(1) (emphasis added).

23 Here, the Department's discovery responses are deficient in both substance (essential
24 information is redacted) and temporal scope (responses are largely limited to 2004).

25 **1. Substantively, the Department's Responses Are Meaningless Because Nearly**
26 **All Relevant Information Is Redacted.**

27 Substantively, the Department has so heavily redacted key information from many
28 documents that they are worthless. Specifically, by way of redaction the Department will not

1 identify (1) the name of the businesses paying the LET, (2) the type of live entertainment
2 provided at those establishments, or (3) how much tax those businesses pay.

3 For example,

- 4 • the Department's Responses to Interrogatories 1, 2, 3, and 15 refer to documents
5 that are redacted to the point of non-responsiveness (Exhibit 3);
6
- 7 • the Department's Response to Interrogatory 19 is non-responsive because it
8 refuses to identify any entities, persons, businesses, or classes that have
9 requested to be exempt from the LET (Exhibit 3); and
10
- 11 • the Department's Response to Interrogatory 20, references a non-existent
12 Exhibit AAA, and incorporates Response 19 (Exhibit 3).

13 Also, the Department responded to all of Plaintiffs' 26 Requests for Documents by
14 generally incorporating the entire packet of produced documents, stating, "See Exhibits A-
15 KK." Such a blanket response lacks sufficient specificity to be meaningful.

16 Under NRCP 34(b),
17

18 A party who produces documents for inspection shall produce them as they are
19 kept in the usual course of business or *shall organize and* label them to
correspond with the categories in the request.

20 NRCP 34(b) (Emphasis added).
21

22 Separating the documents into exhibits was pointless if the Department was simply
23 going to refer broadly and generally to all the documents in response to every request. Further,
24 as discussed above, many of the documents produced are redacted to the point of non-
25
26
27
28

1 responsiveness (those documents are Exhibit A, E, G, H, I, J, K, L, M, N, R, S, T, EE⁶, FF⁷,
2 and II, attached hereto as Exhibit 4.

3 By redacting virtually all relevant information in the documents produced, the
4 Department has failed to provide responses that are substantive or meaningful. Further, any
5 otherwise meaningful response is nullified by the limited temporal scope.
6

7 **2. Plaintiffs Requested Information from 2003 to 2008; the Department**
8 **Primarily Produced Information for 2004.**

9 Each of Plaintiffs' Requests for Documents asked for "any and all documents" since the
10 LET has been in effect (i.e., since 2003). See Exhibit 2. In response, the Department primarily
11 provided information for the tax year 2004 (referring to Exhibits B, E, F, I, S, T, U, and II).
12 See Exhibit 4 hereto.

13 Further, where the Department did provide documents for years other than 2004, the
14 documents were incomplete and/or heavily redacted. For example,
15

- 16 • Exhibits G and J have no dates listed and are heavily redacted;
- 17 • Exhibit L, in addition to being completely redacted except for the totals at the
18 bottom, is missing data for 2003, July-December 2004, January-June 2005, and
19 2008 (although again, the data provided is useless because of the near complete
20 redaction of information);
- 21 • Exhibit M contains only data for 2007; and
- 22 • Exhibit N appears to only contain (again redacted) data for February and March
23 2009. Exhibit 4 hereto.
24
25

26
27 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.

28 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.

1 The Department has been administering the LET since its inception in 2003. As such,
2 it presumably possesses data from 2003 to 2008 (as Plaintiffs requested) and not (as the
3 Department responded) for 2004. Yet when Mr. Hoffer spoke with Mr. Doerr regarding this
4 curious omission, Mr. Doerr had no answer and did not offer to produce the missing
5 documents.

6
7 Also, beyond failing to meaningfully respond, the Department ostensibly relies upon a
8 privilege that does not apply here.

9 **B. THE LEGISLATURE HAS DETERMINED THE PRIVILEGE THE**
10 **DEPARTMENT RELIES UPON DOES NOT APPLY TO THIS CASE.**

11 In its privilege log, the Department relies exclusively on NRS 368A.180(2)(C), which it
12 also relies upon in its discovery responses in addition to NRS 49.025. Exhibit 4.

13 The Department's reliance on these statutes is misplaced.

14 The privilege under NRS Chapter 368A is expressly *not* applicable to this case because
15 (1) this lawsuit is brought under the provisions of Chapter 368A; and (2) in any event, the
16 Department may disclose the information in a manner that prevents identification of a
17 particular person or document.
18

19 **1. The Privilege Is Not Applicable Because this Case Is Brought Pursuant to NRS**
20 **Chapter 386A.**

21 The Department claims the information Plaintiffs requested is privileged under NRS
22 49.025 and NRS 368A.180(2)(c). Not so.

23 The Department's reliance on NRS 49.025 is misplaced because NRS 368A.180 does
24 not render any documents unequivocally privileged and confidential and, in fact, specifically
25 states exceptions—under which this lawsuit falls—permitting the disclosure of tax records and
26 information.
27
28

1 Under NRS 49.025, a “public officer or agency to whom a return or report is required
2 by law to be made has a privilege to refuse to disclose the return or report *if the law requiring*
3 *it to be made so provides.*” Here, the law requiring the report to be made is Chapter 368A,
4 which does provide that certain documents are privileged and confidential.

5
6 However, Chapter 368A also clearly states that documents are *not* subject to that
7 privilege if they are requested during *any action or proceeding pursuant to the provisions of*
8 *this chapter and are directly involved in the action or proceeding.* NRS 368A.180(2)(a)
9 (emphasis supplied).

10 Here, this exception applies because this lawsuit is an action under Chapter 368A.
11 The complaint specifically seeks declaratory judgment finding that Plaintiffs were exempt
12 under NRS 368A.200(5)(a), and seeking a refund pursuant to NRS 368A.310. Complaint at
13 12-13, 15. Likewise, the companion case⁸ is an actual appeal pursuant to the administrative
14 process provided for in Chapter 368A. Complaint at 1.

15
16 Therefore, since the law requiring the payment of the LET does not provide for an
17 absolute privilege, the Department cannot rely upon NRS 49.025 to refuse to provide properly
18 discoverable information. Our Supreme Court’s decision in *Tidvall v. Eighth Judicial District*
19 *Court*, 91 Nev. 520 (1975), supports this conclusion.

20
21 In *Tidvall*, a statute granted the superintendent of banks the absolute right to exercise
22 the privilege to keep all information obtained in bank examination reports confidential, without
23 exception; as the court noted:

24
25 The legislature did not empower the superintendent to place whatever
26 information he might deem confidential beyond the reach of a court order.
27 Instead, it has specifically declared all examination reports and all

28 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).

1 information obtained by the superintendent in conducting examinations of
2 banks to be confidential and privileged information and has given the
3 superintendent the absolute right to exercise the privilege of
4 nondisclosure.

5 *Id.* at 525.

6 The court in *Tidvall* cites NRS 49.025, which the Department now relies on. However,
7 in *Tidvall*, unlike here, the underlying statutes (NRS 665.055, 665.065, and 665.075) granted
8 the superintendent a non-discretionary privilege to keep *all* reports confidential.

9 Here, on the other hand, NRS 368A.180 specifically states that the privilege is *not*
10 absolute and sets forth exceptions under which this lawsuit squarely falls, i.e., an action
11 pursuant to Chapter 368A.

12 As such, based on the reasoning in *Tidvall*, and the plain language of NRS
13 368A.180(2)(a), the legislature has clearly decided the privilege the Department relies upon
14 does not apply to this case.
15

16 **2. The Privilege Is Also Not Applicable Here Because the Department May**
17 **Produce Information In Statistical Form Without Identifying Individuals or**
18 **Documents.**

19 Additionally and alternatively, the Department could have produced the requested
20 information pursuant to a second exception to the privilege, which allows for the production of
21 statistical information. Under NRS 368A.180(2)(c),

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

25 ***

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

28 NRS 368A.180(2)(c) (emphasis supplied).

1 Here, the Department could have produced the requested information in a statistical
2 form that would prevent identification of a particular person or document. That is, the
3 Department could have disclosed who, and what type of business, is paying what percentage of
4 the non-gaming portion of the LET, and for which years, without identifying a particular
5 person or document.

6
7 Plaintiffs are not asking to see actual tax returns or any confidential business
8 information. They simply wish to know who is paying what portion of the LET and when.
9 The Department is not required to identify individual businesses to provide responsive
10 information.

11
12 Rather—and well within the above-cited general statistics exception to the privilege—
13 the Department could simply identify which *types* of businesses (as opposed to names) the
14 LET affects, e.g., adult-oriented/First Amendment, others. Likewise, the Department could
15 produce similar statistics showing what percentage of total tax revenue is generated from adult-
16 oriented/First Amendment businesses. And again, such a disclosure would be both responsive
17 and fit within the statistical data exception cited above.

18
19 Finally, assuming *arguendo* a confidentiality issues exists, a protective order would
20 provide adequate safeguards while allowing discovery.

21 **3. The Protective Order Plaintiffs Offered Would Preserve Confidentiality While**
22 **Allowing Discovery.**

23 Finally, and although the privilege the Department relies upon is inapplicable,
24 Plaintiffs' counsel even offered to allow the Department to respond pursuant to a stipulated
25 protective order which would permit only the Court and the attorneys to see identifying
26 information (other than the category of establishment) for the payers of the LET. This would
27 prevent even the Plaintiffs from knowing which clubs paid how much money, but would
28

1 permit Plaintiffs' counsel to prove their contention that the adult entertainment businesses are
2 paying the majority of the LET. However, the Department refused to consider this option.

3 **4. Beyond the Exceptions to the Privilege, the Information Is Essential to**
4 **Plaintiffs' Case.**

5 In sum, there are two clear exceptions to the privilege the Department presumes to rely
6 upon and thus, that privilege is not applicable. It is, however, essential to Plaintiffs' case. The
7 requested information (who, and what type of business, is paying what percentage of the non-
8 gaming portion of the LET, for which years) goes to the heart of Plaintiffs' argument: that the
9 LET is unconstitutionally directed at adult entertainment establishments. Likewise, identifying
10 what types of businesses are exempt from, or subject to, the LET is also essential to prove
11 Plaintiffs' claims.
12

13 Yet this is the exact information the Department completely redacted, including the
14 names of businesses, the type of businesses, and the amount of tax paid. Lastly, the Department
15 redacted the names of employees and consultants on non-privileged communications regarding
16 the LET.
17

18 **C. THE DEPARTMENT SIMPLY FAILED TO PROVIDE REQUESTED**
19 **INFORMATION.**

20 Finally, the Department's response to Interrogatory 24, requesting the identity of the
21 "Live Entertainment Tax Examiner," states that "no such title exists in the Department of
22 Taxation." (Exhibit 3, p. 23). Such a title was identified multiple times in LET forms issued by
23 the Department itself (attached as Exhibit 6), along with a phone number.
24

25 The Department did not state a reason for failing to disclose the identity of the Live
26 Entertainment Tax Examiner, or for failing to produce the data that existed for the tax years
27 2003, 2005, 2006, 2007, 2008 and 2009, as set forth in Section IIA(2), above.
28

1 Under NRCP 37(a), the Court may issue orders compelling discovery when a party fails
2 to respond to a request for inspection submitted under NRCP 34. *Fire Insurance Exchange v.*
3 *Zenith Radio Corporation*, 103 Nev. 648, 651(1987).

4 As such, and considering there is no good faith basis for refusing to respond, the Court
5 must now compel the Department's response. Additionally and alternatively, the Court should
6 not allow the Department to rely upon information it now withholds.
7

8 **D. THE DEPARTMENT CANNOT RELY ON PRIOR ARGUMENTS BASED ON**
9 **INFORMATION IT NOW REFUSES TO PRODUCE**

10 In Defendants' Opposition to Plaintiffs' Motion for Preliminary Injunction (filed June
11 23, 2008), Defendants argued that:

12 Additionally, the fact that PLAINTIFFS' industry generates more revenue from
13 the tax than any other industry falling under the administration of the
14 Department (n. 4) is simply irrelevant because it is merely a corollary with the
15 number of those types of businesses which have been established in the state
compared to other live entertainment establishments – nothing more.

* * *

16 n. 4 The LET is one tax administered by the Gaming Control Board and the
17 Department of Taxation. NRS 368A.140. The Gaming Control Board collects
the majority of the LET. See Exhibit A.

18 Defendants' Opposition at 13-14.

19 In support of this contention, the Department attached a table showing the percentage
20 of non-gaming licensees who paid the LET in 2006. This is the exact information the
21 Department now refuses to produce.
22

23 Plaintiffs sought data from the Defendants during discovery to establish not only who is
24 paying the LET, but more importantly who is paying the *non-gaming* portion of the tax, the
25 category under which Plaintiffs fall.
26

27 Further, Defendants argued that there was no irreparable harm to Plaintiffs' business
28 because the "LET collections increased in 2005 and 2006 and were forecasted to increase in

1 2007, 2008 and 2009. See Exhibit B.” Defendants’ Opposition at 15. Those tables and charts
2 attached as Exhibit B to Defendants’ Opposition only showed *total* LET numbers, not broken
3 down by type of establishment, or even into gaming and non-gaming categories.

4 Our Supreme Court has held that “Under NRCP 37(d), a court may strike a pleading of
5 a party for his failure to answer interrogatories.” *Havas v. Bank of Nevada*, 613 Nev. 567, 569-
6 570 (1980). To the extent the Department relied on the unresponsive document production as
7 its answers to Plaintiffs’ interrogatories, the Department should not be able to rely on those
8 charts and tables in this litigation if it is not going to produce the underlying data.
9

10 Therefore, if the Court is not inclined to compel the Department to produce information
11 it relied upon, it should strike those portions of Defendants’ Opposition to Plaintiffs’ Motion
12 for Preliminary Injunction relying on those Exhibits.
13

14 **E. PLAINTIFFS ARE ENTITLED TO ATTORNEY’S FEES AND COSTS FOR**
15 **HAVING TO BRING THIS MOTION.**

16 If a party refuses to produce discovery or fails to respond to an opposing party’s lawful
17 discovery responses, the moving party is entitled to recover costs involved in bringing the
18 motion to compel. Under NRCP 26(g),
19

20 If a certification is made in *violation of this rule*, the court, upon motion or
21 upon its own initiative, *shall impose upon the person* who made the
22 certification, the party on whose behalf the request, response, or objection was
23 made, or both, *an appropriate sanction*, which may include an order to pay the
24 amount of the reasonable *expenses incurred* because of the violation, *including*
25 *a reasonable attorney’s fee*.

26 NRCP Rule 26(g) (emphasis added).

27 Additionally, NRCP 37 and EDCR 2.34 allow for an appropriate sanction when one
28 party must move to compel the other to comply with discovery. The relevant portion of NRCP
37 states:

1 If the motion is granted, the court shall, . . . require the party or deponent whose
2 conduct necessitated the motion or the party or attorney advising such conduct
3 or both of them to pay to the moving party the reasonable expenses incurred in
obtaining the order, including attorney's fees . . .

4 NRCP 37(a)(4) (emphasis added).

5 The relevant provision of EDCR 2.34 states:

6 If after request, responding counsel fails to participate in good faith in the
7 conference or to answer discovery, the court may require such counsel to pay to
8 any other party the reasonable expenses, including attorney's fees, caused by the
failure.

9 EDCR 2.34(d) (emphasis added).

10 Here, Plaintiffs sent lawful discovery demands to the Department and even after
11 discussions and emails with Plaintiffs' counsel the Department refuses to answer the discovery
12 fully, or to produce relevant, non-privileged information or documents. Further, the
13 Department received the discovery requests in March. If it was going to raise these
14 confidentiality issues, it should have done so before August, 10 days before depositions of
15 Defendants' representatives were to be taken.
16

17 Therefore, the Court should impose an appropriate sanction in the form of attorney's
18 fees as compensation for the Department's blatant refusal to produce adequate, timely
19 responses to Plaintiffs' interrogatories and request for production of documents.
20

21 **III.**
22 **CONCLUSION**

23 For all these reasons, Plaintiffs seek from this Honorable Court an order:

- 24 (1) Compelling the Department to immediately submit to the Plaintiffs, within ten
25 (10) days of the entry of this Court's order, the Department's answers to the
26 below-described interrogatories, and to produce within that same time all the
27
28

1 un-redacted items and documents requested by the below-described requests for
2 production, all without objection;

3 (2) Sanctioning the Department for failing to comply with discovery, by awarding
4 Plaintiffs their costs and attorney fees for having filed this motion; and, in
5 addition and alternatively,
6

7 (3) Striking the portion of Defendants' Opposition to Plaintiffs' Motion for
8 Preliminary Injunction that relies upon information the Department now refuses
9 to produce (attached to the Department's Opposition as Exhibits A and B).

10 DATED this 30th day of September, 2009.

11 Respectfully submitted,
12

13
14 BY: 
15 **WILLIAM H. BROWN, ESQ.**

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20 Telephone: (702) 366-9311
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21 BRADLEY J. SHAFER,
22 Michigan Bar No. P36604*
23 SHAFER & ASSOCIATES, P.C.
24 3800 Capital City Blvd., Suite #2
25 Lansing, Michigan 48906-2110
26 *Co-Counsel for Plaintiffs*
27 **Admitted Pro Hac Vice*
28

1
2
3 **CERTIFICATE OF SERVICE**

4 I hereby certify that on the 30th day of September, 2009, the foregoing **MOTION TO**
5 **COMPEL DISCOVERY OF DEFENDANTS** was served on the party(ies) by faxing a copy
6 and mailing of same in the United States mail, postage prepaid thereon, addressed as follows:

7 Catherine Cortez Masto
8 Attorney General
9 David J. Pope
10 Sr. Deputy Attorney General
11 Blake A. Doerr
12 Deputy Attorney General
13 555 E. Washington Ave., Suite 3900
14 Las Vegas, NV 89101
15 Facsimile: (702) 486-3420
16 *Attorneys for the Nevada Defendants*

17
18
19
20
21
22
23
24
25
26
27
28

an employee of SULLIVAN BROWN

Exhibit 1

INTG
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Attorneys for Plaintiffs
Admitted Pro Hac Vice

DISTRICT COURT

CLARK COUNTY, NEVADA

DEJA VU SHOWGIRLS OF LAS VEGAS,)	
L.L.C., d/b/a <i>Deja Vu Showgirls</i> , LITTLE)	CASE NO. A533273
DARLINGS OF LAS VEGAS, L.L.C., d/b/a)	DEPT. NO. IX
<i>Little Darlings</i> , K-KEL, INC., d/b/a)	
<i>Spearmint Rhino Gentlemen's Club</i> ,)	
OLYMPUS GARDEN, INC., d/b/a <i>Olympic</i>)	
<i>Garden</i> , SHAC, L.L.C. d/b/a <i>Sapphire</i> , THE)	
POWER COMPANY, INC., d/b/a <i>Crazy Horse</i>)	
<i>Too Gentlemen's Club</i> , D. WESTWOOD, INC.,)	
d/b/a <i>Treasures</i> , and D.I. FOOD & BEVERAGE)	
OF LAS VEGAS, LLC, d/b/a <i>Scores</i>)	
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.

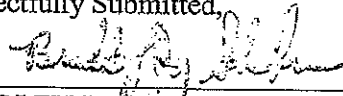
RESPONSE:

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,



BRADLEY J. SHAFER

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Attorneys for Plaintiffs

Admitted Pro Hac Vice

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.

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Supreme Court Case No. 60037
Dec 12 2012 09:05 a.m.
Tracie K. Lindeman
District Court Case Clerk of Supreme Court

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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

DOCKET NO.: _____

VERIFIED COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF,
DAMAGES, AND ATTORNEY
FEES AND COSTS

Plaintiffs,

v.

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

Defendants.

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1 § 1983, which provides, in part:

2 “Every person who, under color of any statute, ordinance, regulation, custom
3 or usage, of any State or Territory . . . subjects, or causes to be subjected, any
4 citizen of the United States or other person within the jurisdiction thereof to
5 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 . . .”

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

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

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

13 **PARTIES**

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

16 8. Plaintiff, *Deja Vu Showgirls of Las Vegas, L.L.C.*, d/b/a *Deja Vu Showgirls* (“*Deja Vu*”), is
17 a Limited Liability Company duly organized under the laws of the State of Nevada, and is
18 authorized and qualified to do business in the State of Nevada.

19 9. Plaintiff, *Little Darlings of Las Vegas, L.L.C.*, d/b/a *Little Darlings* (“*Little Darlings*”), is
20 a Limited Liability Company duly organized under the laws of the State of Nevada, and is
21 authorized and qualified to do business in the State of Nevada.

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

25 11. Plaintiff, *Olympus Garden, Inc.*, d/b/a *Olympic Garden* (“*Olympic*”) is a Corporation duly
26 organized under the laws of the State of Nevada, and is authorized and qualified to do
27 business in the State of Nevada.

- 1 12. Plaintiff, SHAC, L.L.C., d/b/a *Sapphire* ("*Sapphire*") is a Limited Liability Company duly
2 organized under the laws of the State of Nevada, and is authorized and qualified to do
3 business in the State of Nevada.
- 4 13. Plaintiff, The Power Company, Inc., d/b/a *Crazy Horse Too Gentlemen's Club* ("*Crazy*
5 *Horse*") is a Corporation duly organized under the laws of the State of Nevada, and is
6 authorized and qualified to do business in the State of Nevada.
- 7 14. Plaintiff, D. Westwood, Inc., d/b/a *Treasures* ("*Treasures*") is a Corporation duly organized
8 under the laws of the State of Nevada, and is authorized and qualified to do business in the
9 State of Nevada.
- 10 15. Plaintiff, D.I. Food & Beverage of Las Vegas, LLC, d/b/a *Scores* ("*Scores*") is a Corporation
11 duly organized under the laws of the State of Nevada, and is authorized and qualified to do
12 business in the State of Nevada.
- 13 16. None of the Plaintiffs operate their facilities as licensed gaming establishments under the
14 laws of the State of Nevada.
- 15 17. Defendant, Nevada Department of Taxation (hereinafter sometimes referred to simply as the
16 "Department") is a governmental entity created under the laws of the State of Nevada, which
17 administers and enforces the statutory provisions challenged herein, and collects the Live
18 Entertainment Tax, for all non-gaming licensed taxpayers.
- 19 18. Defendant, Nevada Tax Commission (hereinafter sometimes referred to simply as the
20 "Commission") is a governmental entity created under the laws of the State of Nevada,
21 which administers and enforces some of the statutory provisions challenged herein, and is
22 authorized to consider and rule upon, among other things, appeals of claims under
23 Chapter 368A.
- 24 19. Defendant, Nevada State Board of Examiners (hereinafter sometimes referred to simply as
25 the "Board of Examiners") is a governmental entity created under the laws of the State of
26 Nevada, and consists of the governor, the secretary of state, and the attorney general.
27 Pursuant to N.R.S. § 368A.250, the Board of Examiners is authorized to approve, among
28

1 other things, refunds with regard to any erroneously or illegally collected or computed tax
2 under Chapter 368A.

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

6 **STATEMENT OF FACTS**

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

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

- 13 23. Pursuant to N.R.S. § 368A.140, the Defendant Nevada Department of Taxation is obligated
14 to collect the tax imposed by Chapter 367A from taxpayers who/which are not licensed
15 gaming establishments, and is also obligated to adopt such regulations as are necessary to
16 carry out those functions.

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

- 21 25. As originally enacted, the tax imposed by Chapter 368A was not applicable, under the terms
22 of N.R.S. § 368A.200(5)(d), to live entertainment that is not provided at a licensed gaming
23 establishment if the facility in which the live entertainment is provided had a maximum
24 occupancy of less than 300 persons.

- 25 26. On June 17, 2005, Chapter 368A was amended by Assembly Bill No. 554, which - - among
26 other things - - reduced the scope of the exception as contained in N.R.S. § 368A.200(5)(d)
27 from a maximum seating capacity limitation of 300 to 200. Upon information and belief, the
28

1 purpose of the July 17, 2005, amendments to Chapter 368A, and in particular those to N.R.S.
2 § 368A.200(5)(d), was to specifically extend the tax obligation as contained in Chapter 368A
3 to "adult" entertainment establishments which were not then subject to the Live
4 Entertainment Tax, including a number of the Plaintiffs in this action.

5 27. *Deja Vu* operates a commercial establishment at 3247 Industrial Road, Las Vegas, Nevada,
6 89109, whereupon live performance dance entertainment is presented to the consenting adult
7 public. The Defendants have taken the position that *Deja Vu* is subject to Chapter 368A, as
8 amended, and have required *Deja Vu* to pay the Live Entertainment Tax as mandated therein.

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

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

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

24 31. *Sapphire* operates a commercial establishment at 3025 Industrial Road, Las Vegas, Nevada,
25 89109, whereupon live performance dance entertainment is presented to the consenting adult
26 public. The Defendants have taken the position that *Sapphire* is subject to Chapter 368A,
27 as amended, and have required *Sapphire* to pay the Live Entertainment Tax as mandated
28

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,

1 Plaintiffs are obligated to pay the Live Entertainment Tax since their establishments fall
2 within the definition of "live entertainment" found in N.R.S. § 368A.090, and since they are
3 not otherwise exempted from having to pay that tax.

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

9 39. Plaintiffs have filed this action in order to protect their fundamental constitutional rights
10 from infringement by the enforcement of Chapter 368A, which they contend is
11 unconstitutional on its face as it imposes a tax directly on "live entertainment;" an activity
12 which is protected by Article I, §§ 9 and 10 of the Nevada Constitution as well as the First
13 and Fourteenth to the United States Constitution. Chapter 368A is therefore a direct tax on
14 "First Amendment" freedoms, and in particular on live exotic performance dance
15 entertainment.

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

19 **EXCERPTS OF THE TAX ON LIVE ENTERTAINMENT STATUTE**

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

22 42. Chapter 368A states, at N.R.S. § 368A.200(1), that "[e]xcept as otherwise provided in this
23 section, there is hereby imposed an excise tax on admission to any facility in this State where
24 live entertainment is provided." If the live entertainment is provided at a facility with a
25 maximum occupancy of less than 7,500, the rate of tax is 10% of the admission charge to the
26 facility plus 10% of any amounts paid for food, refreshments and merchandise purchased at
27 the facility. If the live entertainment is provided at a facility with a maximum occupancy of
28

1 at least 7,500, the rate of the tax is 5% of the admission charged to the facility.

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

3 [T]he total amount, expressed in terms of money, of consideration paid for
4 the right or privilege to have access to a facility where live entertainment is
5 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.

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

7 "(a) Any area or premises where live entertainment is provided and for which
8 consideration is collected for the right or privilege of entering that area or
those premises if the live entertainment is provided at:

- 9 (1) An establishment that is not a licensed gaming establishment; or
10 (2) A licensed gaming establishment that is licensed for less than 51
slot machines, less than six games, or any combination of slot
11 machines and games within those respective limits.

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

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

14 "[A]ny activity provided for pleasure, enjoyment, recreation, relaxation,
15 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
16 physically present."

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

19 46. Chapter 368A states, at N.R.S. § 368A.142(2), that the Department shall collect the Live
20 Entertainment Tax from non-gaming licensed taxpayers, such as is the case of the Plaintiffs
21 here, and is empowered to "adopt such regulations are necessary to carry out" that collection.

22 47. Pursuant to N.R.S. § 368A.200(5), the tax imposed by Chapter 368 is not applicable to a
23 variety of circumstances. Some of the exemptions include live entertainment that the State
24 is prohibited from taxing under the Constitution, laws or treaties of the United States or
25 Nevada Constitution; live entertainment that is not provided at a licensed gaming
26 establishment if the facility has a maximum seating capacity of less than 200; live
27 entertainment that is provided at a licensed gaming establishment that is licensed for less
28 than 51 slot machines, less than six games, or any combination of slot machines and games

1 within those limits, if the facility has a maximum seating capacity of less than 200;
2 merchandise sold outside the facility in which the live entertainment is provided, unless the
3 purchase of the merchandise entitles the purchaser to admission to the entertainment; and
4 music performed by musicians who move constantly through the audience if no other form
5 of live entertainment is afforded to the patrons.

6 48. Overpayments and refunds of the Live Entertainment Tax are addressed in N.R.S.
7 § 368A.250, which provides that if the Department determines that any tax has been
8 "erroneously or illegally collected or computed," the Department must record the fact and
9 certify the amount owed and from whom it was collected to Defendant Board of Examiners.
10 If the amount is approved by the Board of Examiners, it is then credited on any amount that
11 is due from that person under Chapter 368A, with the balance refunded to that person.

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

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

22 **COUNT I - DECLARATORY RELIEF**

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

25 52. Chapter 368A is unconstitutional on its face under Article I, §§ 9 and 10 of the Nevada
26 Constitution as well as the First and Fourteenth Amendments to the United States
27 Constitution, for numerous and various reasons, including, but not limited to, the fact that:
28

- 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. 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; 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.

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

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

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

14 **WHEREFORE**, Plaintiffs respectfully request that this Honorable Court enter both a
15 preliminary and permanent enjoining the Defendants, as well as their officers, agents, employees and
16 representatives, from enforcing Chapter 368A against the Plaintiffs and/or from collecting the Live
17 Entertainment Tax against the Plaintiffs. Further, Plaintiffs respectfully request that this Honorable
18 Court enter a permanent injunction ordering Defendant Nevada Tax Commission to record the
19 payments of the Live Entertainment Tax made by the Plaintiffs and to certify those amounts to the
20 Defendant State Board of Examiners, and further ordering the Defendant State Board of Examiners
21 to approve and authorize the refund from the State Treasury of all such Live Entertainment Tax
22 payments that have been involuntarily made by the Plaintiffs under Chapter 368A, together with
23 interest as required by N.R.S. § 368A.310.

24 **COUNT III - DAMAGES AGAINST DEFENDANTS**

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

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

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

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

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

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

18 **COUNT IV - ATTORNEY FEES AND COSTS**

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

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

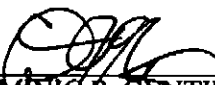
26 **WHEREFORE**, Plaintiffs respectfully request this Honorable Court to award costs and
27 attorney fees incurred herein pursuant to 42 U.S.C. § 1988.
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- A. A declaration that the Live Entertainment Tax under Chapter 368A is unconstitutional on its face; 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;
- B. A preliminary and permanent injunction restraining the Defendants, as well as their officers, agents, employees and representatives, from enforcing Chapter 368A against the Plaintiffs and/or from collecting the Live Entertainment Tax against the Plaintiffs;
- C. 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;
- D. Entry of an award of damages against Defendants and in favor of the Plaintiffs in amounts to which the Plaintiffs are found to be entitled;
- E. Entry of an award of costs and attorney fees incurred herein pursuant to 42 U.S.C. § 1988; and,
- F. Entry of such other and further relief as the Court deems just and proper.

Respectfully Submitted:

Dated: December 19, 2006


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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

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"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.

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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;

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(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

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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.

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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

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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:

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- (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

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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.

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- (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.

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[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. 6166(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.

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(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.

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[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

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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.

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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

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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

ORIGINALS

ORDER

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*Pending Admission *Pro Hac Vice*

FILED

APR 3 10 01 AM '07

CLERK OF 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,

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

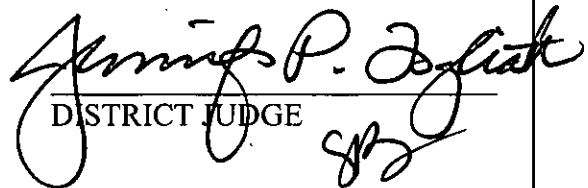
ORDER ADMITTING TO PRACTICE

RECEIVED
APR 9 2007
CLERK OF THE COURT


1 BRADLEY J. SHAFER, ESQ. having filed his Motion to Associate Counsel under
2 Nevada Supreme Court Rule 42, together with a Verified Application for Association of
3 Counsel, a Certificate of Good Standing for the states of Michigan and Arizona, and the State
4 Bar of Nevada Statement; said application having been noticed, no objections having being
5 made, and the Court being fully apprised in the premises, and good cause appearing, it is
6 hereby
7 hereby

8 **ORDERED**, that said application is hereby granted, and Bradley J. Shafer, Esq. is
9 hereby admitted to practice in the above-entitled Court for the purposes of the above entitled
10 matter only.
11

12 DATED this 30th day of March, 2007.

13 
14 DISTRICT JUDGE
15

16 Submitted By:

17 
18 DIANA L. SULLIVAN, ESQ.
19 Nevada Bar #4701
20 8861 West Sahara, Suite 120
21 Las Vegas, NV 89117
22
23
24
25
26
27
28

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Location : District Court Civil/Criminal Help

REGISTER OF ACTIONS

CASE NO. 06A533273

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

§
§
§
§
§
§
§

Case Type: **Other Civil Filing**
Subtype: **Other Civil Matters**
Date Filed: **12/19/2006**
Location: **Department 11**
Conversion Case Number: **A533273**
Supreme Court No.: **60037**

PARTY INFORMATION

Lead Attorneys

Defendant Jacobs, Michelle

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Retained
702-486-3416(W)

Defendant Nevada Dept Of Taxation

Blake A. Doerr
Retained
702-486-3416(W)

Defendant Nevada State Board Of Examiners

Blake A. Doerr
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702-486-3416(W)

Defendant Nevada Tax Commission

Blake A. Doerr
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702-486-3416(W)

Doing Crazy Horse Too Gentlemen's Club
Business As

Dominic P. Gentile
Retained
7023860066(W)

Doing Deja Vu Showgirls
Business As

William H. Brown
Retained
702-474-4222(W)

Doing Little Darlings
Business As

Doing Olympic Garden
Business As

Dominic P. Gentile
Retained
7023860066(W)

Doing Scores
Business As

Dominic P. Gentile
Retained
7023860066(W)

Doing Spearmint Rhino Gentlemen's Club
Business As

Dominic P. Gentile
Retained
7023860066(W)

Doing Treasures
Business As

Dominic P. Gentile
Retained
7023860066(W)

Plaintiff	D I Food And Beverage Of Las Vegas LLC	William H. Brown <i>Retained</i> 702-474-4222(W)
Plaintiff	D Westwood Inc	William H. Brown <i>Retained</i> 702-474-4222(W)
Plaintiff	Deja Vu Showgirls Of Las Vegas LLC	William H. Brown <i>Retained</i> 702-474-4222(W)
Plaintiff	K-Kel Inc	William H. Brown <i>Retained</i> 702-474-4222(W)
Plaintiff	Little Darlings Of Las Vegas LLC	William H. Brown <i>Retained</i> 702-474-4222(W)
Plaintiff	Olympus Garden Inc	William H. Brown <i>Retained</i> 702-474-4222(W)
Plaintiff	Power Company Inc	William H. Brown <i>Retained</i> 702-474-4222(W)
Plaintiff	Shac LLC <i>Doing Business As Sapphire</i>	William H. Brown <i>Retained</i> 702-474-4222(W)

EVENTS & ORDERS OF THE COURT

05/03/2007 **Motion to Associate Counsel** (3:00 AM) (Judicial Officer Togliatti, Jennifer)
PLTF'S MTN TO ASSOCIATE COUNSEL/1 Relief Clerk: Carole D'Aloia Heard By: Jennifer Togliatti

Minutes

05/03/2007 3:00 AM

- Court noted no opposition received and, based upon review, ORDERED, motion GRANTED, Ms. Sullivan to prepare and submit appropriate order and notify all parties. CLERK'S NOTE: A COPY OF THIS MINUTE ORDER WAS PLACED IN THE ATTORNEY FILE OF DIANA L. SULLIVAN, ESQ. (GHANEM & SULLIVAN, LLP) ON 5/18/07. cd

[Return to Register of Actions](#)

COPY

ANS
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Attorneys for the Nevada Department of Taxation

FILED

MAR 3 4 51 PM '08

CLERK OF 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*,

Case No. A533273

Dept. No. IX

ANSWER

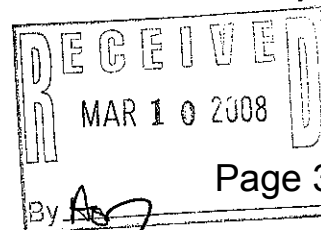
Plaintiff(s),

vs.

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

Defendants.

COMES NOW, Defendants Department of Taxation, Nevada Tax Commission, Nevada
State Board of Examiners, and Michele Jacobs, in her official capacity only, by and through
their attorneys, Catherine Cortez Masto, Attorney General, David J. Pope, Senior Deputy
Attorney General, and Suzanne M. Warren, Deputy Attorney General, and hereby submit their
Answer to Plaintiff's First Amended Complaint.



JURISDICTION AND VENUE

1. Answering paragraph 2, Answering Defendants are without sufficient knowledge or information upon which to form a belief as to the truth or falsity of the allegations contained therein, and upon said basis, deny each and every allegation contained therein.
2. Answering paragraph 3, Answering Defendants are without sufficient knowledge or information upon which to form a belief as to the truth or falsity of the allegations contained therein, and upon said basis, deny each and every allegation contained therein. Answering Defendants specifically deny that they are persons for purposes of 42 U.S.C. § 1983.
3. Answering paragraphs 4, 5, and 6, Answering Defendants are without sufficient knowledge or information upon which to form a belief as to the truth or falsity of the allegations contained therein, and upon said basis, deny each and every allegation contained therein.

PARTIES

4. Answering paragraphs 7, Answering Defendants incorporate by reference each and every paragraph above as if fully set forth herein.
5. Answering paragraphs 8, 9, 10, 11, 12, 13, 14, 15, and 16, Answering Defendants are without sufficient knowledge or information upon which to form a belief as to the truth or falsity of the allegations contained therein, and upon said basis, deny each and every allegation contained therein.
6. Answering paragraph 17, Answering Defendant Nevada Department of Taxation admits that it is a governmental entity created under the laws of the State of Nevada and that it administers and enforces the statutory provisions of Chapter 368A of the Nevada Revised Statutes, and collects the Live Entertainment Tax, for all non-gaming licensed taxpayers in Nevada. Other Answering Defendants answer that they are without sufficient knowledge or information upon which to form a belief as to the truth or falsity

of the allegations contained therein, and upon said basis, deny each and every allegation contained therein.

7. Answering paragraph 18, the answering Defendant Nevada Tax Commission admits that it is a governmental entity created by the laws of the State of Nevada and that it is the head of the Department of Taxation which administers and enforces the statutory provisions of Chapter 368A of the Nevada Revised Statutes with regard to non-gaming licensed taxpayers and that it is statutorily authorized to consider and rule upon appeals of refund claims. The answering Defendant Nevada Tax Commission further answers that they are without sufficient knowledge as to the remaining allegations and therefore deny the same. Other Answering Defendants answer that they are without sufficient knowledge or information upon which to form a belief as to the truth or falsity of the allegations contained therein, and upon said basis, deny each and every allegation contained therein.

8. Answering paragraph 19, Answering Defendant State Board of Examiners admits that it is a governmental entity created under the laws of the State of Nevada, consisting of the governor, the secretary of state, and the attorney general. Answering Defendant Nevada State Board of Examiners further admits that pursuant to NRS 368A.250, it is authorized to approve refunds of amounts collected by the Nevada Department of Taxation in excess of the amount legally due. The answering Defendant State Board of Examiners further answers that it is without sufficient knowledge as to the remaining allegations and therefore denies the same. Other Answering Defendants answer that they are without sufficient knowledge or information upon which to form a belief as to the truth or falsity of the allegations contained therein, and upon said basis, deny each and every allegation contained therein.

9. Answering paragraph 20, Answering Defendant Michelle Jacobs admits that she is an employee of the Nevada Department of Taxation and is, in some capacity, responsible for the administration of Chapter 368A. Other Answering Defendants further answer that they are without sufficient knowledge or information upon which to form a belief as

1 to the truth or falsity of the allegations contained therein, and upon said basis, deny
2 each and every allegation contained therein.

3 **STATEMENT OF FACTS**

- 4 10. Answering paragraph 21, Answering Defendants incorporate by reference each and
5 every paragraph above as if fully set forth herein.
- 6 11. Answering paragraph 22, Answering Defendants admit the allegations contained
7 therein.
- 8 12. Answering paragraph 23, Answering Defendant Nevada Department of Taxation admits
9 that it collects the tax imposed by Chapter 368A (Plaintiffs incorrectly cite Chapter
10 367A) from taxpayers who/which are not licensed gaming establishments. Answering
11 Defendant Nevada Department of Taxation further admits that pursuant to NRS
12 368A.140 it shall adopt such regulations as are necessary to carry out this function.
13 Other Answering Defendants further answer that they are without sufficient knowledge
14 or information upon which to form a belief as to the truth or falsity of the allegations
15 contained therein, and upon said basis, deny each and every allegation contained
16 therein.
- 17 13. Answering paragraph 24, Answering Defendants are without sufficient knowledge or
18 information upon which to form a belief as to the truth or falsity of the allegations
19 contained therein and, upon said ground, deny each and every allegation contained
20 therein.
- 21 14. Answering paragraph 25, Answering Defendants admit that the statutory sections cited
22 therein, as they existed when enacted, speak for themselves.
- 23 15. Answering paragraph 26, Answering Defendants admit that Chapter 368A was
24 amended by Assembly Bill No. 554 which reduced the scope of the exception as
25 contained in NRS 368A.200(5)(d) from a maximum seating capacity limitation of 300 to
26 200. Answering Defendants further answer that they are without sufficient knowledge
27 or information upon which to form a belief as to the truth or falsity of the remaining
28

1 allegations contained therein and, upon said ground, deny each and every remaining
2 allegation contained therein.

3 16. Answering paragraph 27, 28, 29, 30, 31, 32, 33, and 34, Answering Defendants admit
4 that the Plaintiffs mentioned therein have been required to pay the Live Entertainment
5 Tax found in Chapter 368A of the NRS. Answering Defendants further answer that
6 they are without sufficient knowledge or information upon which to form a belief as to
7 the truth or falsity of the remaining allegations contained therein, and upon said basis,
8 deny each and every other allegation contained therein.

9 17. Answering paragraph 35, Answering Defendants are without sufficient knowledge or
10 information upon which to form a belief as to the truth or falsity of the allegations
11 contained therein and, upon said ground, deny each and every allegation contained
12 therein.

13 18. Answering paragraph 36, Answering Defendants are without sufficient knowledge or
14 information upon which to form a belief as to the truth or falsity of the allegations
15 contained therein and, upon said ground, deny each and every allegation contained
16 therein.

17 19. Answering paragraph 37, Answering Defendants admit the allegations contained
18 therein.

19 20. Answering paragraph 38, Answering Defendants are without sufficient knowledge or
20 information upon which to form a belief as to the truth or falsity of the allegations
21 contained therein and, upon said ground, deny each and every allegation contained
22 therein.

23 21. Answering paragraph 39 and 40, Answering Defendants are without sufficient
24 knowledge or information upon which to form a belief as to the truth or falsity of the
25 allegations contained therein and, upon said ground, deny each and every allegation
26 contained therein.

27 //

28 //

EXCERPTS OF THE TAX ON LIVE ENTERTAINMENT STATUTE

22. Answering paragraph 41, Answering Defendants incorporate by reference each and every paragraph above as if fully set forth herein.
23. Answering paragraph 42, Answering Defendants admit that the excerpts from the statute appear to be the same language found in the statute cited therein.
24. Answering paragraphs 43, 44, and 45, Answering Defendants admit that the statutory sections cited therein speak for themselves.
25. Answering paragraph 46, Answering Defendants admit that pursuant to NRS 368A.140(2)(a) the Nevada Department of Taxation is statutorily required to collect the Live Entertainment Tax from non-gaming licensed taxpayers and pursuant to NRS 368A.140(2)(b) is empowered to adopt such regulations as are necessary to carry out the provisions of paragraph (a).
26. Answering paragraph 47, Answering Defendants admit that pursuant to NRS 368A.200(5) the tax imposed by Chapter 368A is not applicable to a variety of circumstances and further admit that any statutory sections cited therein speak for themselves.
27. Answering paragraphs 48, 49 and 50, Answering Defendants admit that the statutory sections cited therein speak for themselves.

COUNT I – DECLARATORY RELIEF

28. Answering paragraph 51, Answering Defendants incorporate by reference each and every paragraph above as if fully set forth herein.
29. Answering paragraph 52, Answering Defendants deny each and every allegation contained therein.
30. Answering paragraph 53, Answering Defendants deny each and every allegation contained therein.
31. Answering paragraph 54, Answering Defendants are without sufficient knowledge or information upon which to form a belief as to the truth or falsity of the allegations

1 contained therein and, upon said ground, deny each and every allegation contained
2 therein.

3 32. Answering paragraph 55, Answering Defendants deny each and every allegation
4 contained therein.

5 33. Answering paragraph 56, Answering Defendants deny each and every allegation
6 contained therein.

7 **COUNT II – INJUNCTIVE RELIEF**

8 34. Answering paragraph 57, Answering Defendants incorporate by reference each and
9 every paragraph above as if fully set forth herein.

10 35. Answering paragraph 58, Answering Defendants are without sufficient knowledge or
11 information upon which to form a belief as to the truth or falsity of the allegations
12 contained therein and, upon said ground, deny each and every allegation contained
13 therein.

14 36. Answering paragraph 59, Answering Defendants admit only that they intend to enforce
15 and carry out the provisions of Chapter 368A. Answering Defendants deny each and
16 every remaining allegation contained therein.

17 37. Answering paragraph 60, Answering Defendants are without sufficient knowledge or
18 information upon which to form a belief as to the truth or falsity of the allegations
19 contained therein and, upon said ground, deny each and every allegation contained
20 therein.

21 38. Answering paragraph 61, Answering Defendants are without sufficient knowledge or
22 information upon which to form a belief as to the truth or falsity of the allegations
23 contained therein and, upon said ground, deny each and every allegation contained
24 therein.

25 **COUNT III – DAMAGES AGAINST DEFENDANTS**

26 39. Answering paragraph 62, Answering Defendants incorporate by reference each and
27 every paragraph above as if fully set forth herein.
28

1 40. Answering paragraph 63, Answering Defendants are without sufficient knowledge or
2 information upon which to form a belief as to the truth or falsity of the allegations
3 contained therein and, upon said ground, deny each and every allegation contained
4 therein.

5 41. Answering paragraph 64, Answering Defendants are without sufficient knowledge or
6 information upon which to form a belief as to the truth or falsity of the allegations
7 contained therein and, upon said ground, deny each and every allegation contained
8 therein.

9 42. Answering paragraph 65, Answering Defendants are without sufficient knowledge or
10 information upon which to form a belief as to the truth or falsity of the allegations
11 contained therein and, upon said ground, deny each and every allegation contained
12 therein.

13 43. Answering paragraph 66, Answering Defendants deny each and every allegation
14 contained therein.

15 **COUNT IV – ATTORNEY FEES AND COSTS**

16 44. Answering paragraph 67, Answering Defendants incorporate by reference each and
17 every paragraph above as if fully set forth herein.

18 45. Answering paragraph 68, Answering Defendants deny each and every allegation
19 contained therein.

20 As to any allegations not specifically answered above or inadvertently omitted,
21 Answering Defendants deny them in their entirety.

22 **AFFIRMATIVE DEFENSES**

- 23 1. Plaintiffs' Complaint fails to state a claim upon which relief may be granted.
- 24 2. Answering Defendants claim all immunities, defenses, exemptions, and limitations on
- 25 liability pursuant to the provisions of Chapter 41 of the Nevada Revised Statutes.
- 26 3. Answering Defendants are entitled to qualified immunity as a matter of law.
- 27 4. Answering Defendants are not "persons" for purposes of 42 U.S.C. § 1983 and therefore
- 28 no remedy in the form of monetary damages is available under that statute.

5. The Defendants are not "persons" for purposes of 42 U.S.C. § 1983 and therefore no remedy in the form of injunctive relief is available under that statute.
6. Pursuant to Chapter 368A of the Nevada Revised Statutes, Plaintiffs are not entitled to an injunction, writ of mandate, or any other legal or equitable process to prevent or enjoin the collection of the tax, penalty or interest imposed by Chapter 368A.
7. The Nevada Department of Taxation properly assessed tax as authorized and required by, and in accordance with, Chapter 368A of the Nevada Revised Statutes and the applicable Nevada Administrative Code provisions.
8. The Defendants are entitled to sovereign immunity.
9. This action is barred by Nevada Revised Statutes 41.031 and 41.0337, due to Plaintiffs' failure to name the State of Nevada as a defendant.
10. Answering Defendants allege that at the time of filing of this Answer, all possible affirmative defenses may have not been alleged pending the development of sufficient facts after reasonable inquiry; therefore, Answering Defendants reserve the right to amend this Answer to allege additional affirmative defenses if warranted by subsequent investigation.

WHEREFORE, Defendants pray that this Court enter judgment in their favor and that Plaintiffs take nothing by way of their Complaint.

Respectfully submitted:

Dated March 3, 2008

CATHERINE CORTEZ MASTO
Attorney General

By:



David J. Pope
Sr. Deputy Attorney General
Nevada State Bar #8617
Suzanne M. Warren
Nevada State Bar #9002
555 E. Washington Ave., #3900
Las Vegas, NV 89101

Attorneys for Defendants

CERTIFICATE OF SERVICE

I certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on March 4, 2008, I served the foregoing **Answer** by mailing a copy thereof, via first class, postage- paid mail, addressed as follows:

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

Dominic P. Gentile, Esq.
Gentile Depalma, Ltd.
Las Vegas, NV 89169

DATED this 4th day of March, 2008

By:


An employee of the State of Nevada,
Office of the Attorney General

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Search Refine Search Close

Location : District Court Civil/Criminal Help

REGISTER OF ACTIONS

CASE NO. 06A533273

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

§
§
§
§
§
§
§

Case Type: **Other Civil Filing**
Subtype: **Other Civil Matters**
Date Filed: **12/19/2006**
Location: **Department 11**
Conversion Case Number: **A533273**
Supreme Court No.: **60037**

PARTY INFORMATION

Lead Attorneys

Defendant Jacobs, Michelle

Blake A. Doerr
Retained
702-486-3416(W)

Defendant Nevada Dept Of Taxation

Blake A. Doerr
Retained
702-486-3416(W)

Defendant Nevada State Board Of Examiners

Blake A. Doerr
Retained
702-486-3416(W)

Defendant Nevada Tax Commission

Blake A. Doerr
Retained
702-486-3416(W)

Doing Crazy Horse Too Gentlemen's Club
Business As

Dominic P. Gentile
Retained
7023860066(W)

Doing Deja Vu Showgirls
Business As

William H. Brown
Retained
702-474-4222(W)

Doing Little Darlings
Business As

Doing Olympic Garden
Business As

Dominic P. Gentile
Retained
7023860066(W)

Doing Scores
Business As

Dominic P. Gentile
Retained
7023860066(W)

Doing Spearmint Rhino Gentlemen's Club
Business As

Dominic P. Gentile
Retained
7023860066(W)

Doing Treasures
Business As

Dominic P. Gentile
Retained
7023860066(W)

Plaintiff	D I Food And Beverage Of Las Vegas LLC	William H. Brown <i>Retained</i> 702-474-4222(W)
Plaintiff	D Westwood Inc	William H. Brown <i>Retained</i> 702-474-4222(W)
Plaintiff	Deja Vu Showgirls Of Las Vegas LLC	William H. Brown <i>Retained</i> 702-474-4222(W)
Plaintiff	K-Kel Inc	William H. Brown <i>Retained</i> 702-474-4222(W)
Plaintiff	Little Darlings Of Las Vegas LLC	William H. Brown <i>Retained</i> 702-474-4222(W)
Plaintiff	Olympus Garden Inc	William H. Brown <i>Retained</i> 702-474-4222(W)
Plaintiff	Power Company Inc	William H. Brown <i>Retained</i> 702-474-4222(W)
Plaintiff	Shac LLC <i>Doing Business</i> As Sapphire	William H. Brown <i>Retained</i> 702-474-4222(W)

EVENTS & ORDERS OF THE COURT

07/31/2008 **All Pending Motions** (9:00 AM) (Judicial Officer Togliatti, Jennifer)
ALL PENDING MOTIONS 07/31/08 Court Clerk: Alan Paul Castle Reporter/Recorder: Yvette Lester Heard By: Jennifer Togliatti

Minutes

07/31/2008 9:00 AM

- DEFENDANTS NEVADA DEPT OF TAXATION, NEVADA TAX COMMISSION & NEVADA STATE BOARD OF EXAMINERS' MOTION TO DISMISS... PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION Arguments by counsel. COURT ORDERED, transcript be prepared for today's proceedings and matter continued to chambers for status check on decision. Court notes if the motion to dismiss is denied, this court wants to make a substantive ruling for the purposes of the also pending motion for preliminary injunction. 8/14/08 (CHAMBER) STATUS CHECK: TRANSCRIPT / DECISION PENDING MOTIONS

[Parties Present](#)

[Return to Register of Actions](#)

1 TRAN

2 ORIGINAL

8
CLERK OF THE COURT

3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

AUG 13 1 11 PM '08

5 DÉJÀ VU SHOWGIRLS OF LAS
6 VEGAS LLC, et al.,

7 Plaintiffs,

8 vs.

9 NEVADA DEPARTMENT OF
10 TAXATION, et al.,

11 Defendants.

FILED
CASE NO. A533273

DEPT. IX

12 BEFORE THE HONORABLE JENNIFER TOGLIATTI, DISTRICT COURT JUDGE

13
14 THURSDAY, JULY 31, 2008

15 RECORDER'S TRANSCRIPT RE:
16 DEFENDANTS DEPARTMENT OF TAXATION, NEVADA TAX COMMISSION, AND
17 NEVADA STATE BOARD OF EXAMINERS' MOTION TO DISMISS/
18 AND MOTION FOR PRELIMINARY INJUNCTION

19 APPEARANCES:

20 For the Plaintiffs:

DIANA L. SULLIVAN, ESQ.
BRADLEY J. SHAFER, ESQ.

22 For the Defendants:

DAVID J. POPE, ESQ.
Senior Deputy Attorney General
BLAKE A. DOERR, ESQ.
Deputy Attorney General

23 RECORDED BY: YVETTE LESTER, COURT RECORDER/TRANSCRIBER
24
25

RECEIVED

AUG 13 2008

CLERK OF THE COURT

1 LAS VEGAS, NEVADA, THURSDAY, JULY 31, 2008, 9:00 A.M.

2 THE COURT: Déjà Vu Showgirls versus Nevada Department of
3 Taxation, A533273.

4 MS. SULLIVAN: Judge, do you have a court reporter?

5 THE COURT: We have recording equipment.

6 MS. SULLIVAN: Okay.

7 THE COURT: You need to state your appearances, and you're being –

8 MS. SULLIVAN: Diana Sullivan on behalf of the plaintiffs' local counsel.

9 MR. SHAFER: Your Honor, Bradley Shafer, a member of the Michigan
10 and Arizona bars appearing pursuant to a pro hac vice admission on behalf of
11 plaintiffs, Your Honor.

12 MR. POPE: Your Honor, good morning, David Pope with the Nevada
13 Attorney General's Office on behalf of the defendants.

14 MR. DOERR: Good morning, Your Honor, Blake Doerr on behalf of the
15 Attorney General's Office on behalf of defendants.

16 THE COURT: Good Morning. Do you want to address the motion to
17 dismiss first and then –

18 MR. DOERR: Yes we do.

19 THE COURT: Okay. I've reviewed the motion, the opposition, the
20 rebuttal, the complaint. There were no erratas or supplements to that set of
21 pleadings that I'm aware of. Correct?

22 MR. DOERR: That's correct.

23 THE COURT: Okay. Ready when you are.

24 MR. DOERR: We brought this motion. We don't believe, because of
25 the way the matter was filed, that the Court has jurisdiction. We brought the motion

1 to sort of clean up the matter procedurally. And we believe the argument was
2 simple and we included that in our brief. And unless you have a specific question –

3 THE COURT: Not really.

4 MR. DOERR: Okay.

5 THE COURT: I think you were very thorough and I might have a
6 question or two for plaintiffs, but you can address their comments in reply if you like.

7 MR. POPE: Okay.

8 MR. DOERR: Okay. Thank you.

9 MR. SHAFER: Thank you, Your Honor.

10 There are numerous arguments that they have raised in their motion,
11 and in response we set out in very detailed form why that motion is not well taken.

12 The first argument is because of the line of cases from the United
13 States Supreme Court dealing with Patsy where the United States Supreme Court
14 has said that when you have a 1983 action, a federal civil rights violation action,
15 exhaustion of administrative remedies is not required.

16 Your Honor, we've cited all those cases. The State hasn't responded to
17 that argument at all. They have cited no cases in response because there are none.
18 There's nothing to respond to Patsy. That is hornbook law from the United States
19 Supreme Court, and, in fact, Your Honor, in the Scotsman Manufacturing and the
20 Malecon Tobacco case, the Nevada Supreme Court has recognized that. And, in
21 fact, in Malecon Tobacco – if I'm pronouncing that company's name correctly – the
22 State Supreme Court said they are aware of no state that does not have an
23 exception, when constitutional rights are at issue, to the exhaustion requirement.

24 Now, there is only one argument that the State has made in regard to
25 why the Scotsman Manufacturing direct refund action, which they have asserted to

1 the federal court and the federal court agreed with them, gave us a plain, speedy
2 and efficient remedy in order to the – for the federal court to dismiss out that lawsuit
3 because it didn't have jurisdiction under the Tax Injunction Act.

4 And the only reason that they assert that is because they contend that,
5 unlike Scotsman Manufacturing, our case does not deal with constitutional issues
6 because we have added – in addition to a declaratory judgment action we've
7 requested injunctive relief, we've requested refund, we've requested damages,
8 we've requested attorney fees. Your Honor, all of those forms of relief are
9 conditioned and contingent upon the constitutionality of the law. If the Court rules
10 that the law is constitutional there is no injunctive relief, there are no damages, there
11 is no refund, there is no attorney fees and costs.

12 THE COURT: So on page 12 of your complaint, at paragraph 56, when
13 you plead that, "both as a result of the constitutional violations as enumerated
14 above, as well as the specific exemption as set forth in NRS 368A.200(5)(a)." – just
15 kind of leaving it there – "as well as" – I mean, and then in the motions for
16 preliminary injunction you reference those exemptions as further, you know, being
17 illustrative of the content-based nature of all of this, and the intent of the legislature
18 to purposely target these types of businesses.

19 So, what are you alluding to when you say, above "as well as the
20 specific exemption"?

21 MR. SHAFER: Your Honor, if you take a look at that specific
22 exemption, that isn't the exemption in regard to the content; that is the first
23 exemption that says that what is exempted out is any live entertainment, which the
24 State of Nevada can't tax because the – of the federal or state constitutions.

25 THE COURT: So the other – so 368A.200(5), that you cite in

1 paragraph 47, and then (5)(a) is the –

2 MR. SHAFER: It is that exemption that I just said, Your Honor.

3 And so, realistically, the Court can rule in my clients' favor on the
4 injunctive relief in one of two fashions. Number one, the Court can just rule it's a
5 reasonable likely [sic] that the statute is unconstitutional, or it's reasonable – there's
6 a reasonable likelihood that we fall within that exemption.

7 I can't tell Your Honor why they put that exemption in there. That
8 exemption is there. If in fact they cannot tax my clients, which I believe they cannot
9 for all the reasons set forth in our motion for preliminary injunction, they just – by
10 definition they fall within that exemption.

11 THE COURT: And you're talking about the paragraph starting, "Some"
12 – well, the sentence starting, "Some of the exemptions include live entertainment
13 that the State is prohibited from taxing under the constitutional laws or treaty of the
14 United States or Nevada constitution, live entertainment that is not provided at a
15 licensed gaming establishment if the facility has a maximum seating capacity of less
16 than 200, live" – and it goes on.

17 MR. SHAFER: Yes, but, Your Honor, only that first one. That –

18 THE COURT: Well, that's what I'm trying to get at.

19 MR. SHAFER: Yes.

20 THE COURT: Are you suggesting to me that part of this complaint is
21 that one of the other exemptions could apply to your clients?

22 MR. SHAFER: No, no.

23 THE COURT: Okay, because it's – because then we're not strictly
24 talking about constitutionality necessarily.

25 MR. SHAFER: No. I apologize if that was not clear enough.

1 THE COURT: Okay.

2 MR. SHAFER: But all of the briefing we've alluded to that --

3 THE COURT: Right.

4 MR. SHAFER: -- specific exemption.

5 THE COURT: But, I mean, I'm looking at the complaint --

6 MR. SHAFER: Okay.

7 THE COURT: -- and the complaint says, "as well as the specific

8 exemption." You did cite it. I just want to make sure --

9 MR. SHAFER: Yes, Your Honor.

10 THE COURT: -- because I go back to 47, where you --

11 MR. SHAFER: Okay.

12 THE COURT: -- lay out the language and you include all the other, you

13 know, seating capacity and all those other things.

14 MR. SHAFER: Right.

15 THE COURT: I just want to make sure I was clear.

16 MR. SHAFER: No, Your Honor. There is no other exemption we're

17 claiming we fall within.

18 THE COURT: You're not trying to just sniggle that in with the sentence

19 fragment?

20 MR. SHAFER: Your Honor, I'm an officer of the court. I'm an Eagle

21 Scout; just came back from Boy Scout camp. Okay? We're not claiming we're

22 falling within any other exemption.

23 THE COURT: Okay.

24 MR. SHAFER: Your Honor, the next issue that we have raised under

25 Nevada law is if the administrative is futile. And what I would like to point out to

1 Your Honor is the differences of the plaintiffs in the two cases, because Déjà Vu and
2 Little Darlings of Las Vegas LLC, which are two of the plaintiffs in the lawsuit that
3 we're in front of Your Honor right now on the motion to dismiss, which is the first
4 lawsuit, they are not plaintiffs in the second lawsuit, for the reason that they have yet
5 to undergo their administrative refund claims in the Nevada Tax Commission. The
6 reason for that, Your Honor, is that the statute was amended in 2005 to reduce the
7 seating capacity to capture those clients.

8 So, because of the timing for the refund claims, and then the
9 proceedings in front of the Nevada Tax Commission, they didn't have to file
10 administrative refund claims previously. They have not done that. They are seeking
11 injunctive relief. And it would obviously be futile for them to make any claims in
12 regard to the Nevada Tax Commission, because the Nevada Tax Commission has
13 already said they don't find any merit in regard to the claims that we have – the
14 claims that the other plaintiffs have raised, Your Honor.

15 I should also point out that they have raised two other arguments, Your
16 Honor, which would also make it futile. Number one is the NAC, 368A.170, which is
17 the NAC that says – that they contended for the first time in front of the Nevada Tax
18 Commission would preclude my client from obtaining a refund – which says that
19 unless you can give the money back to the customer you can't get a refund. So,
20 there is no administrative remedy, according to them, for my client; that would apply
21 to the Déjà Vu and the Little Darlings clients as well.

22 But most ironic, Your Honor, is that in their response to the motion for
23 preliminary injunction, now they're even making an argument that my client doesn't
24 even have standing to bring an administrative refund claim because of that NAC.
25 Now I think that's totally false, but that's their argument.

1 And again, Your Honor, they specifically cited Scotsman Manufacturing
2 to the Federal District Court here, to the Ninth Circuit, and those courts utilized that
3 decision by saying my client has a right – an independent right of relief. It is this
4 lawsuit that is the independent right of relief. They already won on that issue. We
5 talked about judicial estoppel, Your Honor, in our brief. They cannot have it both
6 ways. They can't say to one court, you have an independent claim of remedy, go do
7 it in state court, and then we get into state court and they say, oh, you don't have
8 that.

9 Your Honor, the last argument that they have is in regard to the inability
10 to bring injunctive relief because of the statute, and I mean the live entertainment tax
11 statute. Your Honor, we have said in elaborate detail, briefing both in response to
12 the motion for dismissal and the motion for preliminary injunction, why it is a blatant
13 violation of the separation of powers to enforce that statute because that statute
14 deprives this Court of its inherent, and more importantly, constitutional power of
15 injunctive relief.

16 And, Your Honor, I want to point out to the Court; we cited the Nevada
17 Constitution, Article 6, section 6 that gives this Court the constitutional authority to
18 grant injunctive relief. We cited Nevada decisions in regard to the separation of
19 powers where the Nevada Supreme Court says that that separation cannot ever be
20 infringed upon.

21 And, more importantly, we cited to Your Honor the elaborate analysis
22 by the Ohio Supreme Court in The City of Norwood vs. Horney case, in discussing
23 why a similar type of proscription is unconstitutional, and, Your Honor, they didn't
24 respond. The State of Nevada has not responded to that argument in the least. All
25 they have said is that the statute precludes it. For me to lose on that argument they

1 have to have a response. They have no response because the law is so clear.

2 And, Your Honor, what I would point out even more to this Court is that
3 take a look at The City of Norwood case where they're just talking about the inherent
4 rights of courts to grant injunctive relief, and that's a violation of the separation of
5 powers. Here the authority of this Court to grant injunctive relief comes from the
6 state constitution. Again, they haven't responded to that argument in the least.

7 And for all those reasons, Your Honor, clearly this Court should not
8 dismiss this first lawsuit.

9 Did Your Honor have any questions of me?

10 THE COURT: No. Thank you.

11 MR. POPE: Your Honor, if I may, with regard to the cases dealing with
12 1983 actions, I don't believe that the plaintiffs included a claim for 1983 damages in
13 their second complaint, and so if the first complaint is dismissed that goes away. It
14 also seems as though in their moving papers that they've more or less admitted that
15 they can't get damages. The defendants are not persons for purposes of 1983, so
16 those cases should have no effect.

17 With regard to Little Darlings and Déjà Vu, it's – it may be true. It's
18 been alleged that they still have time to file claims for refund, but, you know, they
19 have three years to do that, and it doesn't say that they don't have to or can't file
20 their claim for refund to comply with the statutes that require that such a claim for
21 refund be filed in order for them to come to this Court with their action. So, to say
22 that we haven't had to file that claim for a refund yet, yeah, they – maybe they
23 haven't, maybe the statute hasn't run, but it doesn't mean that they don't have to
24 comply with the statute that requires them to file a claim for refund to come here.

25 With regard to any NAC 368A.170, now that regulation speaks for itself,

1 and it says that if the plaintiffs collect the tax from their patrons then they need to
2 show that they've refunded it to their patrons in order to get a refund themselves.
3 That was an issue left open before the Commission.

4 It's an issue here with regard to whether they're collecting it or not. I
5 think that the regulation also has to be read with the statute that requires that if the
6 admission charge – or if the tax is included in the admission charge that the ticket
7 says so; otherwise the entire admission charge is taxable. So that's still an issue
8 that's left open.

9 With regard to the, you know, allegations that that's been argued two
10 different ways, the case law says that you can take a different position as, you know,
11 as long as the two positions weren't argued for, we'll just say, purposes to better
12 your position in the case – or whatever the exact language was. That wasn't – it's
13 not why it was done.

14 And, in fact, you know, if the plaintiffs are able to prove that the way
15 that they do collect and pay the tax then that issue might be resolved, you know, in
16 their favor. In other words, it could have been a mistake. It could have been the
17 position is argued on a set of facts or in the context that's present on that day of
18 hearing. So I don't think that there is judicial estoppel on that issue.

19 With regard to the other issue that – you know, regarding the direct and
20 speedy remedy and that it was argued in the federal case that there is a direct – or
21 that there is a plain and speedy remedy and that there's a direct remedy on
22 constitutional issues, all that was argued in that case was that in addition to a refund
23 claim being a remedy at law that there is this additional remedy of the direct remedy
24 on constitutional issues.

25 I don't think that it was ever represented that they were entitled to it. I

1 don't think it was represented that this case was in fact gonna be, you know, their
2 direct-remedy refund case. It's something that they have to establish pursuant to
3 the cases. They have to show that it's – that it meets one of the two exceptions.
4 That it's limited to constitutional issues would be the exception in this case.

5 And because there is a claim for damages pursuant to 1983, there is
6 something other than constitutional issues. Attorney's fees, the question of, are they
7 collecting the tax from their patrons or are they paying it themselves, is another
8 question. There's all kinds of questions in this case that's beyond the constitutional
9 question. It's not just limited to a declaratory – a request for declaratory relief as to
10 whether or not this tax is constitutional.

11 You know, they could have done it this way, Your Honor; they could
12 have filed a claim for refund, held that in abeyance, requested dec relief from this
13 Court, and then when they got that answer could have went back and pursued the
14 administrative claim for refund. They didn't do it that way. They're trying to put it all
15 together and bring it directly here.

16 With regard to the injunction statute, Your Honor, statutes are
17 presumed constitutional. The statute says no injunctions. There's a really good
18 reason for that. The State's budget is based on revenue. It's projected. The State
19 needs that revenue to operate. Therefore, I think tax statutes are different than
20 other statutes. There's a different need.

21 THE COURT: All right. I mean, but that's – what does that have to do
22 with the separation-of-powers argument? There's a really – either it's – you know,
23 I'm not really hearing any comments on that.

24 There's – you know, what I'm hearing is, there's a really good reason
25 for it, and that's fine. But if it is, in fact, a separation-of-powers issues, there's no

1 really good reason that you get to do that.

2 MR. POPE: Well, citing the –

3 THE COURT: As far as the legislature, not you.

4 MR. POPE: Right.

5 THE COURT: So, could you maybe highlight – because you have a lot
6 of issues and a lot of briefing, highlight for me what your response was to that
7 argument?

8 MR. POPE: I think that our general response to that argument would
9 be that the statute –

10 THE COURT: Presumes.

11 MR. POPE: -- was presumed constitutional. In addition, Article 6, you
12 know, gives this Court jurisdiction. It doesn't specifically mention injunctions, at
13 least not when I reviewed it. That's all I have on that one, Your Honor, but in – you
14 know –

15 THE COURT: I mean, they kind of cross over, the motions. So I
16 understand we're in motion-to-dismiss mode right now –

17 MR. POPE: Yeah.

18 THE COURT: -- but I – so, you know, if we get to that point later I
19 guess you can further address it, but it's in your pleadings in some form or fashion,
20 either in the reply, or in the motions for preliminary injunction, or both – I mean, in
21 your opposition. Correct?

22 So I went back and I carefully culled through. I could find all the
23 arguments that you have to address. Otherwise it's just basically the presumption –

24 MR. POPE: Yeah. And we argue that there's no irreparable harm
25 because it's just – it's money.

1 THE COURT: Well, that's different.

2 MR. POPE: Right.

3 THE COURT: That's me deciding whether there's a reasonable
4 likelihood of success on the merits, balancing the hardships and ignoring the
5 provision that you're referencing and making a substantive decision; two different
6 things.

7 So, I mean, I know those arguments because you went through very
8 carefully. And, so, I was just curious as to the specific arguments in response to the
9 suggestion that – the separation-of-powers argument.

10 And you're saying the presumption in your pleadings – and what else?
11 Remind me one more time – you said – I'll find it, don't worry.

12 MR. POPE: It wasn't specifically addressed in the authorities cited.

13 THE COURT: Okay.

14 MR. POPE: At least – well, I should say I cited in the Article 6.

15 THE COURT: Right. So, you're saying –

16 MR. POPE: Yeah.

17 THE COURT: -- there's nothing in what you reviewed that gives this
18 Court that particular power.

19 MR. POPE: Specifically, yeah.

20 THE COURT: Okay.

21 MR. POPE: Thank you.

22 THE COURT: Did you have anything in light of those comments at the
23 end there, before we move on to the motion for preliminary injunction?

24 MR. SHAFER: Yes, Your Honor, just briefly. There is nothing in either
25 of their responses dealing with the separation-of-powers argument other than the

1 simple statement that the statute says you can't have injunctive relief. That's – that
2 is flat-out it.

3 In regard –

4 MR. DOERR: Your Honor, we'd be happy to brief that if you'd so
5 desire.

6 MR. SHAFER: Well, Your Honor, you know –

7 MR. DOERR: We'd be happy to brief that specific issue if you are
8 inclined to take it under advisement.

9 THE COURT: Well, let's do this: let's hear what he has to say. I'll hear
10 arguments on the injunction since you're all here and you're all prepared to go, and
11 then if I need any additional anything I'll let you know.

12 MR. SHAFER: Thank you, Your Honor.

13 Your Honor, in regard to the NAC in – as being something different than
14 the constitutionality, no. That deals with the refund action, Your Honor, which is the
15 second lawsuit. The second lawsuit is the refund action.

16 This is a prophylactic, offensive attack against the constitutionality of
17 this statute so that we could get injunctive relief so that we don't have to pay the tax
18 in the future, and then potentially put the State in the position that seven years down
19 the road, after the U.S. Supreme Court either takes the case and hears it or denies
20 cert, whichever way it goes, and, if we were to win, that the State then doesn't have
21 to have a humongous bill that they have to refund. So this case deals only with the
22 constitutional arguments.

23 And I swear to God, I think I heard Mr. Pope say that even though we
24 have a 1983 action in this case, we don't have a 1983 action in the second case, so
25 if the Court dismisses this case then there won't be a 1983 action. That was in

1 response to his argument about Patsy.

2 But we're here for the dismissal of this case. This is a 1983 action.
3 Patsy – and it's just not Patsy, we've cited a plethora of cases. There are no
4 exceptions to that, Your Honor. The only case law this Court will find, is there a final
5 determination from the State? There is a final determination from the State; they
6 said we're not entitled to it. So Patsy says that we do not have to exhaust
7 administrative remedies.

8 And more importantly, Your Honor – and I'll point this out – the Nevada
9 Supreme Court in the Scotsman Manufacturing case said, all you have to do to
10 prove futility of your administrative remedies in order to have an exception is have
11 the State say they believe the statute is constitutional. That's what Scotsman
12 Manufacturing says.

13 They have defended this tooth and nail. And they say to this Court that
14 it's constitutional. They said it to the Nevada Tax Commission that it's constitutional.
15 That's all we need. And that's only one exception, the futility exception. We fall
16 within every one of them. We fall within Scotsman, we fall within Patsy – with Patsy,
17 we fall within the futility.

18 If the Court doesn't have any other questions, those are my comments
19 in regard to the motion to dismiss.

20 THE COURT: Can we address the motion for preliminary injunction
21 now and make a complete record on that so that –

22 MR. SHAFER: Yes, Your Honor.

23 Again, Your Honor, probably the critical issue for the Court's
24 consideration is not what is in the briefing but what is not in the briefing. I've set
25 forth all the constitutional protections. Clearly, live entertainment, in and of itself, let

1 alone exotic dancing, they are both protected under both the federal and state
2 constitutions.

3 And I should also point out, Your Honor, as we pointed out in our reply
4 brief, there's really two taxes here. There's the casino tax and the live entertainment
5 tax. And, Your Honor, we're not trying to get any type of injunction in regard to the
6 casino tax. I'm only dealing with the live entertainment tax in regard to my clients.
7 That's the injunction I want. I want my clients not to have to pay this tax.

8 Now, every case that has ever been decided in the history of this
9 country in regard to laws which impact upon first amendment rights, which this law
10 clearly does because it is a direct tax on first amendment-protected activities, say
11 that the government has the burden of coming forward – setting aside the level of
12 constitutional scrutiny to apply – the government has the burden of coming forward
13 with the compelling or important governmental interest.

14 And we know from the United States Supreme Court in the Murta
15 [phonetic] case they also have to show narrow tailoring, and they have to show why
16 the governmental interest cannot be satisfied with a – without a differential tax on
17 first amendment rights, without taxing some first amendment rights or not others, or
18 having a special tax on first amendment rights and not having a tax on other people.
19 There's no dispute that that is what the case law is.

20 Your Honor, comb their pleadings. They never say to this Court what
21 the compelling governmental interest is to have a differential tax. They have never
22 articulated to this Court why animal shows are exempted and my clients are not,
23 why baseball is exempted and my clients are not, why NASCAR is exempted and
24 my clients are not, why roving musicians are exempted and my clients are not, and
25 why the other twenty-five – there are twenty-five in total exemptions and exceptions

1 – why there's a differential tax on those modes of entertainment. It is their burden.

2 Your Honor, we cited the Ninth Circuit decision in Lakewood. We've
3 cited the U.S. Supreme Court decisions. It is clear that on these tax cases they
4 have that burden. They haven't met that burden. They haven't said anything, let
5 alone a laughable argument; they haven't even made an argument.

6 Now, if they want to come before Your Honor, which they do, and in
7 their reply – I'm sorry, in their response and talk about the need to raise revenue,
8 that issue has been authoritatively decided by the United States Supreme Court.
9 They have said time and time again – we've cited it to the Court – raising revenue
10 cannot be a governmental interest for a differential tax on first amendment activity,
11 cannot.

12 And the reason for that, Your Honor, is articulated in the cases – and
13 we've cited it to the Court – because if you have a generally applicable tax the
14 political process will protect from an over-taxation. If you're only taxing a few people
15 – and, by the way, people that a lot of people don't like – that political process
16 breaks down. There is no political protection there.

17 And that is, in fact, Your Honor, what has occurred here, because we
18 have given Your Honor the legislative history. And it is clear that this statute, the
19 extension of the casino-entertainment tax, in order to capture in live entertainment
20 that is not exempted, was meant to get to the strip clubs, Your Honor. And, in fact,
21 you'll see not only that, but the quotations from the legislative history that we have
22 included, talks about what is the second greatest amount of revenue of the live
23 entertainment tax?

24 And, Your Honor, the legislative history, in fact, demonstrates that these
25 are two taxes, because you will see in the quotations that we have included for the

1 Court, they talk about the largest taxes paid by the gentlemen's clubs – by the strip
2 clubs in Las Vegas. Okay? They don't say anything about the casino. Even the
3 legislature recognized that these were two separate taxes.

4 But what else did they say? The second greatest avenue of revenue is
5 the racetrack. So what did they do? They exempted out the racetrack.

6 Your Honor, we have tried to make this constitutional issue very easy
7 for this Court. When I went in front of the Nevada Tax Commission I raised the
8 three constitutional arguments that make a tax on first amendment activities
9 unconstitutional: Number one, it's a direct tax on first amendment activity. Number
10 two, it only applies to a small group of taxpayers. Number three, it's content based.

11 Our motion today is only on that third argument. And the reason for
12 that is very simple. This issue has been taken up across the United States as a way
13 in these times of troubled economics to raise additional revenues for states. Pick
14 out the adult businesses because no politician is going to say in the legislature: We
15 ought not be doing that. They're easy pickings.

16 And, Your Honor, we have presented to the Court – and the reason we
17 limited it to this one issue is that although Nevada wasn't the first state to enact one
18 of these, now the cases are coming up where they have been enacted in other
19 jurisdictions and they have uniformly been stricken.

20 And so we have given Your Honor the Poo-Bah case out of the Illinois
21 Court of Appeals. We have given Your Honor the recent decision of the trial court in
22 the state of Texas which also ruled one of these adult entertainment taxes
23 unconstitutional. We have given Your Honor the recent opinion by the Tennessee
24 Attorney General that says – because Tennessee was going to enact the same
25 statute, basically, that Texas had enacted. The Tennessee Attorney General ruled

1 and said that if you pass this it is more than likely unconstitutional.

2 And then most recently, Your Honor, we cited to Your Honor the case of
3 Big Hat Entertainment that was just decided by a federal district court that ruled an
4 adult tax unconstitutional as well, because they are differential taxes, because they
5 are content-based taxes, because they pick on some people and don't pick on
6 others.

7 Your Honor, the sole argument that the State has made that this is not
8 a content-based tax is that it's not a content-based tax. And I guess if you say Your
9 Honor's wearing a yellow robe you can say it's not a content-based tax, but there is
10 no way a reasonable person can look at the language in these exceptions and
11 exemptions and say that this is not a content-based tax when you say: If the
12 entertainment is musicians, if the entertainment is, by the way, musical
13 entertainment that doesn't cause the patron to turn their head and look at the
14 entertainment – I'm not making this up, Your Honor. That's actually in there. That's
15 one of the exceptions. Calm, soothing, music, that's exempted. Animals,
16 exempted, NASCAR. I've gone through all of it. I've put it all in the brief. Are they
17 all content based? No, Your Honor, they are not all content based, but a ton of them
18 are content based.

19 And, Your Honor, I was actually ready on a reply brief to brief
20 something because I anticipated that the State was going to argue this. They didn't,
21 so I didn't include it in my reply. But if Your Honor is thinking about the fact: Well,
22 maybe the constitutional problem is the exemption as opposed to the tax, Your
23 Honor, I would submit to you – and I will be more than happy to provide additional
24 briefing on this issue because I briefed this in other places – it is improper for you to
25 blue-pencil out exemptions that create unconstitutionality.

1 And the reason for that is very simple, the state legislature has
2 indicated its clear intent: They don't want those people taxed. So if the Court blue-
3 pencils out the exemptions, those people are taxed, which is absolutely the opposite
4 intent of the legislature. So the Court can't do that. Given the clear content-based
5 nature of this legislation, it is unconstitutional under any line of cases under the
6 United States Supreme Court or any other cases.

7 And again, Your Honor, I didn't want – I apologize for the length of
8 some of these briefs. I had to deal with all of these issues, but I didn't give Your
9 Honor the ton of tax cases out there because I wanted to limit this to one simple-but-
10 irrefutable issue, that this is a content-based tax. Now, Your Honor, that deals with
11 the – having a reasonable likelihood of success on the merits.

12 We've cited to the Court the case law that says one of the issues you
13 have to take into consideration is the public policy. The case law is clear that public
14 policy is in favor of enjoining unconstitutional laws. The balancing of the harm
15 clearly weighs in my clients' favor. And let me lastly talk about the prospect of
16 irreparable harm.

17 Your Honor, let's take for example, for giggles sake, that their argument
18 about the NAC is correct and my client can't get back the tax, a refund, if we do not
19 get the name and address of every person walking into our establishment who buys
20 a Coca-Cola, because remember that the tax is not just on admissions, in my
21 clients' establishment, unlike the casinos, it's also a tax on merchandise, food and
22 refreshments. Now, nobody's going to do that. My clients haven't done that. I've
23 represented that to the Nevada Tax Commission. I'm representing that to the Court.

24 There's actually a line of case law that says that customers in adult
25 businesses have a right of privacy. They don't have to tell people who they are,

1 because people in general have the right to engage in first amendment expression
2 anonymously. There's a U.S. Supreme Court case called Watchtower Bible, comes
3 out of a decision out of the Sixth Circuit, U.S. Court of Appeals, but there's a number
4 of cases before that.

5 So let's assume they're correct and we're never going to get a refund.
6 Now, what we're limited to, Your Honor, is our sole remedy of getting an injunction
7 because we're never going to get the money back. We can't have a damage claim
8 and we can't have a refund claim, because if their argument about the NAC is
9 correct we never get the money back. Under every definition of U.S. Supreme Court
10 and Nevada Supreme Court jurisprudence, that's irreparable harm. There's no
11 damage claim that we can get back.

12 Setting aside for the moment, Your Honor – there's a – I didn't cite it in
13 the briefs, but there's a U.S. Supreme Court case, you might remember it from law
14 school; I think everybody learns it at some point – called Steffel vs. Thompson,
15 where the U.S. Supreme Court talks about: You shouldn't put a litigant – and they
16 cite Homer – between the Scylla of flaunting the law or the Charybdis of not
17 engaging in first amendment protected activity, Your Honor.

18 So, my clients if they wanted, Your Honor, they could not pay this tax.
19 They have been paying the tax. But they could not – they could take the position: I
20 want to defend my constitutional rights and not pay the tax. But, Your Honor, this
21 statute has a criminal component as well. My clients could be subject to criminal
22 sanctions if they don't comply with the law, and, therefore, that's irreparable harm as
23 well.

24 I've also pointed out in my briefing, Your Honor, that the U.S. Supreme
25 Court, and all these cases, all talk about the fact that the ability to tax is the ability to

1 destroy speech and expression. And we've also cited all of the case law – and
2 again, it is irrefutable that the harm of – to first amendment activities, even for a
3 “minimal period of time” constitutes irreparable harm. So under all of the elements,
4 Your Honor, we meet the standards for this Court to enjoin this.

5 But again, let me reiterate, Your Honor, something I said earlier in
6 regard to the motion to dismiss: I'm not dumb enough that I don't understand the
7 practicalities and the politics involved in this, but, Your Honor, we have a big
8 problem here if we don't get an injunction here and this case goes on for seven
9 years and then my client's entitled to a refund. And that is one big number, Your
10 Honor, and that is a problem for the State.

11 Here what this Court should do is enjoin the collection of this tax now.
12 In the other case we'll deal with the refund action. Maybe my clients are entitled to it
13 and maybe we're not, but the Court should enjoin it. And like I say: The primary
14 issue here, constitutionally, is they have their burden to establish a governmental
15 interest for differential taxation. They haven't articulated it at all.

16 You would be the first judge that I'm aware of in the United States that
17 has written an opinion that says that, well, even though the government doesn't
18 articulate a reason, you know, I'm not – I'm going to say it's not unconstitutional. It's
19 their burden, Your Honor. Thank you.

20 MR. POPE: Your Honor, I'm going to begin and then my co-counsel is
21 going to follow up with a couple of things.

22 If I could just quote from the statute first of all, it – “The live
23 entertainment tax is an excise tax imposed on admission to any facility that has live
24 entertainment.” So from the language of the statute it's generally applicable tax.

25 The plaintiffs have to show, as opposing counsel said, that it singles out

1 the press, targets a small group or that it's content based. You know, it's this – in
2 this case it's not singling out the press. It's not targeting a small group. It's
3 generally applicable to all facilities – to admission charges to all facilities that have
4 live entertainment. The only argument they could make is that it's content based.

5 Just a few quick additional notes about the statute: One is the
6 legislative history, to the extent that plaintiffs quote to, I think it's AB247, I believe
7 that that was rejected. So, any comments or notes or minutes regarding that really
8 have no effect.

9 Talking about the exemptions for the racetracks – I believe that it says
10 racetracks – that it exempts the Nextel race series, not all racetracks. If there's a
11 difference, I don't know. If it applies to more, I don't know, but I believe it says
12 Nextel series, which is a specific series.

13 With regard to boxing, boxing has an exemption because it pays a
14 different kind of tax. Now in fairness I didn't cite this case, but it's Madden, which
15 basically says that a legislature has broad discretion with regard to classifications –
16 or differential taxing because it's tied to local needs. The legislature has to figure
17 out where it can get its revenue from. And I'm looking for that cite, Your Honor.

18 In this case that's precisely what the LET exemptions do, that they're
19 looking for a revenue base. It's not content based. There's nothing in the legislative
20 history that says that we don't like the message so we're going to tax it. In fact, I
21 think that the plaintiffs' brief indicates that there – that these – there are two plaintiffs
22 that weren't originally included and those may be the only two plaintiffs that were
23 added after the amendment. I'm not sure. That hasn't been addressed.

24 Because the legislature has this broad discretion with regard to taxing
25 matters, and because statutes are presumed constitutional, and because it's a

1 generally applicable tax, the State's position is that this – the test is low-level
2 scrutiny, whether there's a rational basis for it.

3 And this is where my co-counsel's going to pick up. Thank you.

4 MR. DOERR: I'd just like to address – counsel said that we never
5 addressed the compelling-interest standard, and we didn't because we don't think
6 that's the standard that's applicable. That assumes strict scrutiny.

7 The cases that counsel has cited deal with regulations. And there's a
8 difference between a tax and a regulation. Regulations are enacted to alter
9 behavior; taxes are enacted to generate revenue. And we allude to that in our
10 opposition. And we have a case out of Pennsylvania that I haven't cited.

11 I have a copy for you if you'd like, if you'd like me to approach?

12 It makes the distinction. It makes those arguments. And we cited that
13 when we argued this in front of the NTC. And again, we did not – we don't believe
14 that's the standard. We don't believe it's content based. And, therefore, if it's not
15 content based we don't address the compelling-interest standard.

16 Everything that the plaintiff said assumes that the live entertainment tax
17 targets their message, everything he says. This statute gives the Department of
18 Taxation no authority to regulate their business. It gives them authority to collect
19 tax. And the tax is not really collected from them. It's collected from the patrons.

20 So – and, you know – and that brings me to my next point about
21 irreparable harm. They can choose to start collecting the money from their patrons.
22 They claim they're not doing that. If they start collecting it, they're not out any
23 money. Their claim is that they're paying it now.

24 We don't actually believe they're actually paying it. We believe it's the
25 patrons who are paying it the whole time. And that's what's gets us to the argument

1 as to who's entitled to a refund, which I know that's – we're not addressing that here,
2 but, you know, what's the irreparable harm if he can turn around and collect it from
3 his patrons? He's not out any money. And his only claim is that now he's just not
4 doing that.

5 I think there are cases certainly dealing with sales and use tax that say
6 it is the customer who pays the tax. And I believe that's the situation here. And I
7 believe that that case is applicable in this matter, although this is specifically the live
8 entertainment tax.

9 As to their other points, I believe that we've laid out our position as to a
10 lot of his points in our brief, so I won't elaborate.

11 Would you like – may I approach and give you this case? And I –

12 MR. SHAFER: Is that Adams Outdoor Advertising?

13 MR. DOERR: Yes, it is.

14 MR. SHAFER: Thank you.

15 MR. POPE: Your Honor –

16 THE COURT: Yes. You can give me any case you want to give me –

17 MR. POPE: -- if I may? I found –

18 THE COURT: -- that you cited, that you cited.

19 MR. DOERR: We did not cite this case.

20 THE COURT: Oh.

21 You're aware of this case though?

22 MR. SHAFER: Oh, yes, and I'm gonna respond to it.

23 THE COURT: Okay.

24 I'm sorry, so this is the case – the differential taxing that you referenced
25 – or which case is this?

1 MR. DOERR: This case describes – distinguishes taxes from
2 regulations.

3 THE COURT: Okay.

4 MR. DOERR: And it's sort of a standard that may be applicable when
5 it's a taxing statute.

6 THE COURT: Thank you.

7 MR. POPE: Your Honor, I did find that cite. It's 309 U.S. at 8788.

8 MR. SHAFER: Can't be. They don't go into the thousands. The
9 Supreme Court would go into the thousands.

10 MR. POPE: I'm sorry, 87-88.

11 MR. SHAFER: Oh, okay.

12 MR. POPE: I just misspoke.

13 THE COURT: It just seems like it when you're reading.

14 MR. POPE: In addition, to follow up on that point, Your Honor, in
15 Leathers, at 49 U.S. 451, even if this were a differential burden, that in and of itself
16 is insufficient to raise first amendment concerns.

17 MR. DOERR: I'd just make one more point. The Pooh-Bah case really
18 – that Court held that the exception to the exemption was not constitutional. It did
19 not – and we've stated that in our brief. It did not say that the broad-based,
20 generally-applicable entertainment tax was unconstitutional. It was the exception to
21 the exemption. And that targeted new dancers. It took them out of the exception.

22 So his assertion that you can't just blue-line things out, I don't know that
23 I agree with that. And clearly when you read that case, that's what happened there.
24 They did not declare the generally-applicable tax unconstitutional. It was the
25 exception to the exemption.

1 MR. SHAFER: Thank you, Your Honor.

2 First of all, in regard to Adams Outdoor Advertising, Your Honor can
3 take a look at page 27 of the opinion. It says, "The ordinance imposes the tax on all
4 off-premises signs regardless of their content."

5 On page 26, it says, "Here, there was nothing in the record or in the
6 ordinance suggesting that the tax was directed at suppressing any particular ideas."
7 Here, we have the legislative history quite to the contrary. "Moreover, because that
8 tax was imposed on all off-premises signs, it does not single out one small group of
9 off-premises signs while exempting others from taxation under the reasoning of
10 Leathers" – that's one of the U.S. Supreme Court cases that we're dealing with,
11 Your Honor – "therefore, the tax cannot be deemed to be unconstitutional."

12 You know, Your Honor, if they want to have a live entertainment tax that
13 has no exemptions, let them pass it, and let's see if that passes constitutional
14 muster under the first prong of the U.S. Supreme Court cases of why a tax is
15 unconstitutional, but that's not what we're dealing with here. We're dealing with a
16 gerrymandered tax so that they exempt out virtually everybody but my clients. The
17 tax in regard to the adult businesses in Pooh-Bah was rendered unconstitutional,
18 could not be applied to them.

19 Now, in regard to what Mr. Pope said about this is a generally-
20 applicable tax. Again, Your Honor, if you say you're wearing a yellow robe, it's a
21 generally-applicable tax. This is what a generally-applicable tax is: Tax on all
22 business income at X percent. That is a generally-applicable tax.

23 A tax on live entertainment is not a generally-applicable tax. A tax on
24 only one form of live entertainment, because you gerrymander it so that everyone
25 else is exempted other than adult businesses, is not a generally-applicable tax. If in

1 fact it was a generally applicable tax everyone would be paying it.

2 And, Your Honor, again, I'm going to point this out in regard to one of
3 my original comments; I'm not coming here, Your Honor, and saying that because
4 my clients are engaged in first amendment activity we have some special exemption
5 from generally-applicable taxes. They want to change the tax rate in this state, they
6 can do that and I don't have – I don't have any argument. They want to, you know,
7 tax toilet paper in regard to all businesses; that applies to us as well, just like it does
8 everybody else. But what you can't do, you can't – you can't have a separate tax
9 over and above the general taxes that only applies to first amendment activity and
10 then is gerrymandered in such a fashion that it really only applies to one category of
11 taxpayers.

12 Your Honor, he talks about AB2 – I think it was 247. He said that was
13 rejected. And that's exactly right, because take a look at what they did, because
14 AB247 was going to say, this is a tax on adult businesses. So I gave you the
15 legislative history and they said, we don't want to say that because that would be a
16 "red flag" for the Court. So then let's do it this way: have it generally put, well, but
17 just exempt everybody else out. That's what happened here, Your Honor. That's
18 exactly what happened.

19 Your Honor, in regard to the Madden case, I haven't read it in a couple
20 of years, but all that case stands for is the standpoint that states and municipalities
21 are given broad discretion in regard to their taxing. That doesn't mean you can tax
22 in an unconstitutional manner, which is what has been done here.

23 Again, you know, I mean, I don't know how many times I can say this,
24 but, again, I said in my earlier arguments, it – you know, it's content based. And,
25 again, all he did is stand up and say it's not content based. You can't say it's not

1 content based when half of the exemptions would require you to look at the content
2 of the entertainment in order to figure out whether the exemption applies. It's clearly
3 content based.

4 One of counsel, I'm not sure which one, said, you know, there's no
5 evidence in the – there's no claim that the legislature didn't like the message. Yeah,
6 there is. I gave you the legislative history. It said, our idea initially was to get at the
7 strip clubs, and then because of the 200 – the 300-seat-capacity exemption they
8 missed some of them so they had to change it, and then they had to add
9 exemptions because they got in people in the tax they didn't intend to get. They
10 wanted this to apply to the adult businesses.

11 Your Honor, then counsel said that rational basis applies here. What
12 case has anyone cited that said that rational basis applies in this type of case?
13 There are none. That's number one.

14 Number two, is even under rational basis, which doesn't apply, the
15 government has to have a reason. You can't arbitrarily say we're going to do this to
16 this person and not do that to that person. The Court's probably dealt with over the
17 years plenty of equal protection arguments that people have come in and made.
18 You have to have a reason. It may be a rational reason, and you may not have to
19 have strict scrutiny or intermediate scrutiny, but you have to have a reason. I've
20 given them five opportunities now to articulate a reason and they still haven't
21 articulated a reason for any of these exemptions. But, Your Honor, there is not one
22 case that has been decided that decides these cases on rational-basis scrutiny.

23 And, again, Your Honor, I will go to the four cases and the attorney
24 general opinion that I've given you that are all recent. They're all recent because
25 they're dealing with this issue because this is the hot revenue-raising issue now.

1 There's not one court across this country yet, appellate court, that has
2 upheld the constitutionality of one of these things. It is because they're subject to
3 strict scrutiny. It's because you're trying to tax somebody a lot of people don't like
4 differently. We'll pay our fair share of taxes. We'll pay our fair share of general
5 taxes. We're not exempt from those, but you can't tax us specially.

6 And, Your Honor, again, if – you know, if these things were subject to
7 rational-basis scrutiny, all these courts wouldn't be declaring these things, and the
8 attorney general of Tennessee wouldn't be saying these things are unconstitutional.

9 Your Honor, the last argument about that, you know, we could choose
10 to collect this from the patrons. We don't have to collect it from the patrons because
11 in the Nevada Tax Commission they're saying it's interposed as being a true tax
12 from the patrons as well.

13 The fact is, we're paying it. We have the right – and I've pointed out,
14 Your Honor, the cases that we've cited to, that adult businesses even have standing
15 to raise constitutional arguments of their customers. And there's a very important
16 reason for that. If somebody buys a Coca Cola and his live entertainment tax is fifty
17 cents, he's not going to go file a state court lawsuit to get that case [sic] back. He's
18 not going to file a refund action. He doesn't even have standing under the statute to
19 file a refund action. We have the right to protect the business and the clients from
20 this unconstitutional tax. We're paying it. It's irreparable harm to us.

21 And, in fact, if we wanted to raise the entry fee in order to recoup that
22 tax, let's just take a look at, you know, simple economics. You raise fees, less
23 people buy it. That means less people are coming into the business. That means
24 less people are engaging in first amendment protected activity. Therefore, under
25 the definition of the U.S. Supreme Court that's irreparable harm because you're

1 decreasing the amount of constitutionally-protected activity.

2 I apologize, Your Honor, but this seems very clear to me, but unless the
3 Court has any other questions I'll sit down.

4 THE COURT: I don't. Thank you.

5 Well, a couple things. First of all, preliminary injunctions are my favorite
6 type of proceeding because it requires the Court to look into the future and make,
7 essentially, what is an early decision on the merits of everything to do with the case.
8 Those are my favorite kinds of motions to do early on.

9 I will tell you a couple things. One, I'm going to issue a minute order
10 with regards to the motion to dismiss. Two, if that motion to dismiss gets denied I'm
11 inclined to make a substantive ruling on the motion for preliminary injunction.

12 I struggle with – the one thing I do know is I struggle with the
13 legislature, or any administrative code, telling me – limiting my powers, if you will –
14 or a court's powers. And at some point when does that stop?

15 So I expect a couple things – doesn't mean I'll grant a preliminary
16 injunction, simply means I'm going to make a substantive ruling. And I guess if that
17 substantive ruling is in favor of the plaintiff then you'll have two avenues to pursue
18 with the Supreme Court. If it doesn't it really won't matter, but I intend to make a
19 substantive ruling. I don't intend to rely on that provision, if you will, to beg off, for
20 the reasons that have been argued today which I agree with.

21 And so I'm not saying I'm going to grant a preliminary injunction; I'm
22 simply saying I'm going to make a substantive decision. And if that means that the
23 plaintiff prevails then you two grounds, I guess, to pursue relief, but that should in no
24 way indicate I'm going to grant it or not. I really want to look at your briefs more
25 carefully. I'm going to order a transcript of your arguments.

1 And so I appreciate that you've been – well, first of all, the good news is
2 there's a five-year rule limitation in the state of Nevada, so it won't last – this case
3 won't last seven years. That's the first good piece of information for you.

4 MR. SHAFER: Well, Your Honor, I was in front of Judge Saitta, and
5 irrespective of that of rule, it lasted more than five years.

6 THE COURT: Not in Department IX it doesn't. So, I don't know – I
7 can't speak for her. I can only speak for me. But because of the fact that, you
8 know, you've been litigating this for a long time, and I appreciate that this was on
9 calendar a couple months ago, but really I've just been looking at your pleadings in
10 the last week. So, I beg your indulgence while I get as familiar with the issues as I
11 know you are, and the case law, and make a decision.

12 So, I'd, you know, love to rule from the bench and give you certainty
13 and let you be able to go off and conduct your affairs, but out of fairness to me, this
14 matter that it appears you've been litigating for years now, needs a little more of my
15 time and attention.

16 And so, what I'm going to do – excuse me.

17 (Court colloquy, off the record)

18 THE COURT: So, I'm going to set this on a chamber calendar for the
19 purposes of tracking it for a decision, and I wanted to get a transcript which will be
20 prepared as soon as she can. And, so, I'm going to put it on in two weeks. That's
21 for my purposes. I mean, you know, you'll understand that I'm looking at it as I can
22 over the next two weeks and I hope to render a decision as soon as possible. And I
23 know you're waiting, and you're welcome to check Blackstone, and you're welcome
24 to call my law clerk, although, not too much.

25 MR. DOERR: Take all the time you need as far as we're concerned.


1 THE COURT: I'm not going to say anything on that.
2 And you'd like me to hurry up and decide, so I'll do the best I can.
3 MR. SHAFER: I just want you to reach the right decision, Your Honor.
4 THE COURT: Sure, I understand.
5 So, I appreciate your patience and your thoroughness. And you've
6 certainly – you know, these cases are difficult enough, particularly if the lawyers
7 don't present the quality of briefing that you all have, so I do really appreciate it.
8 MR. SHAFER: Your Honor, could I ask one question?
9 THE COURT: Sure.
10 MR. SHAFER: There was an issue that was obliquely addressed in the
11 pleadings, and that is that we do have this case and then we have the refund action.
12 I don't know if it's coincidence that they're both in front of you, but they are both in
13 front of you.
14 THE COURT: It's random assignment.
15 MR. SHAFER: Okay.
16 MS. SULLIVAN: Wow.
17 MR. SHAFER: At some point we were – we actually talked
18 telephonically. I believe, the State does not –
19 THE COURT: Well, they say is they're not proper for consolidation –
20 they're not proper for consolidation, twice. And, so, I expect that you're going to
21 move to consolidate?
22 MR. SHAFER: Well, my question was, should I just file a formal motion
23 for that?
24 THE COURT: Yes.
25 MR. SHAFER: Or should we have a pre-trial – okay. We'll do –

1 THE COURT: I mean, unless you stipulate then –
2 MR. SHAFER: Okay.
3 THE COURT: -- if there's no stipulation you have to file a motion and –
4 MR. SHAFER: Thank you.
5 THE COURT: -- I'll consider it –
6 MR. SHAFER: Thank you.
7 THE COURT: -- based upon whatever I read.
8 MR. SHAFER: Thank you.
9 THE COURT: Okay. Now, normally those would go on my chamber
10 calendar, which would mean that you wouldn't be having oral argument unless there
11 was something special about it.
12 MR. SHAFER: Okay.
13 THE COURT: Okay.
14 MR. SHAFER: Thank you, Your Honor.
15 THE COURT: Thank you very much.
16 MR. POPE: Thank you, Your Honor.

17 PROCEEDING CONCLUDED AT 10:24 A.M.

18 * * * * *

19
20
21 ATTEST: I do hereby certify that I have truly and correctly transcribed the sound
22 recording in the above-entitled case.

23 
24 BEVERLY SIGURNIK
25 Court Recorder/Transcriber

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REGISTER OF ACTIONS

CASE NO. 06A533273

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

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Supreme Court No.: **60037**

PARTY INFORMATION

Lead Attorneys

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EVENTS & ORDERS OF THE COURT

08/14/2008	Status Check (3:00 AM) (Judicial Officer Togliatti, Jennifer) <i>STATUS CHECK: TRANSCRIPT/DECISION PENDING MOTIONS Heard By: Jennifer Togliatti</i>
	Minutes 08/14/2008 3:00 AM - COURT ORDERED, matter CONTINUED 30 Days for further consideration. CLERK'S NOTE: The above Minute Order has been distributed to: Ghanem & Sullivan; Catherine Cortez Masto, Attorney General (David J. Pope, Senior Deputy Attorney General). Return to Register of Actions

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EVENTS & ORDERS OF THE COURT

09/18/2008	Status Check (3:00 AM) (Judicial Officer Togliatti, Jennifer) <i>STATUS CHECK: TRANSCRIPT/DECISION PENDING MOTIONS Heard By: Jennifer Togliatti</i>
	Minutes 09/18/2008 3:00 AM - COURT ORDERED, matter CONTINUED 30 Days for further consideration. CLERK'S NOTE: The above Minute Order has been distributed to: Ghanem & Sullivan; Catherine Cortez Masto, Attorney General (David J. Pope, Senior Deputy Attorney General). Return to Register of Actions

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EVENTS & ORDERS OF THE COURT

10/16/2008	Status Check (3:00 AM) (Judicial Officer Togliatti, Jennifer) <i>STATUS CHECK: TRANSCRIPT/DECISION PENDING MOTIONS Heard By: Jennifer Togliatti</i>
	Minutes 10/16/2008 3:00 AM - COURT ORDERED, CONTINUED. Return to Register of Actions

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EVENTS & ORDERS OF THE COURT

11/06/2008	<p>Status Check (3:00 AM) (Judicial Officer Togliatti, Jennifer) <i>STATUS CHECK: TRANSCRIPT/DECISION PENDING MOTIONS Heard By: Jennifer Togliatti</i></p> <p>Minutes 11/06/2008 3:00 AM - COURT ORDERED, matter CONTINUED. CLERK'S NOTE: Pursuant to 11/13/08 hearing, status check CONTINUED. ac/11/13/08</p> <p>Return to Register of Actions</p>
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EVENTS & ORDERS OF THE COURT

11/13/2008	<p>Motion for Summary Judgment (9:00 AM) (Judicial Officer Togliatti, Jennifer) <i>DEFT'S MOTION FOR SUMMARY JUDGMENT /6 Court Clerk: Alan Paul Castle Reporter/Recorder: Yvette Lester Heard By: Jennifer Togliatti</i></p> <p>Minutes 11/13/2008 9:00 AM - Bradley Shafer, Esq., Plaintiff's counsel in Pro Hac Vice, also present. Colloquy regarding pending decision on motion to dismiss complaint. Parties to provide Court with binders referencing points highlighted in the pleadings. Arguments by counsel on motion for summary judgment. COURT ORDERED, matter continued to chambers for decision. Parties to be notified of decision by way of Minute Order.</p> <p>Parties Present Return to Register of Actions</p>
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DSO

DISTRICT COURT
CLARK COUNTY, NEVADA

FILED

DEC 2 1 56 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,

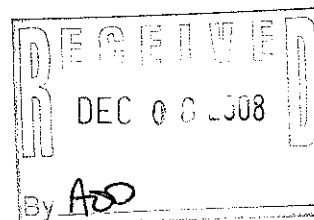
Plaintiffs,

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



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

1 Counsel representing all parties have been heard and
2 after consideration by the Discovery Commissioner,
3

4 IT IS HEREBY ORDERED:

5 1. all parties shall complete discovery on or before
6 4/27/09.

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

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

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

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

15
16 Certain dates from your case conference report(s) may
17 have been changed to bring them into compliance with N.R.C.P.
18 16.1.

19 Within 60 days from the date of this Scheduling Order,
20 the Court shall notify counsel for the parties as to the date
21 of trial, as well as any further pretrial requirements in
22 addition to those set forth above.
23

24 Unless otherwise directed by the court, all pretrial
25 disclosures pursuant to N.R.C.P. 16.1(a)(3) must be made at
26 least 30 days before trial.
27

28 . . .
. . .

1 Motions for extensions of discovery shall be made to the
2 Discovery Commissioner in strict accordance with E.D.C.R.
3 2.35. Discovery is completed on the day responses are due or
4 the day a deposition begins.

5 Unless otherwise ordered, all discovery disputes (except
6 disputes presented at a pre-trial conference or at trial) must
7 first be heard by the Discovery Commissioner.
8

9 Dated this 2 day of December, 2008.

10
11 
12 DISCOVERY COMMISSIONER

13 CERTIFICATE OF SERVICE

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

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

19 ~~Bradley J. Shafer, Esq.,~~
20 ~~Shafer & Associates~~
21 ~~3800 Capital City Blvd., Ste. 2~~
22 ~~Lansing, MI 48906~~

23
24 
25 COMMISSIONER DESIGNEE
26
27
28