

WEST'S NEVADA REVISED STATUTES ANNOTATED  
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.110, 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.

[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.

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(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.060. "Facility" defined

"Facility" means:

1. 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:

(a) An establishment that is not a licensed gaming establishment; or

(b) 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.

2. Any area or premises where live entertainment is provided if the live entertainment is provided at any other licensed gaming establishment.

[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

"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.

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

→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.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. Adoption by Department of regulations for determining whether activity is taxable

The Department shall provide by regulation for a more detailed definition of "live entertainment" consistent with the general definition set forth in NRS 368A.090 for use by the Board and the Department in determining whether an activity is a taxable activity under the provisions of this chapter.

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

### →368A.140. Duties of Board and Department; applicability of chapters 360 and 463 of NRS

#### 1. The Board shall:

(a) Collect the tax imposed by this chapter from taxpayers who are licensed gaming establishments; and

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

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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 Board and the Department may by regulation specify the types of records which must be kept to determine the amount of the liability of a taxpayer from whom they are required to collect 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 seating capacity 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 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).

(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 seating capacity of less than 300.

(e) Live entertainment that is provided at a licensed gaming establishment that is licensed for less than 51 slot machines, less than six games, or any combination of slot machines and games within those respective limits, if the facility in which the live entertainment is provided has a maximum seating capacity of less than 300.

(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.

6. As used in this section, "maximum seating capacity" 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. Taxpayer to hold taxes in separate account

A taxpayer shall hold the amount of all taxes for which he is liable pursuant to this chapter in a separate account in trust for the State.

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

→ 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. The report must be in a form

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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

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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

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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

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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 Nevada Gaming 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,

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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 Nevada Gaming 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 Nevada Gaming 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

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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 Nevada Gaming 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 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.

# EXHIBIT “C”

**RSPN**

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**DISTRICT COURT  
 CLARK COUNTY, NEVADA**

15	DÉJÀ VU SHOWGIRLS OF LAS VEGAS,	)	CASE NO.: A533273
16	LLC, d/b/a <i>Déjà Vu Showgirls</i> , LITTLE	)	
17	DARLINGS OF LAS VEGAS, et al.,	)	DEPT. NO.: 11
18		)	<i>Coordinated with</i>
19	Plaintiffs,	)	CASE NO.: A533273
20	vs.	)	DEPT. NO.: 11
21	NEVADA DEPARTMENT OF TAXATION;	)	
22	NEVADA TAX COMMISSION, et al.	)	
23		)	
24	Defendants.	)	

1 Plaintiff hereby submits the following responses to Defendants' Request for Production  
2 of Documents.

3 **REQUEST NO. 1:**

4 Any and all documents constituting monthly financial statements with departmental  
5 breakouts for all periods prepared internally or externally from January 2001 through the present.

6 **RESPONSE:**

7  
8 Objection. This request is not reasonably calculated to lead to the discovery of  
9 admissible evidence. Information concerning the amounts paid by Plaintiff to the State pursuant  
10 to the subject tax (the "tax") is already within Defendants' custody and control. Plaintiff's  
11 financial information is confidential and/or proprietary. Also, it is neither relevant, nor  
12 calculated to lead to the discovery of admissible evidence concerning the constitutionality of the  
13 tax, which is the sole matter at issue, or the amounts paid pursuant to the tax, which is not  
14 disputed. Finally, the term "periods" is vague and ambiguous.

15  
16 **REQUEST NO. 2:**

17 Any and all audited financial statements for all periods prepared from January 2001  
18 through the present.

19  
20 **RESPONSE:**

21 Objection. This request is not reasonably calculated to lead to the discovery of  
22 admissible evidence. Information concerning the amounts paid by Plaintiff to the State pursuant  
23 to the tax is already within Defendants' custody and control. Plaintiff's financial information,  
24 including audited financial statements, is confidential and/or proprietary. Also, it is neither  
25 relevant, nor calculated to lead to the discovery of admissible evidence concerning the  
26

1 constitutionality of the tax, which is the sole matter at issue, or the amounts paid pursuant to the  
2 tax, which is not disputed.

3 **REQUEST NO. 3:**

4 All Sales and Use Tax Returns for the period starting January 2001 through the present,  
5 along with all back-up work papers.

6 **RESPONSE:**

7  
8 Objection. Sales and Use Tax Returns are filed with the State; thus, the information  
9 sought by this request is obtainable from some other source that is more convenient, less  
10 burdensome, or less expensive, including without limitation the requesting parties themselves.  
11 Also, the term "back-up papers" is vague and ambiguous.

12  
13 **REQUEST NO. 4:**

14 Any and all documents constituting periodic profit and loss statements from January 2001  
15 through the present.

16 **RESPONSE:**

17 Objection. This request is not reasonably calculated to lead to the discovery of  
18 admissible evidence. Plaintiff's financial information, including periodic profit and loss  
19 statements, if such information exists, is confidential and/or proprietary. Also, it is neither  
20 relevant, nor calculated to lead to the discovery of admissible evidence concerning the  
21 constitutionality of the tax, which is the sole matter at issue, or the amounts paid pursuant to the  
22 tax, which is not disputed.

23  
24 **REQUEST NO. 5:**

25 Cash receipts journal(s), bank statements and cancelled checks from January 2001  
26 through the present.  
27  
28

**RESPONSE:**

Objection. This request is not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff's financial information, including cash receipt journals(s), bank statements and cancelled checks is confidential and/or proprietary. Also, it is neither relevant, nor calculated to lead to the discovery of admissible evidence concerning the constitutionality of the tax, which is the sole matter at issue, or the amounts paid pursuant to the tax, which is not disputed. Finally, this request is unduly burdensome, as it would require, among other things, Plaintiff to collect and produce every cash receipt, for every transaction, from the last 3,467 days (since January, 2002).

**REQUEST NO. 6:**

Any and all documents constituting General Ledgers from January 2001 through the present, including all sales invoices, daily sales reports and/or register tapes and/or contracts from January 2001 through the present.

**RESPONSE:**

Objection. This request is not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff's financial information is confidential and/or proprietary. Also, it is neither relevant, nor calculated to lead to the discovery of admissible evidence concerning the constitutionality of the tax, which is the sole matter at issue, or the amounts paid pursuant to the tax, which is not disputed. Finally, this request is unduly burdensome, as it seeks, among other things an individual "sales reports and/or register tape" for each register, from the last 3,467 days (since January, 2002).

///

///

**REQUEST NO. 7:**

Any and all documents constituting all versions and revisions of periodic budgets, variance analyses and related presentations, reports and communication from January 2001 to the present.

**RESPONSE:**

Objection. This request is not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff's financial information, including periodic budgets, variance analyses and related presentations, reports and communication, if such information exists, is confidential and/or proprietary. Also, it is neither relevant, nor calculated to lead to the discovery of admissible evidence concerning the constitutionality of the tax, which is the sole matter at issue, or the amounts paid pursuant to the tax, which is not disputed. Additionally, "variance analyses and related presentations, reports and communications" is vague and ambiguous. Finally, this request is unduly burdensome.

**REQUEST NO. 8:**

Any and all documents constituting all versions and revisions of periodic financial forecasts, projections and related strategic presentations, reports and communication from January 2001 to the present.

**RESPONSE:**

Objection. This request is not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff's financial information, including periodic financial forecasts, projections and related strategic presentations, reports and communication, if such information exists, is confidential and/or proprietary. Also, it is neither relevant, nor calculated to lead to the discovery of admissible evidence concerning the constitutionality of the tax, which is the sole

1 matter at issue, or the amounts paid pursuant to the tax, which is not disputed. Finally, this  
2 request is unduly burdensome and overbroad.

3 **REQUEST NO. 9:**

4 Any and all documents constituting all versions and revisions of periodic business plans,  
5 market studies, industry and competitor analyses and/or reports from January 2001 to the  
6 present.  
7

8 **RESPONSE:**

9 Objection. This request is not reasonably calculated to lead to the discovery of  
10 admissible evidence. Plaintiff's financial information, including versions and revisions of  
11 periodic business plans, market studies, industry and competitor analyses and/or reports, if such  
12 information exists, is confidential and/or proprietary. Also, it is neither relevant, nor calculated  
13 to lead to the discovery of admissible evidence concerning the constitutionality of the tax, which  
14 is the sole matter at issue, or the amounts paid pursuant to the tax, which is not disputed.  
15 Finally, this request is unduly burdensome.  
16

17 **REQUEST NO. 10:**

18 Any and all documents constituting data related to the monitoring and reporting of daily  
19 and monthly information and statistics of customer volume, activities, and spending from  
20 January 2001 to the present.  
21

22 **RESPONSE:**

23 Objection. This request is not reasonably calculated to lead to the discovery of  
24 admissible evidence. Plaintiff's financial information, including data related to the monitoring  
25 and reporting of daily and monthly information and statistics of customer volume, activities, and  
26 spending is confidential and/or proprietary. Also, it is neither relevant, nor calculated to lead to  
27  
28

1 the discovery of admissible evidence concerning the constitutionality of the tax, which is the sole  
2 matter at issue, or the amounts paid pursuant to the tax, which is not disputed. Finally, this  
3 request is unduly burdensome.

4 **REQUEST NO. 11:**

5 Any and all documents constituting all customer data from any loyalty club or similar  
6 databases from January 2001 through the present.

7 **RESPONSE:**

8 Objection. This request is not reasonably calculated to lead to the discovery of  
9 admissible evidence. Plaintiff's business information, including customer data, if such  
10 information exists, is confidential and/or proprietary. Also, it is neither relevant, nor calculated  
11 to lead to the discovery of admissible evidence concerning the constitutionality of the tax, which  
12 is the sole matter at issue, or the amounts paid pursuant to the tax, which is not disputed.  
13 Finally, this request is unduly burdensome.

14 **REQUEST NO. 12:**

15 Any and all documents constituting all information and data gathered related to customer  
16 satisfaction, suggestions and/or complaints from January 2003 to the present.

17 **RESPONSE:**

18 Objection. This request is not reasonably calculated to lead to the discovery of  
19 admissible evidence. Plaintiff's business information, including customer data/satisfaction, if  
20 such information exists, is confidential and/or proprietary. Also, it is neither relevant, nor  
21 calculated to lead to the discovery of admissible evidence concerning the constitutionality of the  
22 tax, which is the sole matter at issue, or the amounts paid pursuant to the tax, which is not  
23 disputed. Finally, this request is unduly burdensome.

1  
2 **REQUEST NO. 13:**

3 Any and all documents constituting Monthly Gross Revenue or Statistical Reports or the  
4 equivalent submitted to the Nevada Department of Taxation or equivalent agency since January  
5 1, 2001 to the present.  
6

7 **RESPONSE:**

8 Objection. This request is not reasonably calculated to lead to the discovery of  
9 admissible evidence. Information concerning the amounts paid by Plaintiff to the State pursuant  
10 to the tax is already within Defendants' custody and control. Also, it is neither relevant, nor  
11 calculated to lead to the discovery of admissible evidence concerning the constitutionality of the  
12 tax, which is the sole matter at issue, or the amounts paid pursuant to the tax, which is not  
13 disputed. Moreover, it appears one of the requesting parties (the Nevada Department of  
14 Taxation) is actually requesting that Plaintiff produce information "submitted to the Nevada  
15 Department of Taxation". In other words, Defendants are specifically requesting information  
16 that, by definition, Plaintiff's have already produced and thus, that Defendants already possess.  
17 As such, the information sought by this request is obtainable from some other source that is more  
18 convenient, less burdensome, or less expensive, including without limitation the requesting  
19 parties themselves.  
20  
21

22 **REQUEST NO. 14:**

23 Any and all documents constituting records of employees including, but not limited to,  
24 departmental headcounts, salaries and wages, W-2's, 1099's, Employment Security Report  
25 form(s), NUCS 4072, incentive compensation and benefits from January 2001 to the present.  
26

27 ///  
28

**RESPONSE:**

Objection. This request is not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff's business information, including personal information concerning employees, wages, benefits, etc., if such information exists, is confidential and/or proprietary. Also, it is neither relevant, nor calculated to lead to the discovery of admissible evidence concerning the constitutionality of the tax, which is the sole matter at issue, or the amounts paid pursuant to the tax, which is not disputed. Finally, this request is unduly burdensome.

**REQUEST NO. 15:**

Any and all incident payments or referral payments including, but not limited to payments made to limousines, taxis or car services from January 2001 to the present.

**RESPONSE:**

Objection. This request is not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff's business information, including "incentive payments or referral payments", if such information exists, is confidential and/or proprietary. Also, it is neither relevant, nor calculated to lead to the discovery of admissible evidence concerning the constitutionality of the tax, which is the sole matter at issue, or the amounts paid pursuant to the tax, which is not disputed. Finally, this request is unduly burdensome.

**REQUEST NO. 16:**

Any and all documents constituting the plaintiff's loss analysis including, but not limited to, plaintiff's schedule of lost revenue and any and all supporting documents constituting calculations, spreadsheets, reports, accounting ledgers and/or journals, projections, forecasts,

1 business plans, valuations or other information forming the basis for the loss from January 2001  
2 to the present.

3 **RESPONSE:**

4       Objection. Plaintiff does not have any documents constituting a "loss analysis" (a term  
5 that is vague and ambiguous), other than those documents setting forth and documenting all  
6 sums paid pursuant to the tax, all of which are already within Defendants' custody and control,  
7 as are all individual and aggregate calculations arising there from. Also, this information is  
8 neither relevant, nor calculated to lead to the discovery of admissible evidence concerning the  
9 constitutionality of the tax, which is the sole matter at issue, or the amounts paid pursuant to the  
10 tax, which is not disputed. Plaintiff's financial information is otherwise wholly irrelevant to the  
11 constitutionality of the subject tax, which is the sole matter at issue. Finally, it is overbroad and  
12 unduly burdensome.  
13

14  
15 **REQUEST NO. 17:**

16       Any and all documents constituting valuations or appraisals of the Company or its assets  
17 (including real property) prepared by financial consultants, appraisers, CPAs, accountants, or  
18 other third parties at any time from January 2001 to the present.  
19

20 **RESPONSE:**

21       Objection. This request is not reasonably calculated to lead to the discovery of  
22 admissible evidence. Plaintiff's business information, including documents constituting  
23 valuations or appraisals of the Company or its assets (including real property) prepared by  
24 financial consultants, appraisers, CPAs, accountants, or other third parties, etc., if such  
25 information exists, is confidential and/or proprietary. Also, it is neither relevant, nor calculated  
26 to lead to the discovery of admissible evidence concerning the constitutionality of the tax, which  
27  
28

1 is the sole matter at issue, or the amounts paid pursuant to the tax, which is not disputed.

2 Additionally, this request is unduly burdensome and overly broad.

3 **REQUEST NO. 18:**

4 Any and all documents constituting offers, bids, or proposals received by the Company  
5 for the actual or potential purchase of any and all its assets (including real property) prepared by  
6 actual or potential buyers, accountants, investment bankers, contractors, or other third parties at  
7 any time from January 2001 to the present.

8 **RESPONSE:**

9 Objection. This request is not reasonably calculated to lead to the discovery of  
10 admissible evidence. Information concerning offers or potential offers to purchase any or all of  
11 Plaintiff's assets, if such information exists, is confidential and/or proprietary. Also, it is neither  
12 relevant, nor calculated to lead to the discovery of admissible evidence concerning the  
13 constitutionality of the tax, which is the sole matter at issue, or the amounts paid pursuant to the  
14 tax, which is not disputed. Finally, this request is overly broad and unduly burdensome.

15 **REQUEST NO. 19:**

16 Any and all documents reflecting all debt or other financial arrangements (actual and  
17 prospective) entered into by the Company including, but not limited to, loan agreements, line of  
18 credit agreements, promissory notes, letter of credit agreements, guarantee agreements, or other  
19 contractual documents at any time from January 2001 to the present.

20 **RESPONSE:**

21 Objection. This request is not reasonably calculated to lead to the discovery of  
22 admissible evidence. Information concerning Plaintiff's debt or other financial arrangements, if  
23 such information exists, is confidential and/or proprietary. Also, it is neither relevant, nor  
24

1 calculated to lead to the discovery of admissible evidence concerning the constitutionality of the  
2 tax, which is the sole matter at issue, or the amounts paid pursuant to the tax, which is not  
3 disputed. Finally, this request is overly broad and unduly burdensome.  
4

5 **REQUEST NO. 20:**  
6

7 Any and all documents constituting the correspondence, loan and/or credit applications,  
8 proposals, and other agreements between the Company and financial institutions, accountants,  
9 financial consultants, or other third parties prepared at any time from January 2001 to the  
10 present.  
11

12 **RESPONSE:**

13 Objection. This request is not reasonably calculated to lead to the discovery of  
14 admissible evidence. Information concerning Plaintiff's correspondence, loan and/or credit  
15 applications, proposals, and other agreements between the Company and financial institutions,  
16 accountants, financial consultants, or other third parties, if such information exists, is  
17 confidential and/or proprietary. Also, it is neither relevant, nor calculated to lead to the  
18 discovery of admissible evidence concerning the constitutionality of the tax, which is the sole  
19 matter at issue, or the amounts paid pursuant to the tax, which is not disputed. Finally, this  
20 request is overly broad and unduly burdensome.  
21  
22

23 **REQUEST NO. 21:**  
24

25 All Federal Tax returns and schedules filed by the Plaintiff from January 2001 to the  
26 present.  
27

28 ///

**RESPONSE:**

Objection. Federal Tax returns are privileged and confidential. Also, it is neither relevant, nor calculated to lead to the discovery of admissible evidence concerning the constitutionality of the tax, which is the sole matter at issue, or the amounts paid pursuant to the tax, which is not disputed.

**REQUEST NO. 22:**

Any and all documents constituting agreements and/or contracts with vendors, suppliers, lessees, lessors or other providers or recipients of products or services from January 2001 to the present.

**RESPONSE:**

Objection. This request is not reasonably calculated to lead to the discovery of admissible evidence. Information concerning Plaintiff's agreements and/or contracts with vendors, suppliers, lessees, lessors or other providers or recipients of products or services, if such information exists, is confidential and/or proprietary. Also, it is neither relevant, nor calculated to lead to the discovery of admissible evidence concerning the constitutionality of the tax, which is the sole matter at issue, or the amounts paid pursuant to the tax, which is not disputed. Finally, this request is overly broad and unduly burdensome.

**REQUEST NO. 23:**

All correspondence to and from the Department of Taxation regarding Live Entertainment Tax from January 2003 to the present.

**RESPONSE:**

Objection. This request is not reasonably calculated to lead to the discovery of admissible evidence. Moreover, it appears one of the requesting parties (the Nevada Department

1 of Taxation) is actually requesting that Plaintiff produce correspondence "to and from the  
2 Nevada Department of Taxation"). In other words, Defendants are specifically requesting  
3 information that by definition Plaintiffs have already produced and thus, is already in their  
4 possession. As such, the information sought by this request is obtainable from some other  
5 source that is more convenient, less burdensome, or less expensive, including without limitation  
6 the requesting parties themselves.  
7

8 **REQUEST NO. 24:**

9 Copies of all signs referencing any applicable tax, including information regarding the  
10 location of all of the signs, the dates each sign was posted and time of day that the [sic] each sign  
11 is posted from January 2003 to the present.  
12

13 **RESPONSE:**

14 Objection. This request is not reasonably calculated to lead to the discovery of  
15 admissible evidence. Information concerning Plaintiff's signs referencing any applicable tax,  
16 including information regarding the location of all of the signs, the dates each sign was posted  
17 and time of day that the [sic] each sign is posted, if such information exists, it is neither relevant,  
18 nor calculated to lead to the discovery of admissible evidence concerning the constitutionality of  
19 the tax, which is the sole matter at issue, or the amounts paid pursuant to the tax, which is not  
20 disputed.  
21

22 **DATED:** July 1, 2011  
23

24 TURCO & DRASKOVICH  
25 SHAFER & ASSOCIATES, P.C.

26 By 

27 WILLIAM H. BROWN, ESQ. (7623)  
28 BRADLEY J. SHAFER, ESQ.  
Counsel for Plaintiffs

## CERTIFICATE OF SERVICE

I hereby certify that on July 5, 2011, service of the forgoing:

**RESPONSES TO DEFENDANTS' REQUESTS FOR PRODUCTION OF DOCUMENTS**

was made this date by e-serving, and by faxing a true and correct copy of same to the address listed below:

David J. Pope, Esq.  
Blake A. Doerr, Esq.  
Vivienne Rakowsky, Esq.  
Nevada Attorney General  
555 E. Washington Ave., Ste. 3900  
LV, NV 89101  
Fax: 486-3416  
*Counsel for Defendants*

An employee of Turco & Draskovich, LLP.  
SHAHER & ASSOCIATES, P.C.

# EXHIBIT “D”

title

## **Vivienne Rakowsky**

---

**From:** Vivienne Rakowsky  
**Sent:** Tuesday, June 28, 2011 4:16 PM  
**To:** 'roosb@gtlaw.com'  
**Cc:** Blake A. Doerr; David J. Pope  
**Subject:** Shac LLC

Dear Mr. Roos:

Pursuant to EDCR 2.34 I am requesting a meet and confer regarding your deficient and boilerplate responses to the Defendants' Request for Production of Documents. Please contact me no later than 5:00 p.m. on Thursday, June 30, 2011 to schedule this discussion.

I look forward to hearing from you.

Sincerely,  
Vivienne

**Vivienne Rakowsky, Deputy Attorney General**  
State of Nevada  
Office of the Attorney General  
555 East Washington Avenue, Suite 3900  
Las Vegas, Nevada 89101  
[vrakowsky@ag.nv.gov](mailto:vrakowsky@ag.nv.gov)  
Phone: (702) 486-3103  
Fax: (702) 486-3416

This message and attachments are intended only for the addressee(s) and may contain information that is privileged and confidential. If the reader of the message is not the intended recipient or an authorized representative of the intended recipient, I did not intend to waive and do not waive any privileges or the confidentiality of the messages and attachments, and you are hereby notified that any dissemination of this communication is strictly prohibited. If you receive this communication in error, please notify me immediately by e-mail at [vrakowsky@ag.nv.gov](mailto:vrakowsky@ag.nv.gov) and delete the message and attachments from your computer and network. Thank you.

# EXHIBIT “E”

**Vivienne Rakowsky**

---

**From:** roosb@gtlaw.com  
**Sent:** Friday, July 15, 2011 4:34 PM  
**To:** Vivienne Rakowsky  
**Cc:** ferrariom@gtlaw.com  
**Subject:** FW: Shac LLC

Vivienne,

I have reviewed the NAC provision you referenced in our call. If I understand the NAC provision and your argument, the State is taking the position that if the LET is deemed unconstitutional, and by virtue of that decision the tax collected is therefore deemed to be an "over-collection" pursuant to NAC 368A.170, then the "taxpayer" (in this instance SHAC, LLC) is not entitled to any of the refund for that over-collection *unless* SHAC, LLC pays that money back to the "patron" from whom it was collected. Under NAC 368A.170(4), the State is taking the position if SHAC, LLC cannot identify the patrons from whom it collected the tax, then it cannot pay over the refund to those patrons. And, if SHAC, LLC cannot pay the refund to the patron, then the money essentially escheats to the State. Thus, the State is claiming that the refund portion of the case does not present a viable claim for relief by SHAC, LLC. I cannot determine from the transcripts whether Judge Gonzalez ultimately made a determination regarding that argument, but she certainly raised concerns as to the validity of that contention.

With that understanding, I have again reviewed the discovery requests based on your arguments and the law you have cited. In its Requests for Production, the State has generally asked for records regarding how much money SHAC, LLC actually made (or lost) from 2001 to present, or forecasted it would make during that same timeframe; how much money SHAC has paid in SalesTax, Use Tax and LET to the State; statistical information regarding customer volume, spending, satisfaction, complaints, etc.; comprehensive employee records; taxicab payment records; business valuations of the company, and offers, bids or proposals to purchase or sell the company; and contracts with vendors or suppliers. None of the foregoing information has anything to do with the question before the Court regarding the facial and "as applied" validity of the statute under the First Amendment, or even the refund issue you have raised. I simply do not see how the information that the State has requested from SHAC bears any relationship to proving or disproving its legal position, or furthermore how the information requested will lead to the discovery of admissible evidence related to any of the claims pending in the lawsuit. Moreover, the accumulation and production of the volume of information that the State has requested would place a significant burden on SHAC.

The State has collected a fixed sum of money from SHAC in LET. That fixed sum will not change based upon any of the information requested by the State. Either the fixed sum will be paid back to SHAC, or it will not be paid back to SHAC depending upon the ruling of the Court. Based on the foregoing, I do not think we will be able to reach an agreement on the responses to Requests for Production. Therefore, I think it would be best to address these issues with Judge Gonzalez through motion practice.

Call me with any questions.

Brandon E. Roos  
Shareholder  
Greenberg Traurig, LLP | Suite 400 North  
3773 Howard Hughes Parkway | Las Vegas, Nevada 89169  
Tel 702.938.6872 | Cell 702.370.0782  
[roosb@gtlaw.com](mailto:roosb@gtlaw.com) | [www.gtlaw.com](http://www.gtlaw.com)



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Tax Advice Disclosure: To ensure compliance with requirements imposed by the IRS under Circular 230, we

title

inform you that any U.S. federal tax advice contained in this communication (including any attachments), unless otherwise specifically stated, was not intended or written to be used, and cannot be used, for the purpose of (1) avoiding penalties under the Internal Revenue Code or (2) promoting, marketing or recommending to another party any matters addressed herein.

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---

**From:** Vivienne Rakowsky [mailto:VRakowsky@ag.nv.gov]  
**Sent:** Thursday, July 14, 2011 10:40 AM  
**To:** Roos, Brandon E. (Shld-LV-LT)  
**Subject:** Shac LLC

Thanks for taking part in the 2.34 conference yesterday. Just to follow up, you were going to review the applicable statutes and regulations and get back to me with respect to providing the documentation requested in the Requests for Production. If there is anything else that you need, please let me know.

I look forward to hearing from you.

Sincerely,  
Vivienne

**Vivienne Rakowsky, Deputy Attorney General**  
State of Nevada  
Office of the Attorney General  
555 East Washington Avenue, Suite 3900  
Las Vegas, Nevada 89101  
[vrakowsky@ag.nv.gov](mailto:vrakowsky@ag.nv.gov)  
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Fax: (702) 486-3416

This message and attachments are intended only for the addressee(s) and may contain information that is privileged and confidential. If the reader of the message is not the intended recipient or an authorized representative of the intended recipient, I did not intend to waive and do not waive any privileges or the confidentiality of the messages and attachments, and you are hereby notified that any dissemination of this communication is strictly prohibited. If you receive this communication in error, please notify me immediately by e-mail at [vrakowsky@ag.nv.gov](mailto:vrakowsky@ag.nv.gov) and delete the message and attachments from your computer and network. Thank you.

# EXHIBIT “F”

title

## **Vivienne Rakowsky**

---

**From:** Blake A. Doerr  
**Sent:** Wednesday, July 13, 2011 8:54 AM  
**To:** Will Brown; Andrea Pritzlaff  
**Cc:** Vivienne Rakowsky  
**Subject:** EDCR 2.34

Will and Andrea,  
During the meet and confer, I asked you to let me know before this Friday July 15, 2011 if you remained unwilling to provide any of the requested documents.  
If I haven't heard from you by that date we intend to proceed with the filing of a Motion to Compel.  
Blake

**Blake A. Doerr, Senior Deputy Attorney General**  
State of Nevada  
Office of the Attorney General  
555 East Washington Avenue, Suite 3900  
Las Vegas, Nevada 89101  
[bdoerr@ag.nv.gov](mailto:bdoerr@ag.nv.gov)  
Phone: (702) 486-3095  
Fax: (702) 486-3416

This message and attachments are intended only for the addressee(s) and may contain information that is privileged and confidential. If the reader of the message is not the intended recipient or an authorized representative of the intended recipient, I did not intend to waive and do not waive any privileges or the confidentiality of the messages and attachments, and you are hereby notified that any dissemination of this communication is strictly prohibited. If you receive this communication in error, please notify me immediately by e-mail at [bdoerr@ag.nv.gov](mailto:bdoerr@ag.nv.gov) and delete the message and attachments from your computer and network. Thank you.

# EXHIBIT “G”



JIM GIBBONS  
Governor  
THOMAS R. SHEETS  
Chair, Nevada Tax Commission  
DINO DICIANNO  
Executive Director

STATE OF NEVADA  
DEPARTMENT OF TAXATION

Web Site: <http://tax.state.nv.us>  
1550 College Parkway, Suite 115  
Carson City, Nevada 89706-7937  
Phone: (775) 684-2000 Fax: (775) 684-2020

LAS VEGAS OFFICE  
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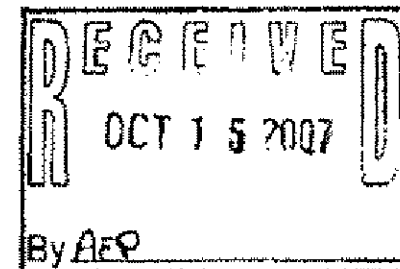
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HENDERSON OFFICE  
2550 Paseo Verde Parkway Suite 180  
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October 12, 2007

Bradley Shafer, Esq.  
Shafer and Associates  
3800 Capital City Blvd., Ste 2  
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CERTIFIED MAIL 7003 1680 0001 3683 7108



Dianna L. Sullivan, Esq.  
Ghanem & Sullivan  
8861 W. Sahara Ave., Ste 120  
Las Vegas, Nevada 89117

CERTIFIED MAIL 7003 1680 0001 3683 6538

**IN THE MATTER OF:** The Appeal of Olympic Gardens, Inc., D.I. Food & Beverage of Las Vegas, Shac, LLC, D. Westwood, Inc., K-Kel, Inc., The Power Co., Inc. ("Appellants") from the Department of Taxation's Denial of their refund request pursuant to NRS 368A.260

The above matter came before the Nevada Tax Commission ("the Commission") for hearing on August 6, 2007. Bradley Shafer, Esq. and Dianna Sullivan, Esq. appeared on behalf of Appellants. Senior Deputy Attorney General David J. Pope and Deputy Attorney General Dennis Belcourt appeared on behalf of the Department of Taxation ("the Department").

The Commission hereby makes the following Findings of Fact, Conclusions of Law and Decision.

**FINDINGS OF FACT**

1. Appellants, as providers of live entertainment, are or have been taxpayers under NRS chapter 368A, through which is imposed the Live Entertainment Tax ("LET").
2. Appellants filed timely requests for refunds pursuant to NRS 368A.260 for the tax periods of January, February 2004, March 2004 and April 2004, claiming that the LET is facially unconstitutional, that it unconstitutionally targets them or their message, and that they are entitled to refunds for the taxes paid by them, pursuant to NRS 368A.200(5)(a).
3. The Department denied Appellants' requests.
4. Appellants filed timely appeals from the Department's denials of their refund requests.
5. In this appeal, Appellants contend that a tax on live entertainment is per se unconstitutional, that the LET is rendered unconstitutional by the number of statutory exemptions, which Appellants claim make the tax one targeted at live adult entertainment, and that the legislative record shows an intent to tax based on content, to the detriment of providers of live adult entertainment.
6. If any Finding of Fact is more properly classified as a Conclusion of Law, then it shall be deemed such.

### CONCLUSIONS OF LAW

1. NRS 368A.200(5)(a) exempts from the live entertainment tax "(l)ive entertainment that this State is prohibited from taxing under the Constitution, laws or treaties of the United States or the Nevada Constitution."
2. Entertainment can be a form of speech protected under the First Amendment of the United States Constitution and Article I, section 9 of the Nevada Constitution.
3. The United States and Nevada Constitutions do not forbid taxation of live entertainment as such.
4. NRS 368A.090 contains a definition of live entertainment. Regulations and an amendment to NRS 368A.090 define what is not live entertainment.
5. NRS 368A.200, as initially enacted in 2003 and as amended in 2005 and 2007, contains exemptions from the live entertainment tax.
6. A tax that targets a small group of speakers may violate the United States and Nevada constitutional protections against infringement of speech.
7. The live entertainment tax under NRS chapter 368A is an extension of the former casino entertainment tax (NRS chapter 463). It is imposed on an array of types of entertainment, both at licensed gaming establishments and other locations. It therefore does not target a small group of speakers.
8. A tax that constitutes a "regulation of speech because of disagreement with the message which it conveys" may violate the United States and Nevada constitutional protections against infringement of speech. *Ward v. Rock against Racism*, 491 U.S. 781, 791 (1989).
9. The definition in NRS 368A.090, the exemptions in NRS 368A.200, and other provisions of NRS chapter 368A delineating the scope of the tax are reasonable classifications for tax purposes and do not appear to be aimed at any message that may be contained in the entertainment by Appellants or any other speakers. See *Madden v. Kentucky*, 309 U.S. 83, 87-88, 60 S.Ct. 406, 408 (1940) (providing, "[i]n taxation, even more than in other fields, legislatures possess the greatest freedom in classification").
10. Mention by legislators of taxability of live adult entertainment under a proposed bill that was subsequently enacted does not prove that the bill was enacted because of disagreement with the message provided by live adult entertainment.
11. Statements by legislators with respect to a bill that would have taxed live adult entertainment as a separate class, where the bill did not pass, does not prove the intent of a separate bill that did not select live adult entertainment.
12. If any Conclusion of Law is more properly classified as a Finding of Fact, then it shall be deemed such.

### DECISION

After due deliberation, and based on the foregoing, the Commission denied the appeal.

FOR THE COMMISSION:

  
DINO DICIANO  
Executive Director  
Nevada Department of Taxation

cc: David Pope, Sr. Deputy Attorney General  
Dennis Belcourt, Deputy Attorney General  
Taxpayers (via regular mail)

# EXHIBIT “H”

title

## **Vivienne Rakowsky**

---

**From:** Vivienne Rakowsky  
**Sent:** Wednesday, June 29, 2011 2:41 PM  
**To:** 'roosb@gtlaw.com'  
**Cc:** Blake A. Doerr; David J. Pope  
**Subject:** Shac LLC

Thanks for speaking with us earlier. Just to confirm, you will contact me within two days and let me know when we can expect appropriate responses to the Department's discovery requests. As we said to your paralegal on June 27<sup>th</sup> and to you on the telephone today, we understand that you have just received the case and we can give you an extension, but you would need to let us know when we can expect to receive the disclosures. Please keep in mind that this action commenced on December 19, 2006 and five year clock is running.

I look forward to hearing from you.

Sincerely,  
Vivienne

**Vivienne Rakowsky, Deputy Attorney General**  
State of Nevada  
Office of the Attorney General  
555 East Washington Avenue, Suite 3900  
Las Vegas, Nevada 89101  
[vrakowsky@ag.nv.gov](mailto:vrakowsky@ag.nv.gov)  
**Phone:** (702) 486-3103  
**Fax:** (702) 486-3416

This message and attachments are intended only for the addressee(s) and may contain information that is privileged and confidential. If the reader of the message is not the intended recipient or an authorized representative of the intended recipient, I did not intend to waive and do not waive any privileges or the confidentiality of the messages and attachments, and you are hereby notified that any dissemination of this communication is strictly prohibited. If you receive this communication in error, please notify me immediately by e-mail at [vrakowsky@ag.nv.gov](mailto:vrakowsky@ag.nv.gov) and delete the message and attachments from your computer and network. Thank you.

# EXHIBIT “I”

title

## **Vivienne Rakowsky**

---

**From:** Vivienne Rakowsky  
**Sent:** Friday, July 01, 2011 3:09 PM  
**To:** 'roosb@gtlaw.com'  
**Subject:** Shac LLC

Just following up on the discovery responses. When we last spoke you were going to check with your client because you had not discussed it with him at that time. Please give me a time frame as to when I can expect the revised responses.

Thanks, and I look forward to hearing from you.

Sincerely,  
Vivienne

**Vivienne Rakowsky, Deputy Attorney General**  
State of Nevada  
Office of the Attorney General  
555 East Washington Avenue, Suite 3900  
Las Vegas, Nevada 89101  
[vrakowsky@ag.nv.gov](mailto:vrakowsky@ag.nv.gov)  
Phone: (702) 486-3103  
Fax: (702) 486-3416

This message and attachments are intended only for the addressee(s) and may contain information that is privileged and confidential. If the reader of the message is not the intended recipient or an authorized representative of the intended recipient, I did not intend to waive and do not waive any privileges or the confidentiality of the messages and attachments, and you are hereby notified that any dissemination of this communication is strictly prohibited. If you receive this communication in error, please notify me immediately by e-mail at [vrakowsky@ag.nv.gov](mailto:vrakowsky@ag.nv.gov) and delete the message and attachments from your computer and network. Thank you.

Skip to Main Content Logout My Account Search Menu New District Civil/Criminal  
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**


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

**Minutes**

08/23/2011 9:00 AM

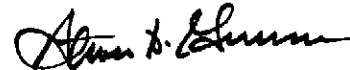
- NEVADA DEPARTMENT OF TAXATION'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON THE PLAINTIFFS' CLAIMS FOR REFUND AND MOTION TO DISMISS THE AS APPLIED CHALLENGE TO THE LIVE ENTERTAINMENT TAX AND THE CLAIMS FOR DAMAGES PURSUANT TO 42 U.S.C. 1983 AND TO DISMISS CASE 2 FOR FAILURE TO FILE A PETITION FOR JUDICIAL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

[Parties Present](#)

[Return to Register of Actions](#)

**MOT**

WILLIAM H. BROWN  
Nevada Bar No.: 7623  
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6029 S. Ft. Apache Rd., Ste. 100  
Las Vegas, NV 89148  
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Will@whbesq.com  
*Counsel for Plaintiffs*



CLERK OF THE COURT

BRADLEY J. SHAFER,  
Michigan Bar No. P36604\*  
SHAFER & ASSOCIATES, P.C.  
3800 Capital City Blvd., Suite #2  
Lansing, Michigan 48906-2110  
Telephone: (517) 886-6566  
Facsimile: (517) 886-6565  
*Co-Counsel for Plaintiffs*  
*\*Admitted Pro Hac Vice*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A533273  
Dept. No.: XI

*Coordinated with:*

Case No. 08A554970  
Dept. No. XI

**PLAINTIFFS' MOTION FOR  
SUMMARY JUDGMENT ON FACIAL  
CHALLENGE, FOR PERMANENT  
INJUNCTION, AND FOR RETURN OF  
TAXES**

Date of Hearing: \_\_\_\_\_

Time of Hearing: \_\_\_\_\_

1 COME NOW Plaintiffs, by and through their attorneys of record, William H. Brown of  
2 the law firm of LAW OFFICES OF WILLIAM H. BROWN, ESQ., LTD., and Bradley J.  
3 Shafer, of the law firm of SHAFER & ASSOCIATES, P.C., and hereby respectfully move this  
4 Honorable Court for partial summary judgment and a permanent injunction enjoining the  
5 Defendants, and their officers, employees, agents, representatives, and all persons acting by,  
6 through, and for them, from enforcing, applying, and implementing Title 32, Chapter 368A of  
7 the Nevada Revised Statutes, for the reasons that it is unconstitutional on its face under Article  
8 I, §§ 9 and 10 of the Nevada Constitution, as well as the First and Fourteenth Amendments to  
9 the United States Constitution, and ordering the return of all taxes paid by Plaintiffs  
10 thereunder, along with interest.  
11  
12

13 ///

14 ///

15 ///

1 This Motion is made and based upon the Verified Complaint for Declaratory and  
2 Injunctive Relief, Damages, and Attorney Fees and Costs, the exhibits thereof, the following  
3 Points and Authorities, the exhibits and affidavit attached thereto, the submissions on file in  
4 this action, prior arguments of counsel, and the arguments of counsel to be made at the time of  
5 the hearing.  
6

7 DATED this 22nd day of September, 2011

8 BY: /s/ William H. Brown  
9 Nevada Bar No.: 7623  
10 LAW OFFICES OF WILLIAM H. BROWN, LTD.  
11 6029 S. Ft. Apache Rd., Ste. 100  
12 Las Vegas, NV 89148  
13 Phone: (702) 385-7280  
14 Facsimile: (702) 386-2699  
15 Will@whbesq.com  
16 *Counsel for Plaintiffs*

17 BRADLEY J. SHAFER  
18 Michigan Bar No. P36604\*  
19 SHAFER & ASSOCIATES, P.C.  
20 3800 Capital City Blvd., Suite #2  
21 Lansing, Michigan 48906-2110  
22 Brad@bradshaferlaw.com  
23 *Co-Counsel for Plaintiffs*  
24 *\*Admitted Pro Hac Vice*  
25  
26  
27  
28

**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 and Blake Doerr

PLEASE TAKE NOTICE that Plaintiffs will bring their Motion for Partial Summary  
Judgment on Facial Challenge, for Permanent Injunction, and for Return of Taxes for hearing  
before the District Court, Department XI, on the 25 of Oct, 2011, 9:00 a or as  
soon thereafter as counsel can be heard.

Dated this 22nd day of September, 2011.

BY: /s/ William H. Brown  
WILLIAM H. BROWN  
Nevada Bar No.: 7623  
LAW OFFICES OF WILLIAM H. BROWN, LTD.  
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*Counsel for Plaintiffs*

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Lansing, Michigan 48906-2110  
Brad@bradshaferlaw.com  
*Co-Counsel for Plaintiffs*  
*\*Admitted Pro Hac Vice*

## MEMORANDUM OF POINTS AND AUTHORITIES

### I. BACKGROUND AND FACTS

Plaintiffs operate commercial entertainment establishments in the City of Las Vegas, which present on their business premises live performance dance entertainment to the consenting adult public. Verified Complaint for Declaratory and Injunctive Relief, Damages, and Attorney Fees and Costs ("Comp."), 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,<sup>1</sup> as well as by Art. I, §§ 9 and 10 of the Nevada Constitution.<sup>2</sup> Comp., ¶ 36.

On or about July 22, 2003, the State of Nevada enacted Title 37, Chapter 368A of the Nevada Revised Statutes (hereinafter "Chapter 368A, or sometimes the "statute"), which modified the previous "Casino Entertainment Tax" and imposed, for the first time and subject to numerous and various exceptions, an excise tax on admission to any facility that provides defined "live entertainment." Comp., ¶ 22. This tax is sometimes referred to hereinafter as

---

<sup>1</sup> 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.

<sup>2</sup> 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 the "Live Entertainment Tax," or simply the "LET." A copy of the version of Chapter 368A  
2 adopted in 2003 is attached hereto as Ex. 1. As originally enacted, the tax imposed by  
3 Chapter 368A was not applicable, under the terms of N.R.S. § 368A.200(5)(d), to live  
4 entertainment that was not provided at a licensed gaming establishment if the facility had a  
5 maximum occupancy of less than 300 persons. Ex. 1, § 368A.200(5)(d); and Comp., ¶ 25.  
6  
7 However, on June 17, 2005, Chapter 368A was amended by Assembly Bill No. 554; a copy of  
8 which is attached hereto as Ex. 2. Among other things, Assembly Bill No. 554 reduced the  
9 scope of the exception as contained in N.R.S. § 368A.200(5)(d) from a maximum seating  
10 capacity limitation of 300 to 200. The stated purpose of this amendment was to specifically  
11 extend the tax obligation as contained in Chapter 368A to a number of the Plaintiffs'  
12 establishments that were not then subject to the LET. Comp., ¶ 26; and Ex. 2,  
13 § 368A.200(5)(d). For the same stated reasons, the LET was again modified in 2005, via  
14 Senate Bill 3 (Ex. 3, p. 13), to change the references in NRS 368A.200 from "seating capacity"  
15 to "occupancy." Then in 2007, via Assembly Bill 487 (Ex. 4) , the LET was modified to  
16 exempt "certain minor league baseball events . . ." (Id. at p. 1).  
17  
18

19 The current codified version of Chapter 368A, incorporating the amendments as contained  
20 in Assembly Bills No. 554 and 487, as well as Senate Bills, are attached hereto as Ex. 5, and  
21 unless designated to the contrary, any further references to the specific provisions of the Statute  
22 refer to the version as found as Ex. 5, while the previous version of the LET will be referred to  
23 as the "2003 LET."  
24

25 The Defendants are the departments, boards, and individuals charged with enforcing  
26 Chapter 368A. They take the position that the Plaintiffs are all subject to the Statute, and the  
27 Defendants have required the Plaintiffs to pay the LET as mandated therein. Comp., ¶¶ 17-20,  
28

1 27-34, 37. Contrarily, the Plaintiffs contend the tax imposed by Chapter 368A is both illegal  
2 and unconstitutional,<sup>3</sup> and that even if that is not the case, they are specifically exempted from  
3 paying the LET pursuant to the statutory exemptions as contained therein. Comp., §§ 38-39,  
4 53. Nevertheless, under threat of criminal prosecution and the imposition of fines and other  
5 penalties against them, Plaintiffs have all, beginning at various times, paid the LET mandated  
6 by Chapter 368A. Comp., §§ 38.

8 Because the tax in question is specifically directed at activities protected by the First  
9 Amendment, Plaintiffs have brought their action, in part, pursuant to a federal civil rights  
10 statute, 42 U.S.C. § 1983, which permits actions at law and suits in equity to redress  
11 deprivations of constitutional rights. Comp., §§ 1, 3, and 66.

## 13 **II. PROCEDURAL HISTORY**

14 In order to safeguard their constitutional rights, Plaintiffs, on April 18, 2006, filed suit  
15 in the United States District Court for the District of Nevada, Case Number CV-S-06-00480-  
16 RLH-RJJ, seeking similar remedies sought in the instant lawsuits<sup>4</sup>: A declaration that the LET  
17 is unconstitutional, an injunction against the enforcement of Chapter 368A, and return of the  
18 live entertainment taxes that had been paid. These same Defendants filed a motion to dismiss  
19 the federal action, claiming that the Tax Injunction Act (“TIA”), 28 U.S.C. § 1341, precluded  
20 the federal court from having jurisdiction over the claims because there existed a “plain,  
21 speedy, and efficient remedy” in state court. The district court dismissed Plaintiffs’ complaint  
22 on that basis (Ex. 7), and Plaintiffs appealed that dismissal to the United States Court of  
23

---

26  
27 <sup>3</sup> Indeed, the Attorney General of Tennessee previously issued an opinion declaring that  
a similar tax proposed in that state would be unconstitutional. See Exhibit 6.

28 <sup>4</sup> As discussed herein, a subsequent action for refund, as permitted by Chapter 368A, was  
filed, and a Petition for Judicial Review is now pending.

1 Appeals for the Ninth Circuit, which affirmed the District Court's decision on May 20, 2008,  
2 in a three-paragraph order. Ex. 8.

3 In order to prevent their constitutional rights from further violation, Plaintiffs filed this  
4 instant action (Case No. A533273, referred to in this Motion as "Case 1") in December 2006.  
5 The Parties agreed, however, to extend the date for the Defendants to answer that complaint  
6 because, in an abundance of caution, a number these Plaintiffs filed, at approximately the same  
7 time, administrative claims for refunds.  
8

9 Specifically, on February 27, 2007, within the three year statutory period under N.R.S.  
10 § 368A.260(1) for the filing of administrative refund claims, Plaintiffs K-Kel, Inc., Olympus  
11 Garden, Inc., SHAC, LLC, The Power Company, Inc., D.Westwood, Inc. and D.I. Food &  
12 Beverage of Las Vegas, LLC (identified herein as the "K-Kel Plaintiffs") filed individual  
13 requests for refunds of the LET that they had paid during certain months.<sup>5</sup> A redacted copy of  
14 one of those refund requests is attached as Ex. 9, which illustrates that the *sole* basis for the  
15 request for refund was the asserted unconstitutionality, and therefore inapplicability to the  
16 Plaintiffs, of the LET.  
17  
18  
19  
20

---

21 <sup>5</sup> Plaintiffs Deja Vu Showgirls of Las Vegas, LLC, and Little Darlings of Las Vegas,  
22 LLC (the "Deja Vu Plaintiffs"), did not become subject to the LET until Chapter 368A was  
23 amended in June of 2005, to reduce the seating capacity required for a facility to be subject to  
24 the LET from 300 to 200 persons. See N.R.S. § 368A.200(5)(d). Pursuant to N.R.S. §  
25 368A.260(1), the statutory three year period for those two Plaintiffs to file their administrative  
26 requests for refunds did not then expire until mid 2008, and those Plaintiffs were not required  
27 to have, and had not yet, filed administrative claims for refund when Case 2 was filed.  
28 However, starting in August, 2008 (for the July 2005 tax period), the Deja Vu Plaintiffs began  
filing administrative claims for refund, and responded to the inevitable denials from the  
Department with monthly notices of appeal to the Commission. Subsequent to the filing of  
Case 2, the Department has responded to the monthly notices of appeal with identical  
acknowledgment letters stating that *each appeal was being held in abeyance during the  
pendency of Case 2*. A sample of the Department's acknowledgment letter is attached hereto  
as Ex. 11.

1 The K-Kel Plaintiffs' requests for refunds were all summarily denied by the Nevada  
2 Department of Taxation on April 3, 2007 (example copy attached as Ex. 10). Those Plaintiffs  
3 all filed timely notices of administrative appeals, and the Nevada Tax Commission  
4 ("Commission") held hearings regarding the first set of denials in July and August of 2007.  
5 After the submission of materials and oral argument, the Commission denied Plaintiffs'  
6 appeals in October of 2007 (Ex. 12). On January 9, 2008, in accordance with N.R.S. §§  
7 368A.290(1)(b) and 368A.300(3)(b), which govern adverse decisions by the Commission, the  
8 K-Kel Plaintiffs timely filed a judicial complaint for refund, declaratory relief, injunctive relief,  
9 and damages. That action was assigned Case No. A554970 (referred to herein as "Case 2").  
10 The status of that case is up in the air at present in light of recent rulings by this Honorable  
11 Court.  
12

13  
14 Plaintiffs filed an amended complaint in Case 1 on or about January 28, 2009, to add an  
15 "as applied" cause of action to the challenge against the LET. Although, at the time of filing of  
16 this instant motion formal orders had not been entered, at a hearing that occurred on August 23,  
17 2011, this Court orally ruled on various motions brought by the Defendants. The Court issued  
18 a minute entry noting the "the Motion is GRANTED as to the issue of sole remedy," and  
19 instructing Plaintiffs to file a Petition for Judicial Review on Case 2 within 30 days. The Court  
20 also orally instructed Plaintiffs to bring the present motion within 30 days. This motion  
21 follows.  
22

### 23 **III. RELEVANT PROVISIONS OF CHAPTER 368A**

24  
25 Chapter 368A states, at N.R.S. § 368A.200(1), that "[e]xcept as otherwise provided in  
26 this section, there is hereby imposed an excise tax on admission to any facility in this State  
27 where live entertainment is provided." If the live entertainment is provided at a facility with a  
28

1 maximum occupancy of less than 7,500,<sup>6</sup> the rate of tax is 10% of the admission charge to the  
2 facility plus 10% of any amounts paid for food, refreshments and merchandise purchased at the  
3 facility. If the live entertainment is provided at a facility with a maximum occupancy of at  
4 least 7,500, the rate of the tax is 5% of the admission charged to the facility. **Id.**

5 Chapter 368A defines an “[a]dmission charge” in N.R.S. § 368A.020 as:

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

10 The term “facility” is defined in N.R.S. § 368A.060 as follows:

11 (a) Any area or premises where live entertainment is provided and for  
12 which consideration is collected for the right or privilege of  
13 entering that area or those premises if the live entertainment is  
14 provided at:

15 (1) An establishment that is not a licensed gaming  
establishment; or

16 (2) A licensed gaming establishment that is licensed for less  
17 than 51 slot machines, less than six games, or any  
18 combination of slot machines and games within those  
respective limits.

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

22 “[L]ive entertainment” is defined in N.R.S § 368A.090 as:

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

26  
27  
28 <sup>6</sup> All the facilities operated by the Plaintiffs have maximum occupancies of less than  
7,500 persons. Comp., ¶ 35.

1 This definition includes, *inter alia*, “[d]ancing performed by one or more professional or  
2 amateur dancers or performers.” N.R.S. § 368A.090(2)(a)(2).

3 Pursuant to N.R.S. § 368A.200(5), however, the tax imposed by Chapter 368A is not  
4 applicable to certain specifically listed situations. One of those exemptions includes “live  
5 entertainment that the State is prohibited from taxing under the Constitution, laws or treaties of  
6 the United States or Nevada Constitution.” N.R.S. § 368A.200(5)(a).

7  
8 Other provisions of Chapter 368A, and the numerous exceptions/exemptions thereto,  
9 will be discussed below.

#### 10 **IV. POINTS AND AUTHORITIES**

##### 11 **A. STANDARDS FOR GRANTING INJUNCTIVE RELIEF.**

12 The power of this Court to issue the injunctive relief requested here derives from Art. 6,  
13 § 6, of the Nevada Constitution, N.R.S. § 33.101, and N.R.C.P. § 65. Injunctive relief should  
14 certainly be granted here. All courts should hasten to grant injunctive relief where fundamental  
15 constitutional rights are involved, and where there is a chance that those rights will be curtailed  
16 or even only just “chilled.” *See, e.g., Sammartano v. First Judicial Dist.*, 303 F.3d 959, 973-  
17 74 (9th Cir. 2002). This is the solemn responsibility of the courts to guard and enforce each  
18 and every constitutionally protected right. *Zwickler v. Koota*, 389 U.S. 241, 248 (1967).

19  
20 “Permanent injunctive relief is available where there is no adequate remedy at law . . . ,  
21 where the balance of equities favors the moving party, and where success on the merits has  
22 been demonstrated.” *State Farm Mut. Auto. Ins. Co. v. JafBros. Inc.*, 109 Nev. 926, 928,  
23 680 P.2d 176, 178 (1993) (quoting 43 C.J.S. Injunctions § 16, 848 (1974)). As will be  
24 discussed below, Plaintiffs satisfy each of these standards.  
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1           **B.       THIS FACIAL CHALLENGE MUST EXAMINE THE LET BASED ON**  
2           **ITS TEXT, LEGISLATIVE HISTORY, AND EFFECT.**

3           As it stands, the Court has limited Plaintiffs' challenge in this Case 1 to a facial  
4 challenge. A facial challenge to a law examines the constitutionality of the law without regard  
5 to its application to a particular plaintiff in a particular situation. *See, e.g., Field Day, LLC v.*  
6 *County of Suffolk*, 463 F.3d 167, 174 (2d Cir. 2006). "Nevertheless, on a facial challenge, [a  
7 court] may still scrutinize a statute based on its text, context, and legislative history . . . ."  
8 *Brown v. Gilmore*, 258 F.3d 265, 275 (4th Cir. 2001) (pre-application challenge under the  
9 establishment clause) (clarification added). Courts frequently scrutinize the legislative history  
10 of laws to assess facial challenges. *See also Educational Media Co. at Virginia Tech, Inc.,*  
11 *v. Swecker*, 602 F.3d 583, 588 (4th Cir. 2010) (governmental interest for commercial speech  
12 restriction may be gleaned from legislative history); *Community Television of Utah, Inc., v.*  
13 *Wilkinson*, 611 F.Supp. 1099 1107 (D.C.Utah 1985) (text, legislative history, and attorney  
14 general opinion analyzed to determine whether the Decency Act facially complied with the  
15 First Amendment).

16           In *Children's Healthcare Is a Legal Duty, Inc., v. Min De Parle*, 212 F.3d 1084,  
17 1088 (8th Cir. 2000), certain taxpayers challenged Section 4454 of the Balanced Budget Act of  
18 1997, contending it violated the First Amendment; specifically, the establishment clause. Like  
19 a tax on a defined group of speakers (*Leathers v. Medlock*, 499 U.S. 439, 445-446 (1991)  
20 (citing *Minneapolis Star & Tribune Co. v. Minnesota Comm'r of Revenue*, 460 U.S. 575  
21 (1983))), "a law that on its face grants a denominational preference may be upheld only if it is  
22 supported by a compelling state interest." *Children's Healthcare*, 212 F.2d at 1090. The  
23 court duly noted that to facially discriminate, the law need not explicitly set forth the  
24 discrimination in its text. *Id.* Rather, "[s]uch discrimination can be evidenced by objective  
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1 factors such as the law's legislative history and its practical effect." *Id.* (quoted text under the  
2 heading "Facial Challenge to Section 4454") (citing Church of Lukumi Bablu Aye, Inc., v.  
3 Haileah, 508 U.S. 520, 535 (1993)). *Accord* Kong v. Min de Parle, 2001 WL 1464549, at \*4  
4 (N.D. Cal Nov. 13, 2001) ("the text, legislative history, and effect of section 4454 persuades  
5 the Court that the exemption does not facially discriminate").  
6

7 Plaintiffs' challenge here is based, in part, on the Lukumi decision cited by the  
8 Children's Healthcare court. Plaintiffs contend that the structure and numerous exemptions  
9 to the LET (specifically the 10% LET), like the exemptions to the laws analyzed in Lukumi,  
10 demonstrate that the laws were gerrymandered to apply to gentlemen's clubs and "few if any"  
11 others. 508 U.S. 535-536. Over the course of its analysis, the High Court recognized that "[i]t  
12 becomes evident that these ordinances target Santeria sacrifice *when the ordinances'*  
13 *operation is considered*. Apart from the test, the effect of a law in its real operation is *strong*  
14 *evidence of its object*." *Id.* at 535 (emphasis added). *See also id.* at 547 (declaring the  
15 challenged laws "void" rather than unconstitutional "as applied" to the plaintiff).  
16  
17

18 Therefore, in order to analyze the facial validity of the LET, the Court need not  
19 examine the application of the LET particularly to any of the named Plaintiffs in this action.  
20 Rather, the LET must be examined according to its text, context, legislative history, and  
21 practical effect. Each of these areas of inquiry, individually and collectively, demonstrate that  
22 the LET is facially unconstitutional under the First Amendment.  
23

24 **C. IT IS THE DEFENDANTS' BURDEN TO PROVE THE**  
25 **CONSTITUTIONALITY OF THE LET.**

26 Taxes that raise First Amendment concerns are subject to strict constitutional scrutiny,  
27 and the *State of Nevada* has the burden to demonstrate the constitutionality of its taxing  
28 scheme of live entertainment. *See, e.g.,* Arkansas Writers' Project, Inc. v. Ragland, 481

1 U.S. 221, 231 (1987) (“*Arkansas faces a heavy burden* in attempting to defend its content-  
2 based approach to taxation of magazines. *In order to justify such differential taxation, the*  
3 *State must show that its regulation is necessary to serve a compelling state interest and is*  
4 *narrowly drawn to achieve that end*”), citing Minneapolis Star Tribune Co. v. Minnesota  
5 Comm’r of Revenue, 460 U.S. 575, 591-92 (1983); Clark v. City of Lakewood, 259 F.3d  
6 996, 1004 (9th Cir. 2001) (“*In all situations . . . the government has the burden of proof to*  
7 *justify burdening freedom of expression*”) (all emphasis added). In addition, like all  
8 regulations that are subject to strict constitutional scrutiny, a tax upon protected expression is,  
9 as referenced above, “*presumptively unconstitutional.*” Minneapolis Star, 460 U.S. at 585  
10 (emphasis added). See also Seres v. Lerner, 120 Nev. 928, 936, 102 P.3d 91, 96 (2004) (“[a]  
11 statute is presumptively inconsistent with the First Amendment if it imposes a financial burden  
12 on speakers because of the content of their speech”) (citing Simon & Schuster v. Members of  
13 New York State Crime Victims Bd., 502 U.S. 105, 115 (1991)).

14  
15  
16 In order to pass muster under strict scrutiny<sup>7</sup>, the Defendants must demonstrate that the  
17 law is narrowly tailored to serve a compelling governmental interest. The burden on the State  
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19

20 <sup>7</sup> In the alternative to applying strict scrutiny, Plaintiffs *also* ask the Court to hold the  
21 LET unconstitutional simply for being a content-based restriction on speech. In Seres, the  
22 Nevada Supreme Court *en banc* (save Hon. Micheal L. Douglas, 120 Nev. at 292, 102 P.3d at  
23 92) questioned the necessity of applying the strict scrutiny analysis to content-based  
24 restrictions on speech (120 Nev. at 942, 102 P.3d at 100). The court favorably discussed  
25 Justice Kennedy’s concurrence in Simon & Schuster, 502 U.S. at 124-126, wherein he states  
26 that when a content-based restriction on speech is present, there is no need to borrow the strict  
27 scrutiny analysis from equal protection jurisprudence. Seres, 120 Nev. at 292, 102 P.3d at 92.  
28 Rather, the fact that the law imposes a content based burden on speech “is itself a full and  
sufficient reason for holding the statute unconstitutional . . . . Borrowing the compelling  
interest and narrow tailoring analysis is ill advised when all that is at issue is a content based  
restriction.” Seres, 120 Nev. at 292, 102 P.3d at 92 (quoting Simon & Schuster, 502 U.S.  
124-126 (Kennedy, J. concurring). The Nevada Supreme court found this approach “inviting”  
but noted the parties at bar had not raised claims under the Nevada Constitution. Id. Plaintiffs  
here have raised claims under the Nevada Constitution, and ask the Court to apply the analysis

1 of Nevada is thus to establish that a compelling governmental interest is furthered “that it  
2 cannot achieve without differential taxation.” Minneapolis Star, 460 U.S. at 585. More  
3 importantly, that governmental interest *cannot* be the simple “raising of revenue.” As the  
4 Supreme Court as noted, that governmental interest “[s]tanding alone, cannot justify the  
5 discriminatory tax on First Amendment protected activities.” Id. at 585-86. The Court has  
6 noted that the “state could raise the revenue by *taxing businesses generally*, avoiding the  
7 censorial threat implicit in a tax that singles out” protected expression. Id. Here, the State of  
8 Nevada simply cannot carry the burden of demonstrating that there exists a compelling  
9 governmental interest to differentially tax certain First Amendment protected live  
10 entertainment.  
11

12  
13 **D. THE LET IS FACIALLY UNCONSTITUTIONAL UNDER THE FIRST**  
14 **AMENDMENT OF THE UNITED STATES CONSTITUTION AND**  
15 **UNDER ARTICLE I, SECTIONS 9 AND 10, OF THE NEVADA**  
16 **CONSTITUTION.**

17 There are primarily three ways by which a tax may violate the First Amendment. First,  
18 a direct tax specifically on First Amendment freedoms is unconstitutional.

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

23 Murdock v. Commonwealth of Pennsylvania, 319 U.S. 105, 108, 111 (1943) (emphasis  
24 added).

25 Second, a tax that targets a narrowly defined group of speakers is unconstitutional. As  
26 set forth by the Supreme Court:

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

28 proposed by our Supreme Court. The LET is content-based, and should be struck on that  
ground alone.

1 \* \* \*

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

7 Leathers, 499 U.S. at 447-448.

8 Third, a *content-based tax* is unconstitutional. Leathers, 499 U.S. at 447 (“Finally, for  
9 reasons that are obvious, a tax will trigger heightened scrutiny under the First Amendment if it  
10 discriminates on the basis of the content of taxpayer speech”); Seres, 120 Nev. at 936, 102  
11 P.3d at 96.

12 The Live Entertainment Tax violates the First Amendment for *all three* of these  
13 reasons. It is unconstitutional under the first test in that it is, *irrefutably*, a tax “laid specifically  
14 on the exercise of [First Amendment] freedoms;” that being *live entertainment*. Murdock,  
15 319 U.S. at 108 (clarification added). In regard to the second test, the large number of  
16 exemptions from the LET demonstrates that the tax targets a “narrowly defined group of  
17 speakers,” and that its focus is, indeed, on one specific form, or content, of live entertainment;  
18 that being exotic dancing. In fact, the legislative history discussed below aptly demonstrates  
19 the narrow focus of the 10% portion of the LET. Third, when the text, context, legislative  
20 history, and practical effect of the LET are viewed as a whole, it is clear that the LET is a  
21 content-based tax.  
22

23  
24 1. The LET is an Unconstitutional Direct Tax on First Amendment  
25 Activities.

26 It is unconstitutional to *directly* tax the engagement in First Amendment protected  
27 activities. The Supreme Court dealt with the issue of taxing First Amendment rights in  
28 Murdock, where the Court analyzed the constitutionality of a city ordinance that required

1 those who wished to canvas or solicit to pay a license fee of \$1.50 per day, or \$7.00 for one  
2 week. 319 U.S. at 106. The Supreme Court explained:

3 It is one thing to impose a tax on the income or property of a  
4 preacher, it is quite another thing to exact a tax from him for the  
5 privilege of delivering a sermon. The tax imposed [here] is a flat  
6 license tax, the payment of which is a condition of the exercise of  
7 these constitutional privileges. *The power to tax the exercise of a  
8 privilege is the power to control or suppress its enjoyment.*

9 Id. at 105 (emphasis and clarification added).

10 The Court further made clear that “it could hardly be denied that a tax laid specifically  
11 on the exercise of those freedoms would be unconstitutional. Yet the license tax proposed by  
12 this ordinance is in substance just that.” Id. at 108. In the case of the LET, there is not even  
13 the pretext of a license involved, as it is merely a *direct imposition of a tax on First  
14 Amendment freedoms*. There is no justification of a requisite license or any form of regulation  
15 that requires funding to administer and enforce.

16 The Supreme Court noted that freedom of speech is “available to all, not merely to  
17 those who can pay their own way,” and that “the power to tax the exercise of a privilege is the  
18 power to control or suppress its enjoyment...[] those who can tax the exercise of this [First  
19 Amendment freedom] can make its exercise so costly as to deprive it of the resources  
20 necessary for its maintenance.” Id. at 111-112. The Supreme Court flatly states that “a state  
21 *may not impose a charge for the enjoyment of a right granted by the federal constitution.*”  
22 Id. at 112 (emphasis added). This is because “the power to impose a license tax on the  
23 exercise of these freedoms is indeed as potent as the power of censorship which this Court has  
24 repeatedly struck down.” Id. at 113.

25 In addition, the fact that entities subject to the LET present live entertainment for profit  
26 does not change the analysis in the least. “Those who make their living through exercise of  
27  
28

1 First Amendment rights are no less entitled to its protection than those who advocacy or  
2 promotion is not hitched to a profit motive.” Cammarano v. U.S., 358 U.S. 498, 514 (1959).  
3 See also Pacific Gas and Elec. Co. v. Public Utilities Com’n of California, 475 U.S. 1, 32  
4 (1986) (“... protection of an author’s profit incentive furthers rather than inhibits expression. .  
5 .”) (citing Harper & Row Publishers, Inc. v. Nation Enterprises, 471 U.S. 539, 555-559  
6 (1985)).  
7

8 There is absolutely no doubt that “live entertainment” is a category of activity  
9 presumptively protected by the First Amendment.

10 It is a fundamental precept of the First Amendment to the United States  
11 Constitution that all expression, whether it is written, pictorial or by way  
12 of performance, is presumptively protected against governmental  
13 interference and restraint.

14 Ellwest Stereo Theatre, Inc. v. Boner, 718 F. Supp. 1553, 1560 (M.D. Tenn. 1989) (citing  
15 Doran v. Salem Inn, Inc., 422 U.S. 922 (1975); Roaden v. Kentucky, 413 U.S. 496 (1973);  
16 and Schad v. Borough of Mount Ephraim, 452 U.S. 61, 66 (1981)). Schad, in particular,  
17 involved a general municipal ban on “‘live entertainment,’ including nude dancing.” 452 U.S.  
18 at 65. The Court made clear:

19 By excluding live entertainment throughout the Borough, the Mount  
20 Ephraim ordinance prohibits a wide range of expression that has long  
21 been held to be within the protections of the First and Fourteenth  
22 Amendments. Entertainment, as well as political and ideological  
23 speech, is protected; motion pictures, programs broadcast by radio and  
24 television, and live entertainment, such as musical and dramatic works  
25 fall within the First Amendment guarantee.

26 Id. at 65-66 (citing Joseph Burstyn, Inc. v. Wilson, 343 U.S. 495 (1952); Schacht v. U.S.,  
27 398 U.S. 58 (1970); Jenkins v. Georgia, 418 U.S. 153 (1974); Southeastern Promotions,  
28

1 Ltd. v. Conrad, 420 U.S. 546 (1975); Erznoznik v. City of Jacksonville, 422 U.S. 205  
2 (1975); and Doran, *supra*).<sup>8</sup>

3 Nevada cannot specifically tax live entertainment any more than it could ban the very  
4 same activity. There can be no doubt that the LET requires persons wishing to engage in  
5 defined “live entertainment” to pay the State of Nevada for this ability to exercise their First  
6 Amendment rights. This is “a tax laid specifically on the exercise of those freedoms” within  
7 the meaning of Murdock, 319 U.S. at 108. Nevada is “charg[ing] for the enjoyment of a right  
8 granted by the federal constitution.” Id. at 112 (clarification added). The LET is plainly and  
9 facially unconstitutional under Supreme Court precedent.

11  
12 2. **The Live Entertainment Tax is Unconstitutional as it Applies to a**  
13 **“Narrowly Defined Group of Speakers” and it Discriminates Based**  
14 **on Content.**

15 The LET is a direct tax upon protected expression, and only upon one form of protected  
16 expression, that which is “entertainment,” and then only to that which is “live”. Even within  
17 this subset of First Amendment activity, it does not even tax that particular mode of expression  
18 in a unified and even fashion. This is because a wide variety of “live entertainment,” based  
19 upon the *content* of that entertainment, is specifically and statutorily *exempted* from the scope  
20 of the tax. In this regard, Plaintiffs’ challenge to the LET involves two related but  
21 distinguishable lines of inquiry: Whether the LET taxes a narrow group of speakers and  
22 whether the LET discriminates based on content? If the LET does either (and, here, it does  
23 *both*), it is unconstitutional.

24 A power to tax differentially, as opposed to a power to tax  
25 generally, gives a government a powerful weapon against the

26  
27 <sup>8</sup> See also Winters v. New York, 333 U.S. 507, 510 (1947) (mere entertainment, in-and-of  
28 itself, is considered protected expression under the First Amendment); and Zacchini v.  
Scripts-Howard Broadcasting Co., 433 U.S. 562, 578 (1977) (\*human cannonball  
performance) (“...entertainment itself can be important news”).

1 taxpayer selected. *When the State imposes a generally applicable*  
2 *tax, there is little cause for concern. We need not fear that a*  
3 *government will destroy a selected group of taxpayers by*  
4 *burdensome taxation if it must impose the same burden on the*  
5 *rest of its constituency.*

6 \* \* \*

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

11 Minneapolis Star, 460 U.S. at 585 (emphasis added).

12 The reason for this is simple:

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

17 Leathers, 499 U.S. at 445 (emphasis added).

18 An impermissible intent to discriminatorily tax based on content need not be  
19 established in order for the law to be found unconstitutional.<sup>9</sup> It is no surprise that when  
20 crafting a tax of dubious constitutionality, legislators will attempt to cloak their improper  
21 intentions by using seemingly benign gerrymandering, such as here, by way of “exemptions”  
22 and “exceptions.” Such structuring *still* results in an unconstitutional tax. As the Supreme  
23 Court has explained:

24 In Minneapolis Star & Tribune Co. v. Minnesota Comm’r of  
25 Revenue, 460 U.S. 575 [ ] (1983), we noted that it was unclear whether  
26 the result in Grosjean [v. American Press Co.], 297 U.S. 233 (1936)  
27 depended on our perception in that case that the State had imposed the  
28 tax with the intent to penalize a selected group of newspapers or whether  
the structure of the tax was sufficient to invalidate it. See 460 U.S., at  
580 [ ] (citing cases and commentary). Minneapolis Star resolved any

<sup>9</sup> However, as discussed below, the legislative history does, indeed, clearly reflect that  
the *intent* of the LET was to tax gentlemen’s clubs specifically.

1 doubts about whether direct evidence of improper censorial motive is  
2 required in order to invalidate a differential tax on First Amendment  
3 grounds: "Illicit legislative intent is not the *sine qua non* of a violation of  
4 the First Amendment." Id. at 592 [ ].

5 Leathers, 499 U.S. at 445 (parallel citations omitted).

6 In addition to its *explicit* content-based discrimination (discussed below), the LET  
7 attempts to use the classic and well-worn mask of impermissible gerrymandering, and that is to  
8 discriminate based upon the "size" of the speaker and/or the volume of its activity. Grosjean  
9 is the first example of this. In that case, the Supreme Court *invalidated* a "Louisiana law that  
10 singled out publications with weekly circulations above 20,000 for a 2% tax on gross receipts  
11 from advertising. The tax fell exclusively on 13 newspapers. Four other daily newspapers and  
12 120 weekly newspapers with weekly circulations of less than 20,000 were not taxed."

13 Leathers, 499 U.S. at 444 (citing Grosjean, 297 U.S. at 246-251).

14 Then:

15  
16 At issue in Minneapolis Star, was a Minnesota special use tax on the  
17 cost of paper and ink consumed in the production of publications. The  
18 tax exempted the first \$100,000 worth of paper and ink consumed  
19 annually. Eleven publishers, producing only 14 of the State's 388 paid  
20 circulation newspapers, incurred liability under the tax in its first year of  
21 operation. The Minneapolis Star & Tribune Co. (Star Tribune) was  
22 responsible for roughly two-thirds of the total revenue raised by the tax.  
23 The following year, 13 publishers, producing only 16 of the State's 374  
24 paid circulation papers, paid the tax. Again, the Star Tribune bore  
25 roughly two-thirds of the tax's burden. We found no evidence of  
26 impermissible legislative motive in the case apart from the structure of  
27 the tax itself.

28 Leathers, 499 U.S. at 445.

These same tools are put to task in the LET. It discriminates on the basis of the size of  
the facility. It excludes small facilities with a maximum occupancy of less than two hundred  
(200) persons, as well as entertainment provided at certain "licensed gaming establishment[s]."

1 N.R.S. §§ 368A.200(5)(d),(e). Those not excluded on the basis of size are then taxed at  
2 *different rates according to their size*, with the smaller venues paying the higher rate.  
3 N.R.S. § 368A.200(1). As explained in subsection IV(D)(2)(c) below, the seating capacity was  
4 actually lowered from 300 to 200 *specifically to increase the number of gentlemen's clubs*  
5 *that would be swept into the tax*. At the same time, “family-oriented” and other preferred  
6 forms of live entertainment that the legislature did not mean to “get” via the LET were then  
7 exempted from taxation.  
8

9       **a.       The Different Rates and Subjects of Taxation Demonstrate Impermissible**  
10       **Gerrymandering.**

11       The rate of taxation under the “Adult LET” is 10%. NRS § 368A.200(1)(a). The rate  
12 of taxation under the “Casino LET” is only 5%. NRS § 368A.200(1)(b). Moreover, under the  
13 Adult LET, the tax applies to an “admission charge to the facility plus 10 percent of any  
14 amounts paid for food, refreshments and merchandise. . . .” NRS § 368A.200(1)(a). However,  
15 under the Casino LET, the tax *only applies to admissions*. NRS § 368A.200(1)(b). This  
16 allows the casinos, but not Plaintiffs, to lower their tax liability simply by reducing admission  
17 charges and raising the prices for refreshments and merchandise. The functional result is  
18 obvious. The Adult LET tax rate is effectively more than twice that of the Casino LET.  
19  
20

21       The Casino LET requires payment and the filing of the applicable tax returns to the  
22 State Gaming Control Board. NRS § 368A.220(1)(a). The Adult LET requires payment and  
23 filing with the Nevada Department of Taxation. Likewise, the Casino LET imposes the duty to  
24 collect on the Gaming Control Board, while the Adult LET places the duty to collect on the  
25 Department of Taxation. NRS §§ 368A.140(1)(a) and (2)(a).  
26

27       In fact, both the Gaming Control Board and the Nevada Department of Taxation each  
28 have the separate authority to promulgate rules and regulations for their respective taxes. The

1 Gaming Control Board has authority to promulgate rules for the imposition and collection of  
2 the Casino LET, NRS § 368A.140(1)(b), while the Department of Taxation has the authority to  
3 promulgate separate rules and regulations for the imposition and collection of the Adult LET,  
4 NRS § 368A.140(2)(b).

5 Similarly, claims for refunds under the Casino LET must be taken to the Gaming  
6 Control Board, while appeals under the Adult LET must be taken to the Department of  
7 Taxation. NRS §§ 368A.260(1)(a)(1) and (1)(a)(2). Appeals from denied refund claims also  
8 proceed to different entities. NRS §§ 368A.300(3)(a) and (3)(b).

9 Both the Gaming Control Board and the Department of Taxation have the power to  
10 inspect the books of the entities taxed under their respective taxes. However, neither has the  
11 authority to inspect the books of entities which are responsible for paying taxes to the other  
12 authority. NRS §§ 368A.170(1)(a) and (1)(b).

13 This bifurcation between the Casino LET and the Adult LET prevails throughout the  
14 LET. These deep and fundamental differences expose the LET for what it really is; two  
15 distinct taxes shoe-horned under the same moniker. The LET paid by Plaintiffs is entirely  
16 different than the LET paid by the Casinos, which receive far more beneficial treatment under  
17 this taxation scheme.

18 Thus, the structure of the LET, like the structure of the tax struck in Minneapolis Star,  
19 is sufficient to render the tax suspect and thereby subject to strict scrutiny. It is important to  
20 emphasize that, for the LET to be held unconstitutional, it is not necessary for the Court to be  
21 firmly convinced that the tax targets gentlemen's clubs or seeks to suppress their expression.  
22 The relevant question is whether the tax targets a certain type of expression for more  
23 burdensome taxation. In reflecting upon its Minneapolis Star decision, the Court explained:  
24  
25  
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28

1 Once again, the scheme appeared to have such a *potential for abuse* that  
2 we concluded that it violated the First Amendment: “[W]hen the  
3 exemption selects such a narrowly defined group to bear the full burden  
4 of the tax, the tax begins to resemble more of a penalty for a few of the  
5 largest newspapers than an attempt to favor struggling enterprises.”

6 Leathers, 449 at 446 (citing Minneapolis Star, 460 U.S. at 592) (emphasis added).

7 And, addressing the case before it, the Leathers Court found that the general Arkansas  
8 sales tax did not target the cable television plaintiffs, “nor is the tax on that structured *so as to*  
9 *raise suspicion* that it was intended to do so. Unlike the taxes involved in Grosjean and  
10 Minneapolis Star, the Arkansas tax has not selected a narrow group to bear fully the burden of  
11 the tax.” 499 U.S. at 448 (emphasis added).

12 As explained more fully below, the LET is structured in a manner that creates an acute  
13 potential for abuse, and certainly raises the suspicion that gentlemen’s clubs are being targeted  
14 for special taxation. This alone requires the tax to be subject to strict scrutiny level of review.

15 Moreover, under no circumstances can the LET (or the Adult LET in particular) be  
16 confused with the generally applicable taxes ultimately upheld in Leathers, Regan v.  
17 Taxation with Representation of Washington, 461 U.S. 540 (1983), or Cammarano v.  
18 United States, 358 U.S. 498 (1959). Those taxes were truly taxes of general applicability. For  
19 example, the tax in Leathers was the general Arkansas sales tax.<sup>10</sup> 499 U.S. at 447. Regan  
20 involved exemptions under the United States corporate tax code. 461 U.S. at 540 (1983)  
21 (regarding 26 U.S.C. § 501). Cammarano involved exemptions from the United States  
22  
23

24  
25 <sup>10</sup> “Among the services on which the tax is imposed are natural gas, electricity, water, ice,  
26 and steam utility services; telephone, telecommunications, and telegraph services; the  
27 furnishing of rooms by hotels, apartment hotels, lodging houses, and tourist camps; alteration,  
28 additional, cleaning, refinishing, replacement, and repair services; printing of all kinds; tickets  
for admission to places of amusement or athletic, entertainment, or recreational events, and  
fees for the privilege of having access to, or use of, amusement, entertainment, athletic, or  
recreational facilities.” Leathers, 499 U.S. at 447.

1 income tax code. 358 U.S. at 499-500. The LET is not a general property, income, or  
2 corporate tax. Instead, the tax is initially triggered by only First Amendment activity, and then  
3 further discriminates among expression based on the size of the taxpayer, the activity of the  
4 taxpayer, and the content of the live entertainment.

5 Such a limited tax on "live entertainment" was struck in U.S. Satellite Broadcasting  
6 Co. v. Lynch, 41 F.Supp.2d 1113 (E.D.Cal. 1999). In that case, the state had singled out  
7 telecasts of boxing contests for special taxation, rather than "adult" entertainment or  
8 gentlemen's clubs. Id. at 116. The court relied heavily on Arkansas Writers' Project and  
9 Leathers to conclude that the tax was an impermissible content-based tax on First Amendment  
10 activity. Id. at 1120-1123. The court reasoned:

11  
12  
13 As a threshold matter, defendants have not convinced the court that First  
14 Amendment protection does not attach to live boxing match organized,  
15 held, and televised for the purpose of entertaining live and remote  
16 viewers. The First amendment protects entertainment. Schad, 452 U.S.  
17 at 65 [ ]. *It protects live entertainment, including even the expressive*  
18 *content of nude dancing*, Barnes v. Glen Theatre, Inc., 501 U.S. 560 [ ] (1991).

19 \* \* \*

20 Thus, it simply does not matter if the First Amendment protects or even  
21 applies to boxing. *A tax on the dissemination of entertainment based*  
22 *on the content must pass strict scrutiny, regardless of its subject*  
23 *matter*. Simon & Schuster, 502 U.S. at 115 [ ]; Arkansas Writers'  
24 Project, 481 U.S. at 230 [ ]. The First Amendment does not protect  
25 murder, yet the court feels confident that news broadcasts of the court  
26 feels confident that news broadcasts of murder, killing, or war may not  
27 be censored to suppress their content. Nor it a hurricane protected by  
28 the First Amendment; yet a broadcast with an audience has a right under  
the First Amendment to broadcast images of a hurricane. Defendants'  
argument, that telecasts of boxing do not enjoy First Amendment  
protection because boxing is somehow "less valuable" than other  
subjects, runs contrary to every principle of the Free Speech Clause  
itself.

\* \* \*

Because the undisputed facts establish the Boxing Act tax must survive  
strict scrutiny, defendants would at trial bear the burden of proving the  
tax to be "necessary to serve a compelling state interest and . . . narrowly

1 drawn to achieve that end.” Simon & Schuster, 502 U.S.] at 118 [ ]. . .

2  
3 Defendants argue that the state has a general interest in raising revenue.  
4 While this interest has been described as “critical” and “important,” as a  
5 matter of law it does not justify a content-based tax on speech.  
6 Arkansas Writers’ Project, 481 U.S. at 231-232 [ ] (“an alternative  
7 means of achieving the same interest [raising revenue] without raising  
8 concerns under the First Amendment is clearly available: the State could  
9 raise the revenue by taxing businesses generally”), quoting Minneapolis  
10 Star [ ] 460 U.S. [at] 586 [ ].

11 Id. at 1120-21 (parallel citations omitted; clarification in original and added).

12 The reasoning in U.S. Satellite Broadcasting is directly applicable to this action.  
13 There, the court identified that “the Boxing Act taxes some telecasts, and not others, based on  
14 the content of those telecasts. . . . The Boxing Act thus taxes some speech based on its content.  
15 Under Leathers, Arkansas Writers’ Project, and the weight of First Amendment  
16 jurisprudence, the tax should be subject to strict scrutiny.” 41 F.Supp.2d 111.

17 The LET is no different. It applies only to First Amendment activity, and then only  
18 according to the size of the taxpayer and the content of its speech. And, here, ironically,  
19 admissions to view boxing is *exempted* from the LET. See N.R.S. §368A.200(5)(c). This is  
20 obviously a content-based tax, which fails under strict scrutiny.

21 **b. The Numerous Exemptions to the LET Demonstrate That the Tax is**  
22 **Narrowly-Directed and Discriminates Based on Content.**

23 Initially, the definition of “live entertainment” itself contains numerous *exceptions*,  
24 which *exclude*, without limitation, the following activities:

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

- 1 (2) ***Occasional performances*** by employees whose primary job function is  
2 that of preparing, selling or serving food, refreshments or beverages to  
3 patrons, if such performances are not advertised as entertainment to the  
4 public;
- 5 (3) Performances by performers of any type if the performance occurs in a  
6 licensed gaming establishment other than a licensed gaming  
7 establishment that is licensed for less than 51 slot machines, less than 6  
8 games, or any combination of slot machines and games within those  
9 respective limits, as long as the ***performers stroll continuously***  
10 ***throughout the facility***;
- 11 (4) Performances in areas other than in nightclubs, lounges, restaurants or  
12 showrooms, if the performances occur in a licensed gaming  
13 establishment other than a licensed gaming establishment that is licensed  
14 for less than 51 slot machines, less than 6 games, or any combination of  
15 slot machines and games within those respective limits, which ***enhance***  
16 ***the theme of the establishment or attract patrons to the areas of the***  
17 ***performances***, as long as any seating provided in the immediate area of  
18 the performers is limited to seating at slot machines or gaming tables;
- 19 (5) Television, radio, closed circuit or Internet broadcasts of live  
20 entertainment;
- 21 (6) ***Entertainment provided by a patron*** or patrons, including, without  
22 limitation, singing by patrons or dancing by or between patrons;
- 23 (7) ***Animal behaviors*** induced by animal trainers or caretakers primarily for  
24 the purpose of education and scientific research; and
- 25 (8) An occasional activity, including, without limitation, dancing, that:
- 26 (I) Does not constitute a performance;
- 27 (II) Is not advertised as entertainment to the public;
- 28 (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.

N.R.S. § 368A.090(b) (emphasis added).

Then, the ***exemptions*** to the tax contained in N.R.S. § 368A.200(5) apply to:

- 1 (a) *Live entertainment that this State is prohibited from taxing under the*  
2 *Constitution, laws or treaties of the United States or the Nevada*  
3 *Constitution.*<sup>11</sup>
- 4 (b) Live entertainment that is provided by or entirely for the benefit of a  
5 *nonprofit religious, charitable, fraternal or other organization* that  
6 qualifies as a tax-exempt organization pursuant to 26 U.S.C. § 501(c), or  
7 a nonprofit corporation organized or existing under the provisions of  
8 chapter 82 of NRS.
- 9 (c) Any *boxing contest* or exhibition governed by the provisions of chapter  
10 467 of NRS.
- 11 (d) Live entertainment that is not provided at a licensed gaming  
12 establishment if the facility in which the live entertainment is provided  
13 has a maximum occupancy of less than 200 persons.
- 14 (e) Live entertainment that is provided at a licensed gaming establishment  
15 that is licensed for less than 51 slot machines, less than [six] 6 games, or  
16 any combination of slot machines and games within those respective  
17 limits, if the facility in which the live entertainment is provided has a  
18 maximum occupancy of less than 200 persons.
- 19 (f) Merchandise sold outside the facility in which the live entertainment is  
20 provided, unless the purchase of the merchandise entitles the purchaser  
21 to admission to the entertainment.
- 22 (g) Live entertainment that is provided at a *trade show*.
- 23 (h) Music performed by *musicians who move constantly through the*  
24 *audience* if no other form of live entertainment is afforded to the patron
- 25 (i) Live entertainment that is provided at a licensed gaming establishment at  
26 private meetings or dinners attended by members of a particular  
27 organization or by a casual assemblage if the purpose of the event is not  
28 primarily for entertainment.
- 29 (j) Live entertainment that is provided in the common area of a shopping  
30 mall, unless the entertainment is provided in a facility located within the  
31 mall.

---

<sup>11</sup> If it is determined that Defendants cannot specifically tax Plaintiffs' protected activities, this exemption will be triggered.

- 1 (k) **Food and product demonstrations** provided at a shopping mall, a craft  
2 show or an establishment that sells grocery products, housewares,  
3 hardware or other supplies for the home.
- 4 (l) **Live entertainment that is incidental to an amusement ride, a motion  
5 simulator or a similar digital, electronic, mechanical or  
6 electromechanical attraction.** For the purposes of this paragraph, live  
7 entertainment shall be deemed to be incidental to an amusement ride, a  
8 motion simulator or a similar digital, electronic, mechanical or  
9 electromechanical attraction if the live entertainment is:
- 10 (1) Not the predominant element of the attraction; and  
11 (2) Not the primary purpose for which the public rides, attends or  
12 otherwise participates in the attraction.
- 13 (m) Live entertainment that is provided to the public in an outdoor area,  
14 without any requirements for the payment of an admission charge or the  
15 purchase of any food, refreshments or merchandise.
- 16 (n) An **outdoor concert**, unless the concert is provided on the premises of a  
17 licensed gaming establishment.
- 18 (o) Beginning July 1, 2007, race events scheduled at a race track in this  
19 State as a part of the **National Association for Stock Car Auto Racing  
20 Nextel Cup Series**, or its successor racing series, and all races associated  
21 therewith.
- 22 (p) Beginning July 1, 2007, a **baseball contest**, event or exhibition  
23 conducted by professional minor league baseball players at a stadium in  
24 this State.
- 25 (q) Live entertainment provided in a **restaurant** which is incidental to any  
26 other activities conducted in the restaurant or which only serves as  
27 **ambience** so long as there is no charge to the patrons for that  
28 entertainment.

N.R.S. § 368A.200(5) (emphasis added).

Because many of these exceptions/exemptions determine whether an entity or individual is subject to the tax based upon the **content** of the live entertainment (e.g., boxing, baseball, NASCAR, and outdoor concerns), it is clear that the LET is a content-based tax and is subject to strict constitutional scrutiny. More specifically, these exceptions/exemptions have

1 been gerrymandered in such a fashion to basically ensure that with the exception of casino  
2 entertainment (which was already subject to tax (at a lower 5% rate, with the subject of the tax  
3 also being more narrow) pursuant to the prior casino entertainment tax), almost the only  
4 remaining live entertainment that is subject to the 10% tax is adult entertainment. If there is  
5 any doubt from a facial reading of the Statute that it was meant to specifically tax live adult  
6 entertainment, any such doubt is quickly eradicated by reviewing the legislative history,  
7 discussed *infra*, which clearly demonstrates such facial targeting.

9 It is constitutionally impermissible to apply a tax on protected expression in such a  
10 discriminatory, content-based manner. As the Supreme Court held in a case where a tax was  
11 “not evenly applied to all magazines” and treated “some magazines less favorably than others”:  
12

13 Indeed, this case involves a more disturbing use of selective  
14 taxation than Minneapolis Star, because the basis on which  
15 Arkansas differentiates between magazines is particularly  
16 repugnant to First Amendment principles: *a magazine’s tax status  
17 depends entirely on its content.* Above all else, the First  
18 Amendment means the government has no power to restrict  
19 *expression* because of its message, its ideas, its subject matter, or  
20 its content. . . . Regulations which permit the Government to  
21 discriminate on the basis of the content of the message cannot be  
22 tolerated under the First Amendment.

19 Arkansas Writers Project, 481 U.S. at 229 (citations omitted, emphasis in original and  
20 added).  
21

22 The United States Supreme Court has further stated that “[e]xemptions from an  
23 otherwise legitimate regulation of a medium of speech may be noteworthy for a reason quite  
24 apart from the risk of view point and content discrimination: They may diminish the credibility  
25 of the government’s rationale for restricting speech in the first place.” City of Ladue v.  
26 Gilleo, 512 U.S. 43, 52 (1994). There, the Court declared as unconstitutional an ordinance  
27 banning outdoor signs (as being impermissibly content-based) because the law included a  
28

1 variety of exceptions of signs that were nevertheless permitted.<sup>12</sup> That is exactly the situation  
2 we have here – a law that is triggered by First Amendment activity, which then picks winners  
3 and losers within the medium of expression regulated (i.e., those to be taxed and those to be  
4 exempted from such taxation).

5 In this case, the numerous exemptions reveal that beyond casino entertainment, the  
6 LET is in fact targeted principally at adult entertainment facilities that are protected by the First  
7 Amendment. The LET is therefore targeted to a “narrowly defined group of speakers” and is  
8 undeniably content specific; it is subject to strict scrutiny; and it is invalid.

9  
10 **c. The Legislative History Demonstrates the Impermissible Targeting**  
11 **and Content-Based Nature of the Live Entertainment Tax.**

12 The legislative history unequivocally bears out the discriminatory intent of the  
13 legislature when it enacted and amended the LET. As explained in subsection IV(B), *supra*,  
14 courts regularly examine the legislative history of a law when confronted with a facial  
15 challenge.  
16

17 Indeed, legislative history and other circumstances surrounding legislative enactments  
18 have contributed to the Supreme Court finding even facially-neutral laws, including taxes, to  
19 be content-based and, therefore, unconstitutional. For example, in Lukumi, the Court  
20 recognized that the First Amendment prohibits “subtle departures from neutrality.” 508 U.S. at  
21

22  
23 <sup>12</sup> See also Church of Lukumi v. Hialeah, 508 U.S. 520, 535-540 (1993) (Court found  
24 that exemptions to three city ordinances banning the killing of animals rendered the laws to be  
25 content-based, and therefore unconstitutional, as being directed at those practicing the Santeria  
26 religion, and that the “pattern of exemptions parallels the pattern of narrow prohibitions. *Each*  
27 *contributes to the gerrymander*”); and U.S. v. Eichman, 495 U.S. 310, 317-19 (1990) (Court  
28 found the facially neutral Flag Protection Act content-based and therefore unconstitutional  
because although it prohibited burning of the flag, it exempted the burning of a “worn or  
soiled” flag as a means of disposal. The exception was an act “traditionally associated with  
patriotic respect for the flag,” and demonstrated content targeting by preferring patriotic rather  
than disrespectful acts upon a flag) (emphasis added).

1 534. To determine whether “the object of the law is a neutral one,” the Court instructed that  
2 “we may determine the City Council’s object from both direct and circumstantial evidence.”<sup>13</sup>

3 Relevant evidence includes, *among other things*, the historical  
4 background of the decision under challenge, the specific series of events  
5 leading to the enactment or official policy in question, *and the*  
6 *legislative or administrative history, including contemporaneous*  
7 *statements made by members* of the decisionmaking body.

8 Id. at 540 (emphasis added) (citing Arlington Heights v. Metropolitan Housing  
9 Development Corp., 429 U.S. 252, 266-268 (1977)).

10 In addition, Plaintiffs propounded interrogatories upon the Department of Taxation  
11 directed at discovering the purposes and governmental interest to be served by the LET and,  
12 specifically the numerous exceptions and later changes to the exceptions therein. *See* Nevada  
13 Department of Taxation’s Responses to Plaintiffs First Set of Interrogatories to Defendants,  
14 Ex. 13, Interrogatories 8, 9, 10, 11, 16, 17, 18, 21, and 22. In response, the Department  
15 repeatedly directed Plaintiffs to the Nevada Legislature’s legislative history of Senate Bill 4 of  
16 the 19<sup>th</sup> Special Session (2003), Senate Bill 5 of the 19<sup>th</sup> Special Session (2003), Senate Bill  
17 247 of the 73<sup>rd</sup> Session (2005), and Assembly Bill 554 of the 73<sup>rd</sup> Session (2005). Id.<sup>14</sup> An  
18 analysis of the relevant legislative history identified by the Department readily discloses that  
19 the LET was crafted to apply to a narrowly-defined group of speakers and discriminates based  
20 on content.  
21  
22  
23

24 <sup>13</sup> The analysis in Lukumi was undertaken specifically under the Free Exercise Clause.  
25 508 U.S. 540. Still, the Court made clear that “[t]he principle underlying the generally  
26 applicability requirement has parallels in our First Amendment Jurisprudence.” Id. at 543  
(citing, *inter alia*, Minneapolis Star, 460 U.S. at 585; other citations omitted).

27 <sup>14</sup> As this Court will also recall, it recently precluded the Plaintiffs from inquiring, in  
28 depositions, as to the governmental interests meant to be furthered by the enactment of the  
LET.

1 A salient example of this is the "Minutes of the Meeting of the Assembly Committee on  
2 Commerce and Labor" recorded during the 73rd Congressional Session on May 16, 2005,  
3 attached hereto as Ex. 14.<sup>15</sup> This was the committee meeting where it was debated whether to  
4 use the language "adult live entertainment" to better capture adult clubs in the amended version  
5 or whether that would make the target of the LET *too obvious to the courts*:  
6

7 **Chairwoman Buckley:**

8 *My biggest concern with the bill is its constitutionality. . . . I'm*  
9 *concerned that if we just put ["live adult entertainment,"] that*  
10 *might be held unconstitutional.* I wonder if a better approach  
11 might be to pick out a few more things like the racetrack and  
12 sporting events, but to delineate all those separate ones and leave it  
13 like that. We could fix and refine the language to make sure we're  
14 more careful and more able to describe things that might be caught  
15 up *rather than put into our statute the phrase "adult*  
16 *entertainment." which puts a big red flag on it for the courts.*  
17 What are your thoughts on that?

18 **Senator Titus:**

19 *At one time* the brothels were included, so that would be broader.  
20 *You can make the argument that this is a special kind of business*  
21 *that poses special kinds of social problems and therefore you can*  
22 *attach them.*<sup>16</sup> It's worth doing, and if an elected court in the state  
23 wants to challenge it, that's fine. None of the parts of the  
24 Constitution are absolute and they're all subject to interpretation.  
25 They interpreted the property tax we recently passed as maybe  
26 constitutional, and we can see how flexible the Constitution is in  
27 Nevada. I think it's worth the chance to put it in there.

28 <sup>15</sup> The Plaintiffs duly recognize that much of this legislative history reflects debate on  
how the 2003 legislation should be modified, rather than on the original enactment of the 2003  
legislation. First, the Plaintiffs challenge the 2005 version of the LET in this action. Second,  
this does not detract from the fact that the legislative history unequivocally demonstrates that  
the 2003 legislation's tax burden befell live adult entertainment in a greatly disproportionate  
manner, and was *meant to do so*. Indeed, the discussion in 2005 indicates that the tax failed to  
bring in the intended revenue because the 300-seat requirement, in action, excluded many of  
the adult clubs that were *intended as a revenue source*. This is certainly within "relevant  
evidence" identified in Lukumi, 508 U.S. at 540.

<sup>16</sup> This Court should note, of course, that brothels are *not*, however, included in the tax at  
issue.

1 ASSEMBLY COMMITTEE ON COMMERCE AND LABOR OF NEVADA, 73d Sess., p. 19 (May 16,  
2 2005) (emphasis and clarification added), Ex. 14.

3  
4 The Minutes also elucidate that the *intent* behind the tax was to further ratchet up the  
5 tax burden on adult entertainment, even though adult entertainment was already paying the *vast*  
6 *majority* of the existing non-casino tax:

7 **Senator Dina Titus, Clark County Senatorial District No. 7:**

8 The tax package from the 2003 Legislative Session included the  
9 entertainment tax, which quickly proved a bookkeeping nightmare.  
10 It also failed to generate the revenue we had anticipated *and it*  
11 *didn't adequately bring in a group some of us intended to be*  
12 *covered, which are the striptease clubs that have proliferated,*  
*primarily in southern Nevada.*

13 \* \* \*

14 *It will do a better job of capturing adult live entertainment*  
15 *because it eliminates that 300 seating requirement.*

16 \* \* \*

17 *Certainly the intent of the live entertainment tax was not to get*  
18 *nudist colonies, but to get striptease clubs.*

19 \* \* \*

20 **Chairwoman Buckley:**

21 I wonder if we could do it in a way that's a little broader but gets at  
22 the problems so we could avoid losing the revenue. *We're getting*  
23 *the most revenue from adult entertainment clubs, which is \$6*  
24 *million dollars, the highest amount paid under the live*  
25 *entertainment tax.*<sup>17</sup> The next one is race tracks at \$1.5 million<sup>18</sup>,  
26 but *everything else pales in comparison to how much they're*  
27 *bringing in now, and I would hate to give them back their \$6*  
28 *million.*

25 <sup>17</sup> This Court should note that these comments demonstrate that even the *legislators* did  
26 not consider the "casino" portion of the statutory scheme to really be part of this Live  
Entertainment Tax.

27 <sup>18</sup> In a time of needed tax revenues, it is, therefore, noteworthy that the *second highest*  
28 *source of revenue*, the racetrack, was then eviscerated by the "NASCAR Exemption" adopted  
in 2005 as part of the statutory revisions, discussed immediately below.

1 **Id.** at 17-19 (names bolded in original, emphasis added), Ex. 14.

2 This legislative history also explains that NASCAR racing and other sporting events  
3 were exempted from the bill because they were believed to be “family oriented”:  
4

5 **Senator Dina Titus, Clark County Senatorial District No. 7:**

6 This eliminates seating requirements, which were problematic in  
7 the original bill. *It eliminates sporting events, which are family*  
8 *oriented.* We believe those are attended by local families, and  
9 eliminating this would help to get a second NASCAR race, an all-  
star basketball game, and a baseball team. . . .

10 \* \* \*

11 **Senator Titus:**

12 I agree with that. *The 300-seat requirement has kept a lot of*  
13 *those clubs from paying.* If you decide to amend this and do  
14 something with it, be sure to keep that in mind because that’s  
15 where a lot of the revenue is. The fiscal Division in the Senate  
16 argued that *if you eliminate some of the family-oriented*  
*businesses like NASCAR and you take out the 300-seat at the*  
*same time, that will more than make up for any lost revenue.*

17 **Id.** (emphasis added).

18 The 300-person seating requirement was, in fact, lowered to a 200-person seating  
19 requirement (N.R.S. § 368A.200(5)(d),(e)), even though adult entertainment was already  
20 paying four-times more in taxes than the next contributor under the LET. The next largest  
21 contributor under the previous scheme was racetracks. But racetrack revenues are now  
22 eliminated via the NASCAR exception and via the exception for all “[l]ive entertainment that  
23 is provided to the public in the outdoor area. . . .” N.R.S. § 368A.200(5)(o), and (m).  
24 Consequently, in the Committee’s own words, the taxes paid by any remaining providers of  
25 live entertainment that the legislature initially forgot to exempt “*pale in comparison*” to the  
26  
27  
28

1 amounts paid by adult entertainment establishments. ASSEMBLY COMMITTEE ON COMMERCE  
2 AND LABOR OF NEVADA, 73d Sess., p. 19 (May 16, 2005), Ex. 14 (emphasis added).

3 Other historical documents from the time period leading up to the 2005 changes  
4 likewise demonstrate that when changes to the LET were proposed, the chief concern was how  
5 they would affect revenues from gentlemen's clubs. For example, on March 14, 2005, a  
6 Memorandum from Department was issued "to analyze the fiscal impact of making changes to  
7 the Live Entertainment Tax (LET)." Department of Taxation Memorandum, March 14, 2005,  
8 Ex. 15. This analysis recognized that eliminating the 300 person seating requirement would  
9 raise an additional \$4,197,900 from gentlemen's clubs, and \$1,614,600 from other bars and  
10 nightclubs. *See also* Untitled Revenue Analysis, Ex. 16, p. 3 (analyzing the impact of the 300-  
11 seat requirement separately for "men's clubs" from other businesses and specifically analyzing  
12 revenue to be generated from 200-seat men's clubs; no other specific category of businesses  
13 being mentioned or identified).

14 Another Memorandum on November 4, 2004, to Chuck Chinnock, Executive Director  
15 of the Nevada Department of Taxation, specifically identifies those gentlemen's clubs  
16 statewide that have seating capacities of less than 300. Memorandum of November 9, 2004,  
17 Ex. 17. And, in an April 24, 2005 email, Dino Dicianno, then-Executive Director of the  
18 Department of Taxation, explained:

19  
20 Chris Janzen asked me [sic] take a look at the fiscal impact of Senator  
21 Titus's new version of SB 247. ***There is no question that the focus of  
22 the bill is to tax for LET all adult entertainment, except for brothels.  
23 Currently the vast majority of the revenue that we collect comes from  
24 the gentlemen's clubs that have a seating capacity greater than 300.***  
25 For example, 1.2 million from nightclubs, 1.4 million from raceways,  
26 1.0 million from performing arts, 5.2 million from gentlemen's clubs;  
27 for a total collected of about 9.0 million. The remaining venues are  
28 minor (i.e. sporting events, etc.). ***By removing the seating capacity and  
eliminating the other venues you would then capture all of the***

1           *remaining gentlemen [sic] clubs that are currently not paying.* There  
2 is no question that they are a cash cow for LET. My best guess is that  
3 the fiscal impact of the revised SB 247 would be either a wash with a  
4 distinct possibility of a potential LET revenue gain.

5 Dicianno Email of April 24, 2004, Ex. 18 (emphasis added) (submitted as Exhibit E to the  
6 Assembly Committee/Ways & Means, May 26, 2005).

7           The documents preceding the 2003 tax are no different. In a 2003 email from Barbara  
8 Smith Campbell to Bill Bible, it was explained that:

9           The DAG has concerns about your recommended language in Ambient  
10 Entertainment #3. In summary, he feels the language may lead to the  
11 exemption of "entertainers" at the Gentlemen [sic] clubs. *Therefore, we*  
12 *did not incorporate it in our draft.*

13 Memorandum, November 18, 2003, Ex. 19 (emphasis added).

14           Even the speakers before the Senate Committee implicitly understood the purpose of  
15 the 2003 LET.

16           **Senator Lee:**

17           I know this bill is very important, but *it seems like we are selectively*  
18 *going after a group of businesses.* No matter what business it is, I have  
19 a challenge with understanding that type of activity.

20           **Taylor Dew: (National Hula Girls)**

21           *As you recall, the live-entertainment tax last Session was meant only to*  
22 *tax adult entertainment,* but unintentionally affected us Hula Girls,  
23 Elvis impersonators, jugglers, singers, bands and virtually every type of  
24 entertainer. Obviously, the wording will need to be changed.

25 Senate Committee on Taxation, April 12, 2005, p. 24, Ex. 20 (emphasis added).

26           Later legislative history further confirms the same:

27           **Senator Coffin:**

28           *Where are the topless clubs in this bill?*

**George W. Treat Flint (Nevada Brother Owners Association):**

1 I have an intimate relationship with this bill and its verbiage since the  
2 last Session. On page 6 of A.B. 554, the topless clubs would be covered  
3 under lines 1 through 3, unless they have an occupancy capacity of less  
4 than 300. The major men's cabarets are covered under that section. I  
5 have been told by the Department of Taxation that the major places  
6 create approximately \$7 million a year. *Most of the smaller clubs could*  
7 *probably be brought into A.B. 554 if you amend the section to read a*  
8 *total occupancy of 200 rather than 300.* To protect my client, I do not  
9 want you to bring the occupancy number down too much lower than 200  
10 *or you will have my clients back in this tax law.*

11 **Senator Coffin:**

12 It is my understanding that some of the topless clubs get out of being  
13 taxed by removing a few seats. We should consider the possibility of  
14 reducing the seating capacity so these highly profitable, legitimate  
15 businesses could help pay their share of the budget. Has there been any  
16 discussion about that?

17 \* \* \*

18 **Senator Coffin:**

19 I would like to ask Charles Chinnock from the Tax Department a few  
20 questions on this legislation. Mr. Chinnock, what happened after the last  
21 Session *with regard to the men's cabarets?*

22 **Charles Chinnock (Executive Director, Department of Taxation):**

23 Many jurisdictions, whether fire marshals or the building code  
24 departments that oversee *these facilities*, found increased safety  
25 concerns with the 300-seating capacity. From the building and safety  
26 officials' standpoint, they would much rather see less occupancy than  
27 greater occupancy. If you had 300 or greater seating capacity, they were  
28 willing to adjust that seating capacity from the standpoint it was a safer  
venue to reduce that capacity. It became an easy issue for *them* to  
reduce the seating capacity.

**Senator Coffin:**

Are you saying *they* reduced the seating number to avoid the tax in the  
interest of safety?

**Mr. Chinnock:**

Yes, it was in the interest of safety.

1                   **Senator Coffin:**

2                   If we changed the language to lower the amount, *would we*  
3                   *unintentionally include entities we do not want to tax?*

4                   **Mr. Chinnock:**

5                   I do not know how to answer that. We did not do a study of a breaking  
6                   point below the 300-seating capacity. The other bills were all or nothing  
7                   *with respect to adult entertainment.*

8                   **Senator Coffin:**

9                   If we are going to take action on A.B. 554 on the Senate Floor, would it  
10                  be possible to amend it at that time to lower the 300-seat capacity to  
11                  200?

12                  **William Bible (Nevada Resort Association):**

13                  I really cannot assist you with this issue because the taxes would apply  
14                  to venues associated with gaming. The seating capacity in A.B. 554 is  
15                  for areas not on gaming premises.

16                  **Senator Townsend:**

17                  With regard to the 300 seating and the budget, the lower we make it, the  
18                  more revenue we would generate as opposed to having an effect on  
19                  *them*. There should be no fiscal note. My limited knowledge of this  
20                  corresponds with Senator Coffin. This puts our Department of Taxation  
21                  and the auditors in a tough situation. We have to remember, at the end  
22                  of the day. We have those individuals who will be responsible for  
23                  implementing this law. *Senator Coffin's proposal meets the original*  
24                  *intent of what this Committee and the Assembly debated.* Obviously,  
25                  we do not want to create a problem for Mr. Flint's clients. That was  
26                  never the issue.

27                  **Mr. Flint:**

28                  This is not official, but *I spoke with someone in the Department of*  
                    *Taxation*, and I do not have Mr. Chinnock's permission to say this on  
                    the record. *I was told if you brought this number down to 200, you*  
                    *may pick up those who are avoiding or evading this at the moment.* I  
                    have been in enough of *these places* to know there are very few with  
                    less than 200 seats. There is a wide area you would pick up at 200, and  
                    you will still keep me harmless at this number.

1 SENATE COMMITTEE ON TAXATION, June 5, 2005, pp. 4, 6-7, Ex. 21 (emphasis added).

2 The context and legislative history to the 2003 statute and the 2005 amendments to the  
3 LET make clear that gentlemen's clubs were the focus of the bill. When other entities are  
4 discussed, it is for the purpose of making sure Nevada is not "unintentionally" taxing too many  
5 other entities. There can be no doubt that the purpose behind lowering the seating requirement  
6 from 300 to 200 was to capture gentlemen's clubs, and no one else.

7 Hence, it is clear that this is a narrowly targeted *and* a content-based tax that applies to,  
8 and indeed exempts, certain speech, and cannot pass constitutional muster.

9  
10  
11 **E. PLAINTIFFS ARE ENTITLED TO PERMANENT INJUNCTIVE**  
12 **RELIEF.**

13 As discussed in subsection IV(A) above, permanent injunctive relief should be granted  
14 when there is no adequate remedy at law, when the balance of equities favors the moving  
15 party, and when success on the merits has been demonstrated. Plaintiffs will discuss these  
16 three elements in reverse order.

17 Plaintiffs have demonstrated success on the merits for the reasons set forth above. In  
18 addition, the balance of equities clearly favors these Plaintiffs and the granting of injunctive  
19 relief. The potential harm to Plaintiffs is that as outlined above -- the deprivation of their  
20 constitutional rights. More importantly, at issue here is not the infringement of just any right,  
21 but the fundamental rights of freedom of speech and expression, which as the Supreme Court  
22 has noted, are the protections upon which all other constitutional rights depend. Palko v.  
23 Connecticut, 302 U.S. 319, 326-27 (1937). The public has a fundamental interest in the  
24 protection of First Amendment freedoms. "[I]t is *always* in the public interest to prevent the  
25 violation of a party's constitutional rights." G&V Lounge, Inc. v. Michigan Liquor Control  
26  
27  
28

1 Com'n, 23 F.3d 1071, 1079 (6th Cir. 1994) (citing Gannett Co., Inc. v. DePasquale, 443 U.S.  
2 368, 383 (1979); and Planned Parenthood Ass'n. v. City of Cincinnati, 822 F.2d 1390, 1400  
3 (6th Cir. 1987)).

4       The potential harm to defendant is, however, merely the inability to enforce a statute  
5 which Plaintiffs assert is constitutionally flawed. See, e.g., Books, Inc. v. Pottawattamie  
6 County, Iowa, 978 F.Supp. 1247, 1256 (S.D. Iowa 1997) (balance of equities favors exercise  
7 of constitutionally protected rights over undeclared interest of government in that the operation  
8 of an ordinance that is "a very probable violation of Supreme Court precedent"). In addition,  
9 Nevada would not be precluded from enforcing other existing statutes, ordinances, and  
10 regulations against Plaintiffs, including all general sales and use taxes. It is undeniable, then,  
11 that the potential harm to Plaintiffs outweighs any harm to the Defendants.  
12

13       The inadequacy of the remedy at law is demonstrated in at least five different ways.  
14

15       First, involves the suppression of the profits of the Plaintiffs. As noted above in  
16 subsection IV(D)(1), Plaintiffs' activities are expression protected by the First Amendment. In  
17 regard to these protections, it makes absolutely no difference, as discussed above, that N.R.A.  
18 § 368A.200(5) limits the tax's application to for-profit entertainment. See also Simon &  
19 Schuster, 502 U.S. at 105 (Court invalidated law that required convicted criminals to disgorge  
20 profits made from books written about their criminal activities).  
21

22       However, through Chapter 368A, the exercise of these constitutional rights is  
23 *conditioned upon* and burdened by the payment of a substantial fee in the form of a tax. If the  
24 Plaintiffs are unable to pay the tax imposed by Chapter 368A, they cannot then engage in the  
25 First Amendment activities encompassed by the regulations. In addition, if the Plaintiffs do  
26  
27  
28

1 not pass on the tax to their customers, there is no question then that this tax directly reduces the  
2 profits of the Plaintiffs, and for this reason alone irreparably injures the Plaintiffs.

3 Second, if the Plaintiffs pass this tax burden onto their customers, there is still the  
4 prospect of an inadequate remedy at law. Additional tax burdens would lead, if passed onto  
5 the customers, to increases in the costs to people desiring to view such entertainment, which  
6 from basic economic theory has the significant potential of reducing the customer base (the  
7 customers themselves being imbued by First Amendment rights in order to be able to *view* such  
8 entertainment) -- and therefore reducing the engagement in First Amendment protected  
9 activities -- regarding those persons who have insufficient means to pay the increased fees in  
10 order to be able to view such entertainment. This would reduce the engagement in these First  
11 Amendment protected activities, and creates irreparable harm.

14 Moreover, if the tax is just paid out of the general operating budgets of the Plaintiffs'  
15 establishments (without passing the costs directly onto customers), that money could otherwise  
16 be used (if not to pay the invalid tax) to purchase, among other things, additional advertising  
17 (an activity itself protected by the First Amendment), to remodel the facilities, and to expand  
18 the physical size of such establishments; all matters that would have the tendency to *increase*  
19 the engagement in protected expression upon the premises of each of the named Plaintiffs. The  
20 Live Entertainment Tax therefore, and without question, negatively impacts upon the  
21 engagement in expressive activities. "The loss of First Amendment freedoms, for even  
22 minimal periods of time, unquestionably constitutes irreparable injury." **Brown v. California**  
23 **Dept. Of Transp.**, 321 F.3d 1217, 1125-126 (9th Cir. 2003) (*quoting* **Elrod v. Burns**, 427  
24 U.S. 347, 373 (1976) (plurality)).

1 Third, and related to these concerns, is the simple fact that in light of this Court's ruling  
2 dismissing out Plaintiffs' 42 U.S.C. § 1983 damage claims, the Plaintiffs face the prospect of  
3 being unable to recover any of the consequent damages that they have sustained as a result of  
4 the imposition of this tax in the past. Irreparable harm occurs when a damage award would be  
5 insufficient to remedy the Plaintiffs' injuries. Hansen v. Eighth Judicial Dist. Court ex rel.  
6 County of Clark, 116 Nev. 650, 658, 6 P.3d 982 (2000). Here, Plaintiffs *cannot* (unless  
7 disturbed on appeal) obtain a damage award for any injuries sustained to their businesses.

9 Fourth, and irrespective of the *damages* discussed above, is the *potential inability of*  
10 *the Plaintiffs to even recover the millions of dollars paid by Plaintiffs since 2004 in Live*  
11 *Entertainment Taxes if this Court ultimately rules the Statute unconstitutional or finds that*  
12 *the Plaintiffs are entitled to one of the statutory exemptions/exceptions.* During the first  
13 hearing that occurred before the Nevada Tax Commission ("Commission") on July 9, 2007, the  
14 Department, through legal counsel (who is the *same attorney* representing the Defendants in  
15 both Cases 1 and 2), stated that it was:  
16

17 . . . important to mention N.A.C. 368A.170 which requires that if it is  
18 determined that a refund is appropriate in this case, that the taxpayer  
19 would first have to establish that any amounts of refund could be or have  
20 been actually refunded to the patrons of the taxpayer, and there has been  
21 no indication in this case that there is any ability of the taxpayer to  
22 refund that money to the patrons.

23 Transcript (Ex. 22), page 30, lines 8-14.

24 N.A.C. § 368A.170 (Ex. 5) regulates the "over-collection" of the subject taxes, which is  
25 defined in part as "any amount collected as a tax on live entertainment that is exempt from  
26 taxation pursuant to subsection 5 of N.R.S. 368A.200.<sup>19</sup>" N.A.C. § 368A.170(1). The  
27

28 <sup>19</sup> Subsection 5 of N.R.S. § 368A.200 states that the LET does not apply to, among other things, "[l]ive entertainment that this state is prohibited from taxing under the Constitution,

1 regulation states that any over-collection “must, if possible, be refunded by the taxpayer to the  
2 patron from whom it was collected.” N.A.C. § 368A.170(2). The taxpayer is required to “use  
3 all practical methods to determine any amount to be refunded pursuant to subsection 2 and the  
4 **name and address** of the person to whom the refund is to be made.” N.A.C. § 368A.170(3)(a)  
5 (emphasis added). Astonishingly, in an unbelievable bout of Orwellian logic, the regulations  
6 further dictate that if the taxpayer cannot “refund an over-collection,” it must “**pay the over-**  
7 **collection to the department [of Taxation].**” N.A.C. § 368A.170(4) (emphasis and  
8 clarification added). Consequently, according to the very language of the regulation, **if the**  
9 **State illegally collects a tax, the taxpayer is required upon the determination of illegality to**  
10 **nevertheless pay the illegally collected tax over to the State of Nevada!**

11  
12  
13 The initial Commission hearing was the first occasion that any of the Defendants raised  
14 the applicability of N.A.C. § 368A.170.<sup>20</sup> When the hearing continued on August 6, 2007,  
15 Bradley Shafer, counsel for the taxpayers and one of the attorneys for the Plaintiffs here,  
16

17 laws or treaties of the United States or the Nevada Constitution.” N.R.S. § 368A.200(5)(a).  
18 Consequently, if Plaintiffs’ arguments are correct that the LET violates both the federal and  
19 state Constitutions, the exemption under N.R.S. § 368A.200(5)(a) applies and there has then  
20 been an “over-collection” of the tax.

21 <sup>20</sup> It should be noted that the Defendants’ position before this Court is not the same that it  
22 took in the federal courts. Defendants originally assured the federal courts that the Nevada  
23 state court proceedings allowed for a full recovery of amounts paid under the LET. Then,  
24 while the matter was pending before the Ninth Circuit, Plaintiffs’ appeal of the denial of their  
25 administrative claims for refunds came before the Nevada Tax Commission. It was only then  
26 that the Department took the position that the tax was not on Plaintiffs, but their customers.  
27 Plaintiffs then moved the Ninth Circuit to supplement the record to reflect this development,  
28 which was denied. Attached hereto as Ex. 24 (which was originally attached as Exhibit 8 to  
Plaintiffs’ Opposition to Defendant’s first Motion to Dismiss in Case 1) is the Defendants’  
“Answering Brief” filed before the Ninth Circuit. In this document, the Defendants contend  
that so long as Plaintiffs have not passed the tax along to their customers (which Plaintiffs have  
verified they have not), Plaintiffs would be entitled to a full refund of the LET tax paid. Ex. 24,  
pp. 14-15, 20. Nevertheless, Plaintiffs have the significant prospect of suffering irreparable  
harm given that the Defendants **now** contend (as discussed below) that Plaintiffs may not,  
indeed, be entitled to a tax refund **even if they prevail in this action.**

1 addressed N.A.C. § 368A.170 and the Department's insistence that in order to obtain a refund,  
2 a taxpayer has to identify each patron who paid an admission charge, or for food, drink or  
3 merchandise, and demonstrate that the taxpayer knows where the patron lives or works in order  
4 to "reimburse" the refund to that individual. He explained that:

5 [W]hat the Department would say is that if a customer buys Coca-Cola,  
6 for us to get a refund of this tax, we have to get the name and address of  
7 every person buying a Coca-Cola or a beer coming in the facility and I  
8 don't think any of you in your real life experiences have ever had any  
9 time where you went to buy food and drink and had to give your name  
and address, and that doesn't happen here.

10 Transcript (Ex. 23), page 10, lines 14-21.

11 In addition to the arguments regarding the taxpayers' inability to locate each patron  
12 who paid an admission or who purchased food, drink or merchandise, the K-Kel Plaintiffs  
13 further informed the Commission that the tax was paid not by the patrons but, rather, by the  
14 clubs themselves. The K-Kel Plaintiffs introduced affidavits from four of the Plaintiffs which  
15 established that "none of the facilities have raised their admission fees in order to recoup the  
16 tax, the tax merely is deducted out of the general receipts of the business and it's the  
17 businesses' money that we're trying to get back." Transcript (Ex. 23), page 10-11, lines 22-25  
18 and 1. The four affidavits submitted are attached hereto as Ex. 25.

19  
20  
21 Irrespective of these arguments of the K-Kel Plaintiffs, Senior Deputy Attorney  
22 General David Pope, *one the defense attorneys who has filed motions for summary judgment*  
23 *and to dismiss in both Cases 1 and 2*, replied as follows:

24 To the extent that the tax is applicable *it's to be collected from the*  
25 *patrons of the gentlemen's clubs*, and in fact, there is to be an  
26 accounting or should have been an accounting by the gentlemen's club  
27 six days after they indicated that they were entitled to a refund.  
28

1 I think that they may have some approach to that and it may lead to  
2 further argument, so I think it's still an issue that is applicable and we'll  
have to address.

3 Transcript (Ex. 23), page 9, lines 5-13 (emphasis added).

4 Although the argument of the applicability of N.A.C. § 368A.170 was thereafter  
5 reserved by the Commission for argument at a later time (if the Plaintiffs were found to be  
6 entitled to a refund in the first place), Mr. Pope subsequently stated in the hearing:

8 I know we've reserved time to argue this, but *the law does require that*  
9 *that admission charge be collected from the patrons* and I believe it  
10 also requires that if it's included in the ticket or included in the  
admission charge, then there has to be some notification of that.

11 To the extent that it's not included as was stated here today, that  
12 it's just being paid on behalf of the patrons, then I think *it's difficult to*  
13 *say that the patrons aren't paying it even though they don't know that*  
14 *they are not. The law requires that it's being collected from the*  
*patrons* and the appellants are paying it *on behalf of the patrons*.

15 Transcript (Ex. 23), pages 74-75, lines 19-25, 1-6 (emphasis added).

16 Commissioner Turner then verified this position:

17 Counsel for the taxpayers, Mr. Shafer, argued that this is really a tax  
18 that's being absorbed by the businesses he represents.

19 *It is a pass-through tax*, and the businesses if the tax did not exist could  
20 reduce what they're charging to their customers by the amount of the tax  
and have the same bottom line today.

21 Transcript (Ex. 23), pages 92-93, lines 21-25, 1-2 (emphasis added).<sup>21</sup>

22  
23  
24  
25 <sup>21</sup> In later commenting upon the bases for the ruling denying the claims for refunds,  
26 Commissioner Turner, in adhering to his "pass-through" conceptualization of the tax, stated  
27 that he would "find in addition that a refund to the taxpayers being the clients of Mr. Shafer at  
28 this point in time would constitute *an unjust enrichment* at the same time." Transcript (Ex.  
23), page 93, lines 6-8 (emphasis added). That unjust enrichment claim was obviously  
predicated upon his belief that these Plaintiffs did not *pay* the tax and could not, then, equitably  
recoup it.

1 Counsel for the Defendants expressed this same position before this very Court.  
2 During the hearing held just on December 9, 2010, all three of the attorneys for the Defendants  
3 articulated three different positions regarding the applicability of N.A.C. § 368A.170 to  
4 Plaintiffs' ability to even recover a refund of the LET unconstitutionally paid to the state.  
5 Transcript of Hearing on December 9, 2010, Ex. 226, pp. 30-46.  
6

7 First, Vivienne Rakowsky, who was not involved in either the federal cases or the state  
8 administrative proceedings, explained her interpretation of the ability of Plaintiffs to recover  
9 any refund based upon N.A.C. § 368A.170:

10 So in other words, they have to pay that tax on the admission. They can  
11 collect it separately from their patrons, or they can include it in the ticket  
12 price and then make out the check. It says any ticket for live  
13 entertainment must stay with the tax imposed by this sections [sic],  
14 including 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.

15 [Mr. Shafer] says his - - his people have not been collecting the  
16 tax they've been paying it. So if he can verify the fact that the LET tax  
17 has come out of the pockets of his clients, he's entitled to - - he - - he  
will be entitled to refund if he wins this case, with interest.

18 Transcript, Ex. 26, p. 34 (clarification added).

19 Next, Mr. Pope, who admitted that he was the only attorney of the trio present on behalf  
20 of the State on December 9, 2010, who was also involved in both the federal court and state  
21 administrative proceedings, made an argument disavowing his position in front of the  
22 Commission, as set forth, *supra*:

23  
24 MR. POPE: I think one of the things that plaintiffs are going to have to  
25 show is how they did handle that - - that issue. Did they include the tax  
and did they have a sign on the wall or did they not?

26 And - - and, you know, we haven't gotten to that point yet.

27 THE COURT: And because, if they did not, then the State's position  
28 would be what?

1 MR. POPE: *Well, I'm not sure*, and I don't know that we're here to say  
2 that today. But it depends on what they did and what evidence they have  
3 to show what they did.

4 THE COURT: Well, let me ask you this. *If you took a position before*  
5 *in an administrative proceeding*, is it your - - is it your - -

6 MR. POPE: *I'm not sure if we took it in administrative proceeding or,*  
7 *I mean, took a position, or if what Mr. Shafer just said, a*  
8 *commissioner recited a regulation. I don't recall, Your Honor. I'm*  
9 *not - - I'm not sure.*

10 Transcript, Ex. 26, pp. 35-36 (emphasis added).

11 Then, it was Mr. Doerr's turn to give this Court *his* interpretation of N.A.C. §  
12 368A.170:

13 THE COURT: . . . You haven't taken a position on that one way or  
14 another you're saying to me?

15 MR. DOERR: I'm not saying that. I'm saying that, in fact, I believe in  
16 our first argument, I argued that *I don't think it could ever be construed*  
17 *to have been not paid by their customer*. It's the customer who bears  
18 the burden of the tax, the retailer under sales and use tax, the club in this  
19 case, is the collection agent. *They're not the payer, they're the*  
20 *remitter*. They remit the tax. They don't pay the tax, they get it from  
21 their client - -

22 Transcript, Ex. 26, p. 38 (emphasis added).

23 Finally, all three of the State's attorneys again gave their varying constructions of the  
24 ability of Plaintiffs to obtain a refund *at all* if Chapter 368A is found to be unconstitutional:

25 MR. DOERR: And I think the commission said, we don't think this is  
26 unconstitutional, you don't get a refund. So that issue - - you know,  
27 again, I think that that question should be here on Judicial review.

28 MR. POPE: What the - - what the statute says, Your Honor, is a  
business entity that collects any amount that is taxable, pursuant to the  
LET, is liable for the tax imposed, but is entitled to collect  
reimbursement from any person paying that amount.

1 MS. RAKOWSKY: So they're paying - - it's a pay first. They're  
2 paying it. They're entitled to collect it if they want, but if they don't  
want it, they still have to pay it.

3 MR. SHAFER: Your Honor - -

4 MR. DOERR: *It comes from the customer.*

5 MR. SHAFER: Your Honor - -

6 MR. DOERR: *The receipts, it comes from the customer.*

7  
8 Transcript, Ex. 26, p. 42 (emphasis added).

9 Despite their arguments to the contrary, Mr. Pope then tried to argue that Plaintiffs have  
10 not established irreparable harm: "You have to pay first, and sue later. It's not an irreparable  
11 harm. As long as you get your money back with interest you have not been harmed."  
12 Transcript, Ex. 26, p. 44.

13  
14 To this day, the Department has not settled on a final position on this issue. In the  
15 Nevada Department of Taxation's Opposition to Plaintiffs' Renewed Motion for Preliminary  
16 Injunction and Motion to Strike (dated March 2, 2011), the Department argued in light of its  
17 ever-changing position on this issue discussed above, that Plaintiffs were the "taxpayers" who  
18 were entitled to a refund:  
19

20 Pursuant to NRS 368A.110 the "taxpayer is the owner or operator of the  
21 facility where the live entertainment is provided. NRS 368A allows the  
22 taxpayer (owner or operator of the facility) to collect the amount taxable  
or pay the tax itself based on the face amount of the ticket. [ ]"

23 In this case, the Plaintiff have provided sworn affidavits from some of  
24 the Case 2 Plaintiffs that they did not "raise[ ] the admission charge" and  
25 did not "assess" its customers with the tax. According the sworn  
26 affidavits the Plaintiffs pay "the Live Entertainment Tax by simply  
27 determining the amount of revenues for taxable admission charges, food,  
refreshments and merchandise, and remitting the appropriate statutory  
percentage of those charges/purchases to the Nevada Department." See  
28 Plaintiffs Exhibit 19 to its Renewed Motion. *Accordingly, NAC.170  
would not apply to the Plaintiffs, because they never collected the tax*

1 *from their patrons, and therefore could never have over-collected the*  
2 *tax.* Thus, the Plaintiffs argument that they do not have a remedy  
3 because they do not keep records of their clients is not relevant to the  
4 refund issue in this case.

5 Contrary to an over-collected tax, an illegal tax is unlawful. In this case,  
6 if the LET is determined by the Court to be illegal, the *Plaintiffs will be*  
7 *entitled to seek a refund.* See State of Nev. v. Scotsman Mfg. Co., 109  
8 Nev. 252, 256, 849 P.2d 317, 320 (1993) (the state must now undo the  
9 unlawful deprivation by refunding the tax." (internal quotations  
10 omitted); see also McKesson Corp. v. Division of Alcoholic Beverages  
11 and Tobacco, 496 U.S. 18, 19 (1990) (If a state takes the position that a  
12 taxpayer should pay the tax and then challenge the tax statute, and the  
13 taxpayer prevails because the tax is inherently unconstitutional, the Due  
14 Process clause of the Fourteenth Amendment requires the state to refund  
15 taxes already paid). [ ] *Therefore, if the LET tax is held to be*  
16 *unconstitutional, the tax could be refunded.*

17 Id. at pp. 16-17 (footnotes omitted; emphasis supplied)

18 However, for purposes of Defendants' Motion to Compel on an Order Shortening Time  
19 (dated August 15, 2011), it better suited the Department to flip-flop its position, and that is  
20 exactly what it did. It argued: "Pursuant to NAC 368A.170 it is necessary to determine  
21 whether the club owner or the patron paid the tax" (id. at 14) and "[t]he Department must also  
22 determine whether the club collected the LET tax from its customers or whether the club paid  
23 the LET tax without collecting from its customers (id. at 17) (citing NAC 368A.170).

24 If history is any guide, it teaches that the Department will advance any position on this  
25 issue that best suits its interest *at that specific point in time.* Thus, upon Plaintiffs' having  
26 demonstrated that the LET is unconstitutional, history predicts that the Department will assert  
27 that the patron is the taxpayer and Plaintiffs are ineligible for a refund. Therefore, the LET  
28 must be declared unconstitutional and permanently enjoined.

If, indeed, the Defendants' position taken before the Tax Commission and this Court  
(that Plaintiffs cannot obtain a refund without identifying and passing the refund along to the

1 specific patrons who Defendants contend paid the tax) carries the day, irreparable injury will  
2 certainly exist apart from the injury to Plaintiffs' First Amendment freedoms since Plaintiffs  
3 will never be able to recover the unconstitutionally collected tax.<sup>22</sup>

4 Fifth, the regulation relied upon by the Defendants, itself, demonstrates irreparable  
5 injury. Under their interpretation of the regulation, the Plaintiffs can only obtain a refund of an  
6 unconstitutional tax if they were able to obtain and retain the *name and address* of every  
7 patron who enters the facility and/or who purchases any form of food, beverage, or  
8 merchandise. No entertainment venue could be expected to collect and maintain such records,  
9 particularly in light of the fact that the Constitution recognizes the right to view, hear, and  
10 engage in protected expression *anonymously*,<sup>23</sup> and these privacy interests are particularly  
11 relevant here where the Plaintiffs are a group of exotic dance facilities and where patrons may  
12 then have a specific interest in maintaining their anonymity. Under these circumstances, the  
13 disclosure requirements of N.A.C. § 368A.170, which the Defendants *insist* apply here,  
14 themselves beget a constitutional violation (compelled disclosure of private information). The  
15 prospect for irreparable harm is therefore clearly established, and an injunction is warranted.

16  
17  
18  
19 **F. PLAINTIFFS HAVE A RIGHT TO THE REQUESTED INJUNCTIVE**  
20 **RELIEF BECAUSE, AS A MATTER OF LAW, NO STATUTE CAN**  
21 **DIVEST THE COURTS OF THIS STATE OF THEIR**  
22 **CONSTITUTIONALLY-GRANTED AUTHORITY TO ISSUE WRITS**  
23 **OF INJUNCTIONS.**

24 <sup>22</sup> In addition, there is also the question, reserved by this Court, of whether the to-be-filed  
25 petition for judicial review, to take the place of Case 2, would be timely.

26 <sup>23</sup> See, e.g., Talley v. California, 362 U.S. 60, 64-66 (1960); Hynes v. Mayor and  
27 Council of Borough of Oradell, 425 U.S. 610, 628 (1976); McIntyre v. Ohio Elections  
28 Comm., 514 U.S. 334, 341-344 (1995); Connection Distributing Co. v. Reno, 154 F.3d 281,  
293 (6th Cir. 1998), *cert. denied*, 526 U.S. 1087 (1999); and Deja Vu of Nashville, Inc. v.  
Metropolitan Government of Nashville and Davidson County, 274 F.3d 377, 394-395 (6th  
Cir. 2001), *cert denied*, 535 U.S. 1073 (2002).

1 Chapter 368A contains an anti-injunction provision (N.R.S. §368A.280(1)), which the  
2 Defendants will raise as a bar to this Court providing the relief requested by way of this  
3 motion. However, the anti-injunction provision in N.R.S. § 368A.280(1) violates the  
4 separation of powers provision of the Nevada Constitution, and is therefore unenforceable.

5 The Supreme Court of Ohio recently faced a similar situation in City of Norwood v.  
6 Horney, 853 N.E.2d 1115, 110 Ohio St.3d 353 (Ohio 2006). In Norwood, the court evaluated  
7 the constitutionality of a statute that “prohibit[ed] a court from enjoining the taking and using  
8 of property appropriated by the government . . . prior to appellate review of the taking.” Id. at  
9 1122. The court ruled the statute to be “an unconstitutional encroachment of the judiciary’s  
10 constitutional and inherent authority in violation of the separation-of-powers doctrine.” Id. at  
11 1150.

12 The Norwood court identified the power of injunction to be an inherent power of the  
13 courts under the state constitution. Id. at 1148-1149. The court next recognized the authority  
14 to grant injunctive relief as judicial power that “resides exclusively in the judicial branch.” Id.  
15 at 1148. It therefore concluded that the legislature’s attempt to limit the court’s inherent power  
16 of injunction violated the separation-of-powers doctrine. Id. at 1150.

17 In doing so, the Ohio Supreme Court found the following statement of the Kentucky  
18 Supreme Court to be particularly astute:

19  
20  
21  
22 The control over this inherent judicial power, in this particular  
23 instance the injunction, is exclusively within the constitutional  
24 realm of the courts. *As such, it is not within the purview of the*  
25 *legislature to grant or deny the power nor is it within the purview*  
26 *of the legislature to shape or fashion circumstances under which*  
27 *this inherently judicial power may be or may not be granted or*  
28 *denied.*

Id. at 1149 (emphasis in original), citing Smothers v. Lewis, 672 S.W.2d 62, 64 (Ky. 1984).

1 This Court should likewise find the legislature's attempt to limit or fashion the  
2 circumstances under which a court may exercise its injunctive power to be in violation of the  
3 separation of powers mandated by Article 3, § 1, of the Constitution of the State of Nevada. In  
4 Nevada, the power of injunction is not only an inherent judicial power, but it is an *explicit*  
5 power of the courts directly conferred upon them by the Nevada Constitution. Article 6, § 6, of  
6 the State Constitution vests the power to issue writs of injunction in the State's District Courts.  
7

8 . . . The District Courts and the Judges thereof have the power to  
9 issue Writs of . . . Injunction. . . , and all other Writs proper and  
10 necessary to the complete exercise of the jurisdiction.

11 Chapter 368A attempts to divest the judiciary of its constitutionally granted power of  
12 injunction. This provision is a patently unconstitutional violation of the separation of powers  
13 set forth in Article 3, § 1, of the State Constitution, which provides:

14 The powers of the government of the State of Nevada shall be  
15 divided into three separate departments,—the legislative,—the  
16 Executive and the Judicial; and no persons charged with the  
17 exercise of powers properly belonging to one of these departments  
18 shall exercise any functions, appertaining to either of the others,  
except in the cases expressly directed or permitted in this  
constitution.

19 “It is fundamental to our system of government that the separate powers granted the  
20 executive, legislative and judicial departments be exercised *without intrusion*.” City of North  
21 Las Vegas v. Daines, 92 Nev. 292, 294, 550 P.2d 399 (1976), citing Galloway v. Truesdell,  
22 83 Nev. 13, 422 P.2d 237 (1967) (emphasis added). This is the single most important principle  
23 “declaring and guaranteeing the liberties of the people.” Galloway, 83 Nev. at 18. Statutes  
24 which attempt to limit or destroy the powers of the courts must *fail*. Goldberg v. The Eighth  
25 Judicial District Court of the State of Nevada, 93 Nev. 614, 616-17, 572 P.2d 521 (1977),  
26 citing Lindauer v. Allen, 85 Nev. 430, 434, 456 P.2d 851 (1969).  
27  
28

1 Further, Plaintiffs' situation is one that has already been recognized to merit injunctive  
2 relief. The Nevada Supreme Court has previously addressed this issue of enjoining the  
3 collection of an impermissible tax. In Penrose v. Whitacre, 62 Nev. 239, 147 P.2d 887 (1944)  
4 (hereinafter "Penrose II"), the court stated that an injunction to prevent the collection of taxes  
5 would lie where "enforcement of the tax would lead to a multiplicity of suits, or *produce*  
6 *irreparable injury*; or, if the property is real estate, throw a cloud upon the title of the  
7 complainant, or there must be some allegation of fraud. . . ." Id. at 245 (emphasis added)  
8 (citing Wells, Fargo & Co. v. Dayton, 11 Nev. 161, 166 (1876) (other citations omitted)). See  
9 also Comm'r of International Revenue v. Shapiro, 424 U.S. 614, 627 (1976). The Plaintiffs  
10 must also lack an adequate remedy at law. Penrose v. Whitacre, 61 Nev. 440, 132 P.2d 609,  
11 617 (1942) (hereinafter "Penrose I").

14 Here, Plaintiffs meet the requirements under Penrose II because: (1) enforcement of  
15 Chapter 368A will cause, and indeed has caused, Plaintiffs to suffer irreparable injury; and (2)  
16 Plaintiffs lack an adequate remedy at law. These matters have been discussed in great detail  
17 above, and will not be reiterated here. Further, the actual imposition of an unconstitutional tax  
18 or fee can cause irreparable injury. See Joelner v. Village of Washington Park, Illinois, 378  
19 F.3d 613, 620, 628 (7th Cir. 2004) (Court found that if plaintiff "cannot afford such a hefty fee,  
20 he would be forced to shut down his bookstore. Hence, there is a threat that these allegedly  
21 unconstitutionally excessive fees could cause Joelner significant irreparable harm").  
22

24 It is clear that Plaintiffs are entitled to injunctive relief in this action under the binding  
25 precedents of Penrose I and II. Because Chapter 368A attempts to divest this Court of its  
26 constitutionally-given power of injunction, it is an unconstitutional abridgment of the  
27  
28

1 separation of powers doctrine contained in Article 3 § 1, of the Constitution of the State of  
2 Nevada, and is therefore invalid.

3 ///

4 ///

5 ///

1 **V. CONCLUSION**

2 Based upon the foregoing, Plaintiffs respectfully request that this Honorable Court  
3 grant this motion; declare the LET to be facially unconstitutional; enjoin the Defendants, their  
4 officers, employees, agents, and representatives, as well as all persons acting by, through, and  
5 for them, from enforcing, applying, and implementing Title 32, Chapter 368A of the Nevada  
6 Revised Statutes; and order the refunding of all taxes paid by Plaintiffs to date, together with  
7 interest.  
8

9 DATED this 22<sup>nd</sup> day of September, 2011

10 BY: /s/ William H. Brown  
11 WILLIAM H. BROWN  
12 Nevada Bar No.: 7623  
13 LAW OFFICES OF WILLIAM H. BROWN, LTD.  
14 6029 S. Ft. Apache Rd., Ste. 100  
15 Las Vegas, NV 89148  
16 Phone: (702) 385-7280  
17 Facsimile: (702) 386-2699  
18 Will@whbesq.com  
19 *Counsel for Plaintiffs*

20 BRADLEY J. SHAFER  
21 Michigan Bar No. P36604\*  
22 SHAFER & ASSOCIATES, P.C.  
23 3800 Capital City Blvd., Suite #2  
24 Lansing, Michigan 48906-2110  
25 Brad@bradshaferlaw.com  
26 *Co-Counsel for Plaintiffs*  
27 *\*Admitted Pro Hac Vice*  
28

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**Catherine Cortez Masto**  
Attorney General  
**David J. Pope**  
Sr. Deputy Attorney General  
**Blake A. Doerr**  
Deputy Attorney General  
555 E. Washington Ave., Suite 3900  
Las Vegas, NV 89101  
Facsimile: (702) 486-3420  
*Attorneys for the Nevada Defendants*

**An employee of LAW OFFICES OF WILLIAM H. BROWN, LTD.**

**INDEX OF EXHIBITS TO  
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT ON FACIAL CHALLENGE,  
OR PERMANENT INJUNCTION, AND FOR RETURN OF TAXES**

- Ex. 1        Original 2003 Version of Chapter 368A
- Ex. 2        Assembly Bill No. 554 (2005)
- Ex. 3        Senate Bill No. 3 (2005) – “occupancy”
- Ex. 4        Assembly Bill 487 (2007) – baseball
- Ex. 5        Current Codified Version of Chapter 368A
- Ex. 6        Tennessee Attorney General Opinion
- Ex. 7        U.S. District Court Dismissal
- Ex. 8        9<sup>th</sup> Circuit Decision Affirming Dismissal
- Ex. 9        Redacted Sample Refund Request
- Ex. 10       Sample Denial Letter from Department of Taxation
- Ex. 11       Sample Appeal Acknowledgment Letter from Department
- Ex. 12       October 12, 2007, Tax Commission Ruling
- Ex. 13       Nevada Department of Taxation’s Responses to Plaintiffs’ First Set of Interrogatories to Defendants
- Ex. 14       Minutes of the Assembly Committee on Commerce & Labor – Congressional Session on May 16, 2005
- Ex. 15       Department of taxation memorandum dated March 14, 2005
- Ex. 16       Untitled Revenue Analysis
- Ex. 17       Memorandum of November 9, 2004 (Cathy Chambers)
- Ex. 18       Dino Dicianno email dated April 24, 2004 – Exhibit E to Assembly Committee/Ways & Means, May 26, 2005
- Ex. 19       Memorandum (or Email – to Bible) regarding proposed regulations
- Ex. 20       Senate Committee on Taxation, April 12, 2005

- Ex. 21      Senate Committee on Taxation, June 5, 2005
- Ex. 22      Nevada Tax Commission Hearing Transcript – July 19, 2007 - Excerpts
- Ex. 23      Nevada Tax Commission Hearing Transcript – August 6, 2007 - Excerpts
- Ex. 24      Defendants' Answering Brief submitted to the Ninth Circuit - Excerpts
- Ex. 25      *Affidavits of Plaintiffs re Admissions*
- Ex. 26      Nevada Tax Commission Hearing Transcript – December 9, 2010 - Excerpts

# EXHIBIT “A”

1 **REQT**

2 CATHERINE CORTEZ MASTO

3 Attorney General

4 DAVID J. POPE

5 Senior Deputy Attorney General

6 Nevada Bar No. 008617

7 BLAKE A. DOERR

8 Senior Deputy Attorney General

9 Nevada Bar No. 009001

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19 [vrakowsky@ag.nv.gov](mailto:vrakowsky@ag.nv.gov)

20 Attorneys for Nevada Department of Taxation

21 **DISTRICT COURT**

22 **CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendants.

Case No. 06A533273  
Dept. No. XI

*Coordinated with:*

Case No. 08A554970  
Dept. No. XI

**DEFENDANTS' REQUEST FOR  
PRODUCTION OF DOCUMENTS TO  
PLAINTIFF OLYMPUS GARDEN, INC.,  
D/B/A OLYMPIC GARDEN**

Case No. 08A554970  
Dept. No. XI

1 K-KEL, INC., d/b/a *Spearmint Rhino*  
2 *Gentlemen's Club*; OLYMPUS GARDEN, INC.,  
3 d/b/a *Olympic Garden*; SHAC, LLC, d/b/a  
4 *Sapphire*; THE POWER COMPANY, INC., d/b/a  
5 *Crazy Horse Too Gentlemen's Club*; D.  
6 WESTWOOD, INC., d/b/a *Treasures*; and D.I.  
7 FOOD & BEVERAGE OF LAS VEGAS, LLC,  
8 d/b/a *Scores*;

9 Plaintiffs,

10 v.

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

14 Defendants.

15 TO: OLYMPUS GARDEN, INC., d/b/a Olympic Garden, Plaintiff; and

16 TO: BRADLEY SHAFFER, ESQ, counsel for Plaintiff:

17 REQUEST IS HEREBY MADE UPON YOU, PLAINTIFFS, pursuant to Rule 34 of the  
18 Nevada Rules of Civil Procedure, for the production of the following documents thirty (30) days  
19 from the receipt of this Request for Production of Documents, at the Office of the Attorney  
20 General, 555 East Washington Avenue, Las Vegas, Nevada 89101.

### 21 DEFINITIONS AND INSTRUCTIONS

22 1. As used in this Request for Production of Documents, the term "writing" includes  
23 without limiting the generality of its meaning, all originals, or copies where originals are  
24 unavailable and non identical copies (whether different from originals by reason of notation  
25 made on such copies or otherwise) of all written, recorded, or graphic matter, however produced  
26 or reproduced, whether or not now in existence, of correspondence, telegrams, e-mails, notes,  
27 signs or sound recordings of any type of conversation(s), meeting(s) or conference(s), minutes  
28 of meeting memoranda, interoffice communications, studies, analyses, reports, summaries and  
results of investigations and test, reviews, contracts, agreements, working papers, tax returns,  
statistical records, ledgers, books of account, vouchers, bank checks, bank statements,  
invoices, receipts, computer data, stenographers' notebooks, manuals, directives, bulletins,

1 desk calendars, appointment books, diaries, maps, charts, photographs, plats, drawings or  
2 other graphic representation, logs, investigators' reports or papers similar of any of the  
3 foregoing, however denominated.

4 2. As used in this Request for Production of Documents identification of a writing  
5 includes, stating:

- 6 (a) The nature of the writing;
- 7 (b) The date, if any, appearing thereon;
- 8 (c) The date, if known, on which the writing was prepared;
- 9 (d) The title of the writing;
- 10 (e) The general subject matter of the writing;
- 11 (f) The number of pages comprising the writing;
- 12 (g) The identity of each person who wrote, dictated or otherwise participated in the  
13 preparation of the writing;
- 14 (h) The identity of each person who signed or initialed the writing;
- 15 (i) The identity of each person to whom the writing was addressed;
- 16 (j) The identity of each person who received the writing or reviewed it;
- 17 (k) The location of the writing; and
- 18 (l) The identity of each person having custody of the writing.

19 Identification of a writing includes identifying all writings known or believed to exist,  
20 whether or not in your custody or in the custody of your attorneys;

21 3. If you at any time had possession or control of a writing called for under this  
22 Request for Production of Documents and if such writing has been lost, destroyed, purged, or is  
23 not presently in your possession or control, you shall describe the writing, the date of its loss,  
24 destruction, purge or separation from possession or control, and the circumstances surrounding  
25 its loss, destruction, purge or separation from possession or control.

26 4. As used in this Request for Production, the term OLYMPUS GARDEN, INC., d/b/a  
27 Olympic Garden or any version thereof, is intended to, and shall, embrace and include any of  
28 ...

1 the locations operated by OLYMPUS GARDEN, INC., d/b/a Olympic Garden who are Plaintiffs  
2 in this action.

3 5. As used in this Request for Production, the term the "Company," "you" or "your"  
4 or any version thereof, is intended to, and shall, embrace and include any or all of the following;  
5 OLYMPUS GARDEN, INC., d/b/a Olympic Garden and any of its agents, officers, directors,  
6 employees, representatives, and any others who are in possession of, or who may have  
7 obtained, information for or on behalf of them.

8 6. As used throughout these Requests, the term "gentlemen's club" or "club" is  
9 intended to and shall, embrace any portions of, any areas related to, or under the control of  
10 OLYMPUS GARDEN, INC., d/b/a Olympic Garden.

11 7. As used throughout these Requests, the term "person" or its plural or any  
12 synonym thereof, is intended to and shall embrace and include any individual, partnership,  
13 corporation or any other entity.

14 8. As used throughout these Requests, the term "communication," its plural or any  
15 synonym thereof, is intended to and shall embrace and include all written, oral or electronic  
16 communications of any kind.

17 9. As used throughout these Requests, the term "employee," its plural or any  
18 synonym thereof, is intended to and shall embrace and include all employees of OLYMPUS  
19 GARDEN, INC., d/b/a Olympic Garden.

20 10. As used throughout these requests the term "food" or "meals" or any synonym  
21 thereof, is intended to and shall embrace and include all food, drinks, meals, snacks, or any  
22 prepared food for human consumption.

23 11. As used throughout these Requests, the term "customer," its plural or any  
24 synonym thereof, is intended to and shall embrace and include all patrons or clients of  
25 OLYMPUS GARDEN, INC., d/b/a Olympic Garden.

26 12. A request that you produce the source of information about certain facts includes  
27 a request that you state the means by which such knowledge has been preserved; if such  
28 source of information or facts is an oral communication, its date or origin, sender and recipient

1 should be stated; if such source of preservation is in writing, its date or origin, its nature,  
2 originator, recipient and last known custodian should be stated.

3 13. If a request has more than one part, each part should be separated so that the  
4 answer is clearly understandable.

5 14. Each Request should be construed independently. No Request should be  
6 construed by reference to any other Request if the result is a limitation of the scope of the  
7 answer to such Request.

8 15. The words "and" and "or" shall be construed conjunctively or disjunctively as  
9 necessary, in order to bring within the scope of the Request all responses which might otherwise  
10 be construed to be outside of its scope.

11 16. If a Request for Production is objected to, in whole or in part, or if information  
12 responsive to a Request for Production is withheld on the ground of privilege or otherwise,  
13 please set forth fully each objection, describe generally the information which is withheld, and  
14 set forth the facts upon which you rely on as the basis for each objection.

15 17. If you cannot produce any portion of any of the following Requests for Production  
16 in full, after exercising diligence to secure the request, please so state and provide the  
17 production to the extent possible, specifying your inability to produce the remainder and stating  
18 whatever information or knowledge you have concerning the unproduced portions.

19 18. These Requests for Production call for information (including information  
20 contained in writings) as is known or reasonably available to you, your attorney or any  
21 investigator or representative or others acting on their behalf or under their direction of control,  
22 or any information in the actual or constructive possession, custody, care, or control of them.

23 19. These Requests for Production shall be deemed to be continuing and in the event  
24 you discover information that has been requested, you are to supplement the Request for  
25 Production by supplementing your production.

26 ...

27 ...

28 ...

REQUEST FOR PRODUCTION OF DOCUMENTS

1  
2 1. Any and all documents constituting monthly financial statements with  
3 departmental breakouts for all periods prepared internally or externally from January 2001  
4 through the present.

5 2. Any and all audited financial statements for all periods prepared from January  
6 2001 through the present.

7 3. All Sales and Use Tax Returns for the period starting January 2001 through the  
8 present, along with all back -up work papers.

9 4. Any and all documents constituting periodic profit and loss statements from  
10 January 2001 through the present.

11 5. Cash receipts journal(s), bank statements and cancelled checks from January  
12 2001 through the present.

13 6. Any and all documents constituting General Ledgers from January 2001 through  
14 the present, including all sales invoices, daily sales reports and/or register tapes and/or  
15 contracts from January 2001 through the present.

16 7. Any and all documents constituting all versions and revisions of periodic budgets,  
17 variance analyses and related presentations, reports and communication from January 2001 to  
18 the present.

19 8. Any and all documents constituting all versions and revisions of periodic financial  
20 forecasts, projections and related strategic presentations, reports and communication from  
21 January 2001 to the present.

22 9. Any and all documents constituting all versions and revisions of periodic business  
23 plans, market studies, industry and competitor analyses and/or reports from January 2001 to  
24 the present.

25 10. Any and all documents constituting data related to the monitoring and reporting of  
26 daily and monthly information and statistics of customer volume, activities, and spending from  
27 January 2001 to the present.

28 ...

1 11. Any and all documents constituting all customer data from any loyalty club or  
2 similar databases from January 2001 through the present.

3 12. Any and all documents constituting all information and data gathered related to  
4 customer satisfaction, suggestions and/or complaints from January 2003 to the present.

5 13. Any and all documents constituting Monthly Gross Revenue or Statistical Reports  
6 or the equivalent submitted to the Nevada Department of Taxation or equivalent agency since  
7 January 1, 2001 to the present.

8 14. Any and all documents constituting records of employees including, but not limited  
9 to, departmental headcounts, salaries and wages, W-2's, 1099's, Employment Security Report  
10 form(s) NUCS 4072, incentive compensation and benefits from January 2001 to the present.

11 15. Any and all incentive payments or referral payments including, but not limited to  
12 payments made to limousines, taxis or car services from January 2001 to the present.

13 16. Any and all documents constituting the plaintiff's loss analysis including, but not  
14 limited to, plaintiff's schedule of lost revenue and any and all supporting documents constituting  
15 calculations, spreadsheets, reports, accounting ledgers and/or journals, projections, forecasts,  
16 business plans, valuations or other information forming the basis for the loss from January 2001  
17 to the present.

18 17. Any and all documents constituting valuations or appraisals of the Company or its  
19 assets (including real property) prepared by financial consultants, appraisers, CPAs,  
20 accountants, or other third parties at any time from January 2001 to the present.

21 18. Any and all documents constituting offers, bids, or proposals received by the  
22 Company for the actual or potential purchase of any and all its assets (including real property)  
23 prepared by actual or potential buyers, accountants, investment bankers, contractors, or other  
24 third parties at any time from January 2001 to the present.

25 19. Any and all documents reflecting all debt or other financing arrangements (actual  
26 and prospective) entered into by the Company including, but not limited to, loan agreements,  
27 line of credit agreements, promissory notes, letter of credit agreements, guarantee agreements,  
28 or other contractual documents at any time from January 2001 to the present.

20. Any and all documents constituting the correspondence, loan and/or credit applications, proposals, and other agreements between the Company and financial institutions, accountants, financial consultants, or other third parties prepared at any time from January 2001 to the present.

21. All Federal Tax returns and schedules filed by the Plaintiffs from January 2001 to the present.

22. Any and all documents constituting agreements and/or contracts with vendors, suppliers, lessees, lessors or other providers or recipients of products or services from January 2001 to the present.

23. All correspondence to and from the Department of Taxation regarding Live Entertainment Tax from January 2003 to the present.

24. Copies of all signs referencing any applicable tax, including information regarding the location of all of the signs, the dates each sign was posted and time of day that the each sign is posted from January 2003 to the present.

DATED this 25 day of May, 2011.

CATHERINE CORTEZ MASTO  
Attorney General

By: David J. Pope

DAVID J. POPE  
Senior Deputy Attorney General  
BLAKE A. DOERR  
Senior Deputy Attorney General  
VIVienne RAKOWSKY  
Deputy Attorney General  
Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on the 25th day of May, 2011, I served the foregoing DEFENDANTS' REQUEST FOR PRODUCTION OF DOCUMENTS TO PLAINTIFF by causing to be delivered to Department of General Services for mailing at Las Vegas, Nevada, a true copy thereof, addressed to:

William H. Brown, Esq.  
Turco & Draskovich  
815 S. Casino Center Blvd.  
Las Vegas, NV 89101

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

Liara Plotnick  
An employee of Office of Attorney General

1 **REQT**  
2 CATHERINE CORTEZ MASTO  
3 Attorney General  
4 DAVID J. POPE  
5 Senior Deputy Attorney General  
6 Nevada Bar No. 008617  
7 BLAKE A. DOERR  
8 Senior Deputy Attorney General  
9 Nevada Bar No. 009001  
10 VIVIENNE RAKOWSKY  
11 Deputy Attorney General  
12 Nevada Bar No. 009160  
13 555 E. Washington Ave., Ste. 3900  
14 Las Vegas, Nevada 89101  
15 P: (702) 486-3095  
16 F: (702) 486-3416  
17 [dpope@ag.nv.gov](mailto:dpope@ag.nv.gov)  
18 [bdoerr@ag.nv.gov](mailto:bdoerr@ag.nv.gov)  
19 [vrakowsky@ag.nv.gov](mailto:vrakowsky@ag.nv.gov)  
20 Attorneys for Nevada Department of Taxation

12 **DISTRICT COURT**  
13 **CLARK COUNTY, NEVADA**

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

20 Plaintiffs,

21 vs.

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

25 Defendants.

Case No. 06A533273  
Dept. No. XI

Coordinated with:

Case No. 08A554970  
Dept. No. XI

**DEFENDANTS' REQUEST FOR  
PRODUCTION OF DOCUMENTS TO  
PLAINTIFF SHAC, L.L.C., D/B/A  
SAPPHIRE**

1 K-KEL, INC., d/b/a *Spearmint Rhino*  
2 *Gentlemen's Club*; OLYMPUS GARDEN, INC.,  
3 d/b/a *Olympic Garden*; SHAC, LLC, d/b/a  
4 *Sapphire*; THE POWER COMPANY, INC., d/b/a  
5 *Crazy Horse Too Gentlemen's Club*; D.  
6 WESTWOOD, INC., d/b/a *Treasures*; and D.I.  
7 FOOD & BEVERAGE OF LAS VEGAS, LLC,  
8 d/b/a *Scores*;

9 Plaintiffs,

10 v.

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

14 Defendants.

Case No. 08A554970  
Dept. No. XI

15 TO: SHAC, L.L.C., d/b/a *Sapphire*, Plaintiff; and

16 TO: BRADLEY SHAFFER, ESQ, counsel for Plaintiff;

17 REQUEST IS HEREBY MADE UPON YOU, PLAINTIFF, pursuant to Rule 34 of the  
18 Nevada Rules of Civil Procedure, for the production of the following documents thirty (30) days  
19 from the receipt of this Request for Production of Documents, at the Office of the Attorney  
20 General, 555 East Washington Avenue, Las Vegas, Nevada 89101.

### 21 DEFINITIONS AND INSTRUCTIONS

22 1. As used in this Request for Production of Documents, the term "writing" includes  
23 without limiting the generality of its meaning, all originals, or copies where originals are  
24 unavailable and non identical copies (whether different from originals by reason of notation  
25 made on such copies or otherwise) of all written, recorded, or graphic matter, however produced  
26 or reproduced, whether or not now in existence, of correspondence, telegrams, e-mails, notes,  
27 signs or sound recordings of any type of conversation(s), meeting(s) or conference(s), minutes  
28 of meeting memoranda, interoffice communications, studies, analyses, reports, summaries and  
results of investigations and test, reviews, contracts, agreements, working papers, tax returns,  
statistical records, ledgers, books of account, vouchers, bank checks, bank statements,  
invoices, receipts, computer data, stenographers' notebooks, manuals, directives, bulletins,

1 desk calendars, appointment books, diaries, maps, charts, photographs, plats, drawings or  
2 other graphic representation, logs, investigators' reports or papers similar of any of the  
3 foregoing, however denominated.

4 2. As used in this Request for Production of Documents identification of a writing  
5 includes, stating:

- 6 (a) The nature of the writing;
- 7 (b) The date, if any, appearing thereon;
- 8 (c) The date, if known, on which the writing was prepared;
- 9 (d) The title of the writing;
- 10 (e) The general subject matter of the writing;
- 11 (f) The number of pages comprising the writing;
- 12 (g) The identity of each person who wrote, dictated or otherwise participated in the  
13 preparation of the writing;
- 14 (h) The identity of each person who signed or initialed the writing;
- 15 (i) The identity of each person to whom the writing was addressed;
- 16 (j) The identity of each person who received the writing or reviewed it;
- 17 (k) The location of the writing; and
- 18 (l) The identity of each person having custody of the writing.

19 Identification of a writing includes identifying all writings known or believed to exist,  
20 whether or not in your custody or in the custody of your attorneys;

21 3. If you at any time had possession or control of a writing called for under this  
22 Request for Production of Documents and if such writing has been lost, destroyed, purged, or is  
23 not presently in your possession or control, you shall describe the writing, the date of its loss,  
24 destruction, purge or separation from possession or control, and the circumstances surrounding  
25 its loss, destruction, purge or separation from possession or control.

26 4. As used in this Request for Production, the term SHAC, L.L.C., d/b/a Sapphire or  
27 any version thereof, is intended to, and shall, embrace and include any of the locations  
28 operated by SHAC, L.L.C., d/b/a Sapphire who is a Plaintiff in this action.

1           5. As used in this Request for Production, the term the "Company," "you" or "your"  
2 or any version thereof, is intended to, and shall, embrace and include any or all of the following;  
3 SHAC, L.L.C., d/b/a Sapphire and any of its agents, officers, directors, employees,  
4 representatives, and any others who are in possession of, or who may have obtained,  
5 information for or on behalf of them.

6           6. As used throughout these Requests, the term "gentlemen's club" or "club" is  
7 intended to and shall, embrace any portions of, any areas related to, or under the control of  
8 SHAC, L.L.C., d/b/a Sapphire.

9           7. As used throughout these Requests, the term "person" or its plural or any  
10 synonym thereof, is intended to and shall embrace and include any individual, partnership,  
11 corporation or any other entity.

12           8. As used throughout these Requests, the term "communication," its plural or any  
13 synonym thereof, is intended to and shall embrace and include all written, oral or electronic  
14 communications of any kind.

15           9. As used throughout these Requests, the term "employee," its plural or any  
16 synonym thereof, is intended to and shall embrace and include all employees of SHAC, L.L.C.,  
17 d/b/a Sapphire.

18           10. As used throughout these requests the term "food" or "meals" or any synonym  
19 thereof, is intended to and shall embrace and include all food, drinks, meals, snacks, or any  
20 prepared food for human consumption.

21           11. As used throughout these Requests, the term "customer," its plural or any  
22 synonym thereof, is intended to and shall embrace and include all patrons or clients of SHAC,  
23 L.L.C., d/b/a Sapphire.

24           12. A request that you produce the source of information about certain facts includes  
25 a request that you state the means by which such knowledge has been preserved; if such  
26 source of information or facts is an oral communication, its date or origin, sender and recipient  
27 should be stated; if such source of preservation is in writing, its date or origin, its nature,  
28 originator, recipient and last known custodian should be stated.

1 13. If a request has more than one part, each part should be separated so that the  
2 answer is clearly understandable.

3 14. Each Request should be construed independently. No Request should be  
4 construed by reference to any other Request if the result is a limitation of the scope of the  
5 answer to such Request.

6 15. The words "and" and "or" shall be construed conjunctively or disjunctively as  
7 necessary, in order to bring within the scope of the Request all responses which might otherwise  
8 be construed to be outside of its scope.

9 16. If a Request for Production is objected to, in whole or in part, or if information  
10 responsive to a Request for Production is withheld on the ground of privilege or otherwise,  
11 please set forth fully each objection, describe generally the information which is withheld, and  
12 set forth the facts upon which you rely on as the basis for each objection.

13 17. If you cannot produce any portion of any of the following Requests for Production  
14 in full, after exercising diligence to secure the request, please so state and provide the  
15 production to the extent possible, specifying your inability to produce the remainder and stating  
16 whatever information or knowledge you have concerning the unproduced portions.

17 18. These Requests for Production call for information (including information  
18 contained in writings) as is known or reasonably available to you, your attorney or any  
19 investigator or representative or others acting on their behalf or under their direction of control,  
20 or any information in the actual or constructive possession, custody, care, or control of them.

21 19. These Requests for Production shall be deemed to be continuing and in the event  
22 you discover information that has been requested, you are to supplement the Request for  
23 Production by supplementing your production.

24 **REQUEST FOR PRODUCTION OF DOCUMENTS**

25 1. Any and all documents constituting monthly financial statements with  
26 departmental breakouts for all periods prepared internally or externally from January 2001  
27 through the present.

28 ...

- 1           2.     Any and all audited financial statements for all periods prepared from January  
2     2001 through the present.
- 3           3.     All Sales and Use Tax Returns for the period starting January 2001 through the  
4     present, along with all back -up work papers.
- 5           4.     Any and all documents constituting periodic profit and loss statements from  
6     January 2001 through the present.
- 7           5.     Cash receipts journal(s), bank statements and cancelled checks from January  
8     2001 through the present.
- 9           6.     Any and all documents constituting General Ledgers from January 2001 through  
10    the present, including all sales invoices, daily sales reports and/or register tapes and/or  
11    contracts from January 2001 through the present.
- 12          7.     Any and all documents constituting all versions and revisions of periodic budgets,  
13    variance analyses and related presentations, reports and communication from January 2001 to  
14    the present.
- 15          8.     Any and all documents constituting all versions and revisions of periodic financial  
16    forecasts, projections and related strategic presentations, reports and communication from  
17    January 2001 to the present.
- 18          9.     Any and all documents constituting all versions and revisions of periodic business  
19    plans, market studies, industry and competitor analyses and/or reports from January 2001 to  
20    the present.
- 21          10.    Any and all documents constituting data related to the monitoring and reporting of  
22    daily and monthly information and statistics of customer volume, activities, and spending from  
23    January 2001 to the present.
- 24          11.    Any and all documents constituting all customer data from any loyalty club or  
25    similar databases from January 2001 through the present.
- 26          12.    Any and all documents constituting all information and data gathered related to  
27    customer satisfaction, suggestions and/or complaints from January 2003 to the present.
- 28          ...

1           13. Any and all documents constituting Monthly Gross Revenue or Statistical Reports  
2 or the equivalent submitted to the Nevada Department of Taxation or equivalent agency since  
3 January 1, 2001 to the present.

4           14. Any and all documents constituting records of employees including, but not limited  
5 to, departmental headcounts, salaries and wages, W-2's, 1099's, Employment Security Report  
6 form(s) NUCS 4072, incentive compensation and benefits from January 2001 to the present.

7           15. Any and all incentive payments or referral payments including, but not limited to  
8 payments made to limousines, taxis or car services from January 2001 to the present.

9           16. Any and all documents constituting the plaintiff's loss analysis including, but not  
10 limited to, plaintiff's schedule of lost revenue and any and all supporting documents constituting  
11 calculations, spreadsheets, reports, accounting ledgers and/or journals, projections, forecasts,  
12 business plans, valuations or other information forming the basis for the loss from January 2001  
13 to the present.

14           17. Any and all documents constituting valuations or appraisals of the Company or its  
15 assets (including real property) prepared by financial consultants, appraisers, CPAs,  
16 accountants, or other third parties at any time from January 2001 to the present.

17           18. Any and all documents constituting offers, bids, or proposals received by the  
18 Company for the actual or potential purchase of any and all its assets (including real property)  
19 prepared by actual or potential buyers, accountants, investment bankers, contractors, or other  
20 third parties at any time from January 2001 to the present.

21           19. Any and all documents reflecting all debt or other financing arrangements (actual  
22 and prospective) entered into by the Company including, but not limited to, loan agreements,  
23 line of credit agreements, promissory notes, letter of credit agreements, guarantee agreements,  
24 or other contractual documents at any time from January 2001 to the present.

25           20. Any and all documents constituting the correspondence, loan and/or credit  
26 applications, proposals, and other agreements between the Company and financial institutions,  
27 accountants, financial consultants, or other third parties prepared at any time from January  
28 2001 to the present.

1 21. All Federal Tax returns and schedules filed by the Plaintiff from January 2001 to  
2 the present.

3 22. Any and all documents constituting agreements and/or contracts with vendors,  
4 suppliers, lessees, lessors or other providers or recipients of products or services from January  
5 2001 to the present.

6 23. All correspondence to and from the Department of Taxation regarding Live  
7 Entertainment Tax from January 2003 to the present.

8 24. Copies of all signs referencing any applicable tax, including information regarding  
9 the location of all of the signs, the dates each sign was posted and time of day that the each  
10 sign is posted from January 2003 to the present.

11 DATED this 25 day of May, 2011.

12 CATHERINE CORTEZ MASTO  
13 Attorney General

14  
15 By: Vivienne Rakowsky

16 DAVID J. POPE  
17 Senior Deputy Attorney General  
18 BLAKE A. DOERR  
19 Senior Deputy Attorney General  
20 VIVIENNE RAKOWSKY  
21 Deputy Attorney General  
22 Attorneys for Defendants  
23  
24  
25  
26  
27  
28

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on the 25<sup>th</sup> day of May, 2011, I served the foregoing DEFENDANTS' REQUEST FOR PRODUCTION OF DOCUMENTS TO PLAINTIFF by causing to be delivered to Department of General Services for mailing at Las Vegas, Nevada, a true copy thereof, addressed to:

William H. Brown, Esq.  
Turco & Draskovich  
815 S. Casino Center Blvd.  
Las Vegas, NV 89101

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

  
An employee of Office of Attorney General

1 **REQT**  
2 CATHERINE CORTEZ MASTO  
3 Attorney General  
4 DAVID J. POPE  
5 Senior Deputy Attorney General  
6 Nevada Bar No. 008617  
7 BLAKE A. DOERR  
8 Senior Deputy Attorney General  
9 Nevada Bar No. 009001  
10 VIVIENNE RAKOWSKY  
11 Deputy Attorney General  
12 Nevada Bar No. 009160  
13 555 E. Washington Ave., Ste. 3900  
14 Las Vegas, Nevada 89101  
15 P: (702) 486-3095  
16 F: (702) 486-3416  
17 [dpope@ag.nv.gov](mailto:dpope@ag.nv.gov)  
18 [bdoerr@ag.nv.gov](mailto:bdoerr@ag.nv.gov)  
19 [vrakowsky@ag.nv.gov](mailto:vrakowsky@ag.nv.gov)  
20 Attorneys for Nevada Department of Taxation

12 **DISTRICT COURT**  
13 **CLARK COUNTY, NEVADA**

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

20 Plaintiffs,

21 vs.

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

25 Defendants.

Case No. 06A533273  
Dept. No. XI

*Coordinated with:*

Case No. 08A554970  
Dept. No. XI

**DEFENDANTS' REQUEST FOR  
PRODUCTION OF DOCUMENTS TO  
PLAINTIFF LITTLE DARLINGS OF LAS  
VEGAS, L.L.C., D/B/A LITTLE DARLINGS**

Case No. 08A554970  
Dept. No. XI

1 K-KEL, INC., d/b/a *Spearmint Rhino*)  
2 *Gentlemen's Club*; OLYMPUS GARDEN, INC.,  
3 d/b/a *Olympic Garden*; SHAC, LLC, d/b/a  
4 *Sapphire*; THE POWER COMPANY, INC., d/b/a  
5 *Crazy Horse Too Gentlemen's Club*; D.)  
6 WESTWOOD, INC., d/b/a *Treasures*; and D.I.)  
7 FOOD & BEVERAGE OF LAS VEGAS, LLC,  
8 d/b/a *Scores*;

Plaintiffs,

v.

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

Defendants.

12 TO: LITTLE DARLINGS OF LAS VEGAS, L.L.C., d/b/a Little Darlings, Plaintiff; and

13 TO: BRADLEY SHAFFER, ESQ, counsel for Plaintiff;

14 REQUEST IS HEREBY MADE UPON YOU, PLAINTIFFS, pursuant to Rule 34 of the  
15 Nevada Rules of Civil Procedure, for the production of the following documents thirty (30) days  
16 from the receipt of this Request for Production of Documents, at the Office of the Attorney  
17 General, 555 East Washington Avenue, Las Vegas, Nevada 89101.

#### 18 DEFINITIONS AND INSTRUCTIONS

19 1. As used in this Request for Production of Documents, the term "writing" includes  
20 without limiting the generality of its meaning, all originals, or copies where originals are  
21 unavailable and non identical copies (whether different from originals by reason of notation  
22 made on such copies or otherwise) of all written, recorded, or graphic matter, however produced  
23 or reproduced, whether or not now in existence, of correspondence, telegrams, e-mails, notes,  
24 signs or sound recordings of any type of conversation(s), meeting(s) or conference(s), minutes  
25 of meeting memoranda, interoffice communications, studies, analyses, reports, summaries and  
26 results of investigations and test, reviews, contracts, agreements, working papers, tax returns,  
27 statistical records, ledgers, books of account, vouchers, bank checks, bank statements,  
28 invoices, receipts, computer data, stenographers' notebooks, manuals, directives, bulletins,

1 desk calendars, appointment books, diaries, maps, charts, photographs, plats, drawings or  
2 other graphic representation, logs, investigators' reports or papers similar of any of the  
3 foregoing, however denominated.

4 2. As used in this Request for Production of Documents identification of a writing  
5 includes, stating:

- 6 (a) The nature of the writing;
- 7 (b) The date, if any, appearing thereon;
- 8 (c) The date, if known, on which the writing was prepared;
- 9 (d) The title of the writing;
- 10 (e) The general subject matter of the writing;
- 11 (f) The number of pages comprising the writing;
- 12 (g) The identity of each person who wrote, dictated or otherwise participated in the  
13 preparation of the writing;
- 14 (h) The identity of each person who signed or initialed the writing;
- 15 (i) The identity of each person to whom the writing was addressed;
- 16 (j) The identity of each person who received the writing or reviewed it;
- 17 (k) The location of the writing; and
- 18 (l) The identity of each person having custody of the writing.

19 Identification of a writing includes identifying all writings known or believed to exist,  
20 whether or not in your custody or in the custody of your attorneys;

21 3. If you at any time had possession or control of a writing called for under this  
22 Request for Production of Documents and if such writing has been lost, destroyed, purged, or is  
23 not presently in your possession or control, you shall describe the writing, the date of its loss,  
24 destruction, purge or separation from possession or control, and the circumstances surrounding  
25 its loss, destruction, purge or separation from possession or control.

26 4. As used in this Request for Production, the term LITTLE DARLINGS OF LAS  
27 VEGAS, L.L.C., d/b/a Little Darlings or any version thereof, is intended to, and shall, embrace  
28 ...

1 and include any of the locations operated by LITTLE DARLINGS OF LAS VEGAS, L.L.C.,  
2 d/b/a Little Darlings who are Plaintiffs in this action.

3 5. As used in this Request for Production, the term the "Company," "you" or "your"  
4 or any version thereof, is intended to, and shall, embrace and include any or all of the following;  
5 LITTLE DARLINGS OF LAS VEGAS, L.L.C., d/b/a Little Darlings and any of its agents,  
6 officers, directors, employees, representatives, and any others who are in possession of, or who  
7 may have obtained, information for or on behalf of them.

8 6. As used throughout these Requests, the term "gentlemen's club" or "club" is  
9 intended to and shall, embrace any portions of, any areas related to, or under the control of  
10 LITTLE DARLINGS OF LAS VEGAS, L.L.C., d/b/a Little Darlings.

11 7. As used throughout these Requests, the term "person" or its plural or any  
12 synonym thereof, is intended to and shall embrace and include any individual, partnership,  
13 corporation or any other entity.

14 8. As used throughout these Requests, the term "communication," its plural or any  
15 synonym thereof, is intended to and shall embrace and include all written, oral or electronic  
16 communications of any kind.

17 9. As used throughout these Requests, the term "employee," its plural or any  
18 synonym thereof, is intended to and shall embrace and include all employees of LITTLE  
19 DARLINGS OF LAS VEGAS, L.L.C., d/b/a Little Darlings.

20 10. As used throughout these requests the term "food" or "meals" or any synonym  
21 thereof, is intended to and shall embrace and include all food, drinks, meals, snacks, or any  
22 prepared food for human consumption.

23 11. As used throughout these Requests, the term "customer," its plural or any  
24 synonym thereof, is intended to and shall embrace and include all patrons or clients of LITTLE  
25 DARLINGS OF LAS VEGAS, L.L.C., d/b/a Little Darlings.

26 12. A request that you produce the source of information about certain facts includes  
27 a request that you state the means by which such knowledge has been preserved; if such  
28 source of information or facts is an oral communication, its date or origin, sender and recipient

1 should be stated; if such source of preservation is in writing, its date or origin, its nature,  
2 originator, recipient and last known custodian should be stated.

3 13. If a request has more than one part, each part should be separated so that the  
4 answer is clearly understandable.

5 14. Each Request should be construed independently. No Request should be  
6 construed by reference to any other Request if the result is a limitation of the scope of the  
7 answer to such Request.

8 15. The words "and" and "or" shall be construed conjunctively or disjunctively as  
9 necessary, in order to bring within the scope of the Request all responses which might otherwise  
10 be construed to be outside of its scope.

11 16. If a Request for Production is objected to, in whole or in part, or if information  
12 responsive to a Request for Production is withheld on the ground of privilege or otherwise,  
13 please set forth fully each objection, describe generally the information which is withheld, and  
14 set forth the facts upon which you rely on as the basis for each objection.

15 17. If you cannot produce any portion of any of the following Requests for Production  
16 in full, after exercising diligence to secure the request, please so state and provide the  
17 production to the extent possible, specifying your inability to produce the remainder and stating  
18 whatever information or knowledge you have concerning the unproduced portions.

19 18. These Requests for Production call for information (including information  
20 contained in writings) as is known or reasonably available to you, your attorney or any  
21 investigator or representative or others acting on their behalf or under their direction of control,  
22 or any information in the actual or constructive possession custody, care, or control of them.

23 19. These Requests for Production shall be deemed to be continuing and in the event  
24 you discover information that has been requested, you are to supplement the Request for  
25 Production by supplementing your production.

26 ...

27 ...

28 ...

REQUEST FOR PRODUCTION OF DOCUMENTS

1  
2 1. Any and all documents constituting monthly financial statements with  
3 departmental breakouts for all periods prepared internally or externally from January 2002  
4 through the present.

5 2. Any and all audited financial statements for all periods prepared from January  
6 2002 through the present.

7 3. All Sales and Use Tax Returns for the period starting January 2002 through the  
8 present, along with all back -up work papers.

9 4. Any and all documents constituting periodic profit and loss statements from  
10 January 2002 through the present.

11 5. Cash receipts journal(s), bank statements and cancelled checks from January  
12 2002 through the present.

13 6. Any and all documents constituting General Ledgers from January 2002 through  
14 the present, including all sales invoices, daily sales reports and/or register tapes and/or  
15 contracts from January 2002 through the present.

16 7. Any and all documents constituting all versions and revisions of periodic budgets,  
17 variance analyses and related presentations, reports and communication from January 2002 to  
18 the present.

19 8. Any and all documents constituting all versions and revisions of periodic financial  
20 forecasts, projections and related strategic presentations, reports and communication from  
21 January 2002 to the present.

22 9. Any and all documents constituting all versions and revisions of periodic business  
23 plans, market studies, industry and competitor analyses and/or reports from January 2002 to  
24 the present.

25 10. Any and all documents constituting data related to the monitoring and reporting of  
26 daily and monthly information and statistics of customer volume, activities, and spending from  
27 January 2002 to the present.

28 ...

1 11. Any and all documents constituting all customer data from any loyalty club or  
2 similar databases from January 2002 through the present.

3 12. Any and all documents constituting all information and data gathered related to  
4 customer satisfaction, suggestions and/or complaints from January 2005 to the present.

5 13. Any and all documents constituting Monthly Gross Revenue or Statistical Reports  
6 or the equivalent submitted to the Nevada Department of Taxation or equivalent agency since  
7 January 1, 2002 to the present.

8 14. Any and all documents constituting records of employees including, but not limited  
9 to, departmental headcounts, salaries and wages, W-2's, 1099's, Employment Security Report  
10 form(s) NUCS 4072, Incentive compensation and benefits from January 2002 to the present.

11 15. Any and all incentive payments or referral payments including, but not limited to  
12 payments made to limousines, taxis or car services from January 2002 to the present.

13 16. Any and all documents constituting the plaintiff's loss analysis including, but not  
14 limited to, plaintiff's schedule of lost revenue and any and all supporting documents constituting  
15 calculations, spreadsheets, reports, accounting ledgers and/or journals, projections, forecasts,  
16 business plans, valuations or other information forming the basis for the loss from January 2002  
17 to the present.

18 17. Any and all documents constituting valuations or appraisals of the Company or its  
19 assets (including real property) prepared by financial consultants, appraisers, CPAs,  
20 accountants, or other third parties at any time from January 2002 to the present.

21 18. Any and all documents constituting offers, bids, or proposals received by the  
22 Company for the actual or potential purchase of any and all its assets (including real property)  
23 prepared by actual or potential buyers, accountants, investment bankers, contractors, or other  
24 third parties at any time from January 2002 to the present.

25 19. Any and all documents reflecting all debt or other financing arrangements (actual  
26 and prospective) entered into by the Company including, but not limited to, loan agreements,  
27 line of credit agreements, promissory notes, letter of credit agreements, guarantee agreements,  
28 or other contractual documents at any time from January 2002 to the present.

1           20. Any and all documents constituting the correspondence, loan and/or credit  
2 applications, proposals, and other agreements between the Company and financial institutions,  
3 accountants, financial consultants, or other third parties prepared at any time from January  
4 2002 to the present.

5           21. All Federal Tax returns and schedules filed by the Plaintiffs from January 2002 to  
6 the present.

7           22. Any and all documents constituting agreements and/or contracts with vendors,  
8 suppliers, lessees, lessors or other providers or recipients of products or services from January  
9 2002 to the present.

10          23. All correspondence to and from the Department of Taxation regarding Live  
11 Entertainment Tax from January 2005 to the present.

12          24. Copies of all signs referencing any applicable tax, including information regarding  
13 the location of all of the signs, the dates each sign was posted and time of day that the each  
14 sign is posted from January 2005 to the present.

15           DATED this 25 day of May, 2011.

16                           CATHERINE CORTEZ MASTO  
17                           Attorney General

18  
19           By: 

20                   DAVID J. POPE  
21                   Senior Deputy Attorney General  
22                   BLAKE A. DOERR  
23                   Senior Deputy Attorney General  
24                   VIVienne RAKOWSKY  
25                   Deputy Attorney General  
26                   Attorneys for Defendants  
27  
28

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on the 25th day of May, 2011, I served the foregoing  
DEFENDANTS' REQUEST FOR PRODUCTION OF DOCUMENTS TO PLAINTIFF by  
causing to be delivered to Department of General Services for mailing at Las Vegas, Nevada,  
a true copy thereof, addressed to:

William H. Brown, Esq.  
Turco & Draskovich  
815 S. Casino Center Blvd.  
Las Vegas, NV 89101

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

  
An employee of Office of Attorney General

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

1 REQ  
2 CATHERINE CORTEZ MASTO  
3 Attorney General  
4 DAVID J. POPE  
5 Senior Deputy Attorney General  
6 Nevada Bar No. 008617  
7 BLAKE A. DOERR  
8 Senior Deputy Attorney General  
9 Nevada Bar No. 009001  
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14 Las Vegas, Nevada 89101  
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17 dpope@ag.nv.gov  
18 bdoerr@ag.nv.gov  
19 vrakowsky@ag.nv.gov  
20 Attorneys for Nevada Department of Taxation

12 DISTRICT COURT  
13 CLARK COUNTY, NEVADA

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

20 Plaintiffs,

21 vs.

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

25 Defendants.

Case No. 06A533273  
Dept. No. XI

*Coordinated with:*

Case No. 08A554970  
Dept. No. XI

DEFENDANTS' REQUEST FOR  
PRODUCTION OF DOCUMENTS TO  
PLAINTIFF K-KEL, INC. D/B/A  
SPEARMINT RHINO GENTLEMEN'S CLUB

Case No. 08A554970  
Dept. No. XI

1 K-KEL, INC., d/b/a *Spearmint Rhino*  
2 *Gentlemen's Club*; OLYMPUS GARDEN, INC.,  
3 d/b/a *Olympic Garden*; SHAC, LLC, d/b/a  
4 *Sapphire*; THE POWER COMPANY, INC., d/b/a  
5 *Crazy Horse Too Gentlemen's Club*; D.)  
6 WESTWOOD, INC., d/b/a *Treasures*; and D.I.)  
7 FOOD & BEVERAGE OF LAS VEGAS, LLC,  
8 d/b/a *Scores*;

9 Plaintiffs,

10 v.

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

14 Defendants.

15 TO: K-KEL, INC. d/b/a *Spearmint Rhino Gentlemen's Club*, Plaintiff; and

16 TO: BRADLEY SHAFFER, ESQ, counsel for Plaintiff.

17 REQUEST IS HEREBY MADE UPON YOU, PLAINTIFFS, pursuant to Rule 34 of the  
18 Nevada Rules of Civil Procedure, for the production of the following documents thirty (30) days  
19 from the receipt of this Request for Production of Documents, at the Office of the Attorney  
20 General, 555 East Washington Avenue, Las Vegas, Nevada 89101.

#### 21 DEFINITIONS AND INSTRUCTIONS

22 1. As used in this Request for Production of Documents, the term "writing" includes  
23 without limiting the generality of its meaning, all originals, or copies where originals are  
24 unavailable and non identical copies (whether different from originals by reason of notation  
25 made on such copies or otherwise) of all written, recorded, or graphic matter, however produced  
26 or reproduced, whether or not now in existence, of correspondence, telegrams, e-mails, notes,  
27 signs or sound recordings of any type of conversation(s), meeting(s) or conference(s), minutes  
28 of meeting memoranda, interoffice communications, studies, analyses, reports, summaries and  
results of investigations and test, reviews, contracts, agreements, working papers, tax returns,  
statistical records, ledgers, books of account, vouchers, bank checks, bank statements,  
invoices, receipts, computer data, stenographers' notebooks, manuals, directives, bulletins,

1 desk calendars, appointment books, diaries, maps, charts, photographs, plats, drawings or  
2 other graphic representation, logs, investigators' reports or papers similar of any of the  
3 foregoing, however denominated.

4 2. As used in this Request for Production of Documents identification of a writing  
5 includes, stating:

- 6 (a) The nature of the writing;
- 7 (b) The date, if any, appearing thereon;
- 8 (c) The date, if known, on which the writing was prepared;
- 9 (d) The title of the writing;
- 10 (e) The general subject matter of the writing;
- 11 (f) The number of pages comprising the writing;
- 12 (g) The identity of each person who wrote, dictated or otherwise participated in the  
13 preparation of the writing;
- 14 (h) The identity of each person who signed or initialed the writing;
- 15 (i) The identity of each person to whom the writing was addressed;
- 16 (j) The identity of each person who received the writing or reviewed it;
- 17 (k) The location of the writing; and
- 18 (l) The identity of each person having custody of the writing.

19 Identification of a writing includes identifying all writings known or believed to exist,  
20 whether or not in your custody or in the custody of your attorneys;

21 3. If you at any time had possession or control of a writing called for under this  
22 Request for Production of Documents and if such writing has been lost, destroyed, purged, or is  
23 not presently in your possession or control, you shall describe the writing, the date of its loss,  
24 destruction, purge or separation from possession or control, and the circumstances surrounding  
25 its loss, destruction, purge or separation from possession or control.

26 4. As used in this Request for Production, the term K-KEL, INC. d/b/a Spearmint Rhino  
27 Gentlemen's Club or any version thereof, is intended to, and shall, embrace and include any of  
28 ...

1 the locations operated by K-KEL, INC. d/b/a Spearmint Rhino Gentlemen's Club who are  
2 Plaintiffs in this action.

3 5. As used in this Request for Production, the term the "Company," "you" or "your"  
4 or any version thereof, is intended to, and shall, embrace and include any or all of the following;  
5 K-KEL, INC. d/b/a Spearmint Rhino Gentlemen's Club and any of its agents, officers, directors,  
6 employees, representatives, and any others who are in possession of, or who may have  
7 obtained, information for or on behalf of them.

8 6. As used throughout these Requests, the term "gentlemen's club" or "club" is  
9 intended to and shall, embrace any portions of, any areas related to, or under the control of K-  
10 KEL, INC. d/b/a Spearmint Rhino Gentlemen's Club.

11 7. As used throughout these Requests, the term "person" or its plural or any  
12 synonym thereof, is intended to and shall embrace and include any individual, partnership,  
13 corporation or any other entity.

14 8. As used throughout these Requests, the term "communication," its plural or any  
15 synonym thereof, is intended to and shall embrace and include all written, oral or electronic  
16 communications of any kind.

17 9. As used throughout these Requests, the term "employee," its plural or any  
18 synonym thereof, is intended to and shall embrace and include all employees of K-KEL, INC.  
19 d/b/a Spearmint Rhino Gentlemen's Club.

20 10. As used throughout these requests the term "food" or "meals" or any synonym  
21 thereof, is intended to and shall embrace and include all food, drinks, meals, snacks, or any  
22 prepared food for human consumption.

23 11. As used throughout these Requests, the term "customer," its plural or any  
24 synonym thereof, is intended to and shall embrace and include all patrons or clients of K-KEL,  
25 INC. d/b/a Spearmint Rhino Gentlemen's Club.

26 12. A request that you produce the source of information about certain facts includes  
27 a request that you state the means by which such knowledge has been preserved; if such  
28 source of information or facts is an oral communication, its date or origin, sender and recipient

1 should be stated; if such source of preservation is in writing, its date or origin, its nature,  
2 originator, recipient and last known custodian should be stated.

3 13. If a request has more than one part, each part should be separated so that the  
4 answer is clearly understandable.

5 14. Each Request should be construed independently. No Request should be  
6 construed by reference to any other Request if the result is a limitation of the scope of the  
7 answer to such Request.

8 15. The words "and" and "or" shall be construed conjunctively or disjunctively as  
9 necessary, in order to bring within the scope of the Request all responses which might otherwise  
10 be construed to be outside of its scope.

11 16. If a Request for Production is objected to, in whole or in part, or if information  
12 responsive to a Request for Production is withheld on the ground of privilege or otherwise,  
13 please set forth fully each objection, describe generally the information which is withheld, and  
14 set forth the facts upon which you rely on as the basis for each objection.

15 17. If you cannot produce any portion of any of the following Requests for Production  
16 in full, after exercising diligence to secure the request, please so state and provide the  
17 production to the extent possible, specifying your inability to produce the remainder and stating  
18 whatever information or knowledge you have concerning the unproduced portions.

19 18. These Requests for Production call for information (including information  
20 contained in writings) as is known or reasonably available to you, your attorney or any  
21 investigator or representative or others acting on their behalf or under their direction of control,  
22 or any information in the actual or constructive possession, custody, care, or control of them.

23 19. These Requests for Production shall be deemed to be continuing and in the event  
24 you discover information that has been requested, you are to supplement the Request for  
25 Production by supplementing your production.

26 ...

27 ...

28 ...

REQUEST FOR PRODUCTION OF DOCUMENTS

1  
2 1. Any and all documents constituting monthly financial statements with  
3 departmental breakouts for all periods prepared internally or externally from January 2001  
4 through the present.

5 2. Any and all audited financial statements for all periods prepared from January  
6 2001 through the present.

7 3. All Sales and Use Tax Returns for the period starting January 2001 through the  
8 present, along with all back -up work papers.

9 4. Any and all documents constituting periodic profit and loss statements from  
10 January 2001 through the present.

11 5. Cash receipts journal(s), bank statements and cancelled checks from January  
12 2001 through the present.

13 6. Any and all documents constituting General Ledgers from January 2001 through  
14 the present, including all sales invoices, daily sales reports and/or register tapes and/or  
15 contracts from January 2001 through the present.

16 7. Any and all documents constituting all versions and revisions of periodic budgets,  
17 variance analyses and related presentations, reports and communication from January 2001 to  
18 the present.

19 8. Any and all documents constituting all versions and revisions of periodic financial  
20 forecasts, projections and related strategic presentations, reports and communication from  
21 January 2001 to the present.

22 9. Any and all documents constituting all versions and revisions of periodic business  
23 plans, market studies, industry and competitor analyses and/or reports from January 2001 to  
24 the present.

25 10. Any and all documents constituting data related to the monitoring and reporting of  
26 daily and monthly information and statistics of customer volume, activities, and spending from  
27 January 2001 to the present.

28 ...

1 11. Any and all documents constituting all customer data from any loyalty club or  
2 similar databases from January 2001 through the present.

3 12. Any and all documents constituting all information and data gathered related to  
4 customer satisfaction, suggestions and/or complaints from January 2003 to the present.

5 13. Any and all documents constituting Monthly Gross Revenue or Statistical Reports  
6 or the equivalent submitted to the Nevada Department of Taxation or equivalent agency since  
7 January 1, 2001 to the present.

8 14. Any and all documents constituting records of employees including, but not limited  
9 to, departmental headcounts, salaries and wages, W-2's, 1099's, Employment Security Report  
10 form(s) NUCS 4072, incentive compensation and benefits from January 2001 to the present.

11 15. Any and all incentive payments or referral payments including, but not limited to  
12 payments made to limousines, taxis or car services from January 2001 to the present.

13 16. Any and all documents constituting the plaintiff's loss analysis including, but not  
14 limited to, plaintiff's schedule of lost revenue and any and all supporting documents constituting  
15 calculations, spreadsheets, reports, accounting ledgers and/or journals, projections, forecasts,  
16 business plans, valuations or other information forming the basis for the loss from January 2001  
17 to the present.

18 17. Any and all documents constituting valuations or appraisals of the Company or its  
19 assets (including real property) prepared by financial consultants, appraisers, CPAs,  
20 accountants, or other third parties at any time from January 2001 to the present.

21 18. Any and all documents constituting offers, bids, or proposals received by the  
22 Company for the actual or potential purchase of any and all its assets (including real property)  
23 prepared by actual or potential buyers, accountants, investment bankers, contractors, or other  
24 third parties at any time from January 2001 to the present.

25 19. Any and all documents reflecting all debt or other financing arrangements (actual  
26 and prospective) entered into by the Company including, but not limited to, loan agreements,  
27 line of credit agreements, promissory notes, letter of credit agreements, guarantee agreements,  
28 or other contractual documents at any time from January 2001 to the present.

20. Any and all documents constituting the correspondence, loan and/or credit applications, proposals, and other agreements between the Company and financial institutions, accountants, financial consultants, or other third parties prepared at any time from January 2001 to the present.

21. All Federal Tax returns and schedules filed by the Plaintiffs from January 2001 to the present.

22. Any and all documents constituting agreements and/or contracts with vendors, suppliers, lessees, lessors or other providers or recipients of products or services from January 2001 to the present.

23. All correspondence to and from the Department of Taxation regarding Live Entertainment Tax from January 2003 to the present.

24. Copies of all signs referencing any applicable tax, including information regarding the location of all of the signs, the dates each sign was posted and time of day that the each sign is posted from January 2003 to the present.

DATED this 25 day of May, 2011.

CATHERINE CORTEZ MASTO  
Attorney General

By: *David J. Pope*

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on the 25th day of May, 2011, I served the foregoing DEFENDANTS' REQUEST FOR PRODUCTION OF DOCUMENTS TO PLAINTIFF by causing to be delivered to Department of General Services for mailing at Las Vegas, Nevada, a true copy thereof, addressed to:

William H. Brown, Esq.  
Turco & Draskovich  
815 S. Casino Center Blvd.  
Las Vegas, NV 89101

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

  
An employee of Office of Attorney General

1 **REQT**  
2 CATHERINE CORTEZ MASTO  
3 Attorney General  
4 DAVID J. POPE  
5 Senior Deputy Attorney General  
6 Nevada Bar No. 008617  
7 BLAKE A. DOERR  
8 Senior Deputy Attorney General  
9 Nevada Bar No. 009001  
10 VIVIENNE RAKOWSKY  
11 Deputy Attorney General  
12 Nevada Bar No. 009160  
13 555 E. Washington Ave., Ste. 3900  
14 Las Vegas, Nevada 89101  
15 P: (702) 486-3095  
16 F: (702) 486-3416  
17 [dpope@ag.nv.gov](mailto:dpope@ag.nv.gov)  
18 [bdoerr@ag.nv.gov](mailto:bdoerr@ag.nv.gov)  
19 [vrakowsky@ag.nv.gov](mailto:vrakowsky@ag.nv.gov)  
20 Attorneys for Nevada Department of Taxation

21  
22 **DISTRICT COURT**  
23 **CLARK COUNTY, NEVADA**

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

Plaintiffs, )

vs. )

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

Defendants. )

Case No. 06A533273  
Dept. No. XI

*Coordinated with:*

Case No. 08A554970  
Dept. No. XI

**DEFENDANTS' REQUEST FOR  
PRODUCTION OF DOCUMENTS TO  
PLAINTIFF D. WESTWOOD, INC., D/B/A  
TREASURES**

1 K-KEL, INC., d/b/a *Spearmint Rhino*  
2 *Gentlemen's Club*; OLYMPUS GARDEN, INC.,  
3 d/b/a *Olympic Garden*; SHAC, LLC, d/b/a  
4 *Sapphire*; THE POWER COMPANY, INC., d/b/a  
5 *Crazy Horse Too Gentlemen's Club*; D.  
6 WESTWOOD, INC., d/b/a *Treasures*; and D.I.)  
7 FOOD & BEVERAGE OF LAS VEGAS, LLC,  
8 d/b/a *Scores*;

9 Plaintiffs,

10 v.

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

14 Defendants.

Case No. 08A554970  
Dept. No. XI

15 TO: D. WESTWOOD, INC., d/b/a *Treasures*, Plaintiff; and

16 TO: BRADLEY SHAFFER, ESQ, counsel for Plaintiff.

17 REQUEST IS HEREBY MADE UPON YOU, PLAINTIFF, pursuant to Rule 34 of the  
18 Nevada Rules of Civil Procedure, for the production of the following documents thirty (30) days  
19 from the receipt of this Request for Production of Documents, at the Office of the Attorney  
20 General, 555 East Washington Avenue, Las Vegas, Nevada 89101.

### 21 DEFINITIONS AND INSTRUCTIONS

22 1. As used in this Request for Production of Documents, the term "writing" includes  
23 without limiting the generality of its meaning, all originals, or copies where originals are  
24 unavailable and non identical copies (whether different from originals by reason of notation  
25 made on such copies or otherwise) of all written, recorded, or graphic matter, however produced  
26 or reproduced, whether or not now in existence, of correspondence, telegrams, e-mails, notes,  
27 signs or sound recordings of any type of conversation(s), meeting(s) or conference(s), minutes  
28 of meeting memoranda, interoffice communications, studies, analyses, reports, summaries and  
results of investigations and test, reviews, contracts, agreements, working papers, tax returns,  
statistical records, ledgers, books of account, vouchers, bank checks, bank statements,  
invoices, receipts, computer data, stenographers' notebooks, manuals, directives, bulletins,

1 desk calendars, appointment books, diaries, maps, charts, photographs, plats, drawings or  
2 other graphic representation, logs, investigators' reports or papers similar of any of the  
3 foregoing, however denominated.

4 2. As used in this Request for Production of Documents identification of a writing  
5 includes, stating:

- 6 (a) The nature of the writing;
- 7 (b) The date, if any, appearing thereon;
- 8 (c) The date, if known, on which the writing was prepared;
- 9 (d) The title of the writing;
- 10 (e) The general subject matter of the writing;
- 11 (f) The number of pages comprising the writing;
- 12 (g) The identity of each person who wrote, dictated or otherwise participated in the  
13 preparation of the writing;
- 14 (h) The identity of each person who signed or initialed the writing;
- 15 (i) The identity of each person to whom the writing was addressed;
- 16 (j) The identity of each person who received the writing or reviewed it;
- 17 (k) The location of the writing; and
- 18 (l) The identity of each person having custody of the writing.

19 Identification of a writing includes identifying all writings known or believed to exist,  
20 whether or not in your custody or in the custody of your attorneys;

21 3. If you at any time had possession or control of a writing called for under this  
22 Request for Production of Documents and if such writing has been lost, destroyed, purged, or is  
23 not presently in your possession or control, you shall describe the writing, the date of its loss,  
24 destruction, purge or separation from possession or control, and the circumstances surrounding  
25 its loss, destruction, purge or separation from possession or control.

26 4. As used in this Request for Production, the term D. WESTWOOD, INC., d/b/a  
27 Treasures or any version thereof, is intended to, and shall, embrace and include any of the  
28 locations operated by D. WESTWOOD, INC., d/b/a Treasures who is a Plaintiff in this action.

1           5. As used in this Request for Production, the term the "Company," "you" or "your"  
2 or any version thereof, is intended to, and shall, embrace and include any or all of the following:  
3 D. WESTWOOD, INC., d/b/a Treasures and any of its agents, officers, directors, employees,  
4 representatives, and any others who are in possession of, or who may have obtained,  
5 information for or on behalf of them.

6           6. As used throughout these Requests, the term "gentlemen's club" or "club" is  
7 intended to and shall, embrace any portions of, any areas related to, or under the control of D.  
8 WESTWOOD, INC., d/b/a Treasures.

9           7. As used throughout these Requests, the term "person" or its plural or any  
10 synonym thereof, is intended to and shall embrace and include any individual, partnership,  
11 corporation or any other entity.

12           8. As used throughout these Requests, the term "communication," its plural or any  
13 synonym thereof, is intended to and shall embrace and include all written, oral or electronic  
14 communications of any kind.

15           9. As used throughout these Requests, the term "employee," its plural or any  
16 synonym thereof, is intended to and shall embrace and include all employees of D.  
17 WESTWOOD, INC., d/b/a Treasures.

18           10. As used throughout these requests the term "food" or "meals" or any synonym  
19 thereof, is intended to and shall embrace and include all food, drinks, meals, snacks, or any  
20 prepared food for human consumption.

21           11. As used throughout these Requests, the term "customer," its plural or any  
22 synonym thereof, is intended to and shall embrace and include all patrons or clients of D.  
23 WESTWOOD, INC., d/b/a Treasures.

24           12. A request that you produce the source of information about certain facts includes  
25 a request that you state the means by which such knowledge has been preserved; if such  
26 source of information or facts is an oral communication, its date or origin, sender and recipient  
27 should be stated; if such source of preservation is in writing, its date or origin, its nature,  
28 originator, recipient and last known custodian should be stated.

1 13. If a request has more than one part, each part should be separated so that the  
2 answer is clearly understandable.

3 14. Each Request should be construed independently. No Request should be  
4 construed by reference to any other Request if the result is a limitation of the scope of the  
5 answer to such Request.

6 15. The words "and" and "or" shall be construed conjunctively or disjunctively as  
7 necessary, in order to bring with the scope of the Request all responses which might otherwise  
8 be construed to be outside of its scope.

9 16. If a Request for Production is objected to, in whole or in part, or if information  
10 responsive to a Request for Production is withheld on the ground of privilege or otherwise,  
11 please set forth fully each objection, describe generally the information which is withheld, and  
12 set for the facts upon which you rely on as the basis for each objection.

13 17. If you cannot produce any portion of any of the following Requests for Production  
14 in full, after exercising diligence to secure the request, please so state and provide the  
15 production to the extent possible, specifying your inability to produce the remainder and stating  
16 whatever information or knowledge you have concerning the unproduced portions.

17 18. These Requests for Production call for information (including information  
18 contained in writings) as is known or reasonably available to you, your attorney or any  
19 investigator or representative or others acting on their behalf or under their direction of control,  
20 or any information in the actual or constructive possession custody, care, or control of them.

21 19. These Requests for Production shall be deemed to be continuing and in the event  
22 you discover information that has been requested, you are to supplement the Request for  
23 Production by supplementing your production.

24 **REQUEST FOR PRODUCTION OF DOCUMENTS**

25 1. Any and all documents constituting monthly financial statements with  
26 departmental breakouts for all periods prepared internally or externally from January 2001  
27 through the present.

28 ...

1           2.     Any and all audited financial statements for all periods prepared from January  
2     2001 through the present.

3           3.     All Sales and Use Tax Returns for the period starting January 2001 through the  
4     present, along with all back –up work papers.

5           4.     Any and all documents constituting periodic profit and loss statements from  
6     January 2001 through the present.

7           5.     Cash receipts journal(s), bank statements and cancelled checks from January  
8     2001 through the present.

9           6.     Any and all documents constituting General Ledgers from January 2001 through  
10    the present, including all sales invoices, daily sales reports and/or register tapes and/or  
11    contracts from January 2001 through the present.

12          7.     Any and all documents constituting all versions and revisions of periodic budgets,  
13    variance analyses and related presentations, reports and communication from January 2001 to  
14    the present.

15          8.     Any and all documents constituting all versions and revisions of periodic financial  
16    forecasts, projections and related strategic presentations, reports and communication from  
17    January 2001 to the present.

18          9.     Any and all documents constituting all versions and revisions of periodic business  
19    plans, market studies, industry and competitor analyses and/or reports from January 2001 to  
20    the present.

21          10.    Any and all documents constituting data related to the monitoring and reporting of  
22    daily and monthly information and statistics of customer volume, activities, and spending from  
23    January 2001 to the present.

24          11.    Any and all documents constituting all customer data from any loyalty club or  
25    similar databases from January 2001 through the present.

26          12.    Any and all documents constituting all information and data gathered related to  
27    customer satisfaction, suggestions and/or complaints from January 2003 to the present.

28    ...

1 13. Any and all documents constituting Monthly Gross Revenue or Statistical Reports  
2 or the equivalent submitted to the Nevada Department of Taxation or equivalent agency since  
3 January 1, 2001 to the present.

4 14. Any and all documents constituting records of employees including, but not limited  
5 to, departmental headcounts, salaries and wages, W-2's, 1099's, Employment Security Report  
6 form(s) NUCS 4072, incentive compensation and benefits from January 2001 to the present.

7 15. Any and all incentive payments or referral payments including, but not limited to  
8 payments made to limousines, taxis or car services from January 2001 to the present.

9 16. Any and all documents constituting the plaintiff's loss analysis including, but not  
10 limited to, plaintiff's schedule of lost revenue and any and all supporting documents constituting  
11 calculations, spreadsheets, reports, accounting ledgers and/or journals, projections, forecasts,  
12 business plans, valuations or other information forming the basis for the loss from January 2001  
13 to the present.

14 17. Any and all documents constituting valuations or appraisals of the Company or its  
15 assets (including real property) prepared by financial consultants, appraisers, CPAs,  
16 accountants, or other third parties at any time from January 2001 to the present.

17 18. Any and all documents constituting offers, bids, or proposals received by the  
18 Company for the actual or potential purchase of any and all its assets (including real property)  
19 prepared by actual or potential buyers, accountants, investment bankers, contractors, or other  
20 third parties at any time from January 2001 to the present.

21 19. Any and all documents reflecting all debt or other financing arrangements (actual  
22 and prospective) entered into by the Company including, but not limited to, loan agreements,  
23 line of credit agreements, promissory notes, letter of credit agreements, guarantee agreements,  
24 or other contractual documents at any time from January 2001 to the present.

25 20. Any and all documents constituting the correspondence, loan and/or credit  
26 applications, proposals, and other agreements between the Company and financial institutions,  
27 accountants, financial consultants, or other third parties prepared at any time from January  
28 2001 to the present.

1 21. All Federal Tax returns and schedules filed by the Plaintiff from January 2001 to  
2 the present.

3 22. Any and all documents constituting agreements and/or contracts with vendors.  
4 suppliers, lessees, lessors or other providers or recipients of products or services from January  
5 2001 to the present.

6 23. All correspondence to and from the Department of Taxation regarding Live  
7 Entertainment Tax from January 2003 to the present.

8 24. Copies of all signs referencing any applicable tax, including information regarding  
9 the location of all of the signs, the dates each sign was posted and time of day that the each  
10 sign is posted from January 2003 to the present.

11 DATED this 25 day of May, 2011.

12 CATHERINE CORTEZ MASTO  
13 Attorney General

14  
15 By: David J. Pope

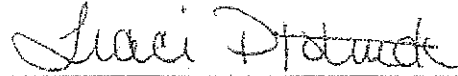
16 DAVID J. POPE  
17 Senior Deputy Attorney General  
18 BLAKE A. DOERR  
19 Senior Deputy Attorney General  
20 VIVIENNE RAKOWSKY  
21 Deputy Attorney General  
22 Attorneys for Defendants  
23  
24  
25  
26  
27  
28

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on the 25<sup>th</sup> day of May, 2011, I served the foregoing  
DEFENDANTS' REQUEST FOR PRODUCTION OF DOCUMENTS TO PLAINTIFF by  
causing to be delivered to Department of General Services for mailing at Las Vegas, Nevada,  
a true copy thereof, addressed to:

William H. Brown, Esq.  
Turco & Draskovich  
815 S. Casino Center Blvd.  
Las Vegas, NV 89101

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



An employee of Office of Attorney General

1 REQT  
2 CATHERINE CORTEZ MASTO  
3 Attorney General  
4 DAVID J. POPE  
5 Senior Deputy Attorney General  
6 Nevada Bar No. 008617  
7 BLAKE A. DOERR  
8 Senior Deputy Attorney General  
9 Nevada Bar No. 009001  
10 VIVIENNE RAKOWSKY  
11 Deputy Attorney General  
12 Nevada Bar No. 009160  
13 555 E. Washington Ave., Ste. 3900  
14 Las Vegas, Nevada 89101  
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19 [vrakowsky@ag.nv.gov](mailto:vrakowsky@ag.nv.gov)  
20 Attorneys for Nevada Department of Taxation

12 DISTRICT COURT  
13 CLARK COUNTY, NEVADA

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

20 Plaintiffs,

21 vs.

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

25 Defendants.

Case No. 06A533273  
Dept. No. XI

*Coordinated with:*

Case No. 08A554970  
Dept. No. XI

DEFENDANTS' REQUEST FOR  
PRODUCTION OF DOCUMENTS TO  
PLAINTIFF D.I. FOOD & BEVERAGE OF  
LAS VEGAS, L.L.C., D/B/A SCORES

Case No. 08A554970  
Dept. No. XI

1 K-KEL, INC., d/b/a *Spearmint Rhino*)  
2 *Gentlemen's Club*; OLYMPUS GARDEN, INC.,)  
3 d/b/a *Olympic Garden*; SHAC, LLC, d/b/a)  
4 *Sapphire*; THE POWER COMPANY, INC., d/b/a)  
5 *Crazy Horse Too Gentlemen's Club*; D.)  
6 WESTWOOD, INC., d/b/a *Treasures*; and D.I.)  
7 FOOD & BEVERAGE OF LAS VEGAS, LLC,)  
8 d/b/a *Scores*; )

9 Plaintiffs, )

10 v. )

11 NEVADA DEPARTMENT OF TAXATION; )  
12 NEVADA TAX COMMISSION; and NEVADA )  
13 STATE BOARD OF EXAMINERS, )

14 Defendants. )

15 TO: D.I. FOOD & BEVERAGE OF LAS VEGAS, L.L.C., d/b/a *Scores*, Plaintiff; and

16 TO: BRADLEY SHAFFER, ESQ, counsel for Plaintiff.

17 REQUEST IS HEREBY MADE UPON YOU, PLAINTIFF, pursuant to Rule 34 of the  
18 Nevada Rules of Civil Procedure, for the production of the following documents thirty (30) days  
19 from the receipt of this Request for Production of Documents, at the Office of the Attorney  
20 General, 555 East Washington Avenue, Las Vegas, Nevada 89101.

#### 21 DEFINITIONS AND INSTRUCTIONS

22 1. As used in this Request for Production of Documents, the term "writing" includes  
23 without limiting the generality of its meaning, all originals, or copies where originals are  
24 unavailable and non identical copies (whether different from originals by reason of notation  
25 made on such copies or otherwise) of all written, recorded, or graphic matter, however produced  
26 or reproduced, whether or not now in existence, of correspondence, telegrams, e-mails, notes,  
27 signs or sound recordings of any type of conversation(s), meeting(s) or conference(s), minutes  
28 of meeting memoranda, interoffice communications, studies, analyses, reports, summaries and  
results of investigations and test, reviews, contracts, agreements, working papers, tax returns,  
statistical records, ledgers, books of account, vouchers, bank checks, bank statements,  
invoices, receipts, computer data, stenographers' notebooks, manuals, directives, bulletins,

1 desk calendars, appointment books, diaries, maps, charts, photographs, plats, drawings or  
2 other graphic representation, logs, investigators' reports or papers similar of any of the  
3 foregoing, however denominated.

4 2. As used in this Request for Production of Documents identification of a writing  
5 includes, stating:

- 6 (a) The nature of the writing;
- 7 (b) The date, if any, appearing thereon;
- 8 (c) The date, if known, on which the writing was prepared;
- 9 (d) The title of the writing;
- 10 (e) The general subject matter of the writing;
- 11 (f) The number of pages comprising the writing;
- 12 (g) The identity of each person who wrote, dictated or otherwise participated in the  
13 preparation of the writing;
- 14 (h) The identity of each person who signed or initialed the writing;
- 15 (i) The identity of each person to whom the writing was addressed;
- 16 (j) The identity of each person who received the writing or reviewed it;
- 17 (k) The location of the writing; and
- 18 (l) The identity of each person having custody of the writing.

19 Identification of a writing includes identifying all writings known or believed to exist,  
20 whether or not in your custody or in the custody of your attorneys;

21 3. If you at any time had possession or control of a writing called for under this  
22 Request for Production of Documents and if such writing has been lost, destroyed, purged, or is  
23 not presently in your possession or control, you shall describe the writing, the date of its loss,  
24 destruction, purge or separation from possession or control, and the circumstances surrounding  
25 its loss, destruction, purge or separation from possession or control.

26 4. As used in this Request for Production, the term D.I. FOOD & BEVERAGE OF  
27 LAS VEGAS, L.L.C., d/b/a Scores or any version thereof, is intended to, and shall, embrace  
28 ...

1 and include any of the locations operated by D.I. FOOD & BEVERAGE OF LAS VEGAS,  
2 L.L.C., d/b/a Scores who is a Plaintiff in this action.

3 5. As used in this Request for Production, the term the "Company," "you" or "your"  
4 or any version thereof, is intended to, and shall, embrace and include any or all of the following;  
5 D.I. FOOD & BEVERAGE OF LAS VEGAS, L.L.C., d/b/a Scores and any of its agents,  
6 officers, directors, employees, representatives, and any others who are in possession of, or who  
7 may have obtained, information for or on behalf of them.

8 6. As used throughout these Requests, the term "gentlemen's club" or "club" is  
9 intended to and shall, embrace any portions of, any areas related to, or under the control of D.I.  
10 FOOD & BEVERAGE OF LAS VEGAS, L.L.C., d/b/a Scores.

11 7. As used throughout these Requests, the term "person" or its plural or any  
12 synonym thereof, is intended to and shall embrace and include any individual, partnership,  
13 corporation or any other entity.

14 8. As used throughout these Requests, the term "communication," its plural or any  
15 synonym thereof, is intended to and shall embrace and include all written, oral or electronic  
16 communications of any kind.

17 9. As used throughout these Requests, the term "employee," its plural or any  
18 synonym thereof, is intended to and shall embrace and include all employees of D.I. FOOD &  
19 BEVERAGE OF LAS VEGAS, L.L.C., d/b/a Scores.

20 10. As used throughout these requests the term "food" or "meals" or any synonym  
21 thereof, is intended to and shall embrace and include all food, drinks, meals, snacks, or any  
22 prepared food for human consumption.

23 11. As used throughout these Requests, the term "customer," its plural or any  
24 synonym thereof, is intended to and shall embrace and include all patrons or clients of D.I.  
25 FOOD & BEVERAGE OF LAS VEGAS, L.L.C., d/b/a Scores.

26 12. A request that you produce the source of information about certain facts includes  
27 a request that you state the means by which such knowledge has been preserved; if such  
28 source of information or facts is an oral communication, its date or origin, sender and recipient

1 should be stated; if such source of preservation is in writing, its date or origin, its nature,  
2 originator, recipient and last known custodian should be stated.

3 13. If a request has more than one part, each part should be separated so that the  
4 answer is clearly understandable.

5 14. Each Request should be construed independently. No Request should be  
6 construed by reference to any other Request if the result is a limitation of the scope of the  
7 answer to such Request.

8 15. The words "and" and "or" shall be construed conjunctively or disjunctively as  
9 necessary, in order to bring within the scope of the Request all responses which might otherwise  
10 be construed to be outside of its scope.

11 16. If a Request for Production is objected to, in whole or in part, or if information  
12 responsive to a Request for Production is withheld on the ground of privilege or otherwise,  
13 please set forth fully each objection, describe generally the information which is withheld, and  
14 set forth the facts upon which you rely on as the basis for each objection.

15 17. If you cannot produce any portion of any of the following Requests for Production  
16 in full, after exercising diligence to secure the request, please so state and provide the  
17 production to the extent possible, specifying your inability to produce the remainder and stating  
18 whatever information or knowledge you have concerning the unproduced portions.

19 18. These Requests for Production call for information (including information  
20 contained in writings) as is known or reasonably available to you, your attorney or any  
21 investigator or representative or others acting on their behalf or under their direction of control,  
22 or any information in the actual or constructive possession, custody, care, or control of them.

23 19. These Requests for Production shall be deemed to be continuing and in the event  
24 you discover information that has been requested, you are to supplement the Request for  
25 Production by supplementing your production.

26 ...

27 ...

28 ...

REQUEST FOR PRODUCTION OF DOCUMENTS

1  
2 1. Any and all documents constituting monthly financial statements with  
3 departmental breakouts for all periods prepared internally or externally from January 2001  
4 through the present.

5 2. Any and all audited financial statements for all periods prepared from January  
6 2001 through the present.

7 3. All Sales and Use Tax Returns for the period starting January 2001 through the  
8 present, along with all back -up work papers.

9 4. Any and all documents constituting periodic profit and loss statements from  
10 January 2001 through the present.

11 5. Cash receipts journal(s), bank statements and cancelled checks from January  
12 2001 through the present.

13 6. Any and all documents constituting General Ledgers from January 2001 through  
14 the present, including all sales invoices, daily sales reports and/or register tapes and/or  
15 contracts from January 2001 through the present.

16 7. Any and all documents constituting all versions and revisions of periodic budgets,  
17 variance analyses and related presentations, reports and communication from January 2001 to  
18 the present.

19 8. Any and all documents constituting all versions and revisions of periodic financial  
20 forecasts, projections and related strategic presentations, reports and communication from  
21 January 2001 to the present.

22 9. Any and all documents constituting all versions and revisions of periodic business  
23 plans, market studies, industry and competitor analyses and/or reports from January 2001 to  
24 the present.

25 10. Any and all documents constituting data related to the monitoring and reporting of  
26 daily and monthly information and statistics of customer volume, activities, and spending from  
27 January 2001 to the present.

28 ...

1 11. Any and all documents constituting all customer data from any loyalty club or  
2 similar databases from January 2001 through the present.

3 12. Any and all documents constituting all information and data gathered related to  
4 customer satisfaction, suggestions and/or complaints from January 2003 to the present.

5 13. Any and all documents constituting Monthly Gross Revenue or Statistical Reports  
6 or the equivalent submitted to the Nevada Department of Taxation or equivalent agency since  
7 January 1, 2001 to the present.

8 14. Any and all documents constituting records of employees including, but not limited  
9 to, departmental headcounts, salaries and wages, W-2's, 1099's, Employment Security Report  
10 form(s) NUCS 4072, incentive compensation and benefits from January 2001 to the present.

11 15. Any and all incentive payments or referral payments including, but not limited to  
12 payments made to limousines, taxis or car services from January 2001 to the present.

13 16. Any and all documents constituting the plaintiff's loss analysis including, but not  
14 limited to, plaintiff's schedule of lost revenue and any and all supporting documents constituting  
15 calculations, spreadsheets, reports, accounting ledgers and/or journals, projections, forecasts,  
16 business plans, valuations or other information forming the basis for the loss from January 2001  
17 to the present.

18 17. Any and all documents constituting valuations or appraisals of the Company or its  
19 assets (including real property) prepared by financial consultants, appraisers, CPAs,  
20 accountants, or other third parties at any time from January 2001 to the present.

21 18. Any and all documents constituting offers, bids, or proposals received by the  
22 Company for the actual or potential purchase of any and all its assets (including real property)  
23 prepared by actual or potential buyers, accountants, investment bankers, contractors, or other  
24 third parties at any time from January 2001 to the present.

25 19. Any and all documents reflecting all debt or other financing arrangements (actual  
26 and prospective) entered into by the Company including, but not limited to, loan agreements,  
27 line of credit agreements, promissory notes, letter of credit agreements, guarantee agreements,  
28 or other contractual documents at any time from January 2001 to the present.

1           20. Any and all documents constituting the correspondence, loan and/or credit  
2 applications, proposals, and other agreements between the Company and financial institutions,  
3 accountants, financial consultants, or other third parties prepared at any time from January  
4 2001 to the present.

5           21. All Federal Tax returns and schedules filed by the Plaintiff from January 2001 to  
6 the present.

7           22. Any and all documents constituting agreements and/or contracts with vendors,  
8 suppliers, lessees, lessors or other providers or recipients of products or services from January  
9 2001 to the present.

10          23. All correspondence to and from the Department of Taxation regarding Live  
11 Entertainment Tax from January 2003 to the present.

12          24. Copies of all signs referencing any applicable tax, including information regarding  
13 the location of all of the signs, the dates each sign was posted and time of day that the each  
14 sign is posted from January 2003 to the present.

15           DATED this 25 day of May, 2011.

16                           CATHERINE CORTEZ MASTO  
17                           Attorney General

18  
19           By: 

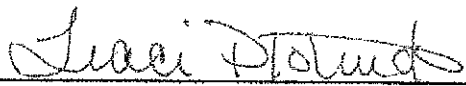
20                   DAVID J. POPE  
21                   Senior Deputy Attorney General  
22                   BLAKE A. DOERR  
23                   Senior Deputy Attorney General  
24                   VIVIENNE RAKOWSKY  
25                   Deputy Attorney General  
26                   Attorneys for Defendants  
27  
28

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on the 25<sup>th</sup> day of May, 2011, I served the foregoing  
DEFENDANTS' REQUEST FOR PRODUCTION OF DOCUMENTS TO PLAINTIFF by  
causing to be delivered to Department of General Services for mailing at Las Vegas, Nevada,  
a true copy thereof, addressed to:

William H. Brown, Esq.  
Turco & Draskovich  
815 S. Casino Center Blvd.  
Las Vegas, NV 89101

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

  
An employee of Office of Attorney General

1 **REQT**

2 CATHERINE CORTEZ MASTO

3 Attorney General

4 DAVID J. POPE

5 Senior Deputy Attorney General

6 Nevada Bar No. 008617

7 BLAKE A. DOERR

8 Senior Deputy Attorney General

9 Nevada Bar No. 009001

10 VIVIENNE RAKOWSKY

11 Deputy Attorney General

12 Nevada Bar No. 009160

13 555 E. Washington Ave., Ste. 3900

14 Las Vegas, Nevada 89101

15 P: (702) 486-3095

16 F: (702) 486-3416

17 [dpope@ag.nv.gov](mailto:dpope@ag.nv.gov)

18 [bdoerr@ag.nv.gov](mailto:bdoerr@ag.nv.gov)

19 [vrakowsky@ag.nv.gov](mailto:vrakowsky@ag.nv.gov)

20 Attorneys for Nevada Department of Taxation

21 **DISTRICT COURT**

22 **CLARK COUNTY, NEVADA**

23 DÉJÀ VU SHOWGIRLS OF LAS VEGAS,)

24 L.L.C., d/b/a Déjà vu Showgirls, LITTLE)

25 DARLINGS OF LAS VEGAS, L.L.C., d/b/a Little)

26 Darlings, K-KEL, INC. d/b/a Spearmint Rhino)

27 Gentlemen's Club, OLYMPUS GARDEN, INC.,)

28 d/b/a Olympic Garden, SHAC, L.L.C., d/b/a)

29 Sapphire, THE POWER COMPANY, INC., d/b/a)

30 Crazy Horse Too Gentlemen's Club, D.)

31 WESTWOOD, INC., d/b/a Treasures, and D.I.)

32 FOOD & BEVERAGE OF LAS VEGAS, L.L.C.,)

33 d/b/a Scores,

34 Plaintiffs,

35 vs.

36 NEVADA DEPARTMENT OF TAXATION,

37 NEVADA TAX COMMISSION, NEVADA

38 STATE BOARD OF EXAMINERS, and

39 MICHELLE JACOBS, in her official capacity

40 only,

41 Defendants.

Case No. 06A533273

Dept. No. XI

Coordinated with:

Case No. 08A554970

Dept. No. XI

DEFENDANTS' REQUEST FOR  
PRODUCTION OF DOCUMENTS TO  
PLAINTIFF THE POWER COMPANY, INC.,  
D/B/A CRAZY HORSE TOO  
GENTLEMEN'S CLUB

Case No. 08A554970  
Dept. No. XI

1 K-KEL, INC., d/b/a *Spearmint Rhino*)  
2 *Gentlemen's Club*; OLYMPUS GARDEN, INC.,)  
3 d/b/a *Olympic Garden*; SHAC, LLC, d/b/a)  
4 *Sapphire*; THE POWER COMPANY, INC., d/b/a)  
5 *Crazy Horse Too Gentlemen's Club*; D.)  
6 WESTWOOD, INC., d/b/a *Treasures*; and D.I.)  
7 FOOD & BEVERAGE OF LAS VEGAS, LLC.)  
8 d/b/a *Scores*;

9 Plaintiffs,

10 v.

11 NEVADA DEPARTMENT OF TAXATION;)  
12 NEVADA TAX COMMISSION; and NEVADA)  
13 STATE BOARD OF EXAMINERS,

14 Defendants.

15 TO: THE POWER COMPANY, INC., d/b/a *Crazy Horse Too Gentlemen's Club*, Plaintiff;

16 TO: BRADLEY SHAFFER, ESQ, counsel for Plaintiff;

17 REQUEST IS HEREBY MADE UPON YOU, PLAINTIFF, pursuant to Rule 34 of the  
18 Nevada Rules of Civil Procedure, for the production of the following documents thirty (30) days  
19 from the receipt of this Request for Production of Documents, at the Office of the Attorney  
20 General, 555 East Washington Avenue, Las Vegas, Nevada 89101.

#### 21 DEFINITIONS AND INSTRUCTIONS

22 1. As used in this Request for Production of Documents, the term "writing" includes  
23 without limiting the generality of its meaning, all originals, or copies where originals are  
24 unavailable and non identical copies (whether different from originals by reason of notation  
25 made on such copies or otherwise) of all written, recorded, or graphic matter, however produced  
26 or reproduced, whether or not now in existence, of correspondence, telegrams, e-mails, notes,  
27 signs or sound recordings of any type of conversation(s), meeting(s) or conference(s), minutes  
28 of meeting memoranda, interoffice communications, studies, analyses, reports, summaries and  
results of investigations and test, reviews, contracts, agreements, working papers, tax returns,  
statistical records, ledgers, books of account, vouchers, bank checks, bank statements,  
invoices, receipts, computer data, stenographers' notebooks, manuals, directives, bulletins,

1 desk calendars, appointment books, diaries, maps, charts, photographs, plats, drawings or  
2 other graphic representation, logs, investigators' reports or papers similar of any of the  
3 foregoing, however denominated.

4 2. As used in this Request for Production of Documents identification of a writing  
5 includes, stating:

- 6 (a) The nature of the writing;
- 7 (b) The date, if any, appearing thereon;
- 8 (c) The date, if known, on which the writing was prepared;
- 9 (d) The title of the writing;
- 10 (e) The general subject matter of the writing;
- 11 (f) The number of pages comprising the writing;
- 12 (g) The identity of each person who wrote, dictated or otherwise participated in the  
13 preparation of the writing;
- 14 (h) The identity of each person who signed or initialed the writing;
- 15 (i) The identity of each person to whom the writing was addressed;
- 16 (j) The identity of each person who received the writing or reviewed it;
- 17 (k) The location of the writing; and
- 18 (l) The identity of each person having custody of the writing.

19 Identification of a writing includes identifying all writings known or believed to exist,  
20 whether or not in your custody or in the custody of your attorneys;

21 3. If you at any time had possession or control of a writing called for under this  
22 Request for Production of Documents and if such writing has been lost, destroyed, purged, or is  
23 not presently in your possession or control, you shall describe the writing, the date of its loss,  
24 destruction, purge or separation from possession or control, and the circumstances surrounding  
25 its loss, destruction, purge or separation from possession or control.

26 4. As used in this Request for Production, the term THE POWER COMPANY, INC.,  
27 d/b/a Crazy Horse Too Gentlemen's Club or any version thereof, is intended to, and shall,  
28 ...

1 embrace and include any of the locations operated by THE POWER COMPANY, INC., d/b/a  
2 Crazy Horse Too Gentlemen's Club who is a Plaintiff in this action.

3 5. As used in this Request for Production, the term the "Company," "you" or "your"  
4 or any version thereof, is intended to, and shall, embrace and include any or all of the following;  
5 THE POWER COMPANY, INC., d/b/a Crazy Horse Too Gentlemen's Club and any of its  
6 agents, officers, directors, employees, representatives, and any others who are in possession  
7 of, or who may have obtained, information for or on behalf of them.

8 6. As used throughout these Requests, the term "gentlemen's club" or "club" is  
9 intended to and shall, embrace any portions of, any areas related to, or under the control of  
10 THE POWER COMPANY, INC., d/b/a Crazy Horse Too Gentlemen's Club.

11 7. As used throughout these Requests, the term "person" or its plural or any  
12 synonym thereof, is intended to and shall embrace and include any individual, partnership,  
13 corporation or any other entity.

14 8. As used throughout these Requests, the term "communication," its plural or any  
15 synonym thereof, is intended to and shall embrace and include all written, oral or electronic  
16 communications of any kind.

17 9. As used throughout these Requests, the term "employee," its plural or any  
18 synonym thereof, is intended to and shall embrace and include all employees of THE POWER  
19 COMPANY, INC., d/b/a Crazy Horse Too Gentlemen's Club.

20 10. As used throughout these requests the term "food" or "meals" or any synonym  
21 thereof, is intended to and shall embrace and include all food, drinks, meals, snacks, or any  
22 prepared food for human consumption.

23 11. As used throughout these Requests, the term "customer," its plural or any  
24 synonym thereof, is intended to and shall embrace and include all patrons or clients of THE  
25 POWER COMPANY, INC., d/b/a Crazy Horse Too Gentlemen's Club.

26 12. A request that you produce the source of information about certain facts includes  
27 a request that you state the means by which such knowledge has been preserved; if such  
28 source of information or facts is an oral communication, its date or origin, sender and recipient

1 should be stated; if such source of preservation is in writing, its date or origin, its nature,  
2 originator, recipient and last known custodian should be stated.

3 13. If a request has more than one part, each part should be separated so that the  
4 answer is clearly understandable.

5 14. Each Request should be construed independently. No Request should be  
6 construed by reference to any other Request if the result is a limitation of the scope of the  
7 answer to such Request.

8 15. The words "and" and "or" shall be construed conjunctively or disjunctively as  
9 necessary, in order to bring with the scope of the Request all responses which might otherwise  
10 be construed to be outside of its scope.

11 16. If a Request for Production is objected to, in whole or in part, or if information  
12 responsive to a Request for Production is withheld on the ground of privilege or otherwise,  
13 please set forth fully each objection, describe generally the information which is withheld, and  
14 set for the facts upon which you rely on as the basis for each objection.

15 17. If you cannot produce any portion of any of the following Requests for Production  
16 in full, after exercising diligence to secure the request, please so state and provide the  
17 production to the extent possible, specifying your inability to produce the remainder and stating  
18 whatever information or knowledge you have concerning the unproduced portions.

19 18. These Requests for Production call for information (including information  
20 contained in writings) as is known or reasonably available to you, your attorney or any  
21 investigator or representative or others acting on their behalf or under their direction of control,  
22 or any information in the actual or constructive possession custody, care, or control of them.

23 19. These Requests for Production shall be deemed to be continuing and in the event  
24 you discover information that has been requested, you are to supplement the Request for  
25 Production by supplementing your production.

26 ...

27 ...

28 ...

REQUEST FOR PRODUCTION OF DOCUMENTS

1  
2 1. Any and all documents constituting monthly financial statements with  
3 departmental breakouts for all periods prepared internally or externally from January 2001  
4 through the present.

5 2. Any and all audited financial statements for all periods prepared from January  
6 2001 through the present.

7 3. All Sales and Use Tax Returns for the period starting January 2001 through the  
8 present, along with all back -up work papers.

9 4. Any and all documents constituting periodic profit and loss statements from  
10 January 2001 through the present.

11 5. Cash receipts journal(s), bank statements and cancelled checks from January  
12 2001 through the present.

13 6. Any and all documents constituting General Ledgers from January 2001 through  
14 the present, including all sales invoices, daily sales reports and/or register tapes and/or  
15 contracts from January 2001 through the present.

16 7. Any and all documents constituting all versions and revisions of periodic budgets,  
17 variance analyses and related presentations, reports and communication from January 2001 to  
18 the present.

19 8. Any and all documents constituting all versions and revisions of periodic financial  
20 forecasts, projections and related strategic presentations, reports and communication from  
21 January 2001 to the present.

22 9. Any and all documents constituting all versions and revisions of periodic business  
23 plans, market studies, industry and competitor analyses and/or reports from January 2001 to  
24 the present.

25 10. Any and all documents constituting data related to the monitoring and reporting of  
26 daily and monthly information and statistics of customer volume, activities, and spending from  
27 January 2001 to the present.

28 ...

1 11. Any and all documents constituting all customer data from any loyalty club or  
2 similar databases from January 2001 through the present.

3 12. Any and all documents constituting all information and data gathered related to  
4 customer satisfaction, suggestions and/or complaints from January 2003 to the present.

5 13. Any and all documents constituting Monthly Gross Revenue or Statistical Reports  
6 or the equivalent submitted to the Nevada Department of Taxation or equivalent agency since  
7 January 1, 2001 to the present.

8 14. Any and all documents constituting records of employees including, but not limited  
9 to, departmental headcounts, salaries and wages, W-2's, 1099's, Employment Security Report  
10 form(s) NUCS 4072, incentive compensation and benefits from January 2001 to the present.

11 15. Any and all incentive payments or referral payments including, but not limited to  
12 payments made to limousines, taxis or car services from January 2001 to the present.

13 16. Any and all documents constituting the plaintiff's loss analysis including, but not  
14 limited to, plaintiff's schedule of lost revenue and any and all supporting documents constituting  
15 calculations, spreadsheets, reports, accounting ledgers and/or journals, projections, forecasts,  
16 business plans, valuations or other information forming the basis for the loss from January 2001  
17 to the present.

18 17. Any and all documents constituting valuations or appraisals of the Company or its  
19 assets (including real property) prepared by financial consultants, appraisers, CPAs,  
20 accountants, or other third parties at any time from January 2001 to the present.

21 18. Any and all documents constituting offers, bids, or proposals received by the  
22 Company for the actual or potential purchase of any and all its assets (including real property)  
23 prepared by actual or potential buyers, accountants, investment bankers, contractors, or other  
24 third parties at any time from January 2001 to the present.

25 19. Any and all documents reflecting all debt or other financing arrangements (actual  
26 and prospective) entered into by the Company including, but not limited to, loan agreements,  
27 line of credit agreements, promissory notes, letter of credit agreements, guarantee agreements,  
28 or other contractual documents at any time from January 2001 to the present.

1           20. Any and all documents constituting the correspondence, loan and/or credit  
2 applications, proposals, and other agreements between the Company and financial institutions,  
3 accountants, financial consultants, or other third parties prepared at any time from January  
4 2001 to the present.

5           21. All Federal Tax returns and schedules filed by the Plaintiff from January 2001 to  
6 the present.

7           22. Any and all documents constituting agreements and/or contracts with vendors,  
8 suppliers, lessees, lessors or other providers or recipients of products or services from January  
9 2001 to the present.

10          23. All correspondence to and from the Department of Taxation regarding Live  
11 Entertainment Tax from January 2003 to the present.

12          24. Copies of all signs referencing any applicable tax, including information regarding  
13 the location of all of the signs, the dates each sign was posted and time of day that the each  
14 sign is posted from January 2003 to the present.

15           DATED this 25 day of May, 2011.

16                           CATHERINE CORTEZ MASTO  
17                           Attorney General

18  
19           By: \_\_\_\_\_

20                   DAVID J. POPE  
21                   Senior Deputy Attorney General  
22                   BLAKE A. DOERR  
23                   Senior Deputy Attorney General  
24                   VIVIENNE RAKOWSKY  
25                   Deputy Attorney General  
26                   Attorneys for Defendants  
27  
28

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on the 25<sup>th</sup> day of May, 2011, I served the foregoing  
DEFENDANTS' REQUEST FOR PRODUCTION OF DOCUMENTS TO PLAINTIFF by  
causing to be delivered to Department of General Services for mailing at Las Vegas, Nevada,  
a true copy thereof, addressed to:

William H. Brown, Esq.  
Turco & Draskovich  
815 S. Casino Center Blvd.  
Las Vegas, NV 89101

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

  
An employee of Office of Attorney General

1 REQT

2 CATHERINE CORTEZ MASTO

3 Attorney General

4 DAVID J. POPE

5 Senior Deputy Attorney General

6 Nevada Bar No. 008617

7 BLAKE A. DOERR

8 Senior Deputy Attorney General

9 Nevada Bar No. 009001

10 VIVIENNE RAKOWSKY

11 Deputy Attorney General

12 Nevada Bar No. 009160

13 555 E. Washington Ave., Ste. 3900

14 Las Vegas, Nevada 89101

15 P: (702) 486-3095

16 F: (702) 486-3416

17 [dpope@ag.nv.gov](mailto:dpope@ag.nv.gov)

18 [bdoerr@ag.nv.gov](mailto:bdoerr@ag.nv.gov)

19 [vrakowsky@ag.nv.gov](mailto:vrakowsky@ag.nv.gov)

20 Attorneys for Nevada Department of Taxation

21 DISTRICT COURT

22 CLARK COUNTY, NEVADA

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

34 Plaintiffs,

35 vs.

36 NEVADA DEPARTMENT OF TAXATION,  
37 NEVADA TAX COMMISSION, NEVADA  
38 STATE BOARD OF EXAMINERS, and  
39 MICHELLE JACOBS, in her official capacity  
40 only,

41 Defendants.

Case No. 06A533273

Dept. No. XI

Coordinated with:

Case No. 08A554970

Dept. No. XI

DEFENDANTS' REQUEST FOR  
PRODUCTION OF DOCUMENTS TO  
PLAINTIFF DÉJÀ VU SHOWGIRLS OF  
LAS VEGAS, L.L.C., D/B/A DÉJÀ VU  
SHOWGIRLS

1 K-KEL, INC., d/b/a *Spearmint Rhino*  
2 *Gentlemen's Club*; OLYMPUS GARDEN, INC.,  
3 d/b/a *Olymic Garden*; SHAC, LLC, d/b/a  
4 *Sapphire*; THE POWER COMPANY, INC., d/b/a  
5 *Crazy Horse Too Gentlemen's Club*; D.  
6 WESTWOOD, INC., d/b/a *Treasures*; and D.I.  
7 FOOD & BEVERAGE OF LAS VEGAS, LLC,  
8 d/b/a *Scores*;

9 Plaintiffs,

10 v.

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

14 Defendants.

Case No. 08A554970

Dept. No. XI

15 TO: DÉJÀ VU SHOWGIRLS OF LAS VEGAS, L.L.C., d/b/a *Déjà vu Showgirls*, Plaintiff; and

16 TO: BRADLEY SHAFFER, ESQ, counsel for Plaintiff.

17 REQUEST IS HEREBY MADE UPON YOU, PLAINTIFFS, pursuant to Rule 34 of the  
18 Nevada Rules of Civil Procedure, for the production of the following documents thirty (30) days  
19 from the receipt of this Request for Production of Documents, at the Office of the Attorney  
20 General, 555 East Washington Avenue, Las Vegas, Nevada 89101.

### 21 DEFINITIONS AND INSTRUCTIONS

22 1. As used in this Request for Production of Documents, the term "writing" includes  
23 without limiting the generality of its meaning, all originals, or copies where originals are  
24 unavailable and non identical copies (whether different from originals by reason of notation  
25 made on such copies or otherwise) of all written, recorded, or graphic matter, however produced  
26 or reproduced, whether or not now in existence, of correspondence, telegrams, e-mails, notes,  
27 signs or sound recordings of any type of conversation(s), meeting(s) or conference(s), minutes  
28 of meeting memoranda, interoffice communications, studies, analyses, reports, summaries and  
results of investigations and test, reviews, contracts, agreements, working papers, tax returns,  
statistical records, ledgers, books of account, vouchers, bank checks, bank statements,  
invoices, receipts, computer data, stenographers' notebooks, manuals, directives, bulletins,

1 desk calendars, appointment books, diaries, maps, charts, photographs, plats, drawings or  
2 other graphic representation, logs, investigators' reports or papers similar of any of the  
3 foregoing, however denominated.

4 2. As used in this Request for Production of Documents identification of a writing  
5 includes, stating:

- 6 (a) The nature of the writing;
- 7 (b) The date, if any, appearing thereon;
- 8 (c) The date, if known, on which the writing was prepared;
- 9 (d) The title of the writing;
- 10 (e) The general subject matter of the writing;
- 11 (f) The number of pages comprising the writing;
- 12 (g) The identity of each person who wrote, dictated or otherwise participated in the  
13 preparation of the writing;
- 14 (h) The identity of each person who signed or initialed the writing;
- 15 (i) The identity of each person to whom the writing was addressed;
- 16 (j) The identity of each person who received the writing or reviewed it;
- 17 (k) The location of the writing; and
- 18 (l) The identity of each person having custody of the writing.

19 Identification of a writing includes identifying all writings known or believed to exist,  
20 whether or not in your custody or in the custody of your attorneys;

21 3. If you at any time had possession or control of a writing called for under this  
22 Request for Production of Documents and if such writing has been lost, destroyed, purged, or is  
23 not presently in your possession or control, you shall describe the writing, the date of its loss,  
24 destruction, purge or separation from possession or control, and the circumstances surrounding  
25 its loss, destruction, purge or separation from possession or control.

26 4. As used in this Request for Production, the term DÉJÀ VU SHOWGIRLS OF LAS  
27 VEGAS, L.L.C., d/b/a Déjà vu Showgirls or any version thereof, is intended to, and shall,

28 ...

1 embrace and include any of the locations operated by DÉJÀ VU SHOWGIRLS OF LAS  
2 VEGAS, L.L.C., d/b/a Déjà vu Showgirls who are Plaintiffs in this action.

3 5. As used in this Request for Production, the term the "Company," "you" or "your"  
4 or any version thereof, is intended to, and shall, embrace and include any or all of the following;  
5 DÉJÀ VU SHOWGIRLS OF LAS VEGAS, L.L.C., d/b/a Déjà vu Showgirls and any of its  
6 agents, officers, directors, employees, representatives, and any others who are in possession  
7 of, or who may have obtained, information for or on behalf of them.

8 6. As used throughout these Requests, the term "gentlemen's club" or "club" is  
9 intended to and shall, embrace any portions of, any areas related to, or under the control of  
10 DÉJÀ VU SHOWGIRLS OF LAS VEGAS, L.L.C., d/b/a Déjà vu Showgirls.

11 7. As used throughout these Requests, the term "person" or its plural or any  
12 synonym thereof, is intended to and shall embrace and include any individual, partnership,  
13 corporation or any other entity.

14 8. As used throughout these Requests, the term "communication," its plural or any  
15 synonym thereof, is intended to and shall embrace and include all written, oral or electronic  
16 communications of any kind.

17 9. As used throughout these Requests, the term "employee," its plural or any  
18 synonym thereof, is intended to and shall embrace and include all employees of DÉJÀ VU  
19 SHOWGIRLS OF LAS VEGAS, L.L.C., d/b/a Déjà vu Showgirls.

20 10. As used throughout these requests the term "food" or "meals" or any synonym  
21 thereof, is intended to and shall embrace and include all food, drinks, meals, snacks, or any  
22 prepared food for human consumption.

23 11. As used throughout these Requests, the term "customer," its plural or any  
24 synonym thereof, is intended to and shall embrace and include all patrons or clients of DÉJÀ  
25 VU SHOWGIRLS OF LAS VEGAS, L.L.C., d/b/a Déjà vu Showgirls.

26 12. A request that you produce the source of information about certain facts includes  
27 a request that you state the means by which such knowledge has been preserved; if such  
28 source of information or facts is an oral communication, its date or origin, sender and recipient

1 should be stated; if such source of preservation is in writing, its date or origin, its nature,  
2 originator, recipient and last known custodian should be stated.

3 13. If a request has more than one part, each part should be separated so that the  
4 answer is clearly understandable.

5 14. Each Request should be construed independently. No Request should be  
6 construed by reference to any other Request if the result is a limitation of the scope of the  
7 answer to such Request.

8 15. The words "and" and "or" shall be construed conjunctively or disjunctively as  
9 necessary, in order to bring within the scope of the Request all responses which might otherwise  
10 be construed to be outside of its scope.

11 16. If a Request for Production is objected to, in whole or in part, or if information  
12 responsive to a Request for Production is withheld on the ground of privilege or otherwise,  
13 please set forth fully each objection, describe generally the information which is withheld, and  
14 set forth the facts upon which you rely on as the basis for each objection.

15 17. If you cannot produce any portion of any of the following Requests for Production  
16 in full, after exercising diligence to secure the request, please so state and provide the  
17 production to the extent possible, specifying your inability to produce the remainder and stating  
18 whatever information or knowledge you have concerning the unproduced portions.

19 18. These Requests for Production call for information (including information  
20 contained in writings) as is known or reasonably available to you, your attorney or any  
21 investigator or representative or others acting on their behalf or under their direction of control,  
22 or any information in the actual or constructive possession, custody, care, or control of them.

23 19. These Requests for Production shall be deemed to be continuing and in the event  
24 you discover information that has been requested, you are to supplement the Request for  
25 Production by supplementing your production.

26 ...

27 ...

28 ...

REQUEST FOR PRODUCTION OF DOCUMENTS

1  
2 1. Any and all documents constituting monthly financial statements with  
3 departmental breakouts for all periods prepared internally or externally from January 2002  
4 through the present.

5 2. Any and all audited financial statements for all periods prepared from January  
6 2002 through the present.

7 3. All Sales and Use Tax Returns for the period starting January 2002 through the  
8 present, along with all back -up work papers.

9 4. Any and all documents constituting periodic profit and loss statements from  
10 January 2002 through the present.

11 5. Cash receipts journal(s), bank statements and cancelled checks from January  
12 2002 through the present.

13 6. Any and all documents constituting General Ledgers from January 2002 through  
14 the present, including all sales invoices, daily sales reports and/or register tapes and/or  
15 contracts from January 2002 through the present.

16 7. Any and all documents constituting all versions and revisions of periodic budgets,  
17 variance analyses and related presentations, reports and communication from January 2002 to  
18 the present.

19 8. Any and all documents constituting all versions and revisions of periodic financial  
20 forecasts, projections and related strategic presentations, reports and communication from  
21 January 2002 to the present.

22 9. Any and all documents constituting all versions and revisions of periodic business  
23 plans, market studies, industry and competitor analyses and/or reports from January 2002 to  
24 the present.

25 10. Any and all documents constituting data related to the monitoring and reporting of  
26 daily and monthly information and statistics of customer volume, activities, and spending from  
27 January 2002 to the present.

28 ...

1 11. Any and all documents constituting all customer data from any loyalty club or  
2 similar databases from January 2002 through the present.

3 12. Any and all documents constituting all information and data gathered related to  
4 customer satisfaction, suggestions and/or complaints from January 2005 to the present.

5 13. Any and all documents constituting Monthly Gross Revenue or Statistical Reports  
6 or the equivalent submitted to the Nevada Department of Taxation or equivalent agency since  
7 January 1, 2002 to the present.

8 14. Any and all documents constituting records of employees including, but not limited  
9 to, departmental headcounts, salaries and wages, W-2's, 1099's, Employment Security Report  
10 form(s) NUCS 4072, incentive compensation and benefits from January 2002 to the present.

11 15. Any and all incentive payments or referral payments including, but not limited to  
12 payments made to limousines, taxis or car services from January 2002 to the present.

13 16. Any and all documents constituting the plaintiff's loss analysis including, but not  
14 limited to, plaintiff's schedule of lost revenue and any and all supporting documents constituting  
15 calculations, spreadsheets, reports, accounting ledgers and/or journals, projections, forecasts,  
16 business plans, valuations or other information forming the basis for the loss from January 2002  
17 to the present.

18 17. Any and all documents constituting valuations or appraisals of the Company or its  
19 assets (including real property) prepared by financial consultants, appraisers, CPAs,  
20 accountants, or other third parties at any time from January 2002 to the present.

21 18. Any and all documents constituting offers, bids, or proposals received by the  
22 Company for the actual or potential purchase of any and all its assets (including real property)  
23 prepared by actual or potential buyers, accountants, investment bankers, contractors, or other  
24 third parties at any time from January 2002 to the present.

25 19. Any and all documents reflecting all debt or other financing arrangements (actual  
26 and prospective) entered into by the Company including, but not limited to, loan agreements,  
27 line of credit agreements, promissory notes, letter of credit agreements, guarantee agreements,  
28 or other contractual documents at any time from January 2002 to the present.

1           20. Any and all documents constituting the correspondence, loan and/or credit  
2 applications, proposals, and other agreements between the Company and financial institutions,  
3 accountants, financial consultants, or other third parties prepared at any time from January  
4 2002 to the present.

5           21. All Federal Tax returns and schedules filed by the Plaintiffs from January 2002 to  
6 the present.

7           22. Any and all documents constituting agreements and/or contracts with vendors,  
8 suppliers, lessees, lessors or other providers or recipients of products or services from January  
9 2002 to the present.

10           23. All correspondence to and from the Department of Taxation regarding Live  
11 Entertainment Tax from January 2005 to the present.

12           24. Copies of all signs referencing any applicable tax, including information regarding  
13 the location of all of the signs, the dates each sign was posted and time of day that the each  
14 sign is posted from January 2005 to the present.

15           DATED this 25 day of May, 2011.

16                           CATHERINE CORTEZ MASTO  
17                           Attorney General

18  
19 By: *David J. Pope*


20                           DAVID J. POPE  
21                           Senior Deputy Attorney General  
22                           BLAKE A. DOERR  
23                           Senior Deputy Attorney General  
24                           VIVIENNE RAKOWSKY  
25                           Deputy Attorney General  
26                           Attorneys for Defendants  
27  
28

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on the 25<sup>th</sup> day of May, 2011, I served the foregoing  
DEFENDANTS' REQUEST FOR PRODUCTION OF DOCUMENTS TO PLAINTIFF by  
causing to be delivered to Department of General Services for mailing at Las Vegas, Nevada,  
a true copy thereof, addressed to:

William H. Brown, Esq.  
Turco & Draskovich  
815 S. Casino Center Blvd.  
Las Vegas, NV 89101

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

  
An employee of Office of Attorney General

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

# EXHIBIT “B”

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

**RSPN**  
Mark E. Ferrario, ESQ.  
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Brandon E. Roos, ESQ.  
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Facsimile: (702) 792-9002  
Emails: FerrarioM@gtlaw.com  
RoosB@gtlaw.com  
*Counsel for Sapphire*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiffs,

— vs. —

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

Defendants.

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

Plaintiffs,

Case No. 06A533273-C

Dept. No. XI

Coordinated with:

Case No. 08A554970

Dept. No. XI

**PLAINTIFFS SHAC, LLC d/b/a/ SAPPHIRE'S  
RESPONSE TO DEFENDANTS' REQUESTS  
FOR PRODUCTION OF DOCUMENTS**

Case No. 08A554970

Dept. No. XI

— vs. —

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

Defendant.

TO: NEVADA DEPARTMENT OF TAXATION, NEVADA TAX COMMISSION, NEVADA  
STATE BOARD OF EXAMINERS, and MICHELLE JACOBS, Defendants; and

TO: CATHERINE CORTEZ MASTO, ESQ., Attorney for Defendants:

Pursuant to Rule 34 of the Nevada Rules of Civil Procedure ("NRCP"), Plaintiff, SHAC,  
LLC d/b/a Sapphire, by and through its attorneys of record, the law firm of Greenberg Traurig, LLP,  
hereby responds to Defendants' Requests for Production of Documents, as follows:

**REQUEST NO. 1**

Any and all documents constituting monthly financial statements with departmental  
breakouts for all periods prepared internally or externally from January 2001 through the present.

**RESPONSE**

Objection, the foregoing request is overly broad, unduly burdensome, harassing, irrelevant  
and not calculated to lead to the discovery of admissible evidence in this matter. The request is  
also vague and ambiguous and seeks confidential and privileged information that is protected from  
discovery.

**REQUEST NO. 2**

Any and all audited financial statements for all periods prepared from January 2001 through  
the present.

**RESPONSE**

Objection, the foregoing request is overly broad, unduly burdensome, harassing, irrelevant  
and not calculated to lead to the discovery of admissible evidence in this matter. The request is  
also vague and ambiguous and seeks confidential and privileged information that is protected from  
discovery.

///

///

1 **REQUEST NO. 3**

2 All Sales and Use Tax Returns for the period starting January 2001 through the present,  
3 along with all back-up work papers.

4 **RESPONSE**

5 Objection, the foregoing request is overly broad, unduly burdensome, harassing, irrelevant  
6 and not calculated to lead to the discovery of admissible evidence in this matter. The request is  
7 also vague and ambiguous and seeks confidential and privileged information that is protected from  
8 discovery.

9 **REQUEST NO. 4**

10 Any and all documents constituting periodic profit and loss statements from January 2001  
11 through the present.

12 **RESPONSE**

13 Objection, the foregoing request is overly broad, unduly burdensome, harassing, irrelevant  
14 and not calculated to lead to the discovery of admissible evidence in this matter. The request is  
15 also vague and ambiguous and seeks confidential and privileged information that is protected from  
16 discovery.

17 **REQUEST NO. 5**

18 Cash receipts journal(s), bank statements and cancelled checks from January 2001 through  
19 the present

20 **RESPONSE**

21 Objection, the foregoing request is overly broad, unduly burdensome, harassing, irrelevant  
22 and not calculated to lead to the discovery of admissible evidence in this matter. The request is  
23 also vague and ambiguous and seeks confidential and privileged information that is protected from  
24 discovery.

25 **REQUEST NO. 6**

26 Any and all documents constituting General Ledgers from January 2001 through the present,  
27 including all sales invoices, daily sales reports, and/or register tape and/or contracts from January  
28 2001 through the present.

1 **RESPONSE**

2       Objection, the foregoing request is overly broad, unduly burdensome, harassing, irrelevant  
3 and not calculated to lead to the discovery of admissible evidence in this matter. The request is  
4 also vague and ambiguous and seeks confidential and privileged information that is protected from  
5 discovery.

6 **REQUEST NO. 7**

7       Any and all documents constituting all versions and revisions of periodic budgets, variance  
8 analyses and related presentations, reports and communication from January 2001 to the present.

9 **RESPONSE**

10       Objection, the foregoing request is overly broad, unduly burdensome, harassing, irrelevant  
11 and not calculated to lead to the discovery of admissible evidence in this matter. The request is  
12 also vague and ambiguous and seeks confidential and privileged information that is protected from  
13 discovery.

14 **REQUEST NO. 8**

15       Any and all documents constituting all versions and revision of periodic financial forecasts,  
16 projections, and related strategic presentations, reports and communication from January 2001 to  
17 the present.

18 **RESPONSE**

19       Objection, the foregoing request is overly broad, unduly burdensome, harassing, irrelevant  
20 and not calculated to lead to the discovery of admissible evidence in this matter. The request is  
21 also vague and ambiguous and seeks confidential and privileged information that is protected from  
22 discovery.

23 **REQUEST NO. 9**

24       Any and all documents constituting all versions and revisions of periodic business plans,  
25 market studies, industry and competitor analyses and/or reports from January 2001 to the present.

26 **RESPONSE**

27       Objection, the foregoing request is overly broad, unduly burdensome, harassing, irrelevant  
28 and not calculated to lead to the discovery of admissible evidence in this matter. The request is

1 also vague and ambiguous and seeks confidential and privileged information that is protected from  
2 discovery.

3 **REQUEST NO. 10**

4 Any and all documents constituting data related to the monitoring and reporting of daily and  
5 monthly information and statistics of customer volume, activities, and spending from January 2001  
6 to the present.

7 **RESPONSE**

8 Objection, the foregoing request is overly broad, unduly burdensome, harassing, irrelevant  
9 and not calculated to lead to the discovery of admissible evidence in this matter. The request is  
10 also vague and ambiguous and seeks confidential and privileged information that is protected from  
11 discovery.

12 **REQUEST NO. 11**

13 Any and all documents constituting all customer data from any loyalty club or similar  
14 databases from January 2001 through the present.

15 **RESPONSE**

16 Objection, the foregoing request is overly broad, unduly burdensome, harassing, irrelevant  
17 and not calculated to lead to the discovery of admissible evidence in this matter. The request is  
18 also vague and ambiguous and seeks confidential and privileged information that is protected from  
19 discovery.

20 **REQUEST NO. 12**

21 Any and all documents constituting all information and data gathered related to customer  
22 satisfaction, suggestions and/or complaints from January 2003 to the present.

23 **RESPONSE**

24 Objection, the foregoing request is overly broad, unduly burdensome, harassing, irrelevant  
25 and not calculated to lead to the discovery of admissible evidence in this matter. The request is  
26 also vague and ambiguous and seeks confidential and privileged information that is protected from  
27 discovery.

28

1 **REQUEST NO. 13**

2 Any and all documents constituting Monthly Gross Revenue or Statistical Reports or the  
3 equivalent submitted to the Nevada Department of Taxation or equivalent agency since January 1,  
4 2001 to the present. .

5 **RESPONSE**

6 Objection, the foregoing request is overly broad, unduly burdensome, harassing, irrelevant  
7 and not calculated to lead to the discovery of admissible evidence in this matter. The request is  
8 also vague and ambiguous and seeks confidential and privileged information that is protected from  
9 discovery.

10 **REQUEST NO. 14**

11 Any and all documents constituting records of employees including, but not limited to,  
12 departmental headcounts, salaries and wages, W-2's, 1099's, Employment Security Report from(s)  
13 NUCS 4072, incentive compensation and benefits from January 2001 to the present.

14 **RESPONSE**

15 Objection, the foregoing request is overly broad, unduly burdensome, harassing, irrelevant  
16 and not calculated to lead to the discovery of admissible evidence in this matter. The request is  
17 also vague and ambiguous and seeks confidential and privileged information that is protected from  
18 discovery.

19 **REQUEST NO. 15**

20 Any and all incentive payments or referral payments including, but not limited to payments  
21 made to limousines, taxis or car services from January 2001 to the present

22 **RESPONSE**

23 Objection, the foregoing request is overly broad, unduly burdensome, harassing, irrelevant  
24 and not calculated to lead to the discovery of admissible evidence in this matter. The request is  
25 also vague and ambiguous and seeks confidential and privileged information that is protected from  
26 discovery.

27 ///

28 ///

1 **REQUEST NO. 16**

2 Any and all documents constituting the plaintiff's loss analysis including, but not limited to,  
3 plaintiff's schedule of lost revenue and any and all supporting documents constituting calculations,  
4 spreadsheets, reports, accounting ledgers and/or journals, projections, forecasts, business plans,  
5 valuations or other information forming the basis for the loss from January 2011 to the present.

6 **RESPONSE**

7 Objection, the foregoing request is overly broad, unduly burdensome, harassing, irrelevant  
8 and not calculated to lead to the discovery of admissible evidence in this matter. The request is  
9 also vague and ambiguous and seeks confidential and privileged information that is protected from  
10 discovery.

11 **REQUEST NO. 17**

12 Any and all documents constituting valuations or appraisals of the Company or its assets  
13 (including real property) prepared by financial consultants, appraisers, CPAs, accountants, or other  
14 third parties at any time from January 2001 to the present.

15 **RESPONSE**

16 Objection, the foregoing request is overly broad, unduly burdensome, harassing, irrelevant  
17 and not calculated to lead to the discovery of admissible evidence in this matter. The request is  
18 also vague and ambiguous and seeks confidential and privileged information that is protected from  
19 discovery.

20 **REQUEST NO. 18**

21 Any and all documents constituting offers, bids, or proposals received by the Company for  
22 the actual or potential purchase of any and all its assets (including real property) prepared by actual  
23 or potential buyers, accountants, investment bankers, contractors, or other third parties at any time  
24 from January 2001 to the present.

25 **RESPONSE**

26 Objection, the foregoing request is overly broad, unduly burdensome, harassing, irrelevant  
27 and not calculated to lead to the discovery of admissible evidence in this matter. The request is  
28 also vague and ambiguous and seeks confidential and privileged information that is protected from

1 discovery.

2 **REQUEST NO. 19**

3 Any and all documents reflecting all debt or other financing arrangements (actual and  
4 prospective) entered into by the Company including, but not limited to, loan agreements, line of  
5 credit agreements, promissory notes, letter of credit agreements, guarantee agreements, or other  
6 contractual documents at any time from January 2001 to the present.

7 **RESPONSE**

8 Objection, the foregoing request is overly broad, unduly burdensome, harassing, irrelevant  
9 and not calculated to lead to the discovery of admissible evidence in this matter. The request is  
10 also vague and ambiguous and seeks confidential and privileged information that is protected from  
11 discovery.

12 **REQUEST NO. 20**

13 Any and all documents constituting the correspondence, loan and/or credit applications,  
14 proposals, and other agreements between the Company and financial institutions, accountants,  
15 financial consultants, or other third parties prepared at any time from January 2001 to the present.

16 **RESPONSE**

17 Objection, the foregoing request is overly broad, unduly burdensome, harassing, irrelevant  
18 and not calculated to lead to the discovery of admissible evidence in this matter. The request is  
19 also vague and ambiguous and seeks confidential and privileged information that is protected from  
20 discovery.

21 **REQUEST NO. 21**

22 All Federal Tax returns and schedules filed by the Plaintiff from January 2001 to the  
23 present.

24 **RESPONSE**

25 Objection, the foregoing request is overly broad, unduly burdensome, harassing, irrelevant  
26 and not calculated to lead to the discovery of admissible evidence in this matter. The request is  
27 also vague and ambiguous and seeks confidential and privileged information that is protected from  
28 discovery.

1 REQUEST NO. 22

2 Any and all documents constituting agreements and/or contracts with vendors, suppliers,  
3 lessees, lessors or other providers or recipients of products or services from January 2001 to the  
4 present.

5 RESPONSE

6 Objection, the foregoing request is overly broad, unduly burdensome, harassing, irrelevant  
7 and not calculated to lead to the discovery of admissible evidence in this matter. The request is  
8 also vague and ambiguous and seeks confidential and privileged information that is protected from  
9 discovery.

10 REQUEST NO. 23

11 All correspondence to and from the Department of Taxation regarding Live Entertainment  
12 Tax from January 2003 to the present.

13 RESPONSE

14 Objection, the foregoing request is overly broad, unduly burdensome, harassing, irrelevant  
15 and not calculated to lead to the discovery of admissible evidence in this matter. The request is  
16 also vague and ambiguous and seeks confidential and privileged information that is protected from  
17 discovery.

18 REQUEST NO. 24

19 Copies of all signs referencing any applicable tax, including information regarding the  
20 location of all the signs, the dates each sign was posted and time of day that the [sic] each sign is  
21 posted from January 2003 to the present.

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23 ///

24 ///

25 ///

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27 ///

28 ///

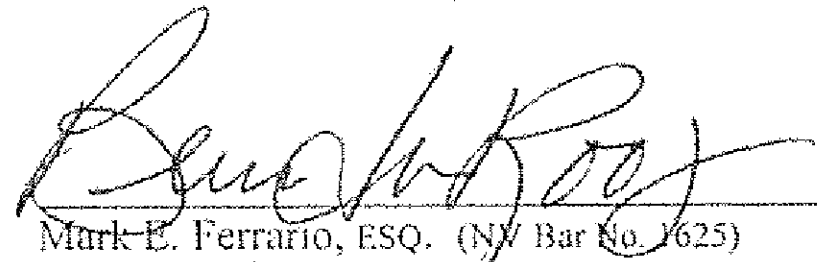
GREENBERG TRAURIG, LLP  
3773 Howard Hughes Parkway  
Suite 400 North  
Las Vegas, Nevada 89169  
Telephone: (702) 792-3773  
Facsimile: (702) 792-9002

1 RESPONSE

2       Objection, the foregoing request is overly broad, unduly burdensome, harassing, irrelevant  
3 and not calculated to lead to the discovery of admissible evidence in this matter. The request is  
4 also vague and ambiguous and seeks confidential and privileged information that is protected from  
5 discovery.

6  
7       DATED this 27<sup>th</sup> day of June, 2011.

9 GREENBERG TRAURIG, LLP

10  
11 

12 Mark E. Ferrario, ESQ. (NV Bar No. 1625)

13 Brandon E. Roos, ESQ. (NV Bar No. 7888)

14 3773 Howard Hughes Parkway

15 Suite 400 North

16 Las Vegas, Nevada 89169

17 *Counsel for Defendant SHAC, LLC d/b/a Sapphire*

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Suite 400 North  
Las Vegas, Nevada 89169  
Telephone (702) 792-3773  
Facsimile (702) 792-9002

CERTIFICATE OF SERVICE

I hereby certify that on June 27<sup>th</sup>, 2011, I served the foregoing PLAINTIFFS SHAC, LLC d/b/a/ SAPPHIRE'S RESPONSE TO DEFENDANTS' REQUESTS FOR PRODUCTION OF DOCUMENTS upon:

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

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

- ☒ by mailing in a sealed, first class postage-prepaid envelop, addressed to the last-known office address of the attorney, and deposited with the United States Postal Service in Las Vegas, Nevada.
- ☐ by hand delivery.
- ☐ by sending via overnight courier in a sealed envelope.
- ☐ by faxing to the attorney at the fax number that is the last-known fax number.
- ☐ by electronic mail to the last known e-mail address.

  
AN EMPLOYEE OF GREENBERG TRAURIG, LLP

**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.

Electronically Filed  
Supreme Court Case No. 60037  
Dec 12 2012 09:07 a.m.  
Tracie K. Lindeman  
District Court Case Clerk of Supreme Court

**APPELLANTS' APPENDIX**  
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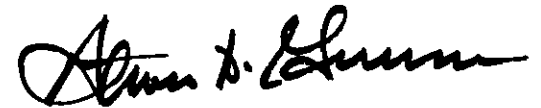
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CLERK OF THE COURT

ORIGINAL

MCOM

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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. 06A533273

Dept. No. XI

Coordinated with:

Case No. 08A554970

Dept. No. XI

**DEFENDANTS' MOTION TO COMPEL  
ON AN ORDER SHORTENING TIME**

...

...

...

1 K-KEL, INC., d/b/a *Spearmint Rhino*)  
2 *Gentlemen's Club*; OLYMPUS GARDEN, INC.,  
3 d/b/a *Olympic Garden*; SHAC, LLC, d/b/a  
4 *Sapphire*; THE POWER COMPANY, INC., d/b/a  
5 *Crazy Horse Too Gentlemen's Club*; D.)  
6 WESTWOOD, INC., d/b/a *Treasures*; and D.I.)  
7 FOOD & BEVERAGE OF LAS VEGAS, LLC,  
8 d/b/a *Scores*;

9 Plaintiffs,

10 v.

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

14 Defendants.

Case No. 08A554970  
Dept. No. XI

15 COMES NOW, Defendants, NEVADA DEPARTMENT OF TAXATION, NEVADA TAX  
16 COMMISSION, NEVADA STATE BOARD OF EXAMINERS, and MICHELLE JACOBS, in  
17 her official capacity only (hereinafter collectively "Department"), by and through its attorneys,  
18 Catherine Cortez Masto, Attorney General, and Vivienne Rakowsky, Deputy Attorney  
19 General, and hereby moves this Court for an Order to Compel Plaintiffs' pursuant to NRCP  
20 34 and 37 to produce documents pursuant to the Request for Production served on May 25,  
21 2011. This Motion is based on all pleadings and papers on file, the attached Memorandum  
22 of Points and Authorities and any oral arguments the Court may allow at the time of the  
23 hearing on this matter.

24 DATED this 15<sup>th</sup> day of August, 2011.

25 Respectfully submitted:

26 CATHERINE CORTEZ MASTO  
27 Attorney General

28 By: /s/ Vivienne Rakowsky

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

**AFFIDAVIT OF VIVIENNE RAKOWSKY IN SUPPORT OF ORDER SHORTENING TIME**

STATE OF NEVADA )  
COUNTY OF CLARK ) ss:

I, VIVIENNE RAKOWSKY, being first duly sworn under oath, depose and state as follows:

1. That Affiant is an attorney licensed to practice law in the State of Nevada, and is qualified to practice before this Court;

2. That Affiant is a duly appointed Deputy Attorney General in the Office of the Attorney General of the State of Nevada, and pursuant to that appointment, affiant has been assigned to Defendants NEVADA DEPARTMENT OF TAXATION, NEVADA TAX COMMISSION, NEVADA STATE BOARD OF EXAMINERS, and MICHELLE JACOBS, in her official capacity only;

3. On or about May 25, 2011 Defendants served Requests for Production of Documents on all Plaintiffs.

4. Counsel for Shac, LLC responded with boilerplate objections and did not produce one single page.

5. Counsel for the Plaintiffs responded with boilerplate objections and did not produce a single page.

6. The Defendants initiated a separate EDCR 2.34 conference with counsel for Shac, LLC and counsel for the Defendants to discuss the reason for the requests and explained the statutory basis for the requests.

7. Following one EDCR 2.34 conference, counsel for Shac, LLC emailed that they would not produce any documents and would leave it up to the Court to decide.

8. Following the EDCR 2.34 conference with counsel for the Plaintiffs, they did not respond at all.

9. This discovery is relevant to the Defense of the claims in the Plaintiffs' Amended Complaints.

10. Trial is set to take place in this matter in December 2011.

11. The Defendants have filed this Motion on an Order Shortening Time in order to acquire the discovery in time to notice the depositions of the persons most knowledgeable for each of the Plaintiffs.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

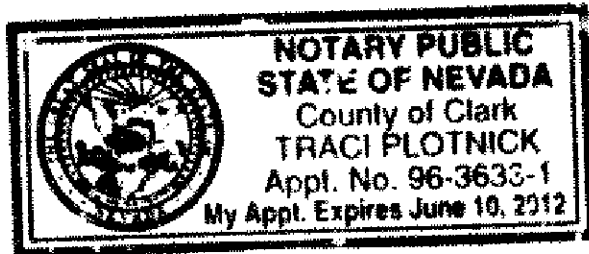
*Vivienne Rakowsky*

VIVIENNE RAKOWSKY

SUBSCRIBED and SWORN to before me  
this 15th day of August, 2011.

*Traci Plotnick*

NOTARY PUBLIC in and for said  
County and State



ORDER SHORTENING TIME

TO: Plaintiffs, above-named;

TO: Will Brown, Turco & Draskovich, Bradley Shafer, Shafer & Associates, P.C., Mark E. Ferrario, Esq., and Brandon E. Roos, Esq., Greenberg Traurig, LLP, Counsel of Record:

Pursuant to EDCR 2.26, and with good cause appearing, it is hereby ordered that this matter be shortened to be heard on the 23 day of August, 2011, at the hour of \_\_\_\_\_m.

DATED this 16 day of August, 2011.

  
DISTRICT COURT JUDGE

MT

I. STATEMENT OF UNDISPUTED FACTS

1. On or about May 25, 2011, the Defendants served eight Requests for Production on each of the eight Plaintiffs. See Requests for Production, attached hereto as **Ex. "A"**.

2. On or about June 27, 2011 Brandon E. Roos, Esq. of Greenberg Traurig LLP responded to the Requests for Production on behalf of Shac, LLC dba Sapphires [hereinafter "Shac"], and did not produce a single document. See Response to Request for Production, attached hereto as **Ex. "B"**.

3. On or about July 5, 2011, Bradley J. Shafer, Esq. of Shafer & Associates, P.C. and his local counsel filed a single response on behalf of all of the Plaintiffs without producing a single document. See Response to Request for Production, attached hereto as **Ex. "C"**.

4. On or about June 28, 2011 counsel for the Defendants requested a meet and confer with Brandon Roos pursuant to EDCR 2.34 to discuss Shac, LLC's responses. See e-mail dated June 28, 2011, attached hereto as **Ex. "D"**.

5. On or about July 6, 2011 counsel for the Defendants requested a meet and confer with Will Brown and Bradley Shafer pursuant to EDCR 2.34 to discuss the Plaintiffs' responses.

6. A telephonic meet and confer took place with Plaintiffs' counsel Will Brown and Andrea Pritzlaff of Bradley Shafer's office on July 7, 2011. After discussions, Plaintiffs' Counsel was to consider the information Defense counsel provided as to the reasons for the requests and get back to us with regards to production of documents.

7. A telephonic meet and confer took place on or about July 13, 2011 with Brandon Roos and Mark Ferrario regarding Shac LLC's responses. Plaintiffs' Counsel was to consider the information Defense counsel provided as to the reasons for the requests and get back to us with regards to production of documents.

...

...

1           8.       On or about July 15, 2011, Mr. Roos responded that they would not provide  
2 any documentation in response to the Defendants' Requests for Production. See e-mail  
3 dated July 15, 2011, attached hereto as **Ex. "E"**.

4           9.       Having not heard from Mr. Shafer's office, on or about July 13, 2004, the  
5 Defendants' sent an e-mail requesting a response. To date, neither Mr. Brown, Mr. Shafer  
6 nor Ms Pritzlaff have contacted counsel for the Defendants, nor have they produced a single  
7 document. See e-mail dated July 13, 2011, attached hereto as **Ex. "F"**.

## 8                               **II.       FACTS AND PROCEDURAL HISTORY**

9           Plaintiffs are the above-captioned exotic dancing establishments. Defendants are the  
10 various agencies of the State of Nevada which administer and collect the Live Entertainment  
11 Tax (hereinafter "LET") and Michelle Jacobs in her official capacity only. As background,  
12 there have been two Complaints (A533273 and A554970) filed in this matter. The two cases  
13 were coordinated for discovery and scheduling purposes, but have not been consolidated.<sup>1</sup>

14           On December 19, 2006, the eight Plaintiffs in Case A533273<sup>2</sup> (hereinafter "Case 1  
15 Plaintiffs") filed a Complaint seeking as their remedies: (1) an injunction enjoining the  
16 Defendants from enforcing the provisions of the LET; (2) a refund of all LET payments that  
17 have been "involuntarily" made; (3) a declaration that the LET is unconstitutional; and, (4) an  
18 award for damages, costs and fees pursuant to 42 U.S.C. §1983. Before filing the Complaint  
19 in District Court, none of the Case 1 Plaintiffs had ever been audited with regards to LET nor  
20 had they requested a refund from the Department pursuant to NRS 368A.260 and therefore  
21 had not exhausted their administrative remedies as required by NRS 368A.260, NRS  
22 368A.290, Chapter 233B of the NRS and Nevada case law.

23  
24  
25           <sup>1</sup> This court has ordered the consolidation of the claims for declaratory relief but to date the order has not yet  
26 been filed.

27           <sup>2</sup> DÉJÀ VU SHOWGIRLS OF LAS VEGAS, L.L.C., d/b/a Déjà vu Showgirls, LITTLE DARLINGS OF LAS  
28 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

1 After filing the complaint in Case 1, six of the Plaintiffs requested refunds from the  
2 Department (hereinafter "Case 2 Plaintiffs") and pursued their administrative remedies. In  
3 January 2007, the six Case 2 Plaintiffs<sup>3</sup> requested a refund of the LET they remitted for  
4 January, February, March and April 2004. The Department denied the refund requests. The  
5 six Case 2 Plaintiffs appealed the Department's denial of the refunds to the NTC. Following  
6 a hearing over which it presided, the NTC upheld the Department's denials of the refunds  
7 and issued its final written decision dated October 12, 2007. See NTC Decision attached  
8 hereto as **Ex. "G"**. However, because the Plaintiffs' refund claims were not related to an  
9 audit, to date the amount of the refunds that Plaintiffs have requested has never been  
10 verified by the Department pursuant to the requirements of NRS 360.236.

11 On January 9, 2008, the six Case 2 Plaintiffs filed a Complaint initiating Case  
12 A554970. The Case 2 Plaintiffs allege in their Complaint that the LET, established by  
13 Chapter 368A of the Nevada Revised Statutes (hereinafter "NRS"), is an impermissible state  
14 tax and they request the refund of LET remitted for the tax periods at issue. The Case 2  
15 Plaintiffs allege that the LET is an unconstitutional infringement by the State of Nevada on  
16 constitutionally protected expression. The Case 2 Plaintiffs seek as their remedy: (1) an  
17 injunction enjoining the Defendants from enforcing the provisions of the LET; (2) a refund of  
18 all LET payments which they remitted for January, February, March and April 2004; and (3) a  
19 declaration that the LET is unconstitutional.

20 On or about January 28, 2009, the eight Class 1 Plaintiffs filed an Amended  
21 Complaint in order to add an "as applied" cause of action to the "facial" challenge to the LET  
22 contained in the initial Complaint.

23 On or about December 19, 2010, the Case 2 Plaintiffs filed an Amended Complaint  
24 enlarging the caption to include all eight Case 1 Plaintiffs without leave of the Court<sup>4</sup> and

25 <sup>3</sup> The six Case 2 Plaintiffs include: K-KEL, INC.; OLYMPUS GARDEN, INC.; SHAC, LLC; THE POWER  
26 COMPANY, INC.; D. WESTWOOD, INC.; and D.I. FOOD & BEVERAGE OF LAS VEGAS, LLC. The other two  
27 Case 1 Plaintiffs, DÉJÀ VU SHOWGIRLS OF LAS VEGAS, LLC and LITTLE DARLINGS OF LAS VEGAS, LLC,  
had not filed claims for a refund with the Department pursuant to NRS 368A.260.

28 <sup>4</sup> This may have been an inadvertent mistake on the part of the Plaintiffs, since two of the parties listed on the  
Amended Complaint have not exhausted administrative remedies (Little Darlings of Las Vegas, LLC and Déjà  
Vu Showgirls of Las Vegas, LLC) and the parties listed in the Amended Complaint list only the original six Case  
2 Plaintiffs. See Case 2 Amended Compl., pp. 3-4, ¶¶ 6-11.

1 added an "as applied" cause of action in addition to the requested declaratory relief  
2 regarding the facial challenge and claim for refund in the initial Complaint.

3 It is the Defendants' position that the refund issues raised by the six Case 2 Plaintiffs  
4 in their Complaint were adjudicated through administrative proceedings and are the subject  
5 of a final decision issued by the NTC following a hearing over which it presided. See NTC  
6 Decision attached hereto as **Ex. "G"**.

7 Based on rulings of this Court, and prior to the Supreme Court decision in Southern  
8 Cal. Edison v. First Judicial Dist. Court, 127 Nev.Adv.Op 22 (May 26, 2011), the Defendants  
9 served Requests for Production on the Plaintiffs in order to seek discovery with reference to  
10 the LET paid by each Plaintiff. See **Ex. "A"**.

11 Plaintiffs waited maximum time before responding to the Requests for Production, and  
12 in fact Mr. Shafer's office requested additional time to respond, which was granted. Finally,  
13 Plaintiffs responded with boilerplate refusals to provide any documents. See **Ex. "C"**.

14 In addition, counsel for Shac, LLC associated into the litigation a day or so before the  
15 responses were due. The Defendants offered to provide information in order to bring them  
16 up to speed and offered to extend the time to respond if they put the request into an e-mail.  
17 See e-mail dated June 29, 2011, attached hereto as **Ex. "H"**. Instead, counsel for Shac,  
18 LLC responded with boilerplate responses (Ex. "B"), and in a telephone conversation with  
19 counsel for the Defendants stated that he responded to the requests *before* even speaking  
20 with his client. See follow up e-mail dated July 1, 2011, attached hereto as **Ex. "I"**.

21 Pursuant to the local rules, in good faith, the Defendants requested an EDCR 2.34  
22 meeting. A telephonic meeting took place with counsel for Shac, LLC and another  
23 telephonic meeting with counsel for the Plaintiffs.<sup>5</sup> During both discussions, the Defendants  
24 set forth the statutory basis for the requests for production, and both counsel similarly stated  
25 that they would think about it and let the Defendants know if they were going to produce the  
26 requested documents. Although all the documents requested in the Defendants' Request for  
27 Production were well within Nevada's broad standard for requests for discovery -- not

28 <sup>5</sup> To the best of the Defendant's knowledge, the firm of Greenberg Traurig associated counsel only with respect to Shac LLC, and all of the Plaintiffs are still represented by Will Brown and Brad Shafer.

1 privileged, relevant to the subject matter involved in the pending action, and appear  
2 reasonably calculated to lead to the discovery of admissible evidence – during the 2.34  
3 conference the Defendants provided the Plaintiffs with additional statutory basis stating: 1)  
4 no audit had been performed and the numbers had to be verified pursuant to NRS 360.236;  
5 2) pursuant to NAC 368A.170 it is necessary to determine whether the club owner or the  
6 patron paid the tax; and 3) because the Plaintiffs have claimed in the Complaint that the  
7 statute has chilled their speech and had an impact on their business, it is necessary to  
8 compare the amount of business prior to and since the adoption of LET.

9       Regardless of the discussions, Plaintiffs have still refused to provide a single  
10 document in response to any of the 24 Requests for Production. Mr. Brown, Mr. Shafer and  
11 Ms. Pritzlaff did not respond after the 2.34 conference and counsel for Shac, LLC, Mr. Roos,  
12 responded by e-mail and refused to provide any documentations stating that it “would be  
13 best to address these issues with Judge Gonzalez through motion practice.” See e-mail  
14 from Brandon Roos dated July 15, 2011, which addresses NAC 368A.170 but not the other  
15 basis for the requests, attached hereto as Ex. “E”.

16       The Defense respectfully requests that pursuant to NRCP 37, this Court compel the  
17 Plaintiffs to provide the documents requested in the Defendants’ Request for Production,  
18 and pursuant to NRCP 37(4)(A), grant the Defendants reasonable expenses including  
19 attorney’s fees in having to prepare this Motion to Compel.

### 20                                   III.     ARGUMENT

21       The State of Nevada embraces a broad and liberal standard for discovery. See e.g.  
22 Maheu v. Eighth Judicial Dist. Court, 88 Nev. 26, 37, 483 P.2d 709 (1972). (“Statutes relating  
23 to discovery procedures should be liberally construed in favor of disclosure.”) The policy  
24 behind this practice is for both sides to have access to facts or information as to the  
25 existence or whereabouts of facts relative to the claims. Hickman v. Taylor, 329 U.S. 495,  
26 500 (1947). “Parties are entitled to obtain the fullest possible knowledge of the issues and  
27 facts before trial.” Hickman v. Taylor, 329 U.S. 495, 501 (1947). Liberal discovery aids in  
28

1 ascertaining facts in dispute, clarifying the issues and avoiding surprise at the time of trial.  
2 Medford v. Metro. Life Ins. Co., et al, 244 F.Supp.2d 1120, 1123 (D. Nev. 2004).

3 "The basic philosophy underlying discovery is that prior to trial every party to a civil  
4 action is entitled to the disclosure of all relevant information in the possession of any person,  
5 unless that information is privileged." Dart Indus. Co., Inc. v. Westwood Chemical Co., Inc.  
6 649 F.2d 646, 652 (9th Cir. 1980) (quoting Wright, Law of Federal Courts 354 (2d ed. 1970)  
7 (internal quotations omitted)). Accordingly, the Nevada Rules of Civil Procedure allow a  
8 party to obtain discovery "regarding any matter, not privileged, which is relevant to the  
9 subject matter involved in the pending action, whether it relates to the claim or defense of the  
10 party seeking discovery or to the claim or defense of any other party..." NRCP 26(b)(1).  
11 There is no pre-requisite that the information be admissible evidence. NRCP 26(b)(1); see  
12 also Dart Indus. Co., Inc. v. Westwood Chemical Co., Inc. 649 F.2d 646, 649 (9th Cir. 1980)  
13 ("A central justification for our exceedingly liberal discovery practice has been that the right to  
14 discover facts and information is kept entirely distinct from the right to use that information at  
15 trial.") Thus, it is not ground for objection that the information sought will be inadmissible at  
16 the trial if the information sought appears reasonably calculated to lead to the discovery of  
17 admissible evidence.

18 All discovery is subject to the limitations imposed by Rule 26 of the Nevada Rules of  
19 Civil Procedure. The portions of Rule 26 relevant to this Motion state:

20 **(1) In General.** Parties may obtain discovery regarding any matter,  
21 not privileged, which is relevant to the subject matter involved in  
22 the pending action, whether it relates to the claim or defense of  
23 the party seeking discovery or to the claim or defense of any other  
24 party, including the existence, description, nature, custody,  
25 condition and location of any books, documents, or other tangible  
26 things and the identity and location of persons having knowledge  
27 of any discoverable matter. It is not ground for objection that the  
28 information sought will be inadmissible at the trial if the information  
sought appears reasonably calculated to lead to the discovery of  
admissible evidence. All discovery is subject to the limitations  
imposed by Rule 26(b)(2)(i), (ii), and (iii).

**(5) Claims of Privilege or Protection of Trial Preparation Materials.** When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall

1 make the claim expressly and shall describe the nature of the  
2 documents, communications, or things not produced or disclosed  
3 in a manner that, without revealing information itself privileged or  
4 protected, will enable other parties to assess the applicability of  
5 the privilege or protection.

[As amended; effective January 1, 2005.]

NRCP26(b)(1) &(b)(5)(emphasis added)

(3) If without substantial justification a certification is made in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who made the certification, the party on whose behalf the disclosure, request, response, or objection was made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney's fee.

NRCP 26(g)(3) (emphasis added).

The Requests for Production at issue in this Motion to Compel are governed by Nevada Rule of Civil Procedure 34 which states:

**RULE 34. PRODUCTION OF DOCUMENTS AND THINGS AND ENTRY UPON LAND FOR INSPECTION AND OTHER PURPOSES**

**(a) Scope.** Any party may serve on any other party a request (1) to produce and permit the party making the request, or someone acting on the requestor's behalf, to inspect and copy, any designated documents (including writings, drawings, graphs, charts, photographs, phonorecords, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of Rule 26(b) and which are in the possession, custody or control of the party upon whom the request is served; or (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 26(b).

[As amended; effective January 1, 2005.]

**(b) Procedure.** The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts. Without leave of court or written stipulation, a request may not be served before the time specified in Rule 26(a).

The party upon whom the request is served shall serve a written response within 30 days after the service of the request. A shorter or longer time may be directed by the court or, in absence of such an order, agreed to in writing by the parties subject to Rule 29.

1 The response shall state, with respect to each item or category,  
2 that inspection and related activities will be permitted as  
3 requested, unless the request is objected to, in which event the  
4 reasons for objection shall be stated. If objection is made to part  
5 of an item or category, the part shall be specified and inspection  
6 permitted of the remaining parts. The response shall first set forth  
7 each request for production made, followed by the answer or  
8 objections thereto. The party submitting the request may move for  
9 an order under Rule 37(a) with respect to any objection to or  
10 other failure to respond to the request or any part thereof, or any  
11 failure to permit inspection as requested.

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

16 NRCP 34.

17 Therefore, according to the Nevada Rules of Civil Procedure, the Parties are entitled  
18 to broad and liberal discovery of things which are not privileged and are relevant to the  
19 subject matter involved in the pending action. The discovery need not be admissible to be  
20 relevant and discoverable. In this case, despite twenty-four requests for production, all eight  
21 Plaintiffs have refused to provide one single piece of paper in response to the requests by  
22 the Defendants, and instead provided a bunch of boilerplate unsubstantiated objections. In  
23 fact, with regards to Shac, LLC, the boilerplate objections to production were provided and  
24 signed by counsel for Shac, LLC before counsel had even spoken with his client. See Ex.  
25 "I".

26 When a party refuses to provide discovery, prior to filing a motion in Court, the Local  
27 Rules require the parties to engage in good faith discussions pursuant to EDCR 2.34(d)  
28 which states:

(d) Discovery motions may not be filed unless an affidavit of  
moving counsel is attached thereto setting forth that after a  
discovery dispute conference or a good faith effort to confer,  
counsel have been unable to resolve the matter satisfactorily. A  
conference requires either a personal or telephone conference  
between or among counsel. Moving counsel must set forth in the  
affidavit what attempts to resolve the discovery dispute were  
made, what was resolved and what was not resolved, and the  
reasons therefor. If a personal or telephone conference was not  
possible, the affidavit shall set forth the reasons.

1 In this case, as soon as the Defendants received the responses, Defendants  
2 immediately contacted counsel for Shac, LLC and counsel for the Plaintiffs and requested  
3 EDCR 2.34 conferences. Separate conferences were held with counsel for Shac, LLC and  
4 counsel for the Plaintiffs. During the course of both telephonic conferences, counsel for the  
5 Defendants discussed the scope of discovery allowed under the Rules of Civil Procedure  
6 and further explained the Defendants' reasoning and statutory basis for the requests, stating:  
7 1) no audit had been performed and the numbers had to be verified pursuant to NRS  
8 360.236 and NRS 368A.250; 2) pursuant to NAC 368A.170 it is necessary to determine  
9 whether the club owner or the patron paid the tax; 3) because the Plaintiffs have claimed in  
10 the Complaint that the statute has chilled their speech and had an impact on their business,  
11 it is necessary to compare the amount of business prior to and since the adoption of LET;  
12 and 4) before processing any refunds, it is necessary to determine if the taxpayer owes any  
13 other tax. NRS 360.236. (Any overpayment must be credited against any other such tax or  
14 fee then due from the taxpayer or other person before any portion of the overpayment may  
15 be refunded).

16 In addition, the Plaintiffs have made a number of claims in both of the Amended  
17 Complaints which necessitate the discovery requested in Ex. "A". As an example, the  
18 Plaintiffs' claim the LET is "an impermissible tax on constitutionally protected expression"  
19 (First Amended Compl., p. 2, ll. 19-2) which contains "numerous and various provisions  
20 affecting the constitutionally protected conduct of the Plaintiffs, their agents, representatives,  
21 entertainers and employees, as well as those individuals from the consenting adult audience  
22 who would seek to view the entertainment provided by the Plaintiffs". (First Amended  
23 Compl. ¶ 31). The Plaintiffs' claim that the Plaintiffs are "assert[ing] the constitutional rights  
24 of their patrons as well in this action." (First Amended Compl. ¶ 31). The Plaintiffs' further  
25 claim that pursuant to NRS 368A.260 they "filed timely requests for refunds of the Live  
26 Entertainment Tax they had paid, together with claims for the statutory interest provided for

27 . . .

28 . . .

1 by NRS 368A.270 and 368A.310" (First Amended Compl. ¶ 34) and that both the "Defendant  
2 Nevada Department of Taxation and the Defendant Nevada Tax Commission erred by not  
3 granting Plaintiffs' requests for refunds." (First Amended Compl. ¶ 60).

4 The Plaintiffs seek to "have this Court declare as unconstitutional on its face and as  
5 *applied to Plaintiffs...* all aspects of the Nevada Tax on Live Entertainment..." (Verified  
6 Amended Compl. ¶¶ 1, 56 (emphasis added)), and have also requested that this Court declare  
7 "that the Defendants have violated the constitutional rights of the Plaintiffs by requiring them  
8 to have pay the Live Entertainment Tax in the past." (Verified Amended Compl. ¶ 56).

9 The Plaintiffs claim that as a "direct and proximate cause of the application and/or  
10 enforcement of Chapter 368A by Defendants against the Plaintiffs, the Plaintiffs have  
11 incurred and suffered significant an substantial damages, and will in the future suffer  
12 significant and substantial damages, including but not limited to having to pay an illegal  
13 and/or unconstitutional tax; loss of constitutional rights; lost business profits; and as a result  
14 incur costs and attorney fees in seeking protection of their constitutional rights. (Verified  
15 Amended Compl. ¶ 64).

16 As a result the Plaintiffs have requested that this Court require "Defendant Nevada  
17 Tax Commission to record the payments of the Live Entertainment Tax made by the  
18 Plaintiffs during those tax periods and to certify those amounts to the Defendant State Board  
19 of Examiners, and further ordering the Defendant State Board of Examiners to Approve and  
20 authorize the refund from the State Treasury of all such Live Entertainment Tax payments  
21 that have been involuntarily made by the plaintiffs under Chapter 368A during those tax  
22 periods, together with interest as required by NRS 368A.270 and 368A.310." (First Amended  
23 Compl., p. 17, ll. 5–13; Verified Amended Compl., p. 13, ll. 19–24). The Plaintiffs'  
24 additionally claim they have been damaged in an amount in excess of \$10,000.00. (First  
25 Amended Compl. ¶ 62).

26 The documentation requested by the Defendants in Ex. "A" is relevant to the Plaintiffs'  
27 claims and the Defendants defenses of the matters at issue here. It is important to note that  
28 none of the Plaintiffs have undergone an audit. Traditionally, a taxpayer will go through the

1 audit process prior to taking their claims to the Tax Commission and to District Court. That  
2 did not happen in this instance. The Plaintiffs filed the case in District Court, and then six of  
3 the Plaintiffs went through the administrative process requesting refunds from the Nevada  
4 Tax Commission. Because the Plaintiffs have not gone through an audit, the Department of  
5 Taxation does not have the records it would normally have regarding the Plaintiffs'  
6 businesses.

7 Moreover, when the Department performs an audit, it does not only audit one type of  
8 tax applicable to the Taxpayer, it will audit all of the taxes that apply such as sales tax, use  
9 tax, modified business tax, as well as any other tax that it administers that apply to the entity  
10 including Live Entertainment Tax. Pursuant to statute, any refund must first be credited to  
11 other taxes that may be due.

12 **NRS 360.236 Overpayments: Credit against other amounts**  
13 **due required before any refund.** Notwithstanding any specific  
14 statute to the contrary, if the Department determines that any  
15 taxpayer or other person has overpaid any tax or fee  
16 administered by the Department pursuant to this title or NRS  
444A.090 or 482.313, the amount of the overpayment must be  
credited against any other such tax or fee then due from the  
taxpayer or other person before any portion of the overpayment  
may be refunded.

17 In the normal course of events, a refund issue arises after an audit. In order to  
18 perform the audit, the auditor first contacts the taxpayer with a list of the documents that are  
19 necessary for the audit. NAC 360.700. The documents requested are similar to those in the  
20 Defendants Request for Production such as, but not limited to: general ledgers, banking  
21 information, financial statements, tax returns, sales journals, budgets, projections, and profit  
22 and loss statements. If after an audit there is an overpayment pursuant to NRS 360.236 or  
23 NRS 368A.250, the numbers must first be certified and then the Department must first apply  
24 the credit to any tax that has not been paid before processing a refund. As a result without  
25 enough information to perform an audit, the Department is not in a position to look at a  
26 potential refund.

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1       **NRS 368A.250 Certification of excess amount collected;**  
2       **credit and refund.** If the Department determines that any tax,  
3       penalty or interest it is required to collect has been paid more  
4       than once or has been erroneously or illegally collected or  
5       computed, the Department shall set forth that fact in its records  
6       and shall certify to the State Board of Examiners the amount  
7       collected in excess of the amount legally due and the person from  
8       whom it was collected or by whom it was paid. If approved by the  
9       State Board of Examiners, the excess amount collected or paid  
10      must, after being credited against any amount then due from the  
11      person in accordance with NRS 360.236, be refunded to the  
12      person or his or her successors in interest.

13           The Department must also determine whether the club collected the LET tax from its  
14      customers or whether the club paid the LET tax without collecting from its customers.  
15      Nevada Administrative Code 368A.170 specifically applies to the LET and provides:

16           **NAC 368A.170 Over-collection of tax: Duties of taxpayer and**  
17           **Department. (NRS 360.090, 368A.140)**

18           1. As used in this section, "over-collection" means any amount  
19      collected as a tax on live entertainment that is exempt from taxation  
20      pursuant to subsection 5 of NRS 368A.200, or any amount in  
21      excess of the amount of the applicable tax as computed in  
22      accordance with subsections 1 to 4, inclusive, of NRS 368A.200.

23           2. Any over-collection must, if possible, be refunded by the  
24      taxpayer to the patron from whom it was collected.

25           3. A taxpayer shall:

26           (a) Use all practical methods to determine any amount to be  
27      refunded pursuant to subsection 2 and the name and address of  
28      the person to whom the refund is to be made.

29           (b) Within 60 days after reporting to the Department that a refund  
30      must be made, make an accounting to the Department of all  
31      refunds paid. The accounting must be accompanied by any  
32      supporting documents required by the Department.

33           4. If a taxpayer is unable for any reason to refund an over-  
34      collection, the taxpayer shall pay the over-collection to the  
35      Department.

36           5. If an audit of a taxpayer reveals the existence of an over-  
37      collection, the Department shall:

38           (a) Credit the over-collection toward any deficiency that results  
39      from the audit, if the taxpayer furnishes the Department with  
40      satisfactory evidence that the taxpayer has refunded the over-  
41      collection as required by subsection 2.

42           (b) Within 60 days after receiving notice from the Department that  
43      a refund must be made, seek an accounting of all refunds paid.  
44      The accounting must be accompanied by any supporting  
45      documents required by the Department.

46      (Added to NAC by Tax Comm'n by R212-03, eff. 12-4-2003)

All of this information would be fleshed out with the discovery requested through the Defendants Request for Production of Documents, Ex. "A". Instead, the Plaintiffs refuse to provide one single document. The following two tables contain the requests submitted by the Defendants, Shac, LLC and the Plaintiffs' responses, and the Defendants reasons that the discovery is necessary. The first table details the responses from Shac, LLC along with the Defendants' explanation as to why the discovery is appropriately had. As is obvious, Shac, LLC responded identically for each request.

**TABLE ONE - SHAC, LLC's RESPONSES**

REQUEST	RESPONSE BY SHAC LLC	REASON INFORMATION IS NECESSARY
<b><u>REQUEST NO. 1:</u></b> Any and all documents constituting monthly financial statements with departmental breakouts for all periods prepared internally or externally from January 2001 through the present.	Objection, the foregoing request is overly broad, unduly burdensome, harassing, irrelevant and not calculated to lead to the discovery of admissible evidence in this matter. The request is also vague and ambiguous and seeks confidential and privileged information that is protected from discovery.	Plaintiffs failed to cite any case law or statute(s) which provide that the information requested is confidential or privileged-- it is tax information requested by a taxing authority in order to make a determine of taxability. In order to process any refund, it is necessary to first perform an audit of all taxes including sales tax, use tax, modified business tax and LET in addition to any other taxes administered by the Department and determine whether the credit must be applied to other taxes due. NRS 360.236, NRS 368A.250. It is not overly burdensome because it is information kept by a business in its normal course. The Plaintiffs simply have to provide the documents. It is necessary for the Department to determine whether the Plaintiffs collected the tax from its customers or paid the tax NAC368A.170. Plaintiffs claim that the tax has chilled their free speech and caused a decline in business, and in order to make that determination it is necessary to compare the receipts prior to the LET to the receipts after the

		LET was instituted. Accordingly, the information requested is not only relevant to the claims made by the Plaintiffs, but it is necessary.
<b><u>REQUEST NO. 2:</u></b> Any and all audited financial statements for all periods prepared from January 2001 through the present.	Objection, the foregoing request is overly broad, unduly burdensome, harassing, irrelevant and not calculated to lead to the discovery of admissible evidence in this matter. The request is also vague and ambiguous and seeks confidential and privileged information that is protected from discovery.	See Defendants' explanation in Request 1.
<b><u>REQUESTS NO. 3</u></b> All Sales and Use Tax Returns for the period starting January 2001 through the present, along with all back –up work papers.	Objection, the foregoing request is overly broad, unduly burdensome, harassing, irrelevant and not calculated to lead to the discovery of admissible evidence in this matter. The request is also vague and ambiguous and seeks confidential and privileged information that is protected from discovery.	See Defendants' explanation in Request 1. In addition, because LET is also imposed on certain items which are also subject to sales tax, it is important to the Department to reconcile the sale of merchandise, refreshments and food which is subject to both sales tax and to LET. NRS 368A.200.
<b><u>REQUEST NO. 4:</u></b> Any and all documents constituting periodic profit and loss statements from January 2001 through the present.	Objection, the foregoing request is overly broad, unduly burdensome, harassing, irrelevant and not calculated to lead to the discovery of admissible evidence in this matter. The request is also vague and ambiguous and seeks confidential and privileged information that is protected from discovery.	See Defendants' explanation in Request 1.

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<p><b>REQUEST NO. 5:</b> Cash receipts journal(s), bank statements and cancelled checks from January 2001 through the present.</p>	<p>Objection, the foregoing request is overly broad, unduly burdensome, harassing, irrelevant and not calculated to lead to the discovery of admissible evidence in this matter. The request is also vague and ambiguous and seeks confidential and privileged information that is protected from discovery.</p>	<p>See Defendants' explanation in Request 1. In addition, this information is necessary during an audit in order to determine if the bank information correlates to the return information.</p>
<p><b>REQUEST NO. 6:</b> Any and all documents constituting General Ledgers from January 2002 through the present, including all sales invoices, daily sales reports and/or register tapes and/or contracts from January 2001 through the present.</p>	<p>Objection, the foregoing request is overly broad, unduly burdensome, harassing, irrelevant and not calculated to lead to the discovery of admissible evidence in this matter. The request is also vague and ambiguous and seeks confidential and privileged information that is protected from discovery.</p>	<p>See Defendants' explanation in Request 1. In addition, this information is necessary during an audit in order to determine if the information in the general ledger relates back to the banking and the return information. The taxpayer is also responsible for LET on the food, refreshments and merchandise and it is necessary to determine whether the LET was included in the prices or charged on the total. NRS 368A.200.</p>
<p><b>REQUEST NO. 7:</b> Any and all documents constituting all versions and revisions of periodic budgets, variance analyses and related presentations, reports and communication from January 2001 to the present.</p>	<p>Objection, the foregoing request is overly broad, unduly burdensome, harassing, irrelevant and not calculated to lead to the discovery of admissible evidence in this matter. The request is also vague and ambiguous and seeks confidential and privileged information that is protected from discovery.</p>	<p>See Defendants' explanation in Request 1.</p>

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<p><b><u>REQUEST NO. 8:</u></b> Any and all documents constituting all versions and revisions of periodic financial forecasts, projections and related strategic presentations, reports and communication from January 2001 to the present.</p>	<p>Objection, the foregoing request is overly broad, unduly burdensome, harassing, irrelevant and not calculated to lead to the discovery of admissible evidence in this matter. The request is also vague and ambiguous and seeks confidential and privileged information that is protected from discovery.</p>	<p>See Defendants' explanation in Request 1.</p>
<p><b><u>REQUEST NO. 9:</u></b> Any and all documents constituting all versions and revisions of periodic business plans, market studies, industry and competitor analyses and/or reports from January 2001 to the present.</p>	<p>Objection, the foregoing request is overly broad, unduly burdensome, harassing, irrelevant and not calculated to lead to the discovery of admissible evidence in this matter. The request is also vague and ambiguous and seeks confidential and privileged information that is protected from discovery.</p>	<p>See Defendants' explanation in Request 1.</p>
<p><b><u>REQUEST NO. 10:</u></b> Any and all documents constituting data related to the monitoring and reporting of daily and monthly information and statistics of customer volume, activities, and spending from January 2001 to the present.</p>	<p>Objection, the foregoing request is overly broad, unduly burdensome, harassing, irrelevant and not calculated to lead to the discovery of admissible evidence in this matter. The request is also vague and ambiguous and seeks confidential and privileged information that is protected from discovery.</p>	<p>See generally Defendants' explanation in Request 1. Specifically, this information is relevant to the Plaintiffs claims regarding the affect of LET on business.</p>

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<p><b>REQUEST NO. 11:</b> Any and all documents constituting all customer data from any loyalty club or similar databases from January 2001 through the present.</p>	<p>Objection, the foregoing request is overly broad, unduly burdensome, harassing, irrelevant and not calculated to lead to the discovery of admissible evidence in this matter. The request is also vague and ambiguous and seeks confidential and privileged information that is protected from discovery.</p>	<p>See generally Defendants' explanation in Request 1. Specifically, this information is relevant to the Plaintiffs claims regarding the affect of LET on business.</p>
<p><b>REQUEST NO. 12:</b> Any and all documents constituting all information and data gathered related to customer satisfaction, suggestions and/or complaints from January 2003 to the present.</p>	<p>Objection, the foregoing request is overly broad, unduly burdensome, harassing, irrelevant and not calculated to lead to the discovery of admissible evidence in this matter. The request is also vague and ambiguous and seeks confidential and privileged information that is protected from discovery.</p>	<p>See generally Defendants' explanation in Request 1. Specifically, this information is relevant to the Plaintiffs claims regarding the affect of LET on business.</p>
<p><b>REQUEST NO. 13:</b> Any and all documents constituting Monthly Gross Revenue or Statistical Reports or the equivalent submitted to the Nevada Department of Taxation or equivalent agency since January 1, 2001 to the present.</p>	<p>Objection, the foregoing request is overly broad, unduly burdensome, harassing, irrelevant and not calculated to lead to the discovery of admissible evidence in this matter. The request is also vague and ambiguous and seeks confidential and privileged information that is protected from discovery.</p>	<p>See Defendants' explanation in Request 1.</p>

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<p><b>REQUEST NO. 14:</b> Any and all documents constituting records of employees including, but not limited to, departmental headcounts, salaries and wages, W-2's, 1099's, Employment Security Report form(s) NUCS 4072, incentive compensation and benefits from January 2001 to the present.</p>	<p>Objection, the foregoing request is overly broad, unduly burdensome, harassing, irrelevant and not calculated to lead to the discovery of admissible evidence in this matter. The request is also vague and ambiguous and seeks confidential and privileged information that is protected from discovery.</p>	<p>See generally Defendants' explanation in Request 1. MBT is an excise tax on employers, and it is necessary part of the audit process. In addition, it is also part of the analysis of the changes to the taxpayers' business as a result of the LET.</p>
<p><b>REQUEST NO 15:</b> Any and all incentive payments or referral payments including, but not limited to payments made to limousines, taxis or car services from January 2001 to the present.</p>	<p>Objection, the foregoing request is overly broad, unduly burdensome, harassing, irrelevant and not calculated to lead to the discovery of admissible evidence in this matter. The request is also vague and ambiguous and seeks confidential and privileged information that is protected from discovery.</p>	<p>See generally Defendants' explanation in Request 1. In addition, this information is necessary with regards to determining the gross receipts and admission payments.</p>
<p><b>REQUEST NO. 16:</b> Any and all documents constituting the plaintiff's loss analysis including, but not limited to, plaintiff's schedule of lost revenue and any and all supporting documents constituting calculations, spreadsheets, reports, accounting ledgers and/or journals, projections, forecasts, business plans, valuations or other information forming the basis for the loss from January 2001 to the present.</p>	<p>Objection, the foregoing request is overly broad, unduly burdensome, harassing, irrelevant and not calculated to lead to the discovery of admissible evidence in this matter. The request is also vague and ambiguous and seeks confidential and privileged information that is protected from discovery.</p>	<p>See Defendants' explanation in Request 1. Specifically, this information is relevant to the Plaintiffs claims regarding the affect of LET on business.</p>

<p><b>REQUEST NO. 17:</b> Any and all documents constituting valuations or appraisals of the Company or its assets (including real property) prepared by financial consultants, appraisers, CPAs, accountants, or other third parties at any time from January 2001 to the present.</p>	<p>Objection, the foregoing request is overly broad, unduly burdensome, harassing, irrelevant and not calculated to lead to the discovery of admissible evidence in this matter. The request is also vague and ambiguous and seeks confidential and privileged information that is protected from discovery.</p>	<p>See Defendants' explanation in Request 1.</p>
<p><b>REQUEST NO. 18:</b> Any and all documents constituting offers, bids, or proposals received by the Company for the actual or potential purchase of any and all its assets (including real property) prepared by actual or potential buyers, accountants, investment bankers, contractors, or other third parties at any time from January 2001 to the present.</p>	<p>Objection, the foregoing request is overly broad, unduly burdensome, harassing, irrelevant and not calculated to lead to the discovery of admissible evidence in this matter. The request is also vague and ambiguous and seeks confidential and privileged information that is protected from discovery.</p>	<p>See Defendants' explanation in Request 1.</p>
<p><b>REQUEST NO 19:</b> Any and all documents reflecting all debt or other financing arrangements (actual and prospective) entered into by the Company including, but not limited to, loan agreements, line of credit agreements, promissory notes, letter of credit agreements, guarantee agreements, or other contractual documents at any time from January 2001 to the present.</p>	<p>Objection, the foregoing request is overly broad, unduly burdensome, harassing, irrelevant and not calculated to lead to the discovery of admissible evidence in this matter. The request is also vague and ambiguous and seeks confidential and privileged information that is protected from discovery.</p>	<p>See Defendants' explanation in Request 1.</p>

<p><b><u>REQUEST NO. 20:</u></b> Any and all documents constituting the correspondence, loan and/or credit applications, proposals, and other agreements between the Company and financial institutions, accountants, financial consultants, or other third parties prepared at any time from January 2001 to the present.</p>	<p>Objection, the foregoing request is overly broad, unduly burdensome, harassing, irrelevant and not calculated to lead to the discovery of admissible evidence in this matter. The request is also vague and ambiguous and seeks confidential and privileged information that is protected from discovery</p>	<p>See Defendants' explanation in Request 1.</p>
<p><b><u>REQUEST NO 21:</u></b> All Federal Tax returns and schedules filed by the Plaintiffs from January 2001 to the present.</p>	<p>Objection, the foregoing request is overly broad, unduly burdensome, harassing, irrelevant and not calculated to lead to the discovery of admissible evidence in this matter. The request is also vague and ambiguous and seeks confidential and privileged information that is protected from discovery.</p>	<p>See Defendants' explanation in Request 1. This information is necessary in order to correlate the financial information provided with the information provided to other taxing authorities.</p>
<p><b><u>REQUEST NO. 22:</u></b> Any and all documents constituting agreements and/or contracts with vendors, suppliers, lessees, lessors or other providers or recipients of products or services from January 2001 to the present.</p>	<p>Objection, the foregoing request is overly broad, unduly burdensome, harassing, irrelevant and not calculated to lead to the discovery of admissible evidence in this matter. The request is also vague and ambiguous and seeks confidential and privileged information that is protected from discovery.</p>	<p>See Defendants' explanation in Request 1.</p>

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<p><b>REQUEST NO. 23:</b> All correspondence to and from the Department of Taxation regarding Live Entertainment Tax from January 2003 to the present.</p>	<p>Objection, the foregoing request is overly broad, unduly burdensome, harassing, irrelevant and not calculated to lead to the discovery of admissible evidence in this matter. The request is also vague and ambiguous and seeks confidential and privileged information that is protected from discovery.</p>	<p>Any correspondence between the Plaintiffs and the Department would be relevant to both the claims and defenses in this matter.</p>
<p><b>REQUEST NO. 24:</b> Copies of all signs referencing any applicable tax, including information regarding the location of all of the signs, the dates each sign was posted and time of day that the each sign is posted from January 2003 to the present.</p>	<p>Objection, the foregoing request is overly broad, unduly burdensome, harassing, irrelevant and not calculated to lead to the discovery of admissible evidence in this matter. The request is also vague and ambiguous and seeks confidential and privileged information that is protected from discovery.</p>	<p>See Defendants' explanation in Request 1.</p>

## **TABLE TWO - PLAINTIFFS' RESPONSES**

The following table contains the Plaintiffs responses. Although separate Requests for Production were served on each of the eight Plaintiffs, the Plaintiffs responded once, but did not state which Plaintiff or whether all Plaintiffs were responding. While the response to each request is not identical for all twenty-four (24) Requests, the Plaintiffs failed to cite any authority to support the contention that the information is confidential or proprietary and simply listed a number of boilerplate objections without any explanation. Plaintiffs also allege that the sole matter at issue is the constitutionality of the tax. However, the Plaintiffs have brought the "as applied" and "refund" claims which significantly expand the scope of this

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matter beyond the constitutional challenge and necessitates the Defendants requests for discovery. In addition, the Defendants have never stated that the amount of the tax is not in dispute, and because an audit has never been performed the Department does not know the extent of any of the Plaintiffs' tax liabilities.

REQUEST	RESPONSE BY PLAINTFFS	REASON INFORMATION IS NECESSARY
<b><u>REQUEST NO. 1:</u></b> Any and all documents constituting monthly financial statements with departmental breakouts for all periods prepared internally or externally from January 2002 through the present.	Objection. This request is not reasonably calculated to lead to the discovery of admissible evidence. Information concerning the amounts paid by Plaintiff to the State pursuant to the subject tax (the "tax") is already within Defendants' custody and control. Plaintiff's financial information is confidential and/or proprietary. Also, it is nether relevant, nor calculated to lead to the discovery of admissible evidence concerning the constitutionality of the tax, which is the sole matter at issue, or the amounts paid pursuant to the tax, which is not disputed. Finally, the term "periods" is vague and ambiguous.	Plaintiffs failed to cite any case law or statute(s) which provide that the information requested is confidential or privileged-- it is tax information requested by a taxing authority in order to make a determine of taxability. In order to process any refund, it is necessary to first perform an audit of all taxes including sales tax, use tax, modified business tax and LET in addition to any other taxes administered by the Department and determine whether the credit must be applied to other taxes due. NRS 360.236, NRS 368A.250. It is not overly burdensome because it is information kept by a business in its normal course. It is necessary for the Department to determine whether the Plaintiffs collected the tax from its customers or paid the tax NAC368A.170. Since an audit has never been performed, the Defendants could never state that there is no dispute concerning the amount that is due. Plaintiffs claim that the tax has chilled their free speech and caused a decline in business, and in order to make that determination it is necessary to compare the receipts prior to the LET to the receipts after the LET was instituted. The constitutionality of the tax was the sole matter until the Plaintiffs made as applied claims and claims for refund, now the issues have expanded. Accordingly, the information

		requested is not only relevant to the claims made by the Plaintiffs, but it is necessary.
<p><b><u>REQUEST NO 2:</u></b> Any and all audited financial statements for all periods prepared from January 2002 through the present.</p>	<p>Objection. This request is not reasonably calculated to lead to the discovery of admissible evidence. Information concerning the amounts paid by Plaintiff to the State pursuant to the tax is already within Defendants' custody and control. Plaintiff's financial information, including audited financial statements, is confidential and/or proprietary. Also, it is neither relevant, nor calculated to lead to the discovery of admissible evidence concerning the constitutionality of the tax, which is the sole matter at issue, or the amounts paid pursuant to the tax, which is not disputed.</p>	<p>See Defendants' explanation in Request 1. The request is not for the amounts paid pursuant to returns filed, it is for the financial statements which the Plaintiffs have not provided.</p>
<p><b><u>REQUESTS NO. 3:</u></b> All Sales and Use Tax Returns for the period starting January 2002 through the present, along with all back –up work papers.</p>	<p>Objection. Sales and Use Tax Returns are filed with the State; thus, the information sought by this request is obtainable from some other source that is more convenient, less burdensome, or less expensive, including without limitation the requesting parties themselves. Also, the term "back-up papers" is vague and ambiguous.</p>	<p>See Defendants' explanation in Request 1. In addition, because LET is also imposed on certain items which are also subject to sales tax, it is important to the Department to reconcile the sale of merchandise, refreshments and food which is subject to both sales tax and to LET. NRS 368A.200. This can only be done with the Plaintiffs back up papers used to determine the amount of sales and use tax that was disclosed on the sales tax returns. In addition, the Department needs receipts for expenses and fixed assets in order to determine the use tax liability.</p>

<p><b>REQUEST NO. 4:</b> Any and all documents constituting periodic profit and loss statements from January 2002 through the present.</p>	<p>Objection. This request is not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff's financial information, including periodic profit and loss statements, if such information exists, is confidential and/or proprietary. Also, it is neither relevant, nor calculated to lead to the discovery of admissible evidence concerning the constitutionality of the tax, which is the sole matter at issue, or the amounts paid pursuant to the tax, which is not disputed.</p>	<p>See Defendants' explanation in Request 1.</p>
<p><b>REQUEST NO. 5:</b> Cash receipts journal(s), bank statements and cancelled checks from January 2002 through the present.</p>	<p>Objection. This request is not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff's financial information, including cash receipt journal(s), bank statements and cancelled checks is confidential and/or proprietary. Also, it is neither relevant, nor calculated to lead to the discovery of admissible evidence concerning the constitutionality of the tax, which is the sole matter at issue, or the amounts paid pursuant to the tax, which is not disputed. Finally, this request is unduly burdensome, as it would require, among other things, Plaintiff to collect and produce every cash receipt, for every transaction, from the last 3,467 days (since January, 2002).</p>	<p>See Defendants' explanation in Request 1. In addition, this information is necessary during an audit in order to determine if the bank information and expenses correlate to the return information. The Plaintiffs are the ones who brought this suit, claiming a loss in business because of the LET, and the Defendants are entitled to the evidence necessary to defend the claims.</p>

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<b><u>REQUEST NO. 6:</u></b> Any and all documents constituting General Ledgers from January 2002 through the present, including all sales invoices, daily sales reports and/or register tapes and/or contracts from January 2002 through the present.	Objection. This request is not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff's financial information is confidential and/or proprietary. Also, it is nether relevant, nor calculated to lead to the discovery of admissible evidence concerning the constitutionality of the tax, which is the sole matter at issue, or the amounts paid pursuant to the tax, which is not disputed. Finally, this request is unduly burdensome, as it seeks, among other things and individual "sales reports and/or register tape" for each register, from the last 3,467 days (since January, 2002).	See Defendants' explanation in Request 1. In addition, this information is necessary during an audit in order to determine if the information in the general ledger relates back to the banking and the return information. The taxpayer is also responsible for LET on the food, refreshments and merchandise and it is necessary to determine whether the LET was included in the prices or charged on the total. NRS 368A.200.
<b><u>REQUEST NO. 7:</u></b> Any and all documents constituting all versions and revisions of periodic budgets, variance analyses and related presentations, reports and communication from January 2002 to the present.	Objection. This request is not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff's financial information, including periodic budgets, variance analyses and related presentations, reports and communication, if such information exists, is confidential and/or proprietary. Also, it is nether relevant, nor calculated to lead to the discovery of admissible evidence concerning the constitutionality of the tax, which is the sole matter at issue, or the amounts paid pursuant to the tax, which is not disputed. Additionally, "variance analyses and related presentations, reports and communications" is vague and ambiguous. Finally, this request is unduly burdensome.	See Defendants' explanation in Request 1.

<b>REQUEST NO. 8:</b> Any and all documents constituting all versions and revisions of periodic financial forecasts, projections and related strategic presentations, reports and communication from January 2002 to the present.	Objection. This request is not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff's financial information, including periodic financial forecasts, projections and related strategic presentations, reports and communication, if such information exists, is confidential and/or proprietary. Also, it is neither relevant, nor calculated to lead to the discovery of admissible evidence concerning the constitutionality of the tax, which is the sole matter at issue, or the amounts paid pursuant to the tax, which is not disputed. Finally, this request is unduly burdensome and overbroad.	See Defendants' explanation in Request 1.
<b>REQUEST NO. 9:</b> Any and all documents constituting all versions and revisions of periodic business plans, market studies, industry and competitor analyses and/or reports from January 2002 to the present.	Objection. This request is not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff's financial information, including versions and revisions of periodic business plans, market studies, industry and competitor analyses and/or reports, if such information exists, is confidential and/or proprietary. Also, it is neither relevant, nor calculated to lead to the discovery of admissible evidence concerning the constitutionality of the tax, which is the sole matter at issue, or the amounts paid pursuant to the tax, which is not disputed. Finally, this request is unduly burdensome.	See Defendants' explanation in Request 1.

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<p><b><u>REQUEST NO. 10:</u></b> Any and all documents constituting data related to the monitoring and reporting of daily and monthly information and statistics of customer volume, activities, and spending from January 2002 to the present.</p>	<p>Objection. This request is not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff's financial information, including data related to the monitoring and reporting of daily and monthly information and statistics of customer volume, activities, and spending is confidential and/or proprietary. Also, it is nether relevant, nor calculated to lead to the discovery of admissible evidence concerning the constitutionality of the tax, which is the sole matter at issue, or the amounts paid pursuant to the tax, which is not disputed. Finally, this request is unduly burdensome.</p>	<p>See generally Defendants' explanation in Request 1. Specifically, this information is relevant to the Plaintiffs claims regarding the affect of LET on business.</p>
<p><b><u>REQUEST NO. 11:</u></b> Any and all documents constituting all customer data from any loyalty club or similar databases from January 2002 through the present.</p>	<p>Objection. This request is not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff's business information, including customer data, if such information exists, is confidential and/or proprietary. Also, it is nether relevant, nor calculated to lead to the discovery of admissible evidence concerning the constitutionality of the tax, which is the sole matter at issue, or the amounts paid pursuant to the tax, which is not disputed. Finally, this request is unduly burdensome.</p>	<p>See generally Defendants' explanation in Request 1. Specifically, this information is relevant to the Plaintiffs claims regarding the affect of LET on business.</p>

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1 2 3 4 5 6 7 8 9 10 11	<b>REQUEST NO. 12:</b> Any and all documents constituting all information and data gathered related to customer satisfaction, suggestions and/or complaints from January 2005 to the present.	Objection. This request is not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff's business information, including customer data/satisfaction, if such information exists, is confidential and/or proprietary. Also, it is nether relevant, nor calculated to lead to the discovery of admissible evidence concerning the constitutionality of the tax, which is the sole matter at issue, or the amounts paid pursuant to the tax, which is not disputed. Finally, this request is unduly burdensome.	See generally Defendants' explanation in Request 1. Specifically, this information is relevant to the Plaintiffs claims regarding the affect of LET on business.
12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	<b>REQUEST NO. 13:</b> Any and all documents constituting Monthly Gross Revenue or Statistical Reports or the equivalent submitted to the Nevada Department of Taxation or equivalent agency since January 1, 2002 to the present.	Objection. This request is not reasonably calculated to lead to the discovery of admissible evidence. Information concerning the amounts paid by Plaintiff to the State pursuant to the tax is already within Defendants' custody and control. Also, it is nether relevant, nor calculated to lead to the discovery of admissible evidence concerning the constitutionality of the tax, which is the sole matter at issue, or the amounts paid pursuant to the tax, which is not disputed. Moreover, it appears one of the requesting parties ( <u>the Nevada Department of Taxation</u> ) is actually requesting that Plaintiff produce information " <u>submitted to the Nevada Department of Taxation</u> "). In other words, Defendants are specifically requesting information that, by definition, Plaintiff's have already produced and thus, that Defendants already	See Defendants' explanation in Request 1.

	possess. As such, the information sought by this request is obtainable from some other source that is more convenient, less burdensome, or less expensive, including without limitation the requesting parties themselves.	
<b>REQUEST NO. 14:</b> Any and all documents constituting records of employees including, but not limited to, departmental headcounts, salaries and wages, W-2's, 1099's, Employment Security Report form(s) NUCS 4072, incentive compensation and benefits from January 2002 to the present.	Objection. This request is not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff's business information, including personal information concerning employees, wages, benefits, etc., if such information exists, is confidential and/or proprietary. Also, it is nether relevant, nor calculated to lead to the discovery of admissible evidence concerning the constitutionality of the tax, which is the sole matter at issue, or the amounts paid pursuant to the tax, which is not disputed. Finally, this request is unduly burdensome.	See generally Defendants' explanation in Request 1. MBT is an excise tax on employers, and it is necessary part of the audit process. In addition, it is also part of the analysis of the changes to the taxpayers' business as a result of the LET.
<b>REQUEST NO 15:</b> Any and all incentive payments or referral payments including, but not limited to payments made to limousines, taxis or car services from January 2002 to the present.	Objection. This request is not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff's business information, including "incentive payments or referral payments", if such information exists, is confidential and/or proprietary. Also, it is nether relevant, nor calculated to lead to the discovery of admissible evidence concerning the constitutionality of the tax, which is the sole matter at issue, or the amounts paid pursuant to the tax, which is not disputed. Finally, this request is unduly burdensome.	See generally Defendants' explanation in Request 1. In addition, this information is necessary with regards to determining the gross receipts and admission payments.

<p><b>REQUEST NO. 16:</b> Any and all documents constituting the plaintiff's loss analysis including, but not limited to, plaintiff's schedule of lost revenue and any and all supporting documents constituting calculations, spreadsheets, reports, accounting ledgers and/or journals, projections, forecasts, business plans, valuations or other information forming the basis for the loss from January 2002 to the present.</p>	<p>Objection. Plaintiff does not have any documents constituting a "loss analysis" (a term that is vague and ambiguous), other than those documents setting forth and documenting all sums paid pursuant to the tax, all of which are already within Defendants' custody and control, as are all individual and aggregate calculations arising there from. Also, this information is nether relevant, nor calculated to lead to the discovery of admissible evidence concerning the constitutionality of the tax, which is the sole matter at issue, or the amounts paid pursuant to the tax, which is not disputed. Plaintiff's financial information is otherwise wholly irrelevant to the constitutionality of the subject tax, which is the sole matter at issue. Finally, it is overbroad and unduly burdensome.</p>	<p>See Defendants' explanation in Request 1. Specifically, this information is relevant to the Plaintiffs claims regarding the affect of LET on business.</p>
<p><b>REQUEST NO. 17:</b> Any and all documents constituting valuations or appraisals of the Company or its assets (including real property) prepared by financial consultants, appraisers, CPAs, accountants, or other third parties at any time from January 2002 to the present.</p>	<p>Objection. This request is not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff's business information, including documents constituting valuations or appraisals of the Company or its assets (including real property) prepared by financial consultants, appraisers, CPAs, accountants, or other third parties, etc., if such information exists, is confidential and/or proprietary. Also, it is nether relevant, nor calculated to lead to the discovery of admissible evidence concerning the constitutionality of the tax,</p>	<p>See Defendants' explanation in Request 1.</p>

	which is the sole matter at issue, or the amounts paid pursuant to the tax, which is not disputed. Finally, this request is unduly burdensome and overly broad.	
<b><u>REQUEST NO. 18:</u></b> Any and all documents constituting offers, bids, or proposals received by the Company for the actual or potential purchase of any and all its assets (including real property) prepared by actual or potential buyers, accountants, investment bankers, contractors, or other third parties at any time from January 2002 to the present.	Objection. This request is not reasonably calculated to lead to the discovery of admissible evidence. Information concerning offers or potential offers to purchase any or all of Plaintiff's assets, if such information exists, is confidential and/or proprietary. Also, it is neither relevant, nor calculated to lead to the discovery of admissible evidence concerning the constitutionality of the tax, which is the sole matter at issue, or the amounts paid pursuant to the tax, which is not disputed. Finally, this request is overly broad and unduly burdensome.	See Defendants' explanation in Request 1.
<b><u>REQUEST NO 19:</u></b> Any and all documents reflecting all debt or other financing arrangements (actual and prospective) entered into by the Company including, but not limited to, loan agreements, line of credit agreements, promissory notes, letter of credit agreements, guarantee agreements, or other contractual documents at any time from January 2002 to the present.	Objection. This request is not reasonably calculated to lead to the discovery of admissible evidence. Information concerning Plaintiff's debt or other financial arrangements, if such information exists, is confidential and/or proprietary. Also, it is neither relevant, nor calculated to lead to the discovery of admissible evidence concerning the constitutionality of the tax, which is the sole matter at issue, or the amounts paid pursuant to the tax, which is not disputed. Finally, this request is unduly burdensome and overly broad.	See Defendants' explanation in Request 1.

<p><b><u>REQUEST NO. 20:</u></b> Any and all documents constituting the correspondence, loan and/or credit applications, proposals, and other agreements between the Company and financial institutions, accountants, financial consultants, or other third parties prepared at any time from January 2002 to the present.</p>	<p>Objection. This request is not reasonably calculated to lead to the discovery of admissible evidence. Information concerning Plaintiff's correspondence, loan and/or credit applications, proposals, and other agreements between the Company and financial institutions, accountants, financial consultants, or other third parties, if such information exists, is confidential and/or proprietary. Also, it is neither relevant, nor calculated to lead to the discovery of admissible evidence concerning the constitutionality of the tax, which is the sole matter at issue, or the amounts paid pursuant to the tax, which is not disputed. Finally, this request is overly broad and unduly burdensome.</p>	<p>See Defendants' explanation in Request 1.</p>
<p><b><u>REQUEST NO 21:</u></b> All Federal Tax returns and schedules filed by the Plaintiffs from January 2002 to the present.</p>	<p>Objection. Federal Tax returns are privileged and confidential. Also, it is neither relevant, nor calculated to lead to the discovery of admissible evidence concerning the constitutionality of the tax, which is the sole matter at issue, or the amounts paid pursuant to the tax, which is not disputed.</p>	<p>See Defendants' explanation in Request 1. This information is necessary in order to correlate the financial information provided with the information provided to other taxing authorities.</p>
<p><b><u>REQUEST NO. 22:</u></b> Any and all documents constituting agreements and/or contracts with vendors, suppliers, lessees, lessors or other providers or recipients of products or services from January 2002 to the present.</p>	<p>Objection. This request is not reasonably calculated to lead to the discovery of admissible evidence. Information concerning Plaintiff's agreements and/or contracts with vendors, suppliers, lessees, lessors or other providers or recipients of products or services, if such information exists, is</p>	<p>See Defendants' explanation in Request 1.</p>

	confidential and/or proprietary. Also, it is neither relevant, nor calculated to lead to the discovery of admissible evidence concerning the constitutionality of the tax, which is the sole matter at issue, or the amounts paid pursuant to the tax, which is not disputed. Finally, this request is overly broad and unduly burdensome.	
<b><u>REQUEST NO. 23:</u></b> All correspondence to and from the Department of Taxation regarding Live Entertainment Tax from January 2005 to the present.	Objection. This request is not reasonably calculated to lead to the discovery of admissible evidence. Moreover, it appears one of the requesting parties ( <u>the Nevada Department of Taxation</u> ) is actually requesting that Plaintiff produce correspondence " <u>to and from the Nevada Department of Taxation</u> ". In other words, Defendants are specifically requesting information that by definition Plaintiffs have already produced and thus, is already in their possession. As such, the information sought by this request is obtainable from some other source that is more convenient, less burdensome, or less expensive, including without limitation the requesting parties themselves.	Any correspondence between the Plaintiffs and the Department would be relevant to both the claims and defenses in this matter.
<b><u>REQUEST NO. 24:</u></b> Copies of all signs referencing any applicable tax, including information regarding the location of all of the signs, the dates each sign was posted and time of day that the each sign is posted from January 2005 to the present.	Objection. This request is not reasonably calculated to lead to the discovery of admissible evidence. Information concerning Plaintiff's signs referencing any applicable tax, including information regarding the location of all of the signs, the dates each sign was posted and time of day that the [sic] each sign is posted, if such information exists, is	See Defendants' explanation in Request 1.

	neither relevant, nor calculated to lead to discovery of admissible evidence concerning the constitutionality of the tax, which is the sole matter at issue, or the amounts paid pursuant to the tax, which is not disputed.	
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Rule 26(b) permits discovery regarding any matter which is relevant to the subject matter involved in the pending action, as long as the discovery is not privileged. Plaintiffs have failed to show a rule of privilege that applies to the documents requested. Plaintiffs have also failed to show why the financial information requested is not relevant to the subject matter when it was the Plaintiffs themselves who put this at issue with as applied and refund claims. If the "sole issue" as they claim is the constitutionality of the LET, then why have the Plaintiffs included as applied and refund claims?

Based on the Plaintiffs' Amended Complaints, the Defendants must defend against the Plaintiffs' claims of lost business profits. Pursuant to the Nevada Revised Statutes and Nevada Administrative Code any credits for a refund must be offset by any balance due for any tax. The entities involved in this litigation have never been audited for the periods at issue here. Accordingly, the information requested is relevant. The information is also not privileged, since it is financial information that would normally be provided during an audit by a taxing authority. In addition, the information sought is not overly burdensome compared to the size and scope of the amounts at issue. This is a multi-million dollar lawsuit, and the documents requested are documents kept in the normal course of business. Therefore, the requests are not overly burdensome.

Just the fact that the Plaintiffs have not produced one single page is proof that the Plaintiffs do not feel that they have to comply with the Nevada Rules of Civil Procedure. Just the fact that counsel for Shac, LLC provided responses *prior* to speaking with his client shows a total disregard for the procedures in place. This utter disrespect for the Rules should not be condoned.

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Moreover, once this matter was expanded to include the as applied and refund claims, this discovery should have been automatically provided pursuant to NRCP 16.1. If a party "fails to make a disclosure required by Rule 16.1(a) or 16.2(a), any other party may move to compel disclosure and for appropriate sanctions." NRCP 37(a)(2)(A).

The Defendants hereby certify that they have met, in good faith, with both counsel for Shac, LLC, as well as, counsel for the Plaintiffs in an attempt to secure the disclosures without the need to file this Motion. Counsel for Shac, LLC stated that they will not produce a single document and that they prefer to have this Court make the determination as per the e-mail dated July 15, 2011, Ex. "E". Counsel for the Plaintiffs has failed to communicate with the Defendants after the EDCR 2.34 conference, and has not produced a single document.


Accordingly, the Defendants are requesting that the Plaintiffs be compelled to produce the information contained in the Defendants' Request for Production of Documents and that this Court impose monetary sanctions pursuant to NRCP 37(a)(2)(A) to cover the costs and fees in having to prepare this Motion to Compel.

### **CONCLUSION**

Based on the foregoing, the Defendants respectfully request that this Honorable Court Order the Plaintiffs to provide the documents requested and that this Court Order the Plaintiffs to pay the costs and fees incurred in having to prepare and file this Motion.

DATED this 15<sup>th</sup> day of August, 2011.

CATHERINE CORTEZ MASTO  
Attorney General

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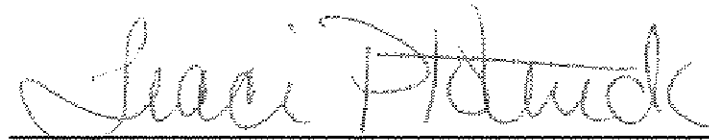
**CERTIFICATE OF SERVICE**

I, hereby certify that on the 16th day of August, 2011, I served the **DEFENDANTS' MOTION TO COMPEL ON AN ORDER SHORTENING TIME**, by causing to be delivered to the Department of General Services for mailing at Las Vegas, Nevada, and **via facsimile (Motion and Order Shortening Time Only)** a true copy thereof, addressed to:

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